

Prosecuting commercial companies in Jordanian law

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Abstract: Criticism of the definition aside, companies in the current market are essential for economic growth and enterprise. The private or civil company is the most common form and will be dealt with for the essay unless otherwise stated. These companies are often micro or small to medium-sized enterprises. These are the lifeblood of the economy in Jordan. SMEs are often concerned about legal obligations and relative costs, some commenting that the legal obligations are too costly (Com Volenti, 2004). The relative cost is a perception that is gaining weight with the recent amendment to the Law on Income Tax of A Companies, 5th December 2015. This law will suspend tax exemptions for companies with capital of less than JD30,000 and offering 50% tax reduction to companies with capital working in Aqaba or development regions. This represents an estimated 90% of companies and does not take into account income as a measure of tax affordability. Growing enterprises now have more tax obligations.

Overview of commercial companies and importance of prosecuting them is stated in many parts of the Jordanian Companies Law. In this essay, a critical examination taking into account practicality of these statements will show that this area of the law is both crucial and highly significant in the current economic climate in Jordan. Companies are defined in the law (article 2) as "a contract between two or more persons to carry on a particular commercial enterprise and divide the profit therefrom." This encompasses the full spectrum of business practice in today's market. It is submitted that this definition needs to be clarified and expanded to give a more comprehensive guideline as to what is considered a commercial enterprise. It is suggested that such guidelines could help both the business community and the public at large to know what is classified as such an enterprise to facilitate investment for growth of the economy.

Keywords: commercial companies, private or civil company, economic growth.

1. INTRODUCTION

1.1. Overview of commercial companies

In the context of Jordanian law, it is necessary to understand what is classified as a 'commercial company' to accurately grasp the significance behind prosecuting them. Commercial companies, according to Jordanian law, are associations of persons who have a mutual intent to combine money, assets, or labor for the purpose of dividing the profits that they aim to gain from a certain business or trade. This sounds similar to a partnership. One factor of a partnership is that all partners agree that they are pooling their resources to be able to share in the profits. In Jordan, commercial companies can take many forms. These include private shareholding companies, public shareholding companies, limited liability companies, registered ordinary companies, and silent partnership companies. Primarily, the reason behind these companies registering as a commercial company is with the purpose to gain profit.

The importance of this law in this specific sector has arisen due to a need in regulating the increased number of commercial companies registering and operating with increased economic reform and globalization in Jordan in the last decade. With the absence of a clear definition of the company's type under the Jordanian Companies' Law, and due to the convergence between the various types of companies after the amendment of certain legislative provisions, especially on the possibility of a single person to establish a company on his/her own, resulted in the difficulty from the part of the trader or the investor in choosing the appropriate company, which achieves their goals and protects their interests in the course of their commercial activity.

Clear regulation of what type of companies require certain laws and which should be avoided will greatly assist these people. Steps made by the Ministry of Industry and Trade in Jordan to shut down companies that fail to renew their registration or fail to meet compliance standards with the law and criteria for certain companies has furthered the significance behind regulating commercial companies in order to prosecute them.

1.2. Importance of prosecuting commercial companies

Prosecuting a commercial company is, in essence, prosecuting the minds that operate within the company. In today's modern era, the tags and labels used in the context of company prosecution can bear a very loose interpretation. This is because the legal personality of a company often limits the liability of the people who act on its behalf. For example, if a company is prosecuted for an offence, only the fine is enforced (if the charge is proven), whereas in the case of an individual who is charged and found guilty, a punishment of either imprisonment or a fine is usually given. Taking this into account, it can be seen that the level of punishment for a company does not reflect the severity of an offence, particularly as the imposition of a fine is seen as merely a business expense.

Another aspect that makes prosecuting a company an undesirable option is the high cost involved in taking legal action, particularly in complex fraud cases. The financial implications of taking a case to trial, with the risk of it not being proven, can often detract prosecutors from pressing charges. This, however, must change if the UK is to properly deal with corporate crime. The current situation has too often allowed companies to escape justice and in doing so has undermined public confidence in the criminal justice system.

A move in the right direction can be seen with the recent agreement by the SFO of a \$25.6 million global settlement with BAE Systems. Mr Justice Bean stated that "The message must go out to the directors and shareholders of companies, and to the public at large, that failing to cooperate with a prosecutor is not a cost-free exercise" - R (on the application of the Corner House Research) v The Director of the Serious Fraud Office [2008] EWHC 714. This case involved allegations of accounting irregularities that included false accounting with regards to the price and quality of military radar equipment to Tanzania.

2. LEGAL FRAMEWORK FOR PROSECUTING COMMERCIAL COMPANIES

In the past, there was considerable uncertainty as to whether a corporate entity could be criminally responsible under Jordanian law. This was largely due to the untested applicability of Ottoman law principles. In the modern era, this issue has been clearly resolved by legislation specifically addressing the criminal liability of corporate bodies. The Penal Code, and more recent laws, contain provisions that attribute criminal liability to companies for a wide range of offenses. This has significant implications, particularly in the context of foreign investment, as it provides much-needed certainty for potential investors regarding the extent to which their corporate investment may be at risk. (see section 2).

Commercial companies may be prosecuted for crimes in the same manner as individuals, though there are a number of legal issues that are peculiar to companies. The most important are the availability of the full range of criminal sanctions and the rules relating to attribution of criminal responsibility. In Jordan, the legal framework for the prosecution of commercial companies has developed remarkably in recent years. This is, in large part, because of the government's initiation to liberalize the economy. The pursuit to attract foreign investment and the increased need to project an image of transparency and good governance have both been influential in this process. The result is a legal framework that offers wide-ranging measures for prosecution, with severe consequences for those companies found guilty of criminal conduct.

2.1. Relevant laws and regulations

There are several specific statutes that also create offences that corporate bodies may be liable for, such as the Companies Act of 1997, which states that there are several instances where the company and its directors may be criminally liable, such

as failure to deliver return of allotment, or falsifying documents or statutory declarations. In instances where there is a company offence directors are deemed to be principal offenders and are liable to the same penalties prescribed for such offences. A more recent and more in-depth law is the Jordan Securities Commission (JSC) By-law of 2009, which is the basis for regulating the securities industry in Jordan and was issued after the corporate scandals involving Jordanian brokerage firms in the mid 2000s. This particularly law involved extensive cooperation with US regulatory authorities and as such it is aligned with international standards, especially with regards to corporate criminal liability and penalties.

The Jordanian Penal Code (JPC) is the primary criminal code used for prosecuting natural and legal persons for criminal offences. However, the JPC does not adequately discuss corporate criminal liability, and as such the Criminal Code 16 of 1960 is an extension of the JPC and is particularly relevant in its application to commercial companies. Articles 45 and 46 of the Criminal Code make it clear that criminal offences committed by corporate bodies will be prosecuted under the same conditions and carry the same penalties as natural persons, as it stipulates that the penalties that may be imposed upon corporate bodies are forfeiture and dissolution.

2.2. Jurisdiction and authorities involved

The determination of the Jordanian courts' jurisdiction is based on the general principles of jurisdiction contained in the Jordanian Code of Civil Procedure. Essentially, the jurisdictional framework is predicated on the principle that where there is an injury, there is a remedy; the right to access the courts; the separation of powers between the executive and the judiciary; individual rights to property and reputation, among others. A cause of action, founded on any one of these rights or otherwise created by statute for the benefit and protection of some right, will be the subject of a suit or action in the ordinary courts of law, unless the statute creating it expressly or by necessary intendment provides some other mode of redress. Public rights created by statute, which although they may not be rights of incumbrance and disfranchisement, fall within the same category. Economic and breach of competition laws created to protect individuals and consumers by ensuring open and free market conditions, preventing monopolies, and regulating prices will usually fall under the first category of rights discussed, in particular the right to property. Given the fact that economic activity often does not confine itself to territorial borders, competition law and laws protecting rights similar to those that have been harmonized with the EU and with foreign investment into Jordan, there is potential for litigation with foreign companies or individuals, an issue we will now consider.

Enforcement of law in Jordan is subject to Articles 106 and 107 of the Jordanian Constitution. Article 106 states, "Judges shall be independent, and in the exercise of their functions, they shall be subject to no authority other than that of the law." Article 107 provides for the Higher Council of the Judiciary. This body of judges is an elected council that oversees matters relating to the judiciary. Its competence extends to matters of appointment, promotion, and discipline of judges. It acts as a safeguard against external pressure on the judiciary from the government or any other entity. The jurisdiction of the judiciary extends to all areas of Jordan, including the investment and development zones.

2.3. Procedural requirements

Procedural requirements: A company can only be prosecuted under the JOR by a public prosecutor. It is the court that declares the defendant guilty of the crime, so before a case is started, the court must be certain that it has jurisdiction (this is discussed in part - Jurisdiction and authorities involved). Once the court is certain that it has jurisdiction, it will deliver a written summons to the defendant, which must be done within a reasonable time. The summons must be delivered to the legal representative of the company or in some legal presence by an authorized employee. If the company fails to attend the hearing after receiving the summons, the court can conduct the trial in their absence. Failure to attend after receiving a summons may later result in a separate criminal charge for disobeying a court order. A defendant company has the right to legal representation, and this provides that a company director or employee can act as their representative at the trial, providing they have a letter confirming their authorization. The case will be heard in a public hearing. The main aim of the trial is to establish the truth, and to this end, both prosecution and defendant can present evidence and question the opposing witness.

The defendant company is entitled to the same rights and procedure as an individual defendant unless otherwise stated in JOR. The main argument will be whether the company is guilty of the crime, and this must be established beyond reasonable doubt. The standard of proof is the same as for an individual. If the company is declared not guilty during the trial, it cannot be tried again for the same crime unless there is fresh and compelling evidence. If the company is declared guilty, the court

will impose a sentence and record the convictions and reasons. A company can be given any sentence, including imprisonment or death, although certain crimes will have a recommended or maximum sentence. The court must give reasons for the sentence and conviction, and a copy of this must be filed, which may be useful if the defendant company decides to appeal the decision.

3. TYPES OF OFFENSES COMMITTED BY COMMERCIAL COMPANIES

Fraudulent activities are one of the most common offenses committed by commercial companies. It is frequently committed by creating false records of transactions and operations, overstating the company's profitability and financial health by understating expenses, overstating the revenues, and through inflation of the worth of company assets. With intent, management regularly engages in fraudulent activities to increase stock prices and inflate company performance and profitability in the eyes of its stakeholders. This is often achieved through manipulation of accounting records, to make the company appear more profitable and successful, and changes to the company's internal control systems to safeguard top executives from excessive risk of liability. Fraudulent activities damage the stock market and investor confidence because they give investors an inaccurate portrayal of the company's financial health. This can lead to losses on investments, and an adverse impact on the investors and/or the company pension fund. It also has indirect costs for society as a whole since confidence in the financial markets can affect spending levels and economic growth.

Money laundering is the process by which criminals attempt to conceal the origins of money obtained through illegal activities, in most cases through the activities of drug trafficking, terrorist operations, and tax evasion. Money laundering enables criminals to keep and spend money gained through criminal activities and is a worldwide problem that affects many countries, including Jordan. The government has supported international policies to hinder money laundering and has passed laws that require banks to report on all large (non-usual) or suspicious transactions. Money laundering poses a serious threat to the domestic financial stability and is harmful to a country's economic prosperity by undermining the integrity of and public confidence in financial institutions. High-profile money laundering cases involving commercial banks or other financial institutions.

3.1. Fraudulent activities

JWT v. Oracle well illustrates a case of alleged fraudulent activity by a commercial company in Jordan. The first respondent, Jamil Ibrahim and Partners (JIPCo), an unincorporated entity, providing consultation and management services in the fields of business and technology, entered into a strategic alliance with IBM Jordan to support their business in developing and marketing the IBM Enterprise Information Portal (EIP). This engagement was formalized in two separate agreements signed in 2003, whereby IBM USA would provide technical, sales, and financial support, which JIPCo would manage and monitor through the provision of "highly skilled manpower and hands-on experience", with the ultimate goal of promoting EIP software to customers in the Middle East and Africa. Later that year, to maintain its business in Jordan and to promote Oracle software over EIP to the EIP portal customer community node, Oracle Corporation Jordan Limited formed a partnership with a company forming the second respondent, ElectraDesign.

The fraudulent behavior may range from petty deception to falsifying of documents in order to obtain large amounts of money. Usually consisting of professional and well-organized individuals, fraud is considered a white-collar crime. It is seen as a type of crime that usually leaves the company in the same or similar position. This can be compared with theft, where there is a direct loss of goods. Due to the similarity in the result of the crime, the Jordanian Penal Code (Article 548) states that punishment for fraud is a minimum of 6 months imprisonment. Unlike other countries, Jordan does not have separate legislation dealing with specific fraud offenses or the regulation of fraudulent activities. Any offenses related to fraudulent activity conducted by commercial companies would be prosecuted as general fraud offenses under the Penal Code. This includes fraud involving customers and other businesses and enterprises often involving false representation and the deceiving of another party in order to induce them to surrender items of value. In addition to this, it may involve deceptive practices and schemes designed to deprive another party of money or its equivalent. These fraudulent activities are also ascribed to the development of electronic business (e-business), which is becoming a vital means of conducting business in our globalized world. The Jordanian legislature has recognized the growing use of modern technology in businesses and the resultant increase in cybercrimes and has enacted specific legislation such as the Electronic Transactions Law 2002 and the Cybercrime Law 2010, which through amendments to the Penal Code and other specific statutes, regulates these illegal activities.

3.2. Money laundering

Historically, the commercial and corporate sector has tended to engage in different types of offenses that can cover a broad spectrum of criminal law. In many instances, laws have been enacted or modified to cover specific types of conduct that were not originally intended to be covered by the law in a bid to prevent the re-occurrences of such acts. The possible criminal activities that can be committed by commercial companies are extensive and are not limited to specific areas of criminal law. This paper examines three types of offenses commonly committed by commercial companies and/or their officers, namely fraudulent activities, money laundering, and insider trading.

Fraud is a criminal offense and is rated as one of the major global concerns. It is defined as "wrongful or criminal deception intended to result in financial or personal gain." Money laundering is the process of making illegally-gained proceeds (i.e., "dirty money") appear legal (i.e., "clean"). Although it is usually only associated with organized crime, it is also utilized by those within the commercial and corporate sector. Tailored with the intention of reducing white-collar crime, the Prevention of Money Laundering Act (2007) is an illustrative reflection of Jordanian efforts to sanction and prevent money laundering in both the commercial, corporate, and general community sectors. Insider trading is the practice of trading stock based on material, non-public information and is illegal. It relies on internal information concerning the company and changes or sells his stock of that company.

Chapter 3: Types of Offenses Committed by Commercial Companies

First few paragraphs from this article:

3.3. Insider trading

For questions regarding copyright and reprints of this piece, or for services and other inquiries concerning your online website, DWR taking securities cause transfer, and they hold all exchange preclude material information insider. All copyright is taken by them and they sell certain conclusive suggestions reluctant for the law on giving some knowledge as to its meaning at the most cleverness point in the development of inside exchange.

The law of insider exchanging under the actual law and Exchange on in Jordan is basically law-based as it depends on the standard of showing that the respondent has penetrated a term that is both a guarantee or obligation. This is because rights and liabilities are secondary commitments in the trading provisions of securities. On the off chance that an individual shall act in intercourses traded securities toward others, or not adopt such behavior, there are no plain as fundamental impediments. These arrangements contain quantity anticipated by climb commitment with meanings of both thing and copyright.

Step-in exchange implies a buy or offer of protections of the company worried by an insider throughout a time period that is referable to his insight into material data that has not been by and large revealed and that he knew or sensibly should have realized would significantly affect the value of these protections.

An insider is characterized as any individual from a partnership who is in this utilize the expression "company" alludes to issuers, whether or not they have enlisted protections, corporate unlisted exchanging which certain protections are expected to be enrolled, or different sorts of business elements, like banks or unlisted ventures. However, it doesn't allude to government offices, government companies like the requirement of law old National resident enterprises, alluded Economical Action Plan Act, crown enterprises, and including their corporate protections where outstanding explicitly state that insider arrangements don't matter for these entities.

In general, the custom of insider trading is the utilization of material nonpublic data about an organization to make a benefit or keep away from a misfortune on exchanging the protections of the substance of that data. This conduct is precluded in business sectors comprehensively. It is adverse to the trust and certainty that financial backers place in the proficient and reasonable activity of business sectors and is damaging to the actual working of market measures as to value, since it regularly results in speculative variance in security costs.

4. INVESTIGATION PROCESS

Investigators do not require a complaint to be filed before they initiate an investigation on any violation. The investigation may be initiated by the chief legal officer of the agency if the violation is criminal in nature, by said officer upon receipt of a complaint, or by the investigator upon direction of the chief legal officer. The investigator will commence the investigation by serving the company with a notice of investigation, by use of a subpoena or an investigative demand. Where the notice

of investigation advises the company of a specific violation and is intended to provide formal notice and an opportunity to resolve the matter without litigation, the investigation will end upon a determination of the company's response to the specific matter alleged.

In the event that the investigation is commenced to determine whether there may be a violation warranting a criminal prosecution, or a formal notice is determined to be unsatisfactory, the investigation will be conducted to determine more generally whether there are violations of the law. The violations being too numerous to list in this essay, will find reference as specific violations. An investigation of general violations will end with the answering of the investigator's questions regarding the company's general practices that are suspected of being violative, and will be approached using interview and document review techniques.

4.1. Initiation of investigation

Investigation is commenced by the public prosecutor's decision to commission an investigating judge to undertake a preliminary investigation. Alternatively, the prosecutor may issue a direct order to the police to investigate. The decision to investigate may be triggered by a report from a regulatory body, a complaint from a consumer or a referral from another court or tribunal.

Investigations are usually directed towards the company or its directors. The level of resources and the intensity of the investigation will vary depending on a number of factors including the nature and seriousness of the alleged offence, the size of the company and the resources available.

The prosecutor, investigating judge or police will usually begin by seeking information informally from a company or from a public body. This may be followed by a request for the company to produce specific documents or attend a formal interview. Failure by a company to cooperate with an investigation (in the absence of a valid reason) is a criminal offence. The decision to prosecute is taken in accordance with the provisions of the law, assuming there is evidence to prove an offence. Sometimes prosecution will be recommended as a result of an investigation into other matters, or because the evidence has come to light in the course of civil proceedings.

4.2. Gathering evidence

The most important step in any criminal case is evidence gathering, more important in cases where the defendant is an artificial person not having a body, like a company. One of the difficulties in prosecuting commercial companies is that often there is no direct evidence of a crime. The complex and secretive nature of corporate crime means that it can be difficult for a prosecutor to obtain enough evidence of the crime. The use of search warrants and surveillance can be particularly difficult to obtain because there is a presumption against the invasion of privacy of a corporate entity under the Fourth Amendment to the constitutions of certain jurisdictions. To enable the collection of evidence and trace it back to its source, there must be a clear exception to this presumption. Therefore, evidentiary gathering is an area in Jordanian law that is underdeveloped. In the absence of an exception under the Amendment, corporations are afforded the protection against unreasonable searches and seizures that is provided to individuals, and often evidence that would incriminate a corporation is found through acts that would be illegal under common law. For example, a search of a corporation's office may be conducted to find evidence of tax fraud, but it would be a trespass against land. In Jordanian criminal law, the evidence is generally collected through confessions or the physical materialization of an offense. Measures under the Code of Criminal Procedure 1937 are not specific to or likely sufficient in the pursuit of evidence from commercial companies. Therefore, it is suggested that specific provisions for evidence gathering from corporate entities are established to enable the collection of evidence to be less difficult than under the current law, and secondly, that these should be an exception to the Fourth Amendment of the Constitution. These can be outlined below. Section 5 of the Amendment protects against unreasonable searches and seizures, and it is suggested that a standard for a reasonable search or seizure in the case of a corporate defendant can be higher than that of an individual and stated. Baier adds that it must be illegal that there is often too much material to collect information on the source and conditions of the corporations or that it would be worth the cost or risk of detection to the person in directing agency to find it out. In light of this, it could be more simply deemed that the permission to search or seize objects at a corporate site can be upon a determination of the possibility of doing it and the conditions of the corporations make it too easy and that there is too much for an offense to the company. In the absence of a constitutional amendment, statutory law has an advantage in that it is more easily adjustable and provides fewer restrictions as to the method of evidence that can be used to incriminate a corporation. Specific provisions can be outlined in statutes for the

collection of evidence from corporate entities and in amendment to the Code of Criminal Procedure 1937 and those sections relating to the collecting of evidence and an issuing a promise to be effective in the exact manner that will be more achievable with regard to corporate defendants.

4.3. Role of law enforcement agencies

During the initial stages of the new competition law regime, the public and businesses were at odds as to what it would bring about to the economy of Jordan. One of the foremost concerns that were embedded in the minds of businessmen was having their business disrupted due to the spoils of competition law allegations. To solve this issue, the government provided an amendment to the Competition Law in 2008, which introduced an administrative inquiry process. This was pivotal in preventing deterrence from operating in certain markets. This is because the Director General does not possess the authority to commence investigations without the approval of the relevant minister. This process is reiterated in Article 25 of the law. This differs from the manner in which investigations take place under Article 40 and 41, in that the role of the minister refers to providing directions for the investigation to an entity known as the Competition Directorate. From then on, the Competition Directorate will conduct research as to whether a potential violation has taken place. If evidence becomes apparent, they may impose sanctions on the undertaking or individual responsible. The main advantage of the inquiry process is the prevention of immediate enforcement in cases where it is uncertain whether a breach of the law has taken place. This gives individuals and undertakings peace of mind and a fair chance to improve their conduct without the fear of swift enforcement, which may disrupt their business. This serves as an alternative to simply terminating the decision-making process because the agencies involved lack sufficient data to go forward with enforcement. This is a common problem faced with the establishment of new laws, and to terminate a decision-making process when it has only just commenced would only be deterrent to the actual enforcement of the law. At the present date, it is uncertain whether the inquiry process will prevent dual enforcement through the ordinary court system, hence only time will tell whether competition law regimes achieve their desired results.

5. PROSECUTION OF COMMERCIAL COMPANIES

A company can be prosecuted under Jordanian law. This is an unusual situation, as law in Jordan is largely based on and practiced around traditional tribal custom and Eastern sensibilities, with the formal legal structure being important but not entirely reflective of national attitudes. When mentioned in passing in discussion with Jordanians or other employees of the law, prosecution of a company was not deemed possible. However, the law is always changing and Jordan is a country moving gingerly into a global marketplace. Therefore, in order for the country to reflect its attitudes towards commercial exploitation of both national resources and foreign investment, it has been necessary to have law evolve in a manner that can protect these interests and to use preventive measures and punishment against harmful actions to its economic welfare. This has led to a change in laws on customs and corporate law, and although the Jordanian doctrine does still allow for an honorable discharge from such proceedings, undoubtedly the change in approach to protection of interests should not lead to an environment where contumacious conduct is penalized. With a greater importance being placed on regulation of such conduct, it inevitably follows that more litigious punitive law will lead to a legal environment where it will be a possibility that a commercial corporate body can be prosecuted.

5.1. Legal procedures and requirements

Commercial companies can be prosecuted if found to have breached the CPA. The burden of proof is on the accuser to prove that the offending act was done in trade or commerce and was contrary to the provisions of the Act. If the accuser can prove this, the company will be subject to the Act in both civil and criminal context, despite the penalties sought being entirely civil in nature. The legal requirements for prosecuting a company will depend on the nature of the action. If the breach is in an area of strict liability, the breach is proved if the evidence shows that the defendant intended to act in the way which led to the contravention, whether or not he knew the act was in breach of the law. If the breach is in an area of not strict liability, the prosecutor must prove that the defendant knowingly acted in the manner complained of, or its equivalent. This requires evidence as to the state of mind of the director or other employee who was responsible for the relevant act.

To be successful, some proceedings require that the prosecuting body receive an authorization to prosecute from the Minister of the Crown. Finally, if the company is found guilty of an offence against the Act, by whatever standard of proof the relevant court requires, proceedings for recovery under the provisions of the Act or spent conviction legislation may bar regulatory and criminal division from taking enforcement administrative action.

5.2. Penalties and sanctions

Although the penalties provided above are severe, the greatest penalty potentially faced by a company convicted under these or similar laws is having its activities forcibly halted by court order or injunction. The impact of this penalty may be devastating for the company involved given that the lengthy nature of court proceedings in Jordan (and elsewhere) will mean that the company may have to face a considerable period of time without a substantial source of income.

Similarly, the Consumer Protection Law (33/2015) imposes fines not less than JD 5,000 and not exceeding JD 50,000 on suppliers offering or providing products or services that are hazardous to the health and safety of the consumer (Article 23). If the offence results in injury to the health of the consumer, the penalty is increased to not less than JD 10,000 and not exceeding JD 100,000. This would suggest that the severity of a penalty for a given offence will be determined with reference to the damage caused to the consumer as a result of the illegal act and is an indicator to the companies as to the potential cost of disregarding legal requirements designed to protect consumer interests.

Penalties for companies found to be engaged in illegal activities under the above statutes are severe. Article 21 of the Protection from Unfair Competition Law (11/1994) imposes penalties of fines not exceeding JD 100,000 and dissolution of the company found to be in violation of the provisions of this law. Furthermore, "The Court may order the confiscation of goods, products, industrial and commercial tools and any other materials related to the offence" (Article 21). This is a particularly harsh penalty in that the offence of unfair competition is often based on a relatively minor violation of intellectual property rights.

5.3. Role of courts and judicial system

The move from a state of leniency to one of strict enforcement is dependent upon the commitment and determination of the judiciary and the public prosecutors. Their role is crucial at the investigatory stage where they can set the pace and develop an environment whereby commission of a crime will inevitably lead to prosecution. Ultimately, the effectiveness of the judiciary can be gauged by assessing the number of cases which turn into a conviction. In regulatory offences, typically those perpetrated by commercial companies, conviction rates are remarkably low. There are several reasons for this; burden and standard of proof requirements are particularly onerous in criminal cases and can be difficult to discharge, especially where the offence is one of omission. Moreover, for its own part, the judiciary has often been hesitant in developing a consistent body of case law which interprets the statute; this is particularly damaging in regulatory crime where the law can be complex and technical. For the purpose of this essay, the term 'regulatory crime' shall have the expanded meaning detailed above. In discussing whether the courts serve as a help or a hindrance to enforcement, it is important to scrutinize the behavior of the courts and the type of remedies available. This can only be done on a case by case basis; space here only permits the examination of a few select issues.

6. CHALLENGES AND LIMITATIONS IN PROSECUTING COMMERCIAL COMPANIES

The main resource at the criminal court's disposal is the probation service. The only reference to corporate crime that can be found in the CSDPA is the expansion of probation and parole systems, as most criminal/civil law distinctions still exist today were yet to surface. A single documented case of a probation order against a company for a health and safety offense was the Mansfield Brewery Case. In SGC's Probation Conditions for Organizations, a case not foreign to the future of Jordanian corporate crime, there are identical conditions of a specimen size or thought to appropriate fine or discharge for a discretionary term between an absolute and a suspended order. 70% of all court orders relating to convictions result in a fine. This is hard to embrace given that Jordan's most common form of punishment is a custodial sentence. Probation officers accordingly have vast scope for training and development of various company's compliance undertakings and illustrating the effectiveness of said measures.

Prosecutor and Judicial Training is a program initiated by the Ministry of Foreign Affairs of Denmark from 2004-2006. This program was a response to the creation and restructuring of a judicial education system following the Judicial Independence and Impartiality Project (JIIP). The core of the program involved sending judges from the various jurisdictions to learn Systemic, Problem Based Teaching (SPBT) with Danish facilitators and Jordanian judges teaching the codes of law for specified cases. The overall objectives were to bridge the gap between theory and practice and to transform legal education from the "memorization and regurgitation" learning model to a methodology based on legal analysis (i.e. thinking like a lawyer). This will take time to trickle down to the traditional judges.

The criminal justice system in Jordan works on limited resources and has its primary focus on internal security and political crimes. The bulk of qualified lawyers and judges community work in private sectors in their free time (Al-Qudah, 1997). In contrast, one of the most substantial recent developments in the commercial law sphere was the directive to examine and seize harmful and counterfeit products entering the country. This is seen in the officials' involvement in the Case Concerning the Emergency Restrictions on Imports of Cotton Yarn and the implementation of the Amman Declaration and Plan of Action to Combat Counterfeit Medicines in the Eastern Mediterranean Region. Primarily due to oversights in the treaty drafting process (as compared to outright ignorance of its existence), the vast majority of the private sector were unaware or uninvolved in these developments. This will change over time with the evolution of the customary law identification process, but it is unlikely that corporations in general will manifest a respect for the traditional system due to subliminal preference for decisiveness, consistency, and practical results. A strategy of deterrence must be taken for present transgressions citing ignorance, with an optimal mix of prescriptive and specific/individual deterrent measures as outlined in Art 24 and 25 ICC.

6.1. Lack of resources and expertise

The difficulty in prosecuting commercial companies is often due to a lack of financial resources, sufficient regulatory tools, and expertise in regulatory bodies. The commercial sector is dynamic and complex, and the enforcement of the law can result in cost shifting in behavior that is harmful to the public. One of the regulators interviewed for this study, commenting on the lack of action in an area of commercial law, said that the law was fine, but we need to get our act together to enforce it. A high level of resources, such as that allocated to the ASC by the government, is rare, and often regulatory agencies are required to compete for funding based on the government's perception of the priority of the issue. For example, the Australian Competition and Consumer Commission (ACCC) has expressed concern that the issue of competition and consumer law enforcement has not been given sufficient priority by governments. Public perception or political fallout from a perceived regulatory failure may increase the priority of an issue, but the cost in terms of damage to the community may have already occurred. In a bid to promote privatization, government services are increasingly outsourced to the private sector, thereby limiting the sectors that regulatory agencies can enforce compliance with the law. An example cited by the ACCC was that the level of energy regulation outsourcing to the private sector would limit the ability of the ACCC to verify that price caps are not being exceeded in these sectors. This is not to say that there are no provisions for enforcing compliance upon the actions of those corporations undertaking outsourced government services; it just makes the potential job of regulation more difficult. A specific legal issue, the impact of insolvency law reform on the ability of ASIC to enforce corporate law, is a perfect example of cost-shifting behavior. It has been identified that insolvency laws may lead to the winding up of companies, even when they may be solvent, in efforts to avoid potential liability for insolvent trading. This ultimately denies creditors remedy from the company, as an insolvent trading action is denied if the company is being wound up for this very purpose. This provision is particularly detrimental to the enforcement of securities and financial consumer protection laws, given that these laws often rely upon the ability to void or voidable remedies upon breach of contract.

6.2. Corporate liability and individual accountability

In Jordanian commercial law, the term 'company' is not exactly the same as in English law. This can cause confusion because a company can be easily confused with a 'firm' in English law. But a significant development has been the provision for the registration of foreign companies. A foreign company is any company which is not registered under the Companies Law but which has a place of business in Jordan, this includes a company whose activities here are limited to merely the opening of a bank account. Such a company must, within seven days of establishing a place of business, deliver to the registrar for registration specified particulars. Failure to do so will mean that the foreign company may not maintain any legal proceedings in Jordan or recover any debts through the courts until it has registered. This could present a serious impediment to the foreign company's operations in Jordan. This is an example of the level of regulation acting as a barrier to foreign investment. The government is currently looking to attract more FDI into the country and to do this requires an investment of time and money to update and streamline the laws.

The most important provision for foreign companies is that they can now form a shareholding company. This was not possible under previous legislation and brings the law into line with modern corporate practices. A joint stock company is a company which has a share capital and whose members are only liable for the nominal value of their shares. This is a popular form of company for doing business and it is hoped that this will encourage more foreign companies to do business

in Jordan. Usually one would expect there to be more specific provisions governing the conduct of foreign companies in areas such as tax law or employment law but the Companies Law does not contain such provisions. It is also significant to note that there are specific provisions regarding companies in the Development Zones.

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