

**Legal regulation of the work of the auditor in the public shareholding company
(A comparative study)**

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Abstract

This research is about the legal organization of the auditor's work in the public shareholding company. This research relates to shareholders' rights, because most of the shareholders do not care about the company's affairs except for their share in profit, and most of them lack experience in monitoring the work of the board of directors or auditing. The accounts prepared by the Board and presented to the General Assembly for approval and taking the decisions proposed by the said Council, and for this reason, the law requires the General Assembly of the company to choose the auditor and be qualified persons for this profession to oversee the financial management of the company and its compatibility with Legal texts and regulations as well as their compatibility with the objectives of the company and its statutes.

Keyword : Legal regulation, work of the auditor , public

Introduction:

The general assembly of any company is responsible for monitoring the company's management and the integrity of the organization of its accounts. It is common knowledge that it usually meets only once a year and a large number of shareholders may not attend this meeting. This is because most of the shareholders are not interested in the company's affairs except for what happens to them from a share in the profit, and most of them lack experience in how to monitor the work of the Board of Directors or audit the accounts prepared by the Board and present them to the General Assembly for approval and the decision-making proposed by the said Board. For this reason, the law required the company's general assembly to choose an auditor and be one of the persons qualified for this profession in order to monitor the company's financial management and its consistency with the legal texts and regulations, as well as the extent to which it is consistent with the company's objectives and articles of association.

The Jordanian legislator has given the auditing profession a special importance to the issue of choosing the auditor in the public shareholding company, and the reason for the Jordanian legislator's interest is due to the fact that the auditor's failure to choose such companies constitutes a great concern for the national economic organization.

Research problem:

Legal regulation of the work of the auditor in the public shareholding company
(A comparative study)

The problem of this research revolves around the chief's question "What is the legal regulation for the work of the auditor in the public shareholding company" and several questions derive from that, namely:

- 1- How to choose the auditor in the public shareholding company?
- 2- How is the auditor's contract in the public shareholding company terminated?
- 3- What are the obligations and rights of the auditor in the public shareholding company?

Research importance:

The problem of this research appears in the following:

- 1- A legal regulation statement for the auditor's work in the public shareholding company.
- 2- How to choose the auditor in the public shareholding company, and to terminate his contract.
- 3- A statement of the obligations and rights of the auditor in the public shareholding company.

Research Methodology:

In this research, the following approaches were followed:

- 1- The inductive approach: by extrapolating the texts of the Jordanian Companies Law and the French Law related to a research topic.
- 2- Analytical method: by analyzing the texts of the law related to a research topic.
- 3- The comparative approach: by comparing the Jordanian and French law.

The first topic

How to choose the auditor in the public shareholding company and how to terminate his contract

Given the importance of the work performed by the auditor in the public shareholding company, this includes auditing the company's balance sheet and accounts, as well as the oversight of its business in terms of its compliance with the law and the company's system. The legislator granted the general assembly, as a general principle, the power to choose the auditor's accounts, and he also mentioned some exceptions to the general origin in choosing the auditor by parties other than the company's regular general assembly (1).

Article (192) Paragraph (A) of the Jordanian Companies Law No. (22) of 1997 stipulates that the General Assembly of Shareholders shall elect one or more auditors for the company from among the auditors licensed to practice the profession for one renewable fiscal year and decide their fees or delegate the Board of Directors Management determines fees. And in paragraph (b) of the same article, it was stipulated that in the event that the general assembly

failed to elect the auditor, or the auditor elected by the general body apologized or refrained from working for any reason, the board of directors shall attribute to the auditors of the companies at least three auditors Within 14 days from the date of his vacancy, to choose one of them, provided that he fulfills the necessary conditions for that. We believe that this solution, which was mentioned in the Jordanian legislation regarding the board of directors' nomination of three auditors to the corporate auditor, is defective because it ultimately leads to the auditor falling under the influence of the company's board of directors.

The researcher tends to take the Jordanian legislator to the ruling followed by the French legislator in this case, which is that each shareholder may, in the absence of the auditor, request the president of the commercial court as a matter of urgency to take the procedures for appointing the auditor.

Article (106) of Jordanian Law No (22) of 1997 stipulated the tasks to be undertaken by the company's founding general assembly in the first meeting held by the partners' general assembly. Among those tasks was what was stated in paragraph (A/4), which stipulated "electing an auditor" Or the company's auditors and determine their fees, or authorize the Board of Directors to determine the fees.

The first requirement: How to choose the auditor in the public shareholding company:

All public joint stock companies are obligated to have at least an auditor. The general assembly of the public shareholding company is considered to have the highest sovereignty and the first jurisdiction to appoint the auditor while the company is present, in order to protect all the beneficiary parties from the financial statements that the auditor audits and this is a general principle (2).

Article (171) of the Jordanian Companies Law No (22) of 1997 stipulates that "the authority of the general assembly of a public shareholding company includes, in its ordinary meeting, the consideration of in particular the following ... 6- Electing the company's auditors on its budget, other final accounts and financial conditions.

Article 192 of the Jordanian Companies Law stipulates that the General Assembly elects one or more auditors from among the auditors licensed to practice the profession for a renewable period of one year. In the event that the general assembly failed to elect the auditor, or the auditor elected by the general assembly apologized, or refrained from working for any reason or died, the board of directors shall assign to the auditors at least three auditors within fourteen days from the date of this vacancy. The center has to choose one of them, and this is what the same article stipulates in its second paragraph (3).

And through what we touched upon regarding the appointment of the auditor in the public shareholding company through the ordinary general assembly, being the owner of the original right to that without authorizing any other party to grant it that right. However, there are exceptions to this principle by appointing an auditor in those companies by their constituent assembly or by appointing him by a court ruling. This is unless it has been clarified in Jordanian legislation, and we interpret this as follows:

First: Choosing the auditor through the Constituent Assembly:

Legal regulation of the work of the auditor in the public shareholding company
(A comparative study)

The legislator permitted, as an exception to the general principle, that the founders of the company be appointed as the first auditor for accounts (the first auditor), as it falls within the competence of the founding body to appoint the first administrative bodies, i.e. the first board of directors and the first auditor, and to determine his fees for the company's first financial year (4).

The Jordanian legislator referred to this in Article No. (92) when he was exposed to the establishment of the public shareholding company and stipulated that the founders of the company, when they submit the incorporation application form, that that request include the name of the auditor, who was chosen by the founders for the incorporation stage: "The application for incorporation of the company shall be submitted by the founders of the company to The auditor on the form prescribed for this purpose, marked with the following..... The name of the auditor chosen by the founders for the incorporation stage...." They elect a committee called the founders' committee, with no more than five of them, and this committee has the right to choose an auditor for the public shareholding company during the founding period, until the company's first general assembly is convened, which then becomes obligatory for it to choose the auditor for one renewable fiscal year (5).

Second: Choosing the auditor through the judiciary:

The appointment of the auditor in the public shareholding company is through the judiciary in the event that he is not appointed by the public body or any other body entrusted to it, or in the event that the auditor is unable to perform the tasks entrusted to him, or in the event of the company's expiration and leaving his place vacant in the shadow of The existence of the company whose accounts he audits is not indicated by the Jordanian legislator. While we see that the French legislator has turned to appointing the auditor by a judicial authority, whereby any shareholder in the company is permitted to ask the head of the commercial court in whose circle the company's headquarters is located, to appoint the auditor. This case is temporarily, until the meeting of the general assembly, and it appoints one or more auditors for the same company, and this right is not decided in accordance with the text of Article No. (224/3) of the French law, except for the shareholders alone, without other persons who may have a direct interest in appointing the auditor of accounts, The number of shares owned by the shareholder who submits the application is not considered. Also, the conditions for a state of urgency are not required, and in application of this, if the auditor is suspended from practicing his profession as a disciplinary sanction for a violation he committed, and the general assembly of shareholders had not chosen a reserve. Each shareholder may, if the general assembly does not take the initiative to appoint an auditor, request in the name of the company from the head of the commercial court in whose jurisdiction the company's head office is located, to appoint an auditor for the company, but the question has arisen in France about appointing the auditor through the judiciary in other cases that cannot be Saying in it that the general body has neglected this appointment, as if the appointed auditor becomes incapable of carrying out his work tasks for any reason.

The second requirement: Termination of the auditor's appointment in the public shareholding company:

The auditor in the public shareholding company performs his task for the financial year for which he was appointed and leaves to the general assembly of shareholders the matter of renewing his appointment for the next financial year or appointing someone else to replace him. It also ends if a legal or physical impediment is achieved that prevents the auditor from performing his work, as the general body submits to dismiss the auditor before the end of his work term, or he may himself submit his resignation (7).

In the Jordanian law, Article (A/192) stipulates that “the general assembly shall elect each of the public shareholding company and the partnership limited by shares, one or more auditors from among the auditors licensed to practice the profession for a period of one year, subject to renewal.” We conclude from this text that he limits the task of the auditor appointed by the General Assembly to one renewable fiscal year (8).

It is noted that the legal period stipulated in the Jordanian legislation is short so that it does not allow the auditor to find out everything he needs in order to express his technical opinion on the company's financial statements to prepare an adequate report to be able to present it to the shareholders. In addition, the auditor will work to satisfy the Board of Directors in order to recommend him to the General Authority to work for another period or more for the company.

We must interpret the various reasons for the auditor’s task to end, as follows:

First: Resignation of the auditor at the public shareholding company:

The auditor in the public shareholding company may resign from his position with the company, thereby putting an end to his services with it. The resignation may be for an emergency reason to remove him from the auditor’s professional schedule, or for personal reasons such as illness that prevents him from working, the insufficiency of his fees, or the deterioration of his relations with the company’s managers in a way that would make him unable to perform his professional duties to the fullest. In his resignation, the auditor must take into consideration, upon his resignation, the interest of the company under his control, and the truth is that the auditor’s resignation is not a manifestation of weakness, but it may be the only way he can take to motivate the shareholders and draw their attention to some serious issues that affect the future of the company (9).

However, he may not act in bad faith and not use this right in a way that is harmful to the company, and he may choose the appropriate time for his resignation, not to resign suddenly and at an inappropriate time for the company, or for the reason for his resignation to be the auditor’s evasion of his legal obligations, otherwise he must compensate the company for the damage he caused. catch up with her. The resignation shall not become final except after the approval of the Ordinary General Assembly, and the auditor may rescind his resignation before the issuance of that decision approving it. But if the auditor’s work term expires and he submits to the general assembly a request not to renew his contract with the company, then the general assembly in this case must respond to this request without the auditor’s obligation to pay any compensation and the reason for resignation is simple (10).

The Jordanian Companies Law referred to in its Article (192) Paragraph (B), which states that “the general assembly shall elect each of the public shareholding company... one or

Legal regulation of the work of the auditor in the public shareholding company
(A comparative study)

more auditors from among the auditors who are licensed to practice the profession for a period of one year, subject to renewal, and determine their fees. B- If the company's general assembly failed to elect the auditor, or the auditor who elected him apologized for his work, refrained from doing it for any reason, or died, the board of directors must attribute to the auditor at least three of the auditors within fourteen days from the date of the work, the vacancy of this position for him to choose one of them." And it turns out to us from the previous text that the auditor may resign from his work after notifying the company of this at an appropriate time. However, he may not abuse this right, so he must continue his work for a reasonable period until the auditor is appointed the auditor is new to the company so that the auditor cannot be obligated to carry out his task when he does not desire this work, so in this case he has the right to resign. But as we mentioned above, he must notify the company in sufficient time and not stop his work until the company appoints someone to carry out his duties, and he must choose the appropriate time for his resignation in order to defend himself from the suspicion of deliberately harming the company (11).

Second: dismissing the auditor in the public shareholding company:

The ordinary general assembly is the owner of the inherent right to appoint the auditor in the public shareholding company, and based on that, whoever owns the right to assign has the right to dismiss, then the general body may dismiss the auditor at any time. The general body may dismiss its auditor until If the duration of his agency is limited to a certain period, because determining the intended period is to set the maximum period during which the auditor can work and not a mandatory limit during which the auditor cannot be dismissed, but despite that, there is another opinion that prohibits the removal of the auditor except in the case of acceptable reasons such as negligence or collusion with the company's board of directors,. The aim of taking some of the procedures that are required to be taken before dismissal of the auditor is to provide a possible degree of guarantee and independence for the auditor so that he can perform his duties to the fullest extent, and among these procedures is to provide a notice to the auditor before sufficient time, explaining the reasons on which the dismissal decision is based, to provide the auditor with an opportunity to discuss those reasons With the company's general assembly (12).

In the Jordanian Companies Law, the legislator limited the possibility of dismissing the auditor to only two cases, when it stipulated them in Articles (202 and 203). In the first case, and based on the provisions of Article (202), the legislator obligated to dismiss the auditor and demand compensation if he disclosed to the shareholders at the meeting place of the general assembly of the public shareholding company, or other places and times, or to other than the shareholders, the company's secrets that he received because of his work for it. As for the second case, what was stipulated in Article (203), which prohibits the auditor and his employees from speculating in the shares of the company whose accounts he audits, whether this deal took place in shares directly or (13) indirectly. Despite all that we mentioned previously regarding the permissibility of dismissing the auditor by the general body at any time you wish. However, there is another legal opinion that contradicts this, and it is prohibited for the company to dismiss the auditor except in the case of the availability of acceptable reasons such as negligence and collusion, with the board of directors, with the aim of Provide as much guarantee and independence as possible for the auditor in the performance of his duties (14).

The French law came more strict in dismissing the auditor from the Jordanian legislator, as it stipulated in its article (227) that the dismissal must not be by a unilateral will, that is, by the will of the general body alone, and that he can only be relieved of his duties for reasonable reasons, which is if the auditor commits a mistake or finds An obstacle prevents him from carrying out his work. Therefore, the company was required to dismiss him only by the judiciary and not by the authority that appointed him, except that the French legislator returned and decided in Article (227) amended by the law issued in 1984 AD that it is not permissible to dismiss the auditor before the expiry of his term except by a judicial decision issued by the court, based on the At the request of the company or a number of shareholders representing at least 10% of the capital, whenever he commits a mistake in carrying out his duties.

Also, the modern trend in some countries, such as the United States of America, especially in large companies working in them, is changing the auditor every several years with the aim of excluding the possibility of complimenting the auditor to those in charge of managing the company because of the personal relationships that formed with them during the period of their work in the company. This procedure also aims to benefit from the suggestions and opinions of the new auditor in addressing the weaknesses related to the internal control systems and procedures (15).

The second topic

The auditor, his obligations and rights in the public shareholding company

When an agreement is reached between the companies' board of directors and the auditor who was chosen in accordance with the law, mutual obligations arise against the parties to the contract, including the company's obligation to pay the agreed fees to the auditor. In return, the auditor is obligated to accomplish the task assigned to him by law, which is to verify the integrity and regularity of the accounts of the public shareholding company, and to monitor the correctness of the information and data provided by the management of the company under his control, in order to protect the various interests attached to the company. Anyone who deliberately refrains from enabling the auditor to perform his duties shall be liable to incrimination provisions, and the auditor, if he fails to carry out his duties, shall be subject to civil and criminal liability (16).

When looking at the role played by the auditor as the watchdog over the rights of shareholders and others who follow the economics of the accounting unit, the different countries did not leave the matter of the rights and duties of the auditors to be decided by his moral conscience or the view of society or the profession, but rather intervened to be approved by legal legislation. In order to carry out this task, we find that he enjoys some rights that enable him to do so, and in return for these rights there are certain duties that he must perform and abide by. It must be noted that the rights and duties of the auditor in individual projects and companies of persons depend on the nature of the task specified in the agreement contract between him and the stakeholders in these projects, unlike joint stock companies (17).

The first requirement: the obligations of the auditor in the public shareholding company:

Legal regulation of the work of the auditor in the public shareholding company
(A comparative study)

The law is granted to the auditor who enjoys it during the performance of his work duties, and in return for this he arranged several obligations that he must abide by when performing professional services as an agent for the accounts (18).

The auditor's tasks are no longer limited to his traditional competencies, that is, to carry out his general task of reviewing or examining accounts and monitoring the accounting and financial situation of the company, but rather he has become as a technical expert charged with several obligations, in addition to that he also performs obligations of a legal nature. Over the breadth of the audit task, this must monitor the total life or activity of the company (19). Accordingly, in this requirement, we will limit ourselves to the obligations referred to in the Companies Law and the Law Regulating the Profession in both Jordanian legislations which fall on the shoulders of the auditor in the public shareholding company, as follows:

First: Commitment to the procedures required by professional principles:

It is the auditor's responsibility to verify the correctness of the accounting data recorded in the books and records and to obtain a neutral technical opinion on the significance of the company's financial statements and the statement of its financial position. And for this, he may review at any time all the company's books, records and documents, and request all data and clarifications that he deems necessary to perform his task, and for that he is obligated to take care and observe the legal and technical procedures required by the profession's rules. This obligation here falls on the auditor here, it is not an obligation to achieve a result, and his responsibility does not arise as soon as the damage is achieved. Rather, it is an obligation to exercise care, which requires evidence of his failure to perform his duty, as it is a professional error that must be proven. The auditor must exercise the amount of diligence expected from the usual person in the profession. If he did not exercise this amount of care, he was in breach of his legal duties, and this amount of required care requires the auditor to respect the rules and procedures stipulated by the law and the company's articles of association, as well as observing the recognized professional principles in the audit process (20).

This obligation requires the auditor to provide the best services to the company and to exert sufficient professional care and great effort in the audit process. However, this does not mean reviewing all accounting documents, but rather conducting several tests that he estimates are necessary to prepare the financial statements and to verify that the company's accounts have been prepared in accordance with the rules. It is generally accepted that it expresses, as much as possible, the reality of the company's financial position (21).

Article (193) Paragraph (A) of the Jordanian Companies Law stipulates that the auditor must adhere to the generally accepted auditing standards, saying, "The auditors shall ... b- Audit the company's accounts in accordance with the approved auditing rules and the requirements and assets of the profession"(22).

Article (5) of the Chartered Accountants Profession Law states that one of the tasks of the supreme body of the profession formed in accordance with the provisions of this law is to adopt the accounting standards and auditing standards to be applied, and the oath that applicants take to obtain the profession's license stipulated in Article (24) paragraph (A) by saying "I swear by Almighty God to carry out the duties of my profession with honor and security without

prejudice and to abide by the applicable laws, regulations and instructions, and to preserve the secrets, etiquette and rules of the profession.”(23)

Second: Commitment to preserve the company's secrets:

The auditor may at any time look at the books, records and documents of the company subject to his control, verify its assets, stand on its trade secrets, discover the truth of its financial position, and find out to him the difficulties that it may face. Therefore, it was natural for the Jordanian legislator to impose on the auditor an obligation to maintain the profession's secret in order to protect the projects under his control (24).

Therefore, according to the foregoing, Article (17) of the Omani Law Regulating the Accounting and Auditing Profession prohibited the auditor from disclosing the secrets of his profession to others while performing his work, in order to preserve the true position of the company and not to harm it, which stipulated in its content that “The accountant or auditor is prohibited from disclosing secrets of work or allow anyone to view it except for those whom the laws qualify for.” Article (27) Paragraph (b) of the Jordanian Legal Accounting Law stipulates that the legal accountant must keep the secrets of the profession, under penalty of legal liability. Article (202) of the Jordanian Companies Law stipulates that the auditor must be obligated to maintain the secrets of the profession by saying, “Without prejudice to the basic obligations of the auditor, he may not broadcast to the shareholders at the meeting place of the general assembly of the joint-stock company or in other places and times, or to The shareholders change the company’s secrets because of his performance of his work for it, otherwise he must be dismissed and demanded for compensation” (25).

The Jordanian Companies Law has clarified some of the obligations that fall on the auditor, including:

He is obligated to monitor the company's business and to audit its accounts in accordance with the approved auditing rules

- He is obligated to examine the company's financial and administrative systems and its internal financial audit systems, to ensure their suitability, to verify the company's assets and ownership, and to ensure the legality and validity of the company's obligations.

- He shall abide by any other duties that he is required to perform under this law, the law of the auditing profession, other relevant regulations, and the customary rules for auditing accounts.

It is worth noting that there are some rights and obligations for which we did not find a basis in the Companies Law or the law regulating the profession of auditing in Jordanian legislation. Rather, they are considered among the international auditing standards as the auditor’s right to seek the assistance of experts and his right to discuss the decision to dismiss him in front of the ordinary general assembly or what is called in the Jordanian Legislation General Assembly of Shareholders. We also note that the multiplicity of laws and regulations regulating the audit process, along with the multiplicity of bodies that set these laws, had a negative impact on the legal texts that deal with the rights and obligations of the auditor, the matter that led to a conflict between them in some cases.

Legal regulation of the work of the auditor in the public shareholding company
(A comparative study)

The second requirement: the auditor's rights in the public shareholding company:

The auditor in the public shareholding company has certain rights that stem mainly from the nature of the professional services he provides (27).

We find that the Jordanian Companies Law has touched upon the rights of the auditor in the public shareholding company, in Article (193), as amended, that "the auditors shall jointly or individually undertake:

- The right to monitor the company's business as an agent for all shareholders in the company

- The right to examine the company's financial and administrative systems and its internal financial control systems and ensure their suitability for the proper conduct of the company's business and the preservation of its funds.

- The right to verify the company's assets and its ownership, and to ensure the legality and validity of the company's obligations.

- The right to review the decisions of the Board of Directors and the General Assembly, the instructions issued by the company, and any data that their work requires the necessity of obtaining and verifying them.

These rights that the auditor performs are considered of great importance, since many entities or persons rely on the data that the auditor reviews and expresses his opinion on, because it is his primary duty to ensure that all the works carried out by the company's board of directors fall within its competencies and that they are consistent with the purposes of The company specified in the memorandum of association and is considered at the forefront of the rights enjoyed by the auditor to enable him to work. The right to review all the company's books and records at all times and to request data that he deems necessary to obtain them. He also has the right to verify the company's assets and obligations and if he is unable to use He must prove these rights in writing in a report submitted to the Companies Controller and a copy thereof to the Board of Directors containing the reasons that hinder his work or prevent him from carrying out them. If he is unable to do so, the matter shall be presented to the company's general assembly in its first meeting, and this is what Article (194) of the same law stipulates (28).

Finally, we would like to point out that the Jordanian legislator has neglected some of the rights stipulated by other legislation, such as the auditor's right to discuss the decision to dismiss him before the ordinary general assembly, similar to the Egyptian Companies Law, which guaranteed him that right.

First, the results:

1- The year period for practicing the auditor's profession stipulated in Jordanian legislation is short so that it does not allow the auditor to find out all that he needs in order to express his technical opinion on the company's financial statements to prepare an adequate report in order to be able to present it to the shareholders. In addition, the auditor will work to

satisfy the Board of Directors in order to recommend him to the General Authority to work for another period or more for the company.

2- The auditor in the public shareholding company may resign from his position with the company, thereby putting an end to his services with it. The resignation may be for an emergency reason to be removed from the auditor's professional schedule, or for personal reasons such as an illness that prevents him from working.

3- The ordinary general assembly is the owner of the inherent right to appoint the auditor in the public shareholding company, and based on that, whoever has the right to appoint has the right to dismiss.

Second: Recommendations:

1- We hope that the Jordanian legislator will follow the example of the Egyptian Companies Law, the auditor's right to discuss the decision to dismiss him before the ordinary general assembly.

2- The researcher recommends the Jordanian legislator to add more detailed legal texts regarding how to terminate the auditor's contract in the public shareholding company.

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Legal regulation of the work of the auditor in the public shareholding company
(A comparative study)

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