The Shareholders' Right to See Information Related To the Liquidation of Public Joint Stock Companies

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Abstract

The liquidation of the company is either voluntary or mandatory. Whatever the type of liquidation, it is considered to be of great importance and danger in view of the operations it is based on – and the consequences it leads to – that touch the essence of the shareholders' rights in the company, in addition to being the same with respect to the rights of others.The liquidation of joint stock companies is based on complex and intertwined procedures, in order to limit the company's assets, which vary between movable money (cash or debt owed by others), immovable money, as well as limiting its liabilities to liquidate its assets in kind and collect its money from debts owed by others and then pay what it owes to others, leading to the division of the liquidation surplus – if there is a surplus – among the company's shareholders. And if the representation of the company during its life is entrusted to its board of directors, its managers and whomever its board of directors may choose from delegates, then despite the continuity of its board of directors and its auditor, however, as soon as a decision is issued to liquidate the company, that representative capacity ceases, and the liquidator becomes the only person with the capacity to represent the company. The company is involved in all actions required for liquidation and in cases in which the company is a party.Based on this, and in view of what the liquidation process may result in infringing the rights of shareholders, and that the company often includes a large number of shareholders, many of whom are separate from the company, by nature, the importance of the study becomes obvious and evident, as one of the simplest requirements for preserving their rights is for them to be acquainted with the course of that process to the extent that they can protect their rights in the company.Accordingly, the study dealt with the issue of legal regulation to inform shareholders of the liquidation process, and the adequacy of the legal texts regulating this subject, to provide the necessary protection for those rights, which are determined according to the information available to them. This, of course, regardless the fact that the large number of shareholders of the company, and the large number of those who may be asked to obtain information related to the liquidation, may hinder the liquidation process, a matter which is dealt with in the present study, and the extent of the balance established by the legislator between the two mentioned considerations. The study's significance is also due to the fact that it tries to organize the shareholders' access to the information related to the liquidation process and the nature and limits of that information, taking into consideration the issues that this may require, including addressing the issues that must be addressed while we are in the process of researching the legal regulation to inform the shareholders of the course of the liquidation process, such as the issue of selecting the liquidator.Thus, the study was divided into two main topics. In the first topic, the researcher dealt with the issue of informing shareholders at the start of liquidation, which is divided into two parts. The selection of the liquidator and its commitment to inform about the liquidation process was the focus of the research in the first section, while the researchers devoted the second section to the liquidator's commitment to informing during the liquidation stage. The second topic, on the other hand, is devoted to examining the liquidator's commitment to informing when the liquidation is completed. It is divided into two sections. In the first section, the researcher dealt with the liquidator's obligation to submit a final account of the liquidation work, while we dealt with its commitment to announce the conclusion of the liquidation work in the second section of this topic.

Introduction

Various legislations regulated the provisions for the expiration of companies, including joint stock companies. It is known that when any of the cases of corporate extinction is realized, the company enters the process of liquidation.

The liquidation of the company is either optional, or mandatory. Whatever the type of liquidation, it is considered a stage of great importance and danger in view of the operations it is based on and the consequences it leads to that affect the essence of the shareholders' rights in the company, in addition to being similar to the rights of others.

The liquidation process is based on the inventory of the company's assets and its debts, moving to fulfilling its rights and selling what it owes from real estate and movables, and then paying its debts, leading to determining its net assets, if there are net, in order to be distributed to shareholders. And if the representation of the company during its life is entrusted to its board of directors, and whom the board may choose, including managers and commissioners, then although the management bodies remain in the company during the liquidation, however, as soon as the decision to liquidate the company is issued, they no longer have the representative capacity. Therefore, the liquidator becomes the only person with the capacity in representing the company in all actions required for liquidation, and in cases in which the company is a party.

In view of the great importance of the liquidation process, as we mentioned above, and the consequent prejudice to the rights of shareholders, one of the simplest rights of the shareholder is to see the course of the liquidation process in order to preserve his rights, which requires the study to shed light on the legal regulation to inform the shareholders on the liquidation process,the nature of that information, and its limits, taking into consideration the issues that this may require to be addressed when researching the legal regulation to inform shareholders of the course of the liquidation process, such as the issue of selecting the liquidator.

Significance of the study

The importance of the study is highlighted in view of the risks involved in the liquidation of joint stock companies for the rights of shareholders – as well as for others – and in view of the diversity of the company's assets; Whether the asset is movable, such as cash or a debt owed by a third party, or whether the asset is immovable money, and the obligations it owes to third parties.

The liquidation process is based on complex processes and intertwined procedures, in order to limit the company's assets, which vary between movable money (cash or debt owed by others), immovable money, as well as limiting its liabilities, moving to liquidating its assets in kind, and collecting its money from debts owed by others, then pay the debts owed to others, up to dividing the liquidation surplus – whenever there is a surplus – among the company's shareholders.

The limits of the study

This study will be limited to researching the publicity of the liquidation procedures from its inception through its closure, in addition to what this requires, including the appointment of the liquidator, and his duties in this regard.

Study Methodology

The methodology of this study is based on the two approaches: descriptive and comparative, as it will address the relevant legal texts in order to determine the legislator's intent from them, identify the shortcomings and strengths, and express a point of view on that.

Study Outline

The axes of the study are divided into two main topics as follows:

The first topic: the obligation to inform about the liquidation.

The first section: the liquidator's obligation to inform about the start of the liquidation process.

The second section: the liquidator's obligation to inform during the liquidation stage.

The second topic: the liquidator's obligation to inform about the end of liquidation.

The first section: the obligation to submit a final account for the liquidation work.

The second section: Commitment to announce the conclusion of the liquidation work.

The First Topic: The Obligation to Inform About the Liquidation

The First Section: The Liquidator's Obligation to Inform about the Start of the Liquidation Process

The liquidation process requires the appointment of one or more liquidators to perform it. The liquidator, in case of voluntary liquidation, is appointed by the shareholders through a decision taken by their general assembly in an extraordinary meeting. If the Extraordinary General Assembly does not choose him, he shall be chosen by the Companies Comptroller, as for his choice by the court in the case of compulsory liquidation, and not for the third method of liquidation, which the Jordanian legislator took. It is liquidation under judicial supervision which has an impact in terms of the method of selecting the liquidator. This is because the liquidator in this case is either the same liquidator chosen by the general assembly of shareholders that decided to conduct the liquidation, or who was chosen by the controller, or the court that accepted the liquidation procedure under its supervision decided to dismiss the previous liquidator and appoint someone else to replace him. And if the Jordanian legislator did not raise the percentage required to vote on the decision of the general assembly in its extraordinary meeting to consider the liquidation of the company, which is the approval of the owners of no less than three quarters of the shares present or represented at the meeting, but it tightened the quorum required for the validity of that meeting. If the quorum required for the validity of the extraordinary general assembly meeting is the attendance of shareholders representing no less than half of the company's subscribed shares, which, if not available, within the specified time, a second meeting is called to be held within ten days of the first meeting, which is the meeting that is valid If it is attended by representatives of no less than (40%) of the company's subscribed shares, the legislator may tighten in case of liquidation, which is considered to be the most extraordinary.

This is the case in which the care that the legislator paid to the liquidation is evident. If the legislator had included the powers of the general assembly, when it meets in an extraordinary way in Article (175) of the Jordanian Companies Law, it considered liquidation as extremely unusual cases. This confirms the need to enable the shareholders of the company to be liquidated to obtain information related to the liquidation of their company, in order to preserve their rights in it, considering that the information they obtain in itself constitutes a control over the liquidation process, as well as the actions they may take based on that information. This reflects positively on the filtering process.The liquidator, in accordance with paragraph (a) of Article VI of the Jordanian Companies Liquidation System No. 6 of 2021, "should inform the relevant authorities that deal with the company in writing of the liquidation of the company, including the real estate registry and the register of movable funds if the company is the owner of real estate, movable property under registration, or real property rights".

Concerning the information regarding liquidation, the French legislator required the liquidator, in accordance with the text of Article (L. 1-238) of the French Companies Law amended by the Law of May 15/2001, and under penalty of penal sanctions, to publish his appointment decision.

As for the Egyptian legislator, it was required that the name of the liquidator and the method of liquidation be announced in the commercial registry and in its newspaper, in accordance with the text of Article (140) of the Companies Law. Otherwise, this decision cannot be invoked against third parties.And we find, as an application of this, that the Egyptian Court of Cassation, in the context of its ruling, confirmed that the decision to liquidate the company is not valid before the completion of the month's procedures.

From here it seems clear that the task of informing others of the intended liquidation of the company, and the person in charge of it, has been placed by the Egyptian legislator on the responsibility of the liquidator who must also share information related to the company, including the company's name, structure, amount of capital, headquarter, address designated to receive correspondence, the exact place for publishing the liquidation documents, and a statement of the competent court, and its headquarters ().

The Second Section: The Liquidator's Obligation to Inform during the Liquidation Stage

Since the liquidator represents the company, the tasks entrusted to him include counting the company's assets and liabilities, and then doing what is necessary to pay off its liabilities and dividing the net liquidation among the shareholders. The liquidator shall also collect the company's debts owed by third parties, including the company's shareholders who owe it the value of the shares in installments or who owe it under any other relationship. Liquidation also requires the sale of the company's movable and immovable funds. The liquidator has the right to conciliate the disputed rights, settle the company's liabilities, and divide the company's net assets among the shareholders.

If there is more than one liquidator, then, according to the French legislator, in Decree 78-704 of July 3, 1998, they may exercise their duties individually, unless there is a text prohibiting this, without including the documents that must be submitted. The French legislator was keen, in accordance with Article (10) of the decree of July 3, 1978,

that the company's shareholders meet to be aware of the liquidation process, and in order to oblige the liquidator to do so, penal penalties were imposed on him, if he did not perform the task of explaining what he must do. Moreover, the liquidator is required to submit an account to the shareholders showing the works that have been completed during the reporting period, of which he must submit at least one of them each year, in case of voluntary liquidation.
In case of compulsory liquidation, the French legislator was more specific when it obliged the liquidator to call the shareholders' assembly, in the six months following his appointment, to submit to it a report showing the status of the company's assets and liabilities, and to inform the shareholders in their assembly of his expectations about the liquidation process and the duration that it will need. .
The law gave the right to request the competent trade court to make that meeting within a period of one year instead of six months. The liquidator must, during the three months following the conclusion of the financial year, draw up the annual accounts attached to a written report, which is sent to the shareholders' assembly, during the six months following the conclusion of the financial year, provided that the assembly decides on the documents submitted to it, and takes the appropriate decisions in this regard. If the assembly does not meet, the liquidator shall deposit his report with the Registry of the Commercial Court so that everyone with an interest may peruse it. Here, the legislator gave the partners, in accordance with Article (414) of the Companies Law, the right to view the company's documents. Here, the attention paid by the French legislator to inform the shareholders is obvious, given the importance it entails in informing them of the course of the liquidation process, with the serious risks it entails on their rights in the company.
In the Egyptian legislation, the legislator has obligated the liquidator, in agreement with the company's board of directors or its managers, to make an inventory of the company's funds and its obligations and to prepare a detailed list of them, signed by the liquidator himself, and by the company's managers or members of its board of directors. This requires the company's board of directors or its managers to hand over to the liquidator the company's funds, books and documents.And if the Egyptian legislator, in the first paragraph of Article (151) of the Companies Law, obligated the liquidator to submit to the general assembly of shareholders, a temporary account for the liquidation work, every six months, which is a positive step that enables the company's shareholders to see the progress of the liquidation process. Thus, it is possible to obtain information that will enable them to protect their rights in the company, which is in a state of liquidation. Here, we believe that it is better to submit that report every three months instead of six months, because this enables them to see the progress of the liquidation process at a relatively early time, compared to what is the case now ,taking into account here that the assembly concerned with this is the ordinary general assembly of shareholders, in accordance with what was stated in the fourth paragraph of Article (217) of the Executive Regulations of the Egyptian Companies Law No. 159 of 1981.
What we see as a surprising position on the part of the Egyptian legislator is that it stipulated in the second paragraph of Article (151) of the Egyptian Companies Law that this should not cause harm to the company and impede the liquidation process. Therefore, the text has become like an empty oyster, because the phrases used by the legislator are loose phrases that make it difficult for shareholders to see the liquidation process and obtain documents that they see in their best interest.
As for the Jordanian legislator, we find that the liquidator, in case of voluntary liquidation, is required to settle the rights and obligations of the company. This requires him to prepare a list of the names of the debtors, which is considered as preliminary evidence that only the persons whose names are mentioned in it are the ones who owe it, as well as preparing a report on the actions and procedures he has done to claim the debts owed to the company in the debtors' accounts. He must also pay the amounts of debts owed by the company and he may exercise the powers granted by law to the liquidator in the compulsory liquidation of the company .
And if the Jordanian legislator has required the liquidator, in case of voluntary liquidation, to submit an adequate account of the work he has done, and that account be attached to the documents and supporting it, but it did not obligate him to invite the general assembly of shareholders in order to ratify it.
As for the compulsory liquidation, we note that the legislator has obligated the liquidator to provide the court and the observer with accounts certified by the auditor on the prescribed dates, including the amounts he received or paid. It did not obligate the liquidator to invite the general assembly of shareholders to a meeting for approval, while stipulating the necessity of ratification. The court shall not consider these accounts as final before being approved by the court.

The Second Topic: The Liquidator's Obligation to Inform about the End of the Liquidation

We will address the issue of the liquidator's obligation to inform the shareholders of the joint stock company about the end of the liquidation process through two main sections, as follows:

The First Section: The Obligation to Submit a Final Report of the Liquidation Work

The French legislator required, in accordance with Article (397) of the French Companies Law of 1966, that the general assembly of shareholders be called to convene to decide on the final accounts of liquidation. If the general assembly is unable to deliberate on the matter, or if it refuses to approve the accounts submitted by the auditor, then it shall be referred to the president of the competent commercial court, based on a request from the liquidator or any of the stakeholders to decide on the matter, in accordance with Article (267) of the same law.

The final accounts submitted by the liquidator and the decision of the shareholders or the judiciary, as the case may be, shall be submitted to the Court of Commerce, in accordance with (Decree 1967, 270), in addition to the notice of closing the liquidation, which the liquidator must publish in the Legal Notices Gazette, and in the Mandatory Legal Notices Bulletin,(B.A.L.O), whenever the company has invited the public to save, in accordance with Article (292).

As for the Egyptian law, the liquidator must submit to the general assembly, or to the group of partners, a final account of the liquidation work, which is ratified until the liquidation work ends. And if the Egyptian Companies Law did not specify the type of that association, nor the majority required to ratify that report, the executive regulations of the Egyptian Companies Law No. 159 of 1981 made ratification of the final account of the liquidation, with the majority of votes represented in the meeting unless if the company's bylaws stipulate otherwise. The final account must include the amounts collected by the liquidator for the account of the company, and the amounts spent on the liquidation account, and he must submit all the final accounts that he organized regarding the liquidation, and the company's books and papers, to the commercial registry office in which the company's main center of management falls within its jurisdiction, unless the assembly selects another place in which these documents, books and records are deposited.If the final account is ratified by the ordinary meeting of shareholders, the liquidation process will have taken place, and the next step is to write off the company from the companies register. However, if that association does not agree to the final account, the liquidation process is considered continuous, and the company will continue to enjoy its legal personality to the extent necessary for liquidation. Not only that, but the company continues to enjoy its legal personality even if the company is struck off the commercial register, as it was stated in a judgment of the Cairo Court of Appeal: "The cancellation of the company from the commercial register does not, in and of itself, lead to the final closing of the liquidation…" ().The liquidator, when the shareholders' general assembly is not ratified at the expense of closing the liquidation, or when it is not possible to hold the meeting of that assembly, for any reason, may refer the matter to the judiciary to decide on it.

Turning to the Jordanian law, we find that the legislator has obligated the liquidator, in case of compulsory liquidation, under Article (270/2) of the Companies Law, to provide the court and the Companies Controller, with an account certified by the liquidation auditor, including the amounts received and paid. It is an account that is not considered final unless it is approved by the court.

With regard to voluntary liquidation, we find that the Jordanian legislator did not stipulate, in the Companies Law, that the liquidator must call the general assembly of shareholders to meet, at the end of the liquidation, in order to approve it .

But when the liquidator was in the position of the agent and the provisions of the agency contained in the Civil Code stipulated that the agent (here the liquidator) must provide his client (which is the general assembly of shareholders in this case) with a final account of the liquidation work, when the civil legislator stipulated, in Article (856) provided that "the agent is obligated to provide his client with the necessary information about the performance of the agency and to submit to him an account on it." The liquidator must invite the general assembly of shareholders to convene in order to approve the liquidation. This was agreed upon by many jurists in Jordan. If he does not do this, we believe that the Companies Controller General should undertake this call. Whereas the legislator stipulated in Article (171/b) of the Companies Law – which regulates the invitation to the ordinary general assembly meeting – that: "The invitation of the general assembly to the meeting must include the agenda of the matters that will be presented to it for discussion with a copy of any documents or data related to these matters", as a consequence of this is for the liquidator to attach, with the invitation addressed to the shareholders, the documents and data related to the liquidation process.

This is in a way that enables shareholders to make their decision in the light of sufficient information and data, which is the case in which the importance of the shareholders' right to see information related to the liquidation process so that they can make their decision on clear grounds to the necessary extent.

We find here that the Jordanian legislator must stipulate in the Companies Law that a meeting of the general assembly of shareholders must be called in order to approve the liquidation process, in addition to the necessity of obligating the liquidator to inform the shareholders of the information and data related to the liquidation process, to the extent that they can make their decision on sound grounds, which must be certified by the liquidation auditor.

The Second Section: The Liquidator's Obligation to Announce the Conclusion of the Liquidation Process

According to the French legislator, the final accounts organized by the liquidator, and the decision of the partners or the judiciary, which decided on these accounts, are handed over to the Court of Commerce, as an appendix to the Register of Commerce, in addition to the notification of the conclusion of the liquidation, in the legal notices newspaper in which the decision of his appointment was published, and in the bulletin of advertisements Mandatory legal (B.A.L.O) if the company is a savings company.

It is not possible to invoke the end of the liquidation, and consequently the lapse of the company's legal personality, on third parties except after the decision to conclude the liquidation has been published in the Commerce and Companies Register as soon as the liquidation ends.

The liquidator, in accordance with Article (152/9) of the Egyptian Companies Law, must publish it in the commercial registry and in the companies' gazette, and his failure to do so results in the inability to invoke it against others.

Accordingly, the liquidator, as representing the company, shall submit to the Commercial Registry within a month from the date of the end of the liquidation, attached to that application confirming that the general assembly of shareholders has ratified the final account of the liquidation works, and that he has published the end of the liquidation. If the liquidator does not do so, the competent commercial registry office must write off the entry on its own, after verifying the reason for it.And every person may obtain from the Commercial Registry Office a copy of the registration page, when it is obtained, or a certificate that it has not been done in case it was not done.

Turning to the Jordanian legislation, we find that the liquidation was considered finished with the issuance of the court's decision to dissolve the company in case of compulsory liquidation, in accordance with Article (272/2) of the Companies Law. And if the legislator did not provide a similar text in case of voluntary liquidation, it is unavoidable to take that into consideration despite the legislator's negligence to mention that when he organized voluntary liquidation.

Various legislations impose a penalty on the liquidator if he fails to do so, but on the whole they are considered insufficient penalties. In this context, the Jordanian legislator stipulated that the liquidator be fined ten dinars for each day in which his negligence in work continues, fourteen days after the date of the court's decision to dissolve the company, taking into consideration the impossibility of applying that text in the case of voluntary liquidation because it is not permissible to measure in criminal penalties, and this is considered a legislative shortcoming that the legislator must pay attention to.

If the French legislator has stipulated the civil liability of the liquidator against the company and third parties for what he may have committed, in accordance with Article (400) of the French Companies Act of 1966, then this necessarily applies to the liquidator in accordance with the Egyptian and the Jordanian laws.

Conclusion

This study has concluded with a number of results and recommendations:

First: It became clear through this study that the Jordanian legislator was not confined with including the liquidation of the company within the competencies of the extraordinary general assembly of shareholders, in accordance with Article (175) of the Jordanian Companies Law. Rather, it went so far as to consider it – besides the merger – extremely unusual, as it tightened the quorum it required for the validity of the extraordinary general assembly meeting that considers the liquidation decision. Therefore, it is recommended that the Jordanian legislator should enable the shareholders of the company under liquidation to obtain information related to the liquidation of their company, in order to preserve their rights in it, considering that the information they obtain in itself constitutes control over the liquidation process, in addition to the actions they may take based on that information, in a manner to preserve their rights.

Second: The Jordanian legislator obliged the liquidator to submit, in case of voluntary liquidation, an adequate account of the work he had done, and that account be attached to the documents and supporting it, but it did not obligate him to invite the general assembly of shareholders in order to ratify it. Therefore, we hope that the legislator confirms the necessity of inviting the general assembly of shareholders to look into that account, which must be ratified for its enforcement.

Third: It has been found that the Jordanian legislator has obligated the liquidator, in the case of compulsory liquidation, to notify the court's decision to dissolve the company to the Companies Controller for publication in the Official Gazette and in at least two local daily newspapers. And if the legislator did not provide a similar text in the case of voluntary liquidation, it is unavoidable to take this into consideration in the case of voluntary liquidation as well.

We hope that the legislator will oblige the liquidator to notify the General Assembly's decision to refer the company to the Companies Controller, to publish it in the Official Gazette and at least two local daily newspapers, as is the case with compulsory liquidation.

Fourth: The legislator did not obligate the liquidator to invite the general assembly of shareholders to a meeting in order to approve the conclusion of the liquidation, while it stipulated in the case of compulsory liquidation that the court should ratify it and not consider those accounts final before the court ratifies them.

Fifth: The study found that the Jordanian companies legislator did not address the need for the liquidator to provide the General Assembly with a final account of the liquidation work, although he is obligated under the provisions of the agency contained in the Civil Code which stipulate that the agent (here the liquidator) must provide his client (who is General Assembly of Shareholders in this case), with a final account of the liquidation work. Therefore, we hope the legislator will clearly and explicitly stipulate this in the Companies Law.

Sixth: The Jordanian legislator imposed a penalty on the liquidator who did not perform what he was obligated to do, but in general they are insufficient penalties, as it stipulated, for example, that the liquidator be fined ten dinars for each day in which his negligence in work continues, fourteen days after the date of the court's decision regarding the liquidation of the company. In addition, the text applies only to compulsory liquidation and therefore cannot be applied by analogy to voluntary liquidation because it is not permissible to measure in penal sanctions. This is undoubtedly a legislative shortcoming that we hope the legislator will deal with. We also hope that it will intensify the penalties in this context to deter the liquidator from cheating, and to enable shareholders to better protect their rights.

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