

Reforming The Role Of Liquidators In Jordanian Commercial Law: Clarity, Consistency, And Accountability

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1. Introduction:

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Research Topic:

This study delves into researching, analyzing, and detailing the legal nature of the liquidator of a commercial company, especially given that civil law and company law do not provide a clear definition of the liquidator and the liquidation process, nor do they explicitly outline its legal basis. Consequently, legal scholars have at times regarded the liquidator as a manager or an agent of the company, while at other times, as a representative of its partners or creditors. This research endeavors to explore all aspects related to the liquidator, ultimately reaching a conclusive understanding of their accurate legal nature.

1.2 Significance of the Study:

The significance of this study lies in its attempt to refute all legal theories that consider the liquidator as a manager of a commercial company undergoing liquidation, or as an agent on behalf of the company, its creditors, or its partners. It aims to establish that the liquidator is, in fact, a deputy for the company, whether their delegation is based on legal provisions or contractual agreements.

1.3 Study Objectives:

This study aims to clarify the accurate and true legal nature of the liquidator of a commercial company. It also seeks to identify the areas of deficiency, shortcomings, ambiguities, and uncertainties that have afflicted the regulation of this matter by the legislator.

1.4 Study Methodology:

This study adopts an analytical methodology, wherein legal texts governing this subject are presented, and various jurisprudential theories concerning it are reviewed and analyzed. This approach is employed to arrive at the correct legal nature of the liquidator of a commercial company.

1.5 Research Problem:

What is the legal nature of the liquidator of a commercial company?

1.5.1 Research Questions Related to the Problem:

Who is the liquidator, and what are the similar concepts to this role? What are the rights and duties of the liquidator, and when does their work come to an end or cease? How is the liquidator appointed?

2. Study Plan

Understanding the correct legal nature of the liquidator of a commercial company can only be achieved through knowledge of who the liquidator is and how they differ from similar concepts. It also involves understanding how they are appointed, their rights, authorities, powers, and duties, essentially defining the concept of the liquidator. By reviewing the theories proposed by jurisprudence to determine the legal basis of the liquidator, this study is divided into two main sections and a conclusion.

The first section addresses the definition of the liquidator of a commercial company, while the second section is dedicated to the legal basis of the liquidator of a commercial company. The conclusion highlights the most important findings and recommendations.

3. First Section: Defining the Commercial Company Liquidator

This section delves into defining and distinguishing the commercial company liquidator. It outlines the appointment mechanism, scenarios for termination of duties, and the roles, responsibilities, and rights of the liquidator. These aspects collectively define the concept. The section comprises four demands: defining the liquidator and distinguishing it from similar roles, explaining the appointment process, detailing cases leading to duty termination, and enumerating tasks, duties, and rights of the liquidator within the company.

Table 1. Summary of key details in the first section: Defining the commercial company liquidator.

Demand	Key Details
First Demand: Defining the Commercial Company Liquidator and Its Distinction	- Definition of a Commercial Company - Definition of Liquidation - Liquidation Scenarios - Defining the Liquidator - Possibility of a Legal Entity as a Liquidator
1.1 Definition of a Commercial Company	- General definition of a company in Jordanian Civil Law - Lack of a precise definition in the law
1.2 Definition of Liquidation	- How legal jurisprudence defines liquidation - Unique nature of liquidation for commercial companies
1.3 Liquidation Scenarios	- Various scenarios leading to the liquidation of commercial companies - Distinction between voluntary and compulsory liquidation
1.4 Defining the Liquidator	- Role and responsibilities of the liquidator during liquidation - Varying views on the legal foundation of the liquidator
1.5 Possibility of a Legal Entity as a Liquidator	- Absence of explicit provisions regarding legal entities as liquidators in Jordanian Company Law - Suggestion for a clear legal framework
2. Second Demand: The Mechanism for Appointing the Liquidator of the Commercial Company	- Appointment by Partners - Appointment by the Court

2.1 Appointment by Partners	- Cases in which partners appoint the liquidator - Absence of specific qualifications for the liquidator - Proposal for clear eligibility criteria
2.2 Appointment by the Court	- Scenarios in which the court appoints the liquidator - Role of the General Controller of Companies in appointments for public shareholding companies
3. Third Demand: Cases of the Termination and Cessation of the Functions of the Liquidator of the Commercial Company	- Termination Conditions - Discovery of Omitted Assets
3.1 Termination Conditions	- Conditions leading to the termination of the liquidator's duties - Consequences and procedures for each termination condition
3.2 Discovery of Omitted Assets	- Exception where the liquidator's work may continue due to the discovery of omitted assets - Advocacy for a timeframe for liquidation to prevent delays
4. Fourth Demand: The Duties, Obligations, and Rights of the Liquidator of the Commercial Company	- Responsibilities, Obligations, and Authorities of the Liquidator in Partnership and Simple Commandite Companies - Responsibilities of the Liquidator in Joint-Stock and Limited Liability Companies - Rights of the Liquidator
4.1 Responsibilities, Obligations, and Authorities in Partnership and Simple Commandite Companies	- Specific duties of the liquidator in these company types - Consequences of breaches and the right to seek compensation
4.2 Responsibilities of the Liquidator in Joint-Stock and Limited Liability Companies	- Duties of liquidators in public, private joint-stock, and limited liability companies - Absence of specified penalties for liquidator violations
4.3 Rights of the Liquidator	- Liquidator's rights, including compensation and fees - Mention of the bonus that can be granted by the liquidation judge

4. First Demand: Defining the Commercial Company Liquidator and Its Distinction

To grasp the practical essence of a commercial company liquidator and differentiate it from similar roles, it's vital to define "commercial company" and "liquidation." The liquidator's role is intricately tied to commercial companies, and its legal standing only becomes clear once a company enters the liquidation process. According to Jordanian Civil Law, a company is a pact where two or more individuals commit capital or labor to a project, sharing its outcomes². This general definition of a company sets the foundation. The law further details its essence, conditions, provisions, management, types, and circumstances leading to its termination, including liquidation³. The Jordanian Companies Law lacks a precise definition of a commercial company, despite its comprehensive regulations⁴. Crucial aspects include classifying commercial companies like partnership, simple commandite, limited liability, and recommendation by shares, private, and public joint-stock firms⁵. It also addresses company

² Article 582 of the Jordanian Civil Code, Law No. 43 of 1976, published on page 2 of Official Gazette No. 2645, dated 1/8/1976.

³ The Civil Code has addressed and regulated these issues through Articles 583-635 of the Code.

⁴ The Jordanian Companies Law bears the number 22 for the year 1997 and was published on page 2038 of the Official Gazette number 4204 on May 15, 1997.

⁵ Article 6/A of the Jordanian Companies Law.

termination, including liquidation cases⁶. According to jurisprudence⁷, a commercial company involves two or more individuals contributing money or work for profit. It categorizes companies as personal (e.g., partnerships) or capital (e.g., public joint-stock companies) based on their focus on personal or financial aspects.

The Jordanian Civil Law lacks a precise definition of liquidation but details the procedures, company status, and asset division during the process⁸. The Companies Law, like the Civil Law, covers liquidation aspects, such as types, procedures, company status, and leaves jurisprudence to define it⁹. Legal jurisprudence defines liquidation as actions to determine rights of partners, third parties, and make claims¹⁰. Liquidation is a process to cease business, settle partner rights, consolidate assets, pay debts, and distribute funds¹¹. Liquidation ends company activities, pays debts, collects receivables, and converts assets into cash for partner distribution¹². Liquidation, a unique process for commercial companies, consolidates assets, pays debts in priority, and distributes remaining funds among partners by shares¹³.

Liquidation scenarios for commercial companies vary, including: termination of the company's initial purpose, expiration of its designated duration, judicial dissolution with one partner remaining, bankruptcy, mutual agreement among partners to liquidate, serious legal or bylaw violations, one-year operation cessation without reason, and losses surpassing 75% of subscribed capital without capital augmentation by the general assembly¹⁴. Companies undergo two liquidation types: voluntary, chosen by partners, and compulsory, forced by events like judicial orders or bankruptcy¹⁵. Defining the liquidator is crucial since neither the Civil Law

⁶ The Jordanian Companies Law does not regulate the liquidation of commercial companies under a separate and distinct chapter or section; instead, it addresses this issue through various scattered and disjointed provisions. It is worth noting that this regulatory approach has been criticized, and it would have been preferable if the legislator had dedicated a separate chapter for liquidation that applies to all types of commercial companies.

⁷ See the following references for further information:

- Sameeha Al-Qalyoubi, "Commercial Companies," Dar Al-Nahda Al-Arabiya, Cairo, Vol. 1, 2nd edition, 1989, p. 170 and beyond.
- Mustafa Kamal Taha, "Commercial Law: Introduction to Commercial Activities and Traders, Commercial Companies, Industrial Ownership," Dar Al-Jamei'ya, Alexandria, 1974, p. 220 and beyond.
- Rizk Antaki and Nahed Al-Sabai, "The Intermediary in Commercial Rights," Dar Al-Ilm, Damascus, Vol. 1, 1982, p. 486 and beyond.
- Hanan Makhloof, "Principles of Commercial Law," Benha University Publications, Benha, Egypt, 2011, p. 130 and beyond.
- Atef El-Faqi, "Commercial Companies in Egyptian Law," Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 49 and beyond.
- Fayez Naeem Radwan, "Commercial Companies," Dar Al-Nahda Al-Arabiya, Cairo, 2001, p. 116 and beyond.

⁸ Refer to Articles 607-610 of the Jordanian Civil Law.

⁹ Refer to Articles 35-40 and 252-272 of the Jordanian Companies Act.

¹⁰ Refer to Samiha Al-Qalyoubi, the previous reference, page 193.

¹¹ Marwan Al-Ibrahim, *Liquidation of Joint Stock Companies: A Comparative Study of Egyptian, Jordanian, and English Laws*, Doctoral Dissertation, Institute of Arab Research and Studies, Cairo, 2000, page 24.

¹² Mafalah Al-Qudah, *The Real Existence of the Actual Company in Comparative Law*, 1985, page 441.

¹³ Abu Zaid Radwan, *Commercial Companies in Egyptian and Comparative Law*, Publisher: Not Specified, Cairo, 1990, page 395.

¹⁴ Refer to Articles 32-35, 252, 254, 295, and 266 of the Jordanian Companies Law.

¹⁵ Refer to Articles 36, 252, 259, 265, and 266 of the Jordanian Companies Law.

nor the Jordanian Companies Law offer a specific definition. Legal jurisprudence defines the liquidator as the individual(s) responsible for selling company assets, settling debts, and distributing cash among partners¹⁶. The liquidator manages the company's affairs throughout liquidation, overseeing all necessary actions for the process¹⁷. Liquidators resolve legal consequences arising during company liquidation¹⁸. The liquidator represents the company in pre-liquidation transactions, holds necessary authority to convert assets into cash for debt settlement¹⁹. The Jordanian Court of Cassation defines the liquidator as the company's representative during liquidation, overseeing its affairs, and handling legal matters²⁰.

Certainly, the existing definitions of the liquidator elucidate their core roles and responsibilities in the context of company liquidation. However, these definitions leave unaddressed critical aspects such as the appointment process, the liquidator's rights, and the possibility of a legal entity assuming the role. Jordanian Company Law and the Civil Law do not explicitly stipulate whether a legal entity can act as a liquidator, and there is a dearth of judicial precedents or practical instances on this matter. The absence of a legal, logical, or rational impediment suggests that a legal entity could indeed serve as a liquidator, potentially through its designated representative. In fact, establishing specialized companies for managing liquidation proceedings could be a beneficial development.

Given the absence of explicit provisions in Jordanian Company Law regarding the permissibility or prohibition of legal entities serving as liquidators, it is imperative for the legislature to intervene and provide a definitive legal framework for this matter. Furthermore, there is a pressing need for a precise legal definition of both liquidation and the role of the liquidator. In light of this, I propose the following definition for the liquidator: "The liquidator, whether a natural or legal person, can be a single individual or multiple individuals, appointed by the liquidation judge in cases of compulsory liquidation or optional liquidation when unanimous agreement among partners is lacking. In cases of optional liquidation, all partners jointly appoint the liquidator. The liquidator assumes the exclusive legal representation of the company under liquidation, overseeing its management, asset sales, debt collection, obligation settlement, addressing legal ramifications, and representing the company in legal proceedings, for a designated fee." Establishing such legal clarity is vital for the efficient operation of liquidation processes.

The concept of a liquidator for a commercial company should not be conflated with that of a "bankruptcy trustee" or "receiver manager." These terms are not interchangeable. A bankruptcy trustee primarily serves as an intermediary for creditors, representing the debtor and creditors alike. They are entrusted with the assets of the bankrupt entity and play a pivotal role in managing the bankruptcy proceedings. The trustee assumes control over the assets when the debtor loses authority over them, overseeing them throughout the entire bankruptcy process

¹⁶ Shihab Mahmoud, *Liquidation of Commercial Companies: A Comparative Study*, Dar Al-Nahda Al-Arabiya, Cairo, 2012, p. 65.

¹⁷ Mohammed Abdel Gawad, *Liquidation of Commercial Companies*, Dar Al-Nahda Al-Arabiya, Cairo, 2012, p. 76.

¹⁸ Abdullah Ghannam, *The Legal System for the Liquidation of Commercial Companies*, Dar Al-Nahda Al-Arabiya, Cairo, 2009, p. 158.

¹⁹ Nicolas Elias, *Legal Aspects of Liquidation*, Dar Al-Kitab Al-Jamei, Beirut, 2014, p. 101.

²⁰ Among these decisions, refer to Decision No. 166/2016, Decision No. 1612/2005, Decision No. 241/1999, and Decision No. 725/2014, all of which are published on the Adalah Information Systems website.

until its resolution. This distinction underscores the separate functions and responsibilities of a liquidator and a bankruptcy trustee²¹.

It is crucial to emphasize that while a bankruptcy trustee and a liquidator share certain duties related to managing assets, sales, distribution, and debt settlement, they are fundamentally distinct roles. A bankruptcy trustee primarily serves as an intermediary for creditors and is responsible for overseeing the entire bankruptcy process, managing debtor assets, and ensuring equitable distribution among creditors. This role is separate from that of a liquidator, who is appointed under different circumstances and for different reasons. Additionally, the concept of a "court-appointed guardian" or "custodian," often referred to as a "receiver," should not be equated with that of a liquidator. A receiver is typically appointed in cases of property disputes, where conflicting parties require a neutral entity to take temporary control. This appointment follows specific conditions outlined in Article 32 of the Civil Procedure Code, preserving the core principles of the disputed right²². The appointment of a liquidator occurs exclusively in cases of voluntary or compulsory liquidation, granting them comprehensive authority over sales, distribution, and administration. This distinguishes the liquidator's role from that of a court-appointed guardian or custodian, who lacks the same extent of powers and responsibilities. Additionally, the assets subject to liquidation do not involve disputes or risks comparable to those handled by a judicial guardian. In essence, a judicial guardian or custodian differs significantly from a liquidator, with their roles primarily sharing the commonality of overseeing assets, albeit with differing scopes of authority and responsibilities²³.

5. The Second Demand - The Mechanism for Appointing the Liquidator of the Commercial Company

In appointing the liquidator of a commercial company, the partners or the court can make the selection. Generally, partners appoint the liquidator, except when the court is responsible for the appointment. The following sections outline cases of appointment by the partners and cases necessitating court appointment.

The partners appoint the liquidator if these cases apply:

1. If the company's contract or bylaws explicitly name the liquidator for its liquidation.
2. If the company's contract, bylaws, or prior agreements lack a designated liquidator, but all partners agree on one²⁴.
3. If a public joint-stock company's extraordinary general assembly decides to appoint a specific liquidator for it²⁵.

Importantly, when partners appoint the liquidator, there are no legal restrictions on choosing one of the partners, a shareholder, or any other individual. Remarkably, neither the Companies Law nor the Civil Law prescribes specific qualifications for the liquidator. The researcher contends that addressing this gap by establishing clear eligibility criteria for liquidator appointments is crucial, considering the gravity and intricacy of liquidation proceedings.

²¹ Ayman Mamdouh Al-Faouri, *Civil Liability of the Liquidator, A Comparative Study* (Jordan, United Arab Emirates, Kuwait), Dar Al-Rawda, Abu Dhabi, 2014, p. 87.

²² See Articles 894 and 896 of the Jordanian Civil Code and the decision of the Jordanian Court of Cassation in its capacity as a Court of Rights, Decision No. 3235/2013, published in 'Adalah' legal publications.

²³ Article 36 of the Jordanian Companies Act.

²⁴ Article 37 of the Jordanian Companies Act.

²⁵ Article 252 of the Jordanian Companies Act.

1. When the company's documents lack a liquidator appointment, and partners can't agree, the court steps in to make the appointment²⁶.
2. If the company has automatically expired due to legal provisions²⁷.
3. If the company has been legally dissolved by a court ruling²⁸.
4. If a public joint-stock company receives a final court decision for liquidation, the court appoints a liquidator²⁹.
5. If the court determines the company is void, it appoints a liquidator³⁰.
6. If a conflict arises between partners' appointed liquidator and company's interest, the court appoints a new liquidator³¹.
7. In voluntary liquidation, if partners can't agree on a liquidator³².
8. If partners don't appoint a liquidator in voluntary liquidation³³.
9. If the company's contract or articles prohibit a majority from appointing a liquidator³⁴.
10. If the articles or contract permit majority appointment, but a majority is unavailable to appoint the liquidator³⁵.

Therefore, it is clear that the court appoints the liquidator in cases where the General Assembly of a public shareholding company decides on liquidation without specifying a liquidator. In such instances, the General Controller of Companies is responsible for appointing the liquidator.³⁶

6. The Third Demand - Cases of the Termination and Cessation of the Functions of the Liquidator of the Commercial Company

The instances of terminating and discontinuing the liquidator's duties can be outlined as follows:

1. Death: The liquidator's demise halts the liquidation until a replacement is appointed by the governing authority³⁷.
2. Insolvency or Legal Restraint: The liquidator's insolvency³⁸ or legal restraint results in termination, requiring a new appointment³⁹.
3. Resignation: The liquidator's resignation, when accepted by the appointing authority, terminates their role. If this harms the partners, they can seek compensation⁴⁰.
4. Removal: The liquidator can make errors or act inappropriately, causing harm. Partners who appointed him, as well as the Ministry or the court, can request removal. The

²⁶ Article 36 of the Jordanian Companies Act.

²⁷ Article 36 of the Jordanian Companies Act.

²⁸ Article 36 of the Jordanian Companies Act.

²⁹ Article 253 of the Jordanian Companies Act.

³⁰ Samiha Al-Qallubi, the aforementioned reference, page 152.

³¹ Abu Zaid Ridwan, the aforementioned reference, page 186.

³² Mustafa Kamal Taha, the aforementioned reference, page 344.

³³ Samihah Al-Qalyubi, the aforementioned reference, page 152.

³⁴ Mohammed Abdeljawad, the aforementioned reference, page 176.

³⁵ Abdullah Ghannam, the aforementioned reference, page 189.

³⁶ Article 260 of the Jordanian Companies Law.

³⁷ Abdul Shakhnbah, *The Legal System for Liquidating Commercial Companies*, Unpublished, 1992, p. 262.

³⁸ Elias Nassef, *The Complete Commercial Law, Commercial Companies, Mediterranean and Aweidat Publications, Part Two, 1st Edition, 1982, p. 95 and beyond.*

³⁹ Marwan Al-Ibrahim, the Previous Reference, p. 164.

⁴⁰ Abdul-Shakhnbah, the Previous Reference, p. 263.

Companies Control Department or the court can also remove the liquidator if justified⁴¹.

5. Completion of Liquidation: The liquidator's role concludes upon finishing all liquidation procedures⁴². If assets are later found registered under the company's name, the Companies Control Department may involve the court to decide how to handle them, appointing a new liquidator if necessary⁴³.

Therefore, the exception to the liquidator's work ending is the discovery of omitted assets. The researcher urges the legislator to establish a timeframe for liquidation to avoid unnecessary delays due to unregulated situations.

7. The Fourth Demand - The Duties, Obligations, and Rights of the Liquidator of the Commercial Company

The duties, obligations, and rights of the commercial company's liquidator are vital and meticulously outlined in the Companies Law. This comprehensive regulation applies to various types of companies, demonstrating its significance. The researcher will initially delve into the tasks, duties, and rights of liquidators in joint-stock and simple recommendation companies. Subsequently, they will address the corresponding responsibilities for public joint-stock, private joint-stock, and limited liability companies.

7.1 The Responsibilities, Obligations, and Authorities of the Liquidator in Partnership and Simple Commandite Companies:

The Responsibilities of the Liquidator in Partnership and Simple Commandite Companies encompass the following:

1. Initiating the liquidation process by publishing a notice in at least one daily newspaper⁴⁴.
2. Compiling a list of the company's assets, liabilities, and obligations under liquidation⁴⁵.
3. Not selling assets without consent from all partners or court approval⁴⁶.
4. No new business activities except for completing ongoing work⁴⁷.

If the liquidator breaches these rules, they bear personal responsibility⁴⁸. Anyone harmed by the liquidator's breach, whether a partner, creditor, or another party, can seek personal compensation from the liquidator.

7.2 Responsibilities of the liquidator in partnership and simple commandite companies:

1. Follow the legal and procedural requirements for company liquidation⁴⁹.
2. Collect company debts and settle them in order of priority⁵⁰.

⁴¹ See the Jordanian Court of Cassation Decision No. 411/1965, published in 'Adalet' magazine. Also, refer to Hassani al-Masri, *Commercial Law, Volume Two*, Dar al-Nahda, Cairo, 1986, p. 139 and beyond.

⁴² Refer to Mustafa Kamal Taha, the previous reference, p. 219.

⁴³ Article 40/b of the Companies Law.

⁴⁴ Article 37/1 of the Companies Law.

⁴⁵ Article 37/A of the Companies Law.

⁴⁶ Article 37/A of the Companies Law.

⁴⁷ Article 37/B of the Companies Law.

⁴⁸ Article 37/B of the Companies Law.

⁴⁹ Article 38 of the Companies Law.

⁵⁰ Article 38 of the Companies Law.

3. Settle partner rights, pay expenses, liquidator fees, employee dues, state treasury claims, and other obligations with due consideration to privileges⁵¹.
4. Submit a final report of actions, including oversight by the General Directorate of Companies⁵².
5. Perform necessary liquidation actions, represent the company legally, per Court of Cassation rulings⁵³ granting sole supervisory and legal authority⁵⁴.

Though penalties for liquidator violations aren't specified, holding them personally responsible is mandated by the legislator for task breaches⁵⁵. The legislator should explicitly outline the liquidator's personal liability for duty breaches. In its absence, general rules dictate personal accountability if duties are violated. Any affected party, be it partners, creditors, or others, holds the right to file claims against the liquidator, seeking compensation for resulting damages.

8. Rights of the Liquidator in Solidarity and Simple Recommendation Companies:

The liquidator's role encompasses diverse and time-intensive tasks, often requiring exclusive dedication. Therefore, it's reasonable for the liquidator to receive compensation for their efforts. Ideally, this compensation should be established when the partners appoint them. If agreement eludes the partners initially or later, the court can set the compensation, especially in voluntary liquidations. In cases of compulsory liquidation, the court determines the liquidator's compensation upon request⁵⁶. The liquidator, after deducting their fees, settles the company's debts⁵⁷. If company funds fall short, the liquidator can seek partners' assistance⁵⁸. Liquidator's personal expenses for liquidation are recoverable and have priority⁵⁹. The court-determined liquidator's fees consider their effort, duration, skills, expertise, and task fulfillment⁶⁰.

Tasks, duties, and rights of liquidators in different company types are as follows.

8.1 Duties of liquidators in various company types can be summarized as follows:

1. Oversee the company's daily operations and protect its assets⁶¹.
2. Handle all legal matters pertaining to the company's affairs⁶².
3. Represent the company until liquidation's completion and dissolution⁶³.
4. Include "under liquidation" in the company's name across all documents and correspondence⁶⁴.
5. Clear the company's debts post deducting liquidation expenses and liquidator's fees⁶⁵.

⁵¹ Article 39 of the Companies Law.

⁵² Article 40 of the Companies Law.

⁵³ Decision of the Jordanian Court of Cassation No. 2860/2013, published in Adalah Magazine.

⁵⁴ Decision of the Jordanian Court of Cassation No. 2845/2013, published in Adalah Magazine.

⁵⁵ Article 37/b of the Companies Law.

⁵⁶ Article 36 of the Companies Law.

⁵⁷ Article 39 of the Companies Law.

⁵⁸ Elias Nassef, "The Complete Commercial Law," The Reference Above, p. 100.

⁵⁹ Article 39 of the Companies Act.

⁶⁰ Abdul-Shakhanbah, the previous reference, p. 264.

⁶¹ Article 253 of the Companies Act.

⁶² Decision of the Jordanian Court of Cassation No. 3200/2008, published in Adalah's publications.

⁶³ Article 254/A of the Companies Act.

⁶⁴ Article 254/J of the Companies Act.

⁶⁵ Article 256 of the Companies Act.

6. Liquidate assets, list debtors, report actions, claim debts, pay creditors, settle obligations⁶⁶.

Notably, the legislator omitted penalties for liquidator negligence or violations. This gap should be rectified. If a liquidator's neglect harms partners or creditors, they can seek compensation through established legal principles.

8.2 Liquidator duties for public, private joint-stock, and LLCs are as follows⁶⁷.

1. Take all requisite measures and make necessary decisions to conclude liquidation.
2. Administer the company's operations and fulfill existing contracts before liquidation.
3. Conduct an inventory of the company's assets, possessions, and liabilities.
4. Designate an expert or appoint individuals to aid in liquidation, or form specialized committees for assistance.
5. Take legal actions to recover debts, protect rights, and appoint a lawyer for courtroom representation on behalf of the company.
6. Participate in lawsuits and legal matters concerning the company's finances and interests.
7. Deposit funds received on behalf of the company into the court-designated bank account.
8. Furnish court and Companies Directorate with verified accountant's report on funds.
9. Keep records and accounting books for the liquidation process.
10. Summon creditors and debtors to general meetings for claim verification and proposal consideration.
11. Adhere to court directives regarding funds, assets, and creditor distribution.

Those affected by the liquidator's actions can contest them in court, which makes the final decision⁶⁸. Creditors or debtors can petition the court about the liquidator's actions, including asset inventory and legal actions. Court decisions are final⁶⁹.

9. Rights of the liquidator for public, private joint-stock, and limited liability companies:

The liquidator's rights encompass receiving fees and a bonus upon task completion. The Court of Cassation confirmed that the liquidation judge can grant a bonus of twenty thousand dinars as authorized by Article 260 of the Companies Law. This bonus reflects the liquidator's efforts in fulfilling their duties⁷⁰.

The researcher has concluded the discussion on defining the concept of a commercial company's liquidator, a crucial aspect in determining the liquidator's legal nature. This gains prominence in the subsequent research section discussing the legal foundation for the liquidator.

⁶⁶ Article 261 of the Companies Act.

⁶⁷ See Articles 269-270 of the Companies Act, and the decisions of the Jordanian Court of Cassation Decision No. 1877/2012, Decision No. 3059/2004, Decision No. 1391/2006, and Decision No. 2998/2012 published in 'Adalah' legal publications.

⁶⁸ Article 270/B of the Companies Act.

⁶⁹ Article 269/B of the Companies Act.

⁷⁰ Court of Cassation Decision No. 2458/2013, published in Al-Adala Journal.

10. Second Section - Determining the Legal Basis for the Liquidator of the Commercial Company

Understanding the liquidator's definition, distinctions, appointment, termination, duties, and rights addresses half of their legal nature. The remaining half pertains to determining the legal foundation, prompting the question: What is it?

Addressing the question, the absence of a clear legal provision specifying the foundation for a commercial company's liquidator has sparked contentious debates among legal scholars. Opinions range from viewing the liquidator as the company's manager, agent for creditors, agent for partners, or agent for the company under liquidation.

This section is divided into four inquiries, each addressing a distinct approach to determine the legal foundation for a commercial company's liquidator.

Inquiry One: The liquidator as the manager of the company under liquidation.

Inquiry Two: The liquidator as an agent for the company's creditors under liquidation.

Inquiry Three: The liquidator as an agent for the partners in the company under liquidation.

Inquiry Four: The liquidator as an agent for the company under liquidation.

Table 2. Summary of inquiries regarding the legal basis for the liquidator of a commercial company.

Inquiry	Perspective	Arguments For	Arguments Against
Inquiry One	The Liquidator as the Manager of the Company Under Liquidation	- Liquidator's extensive powers resemble those of a company manager. - Liquidator's tasks mirror those of a company manager. - Liquidator manages company affairs, a duty usually for the company manager. - Appointment of a liquidator is akin to appointing a manager replacement.	- Distinct and separate roles with unique meanings for liquidator and company manager. - Different appointment processes for a liquidator and a company manager. - Distinct authorities, duties, and tasks. - Different reasons for appointment. - Different civil and criminal liability standards. - Liquidator aims to liquidate, while manager strives for profit and loss prevention. - Managers have employment contracts, while liquidators may not be company employees.

<p>Inquiry Two</p>	<p>The Liquidator as an Agent for the Company's Creditors</p>	<ul style="list-style-type: none"> - Liquidator represents creditors in legal actions to recover debts. - Liquidator sells assets to settle creditors' rights. - Liquidator safeguards company creditors' rights throughout liquidation. - Liquidator's actions ultimately benefit company's creditors. 	<ul style="list-style-type: none"> - Agency demands clear, authorized power, lacking in liquidator-creditors relationship. - No contractual relationship between liquidator and creditors. - Paying debts to creditors is liquidator's duty, not evidence of agency. - Liquidator's lawsuits against partners and debtors don't represent creditors. - Liquidator's actions to protect company and creditor interests. - Creditor harm leads to legal action based on liquidator's liability, not agency relationship. - Creditors don't participate in liquidator appointment. - Companies Law lacks provision establishing liquidator as representative or agent for creditors. - Lack of a valid legal foundation. - No contractual relationship between liquidator and partners. - Liquidator represents the company, not partners. - Conflicts logically, legally, and reasonably with liquidator's role as a partner. - Agency requires clear terms, conditions, and regulations, not
<p>Inquiry Three</p>	<p>The Liquidator as an Agent for the Partners</p>	<ul style="list-style-type: none"> - Partners often appoint the liquidator in voluntary liquidation cases. - Liquidator initiates liquidation process at partners' behest. - Represents partners while executing liquidation tasks. - Occasionally, a partner may also serve as liquidator. 	<ul style="list-style-type: none"> - Agency demands clear, authorized power, lacking in liquidator-creditors relationship. - No contractual relationship between liquidator and creditors. - Paying debts to creditors is liquidator's duty, not evidence of agency. - Liquidator's lawsuits against partners and debtors don't represent creditors. - Liquidator's actions to protect company and creditor interests. - Creditor harm leads to legal action based on liquidator's liability, not agency relationship. - Creditors don't participate in liquidator appointment. - Companies Law lacks provision establishing liquidator as representative or agent for creditors. - Lack of a valid legal foundation. - No contractual relationship between liquidator and partners. - Liquidator represents the company, not partners. - Conflicts logically, legally, and reasonably with liquidator's role as a partner. - Agency requires clear terms, conditions, and regulations, not

Inquiry Four	The Liquidator as an Agent for the Company	<p>- Liquidator carries out tasks similar to those of an agent.</p> <p>- Liquidator's powers not greater than those of an agent.</p> <p>- Liquidator represents the company.</p> <p>- Liquidator's duties conclude upon liquidation's end.</p> <p>- Appointment methods resemble those for agents.</p> <p>- Grounds for suspension/removal mirror those for agents.</p> <p>- Lawsuit filing and legal representation align with typical agent duties.</p>	<p>applicable to liquidator's role.</p> <p>- Lack of a firm legal foundation.</p> <p>- Contradicts principles of agency, particularly in court-appointed compulsory liquidation.</p> <p>- Agency requires principal to designate the agent, not applicable in compulsory liquidation.</p> <p>- Liquidator's authority is established by law, not agency contract.</p> <p>- Liquidator's actions reflect their own will, not the company's.</p> <p>- Liquidator acts in the name of the company, not their own.</p> <p>- Liquidator adheres to granted authorities without exceeding them.</p> <p>- Agency requires a mutual contractual obligation, not present in liquidation.</p> <p>- Agency is contractual or statutory, whereas liquidator's role is both, depending on appointment method.</p>
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11. The First Inquiry: The Liquidator as the Manager of the Company Under Liquidation.

Supporters of this view⁷¹ contend the liquidator is merely a company manager, citing the following justifications:

⁷¹ Supporters of this approach include:

- Wahy Farouk Luqman, Powers and Responsibilities of Directors in Commercial Companies: A Comparative Study, Dar Al-Nahda Al-Arabia, Cairo, 1999, p. 162 and beyond.
- Ahmed Mohamed Mahrez, The Intermediary in Commercial Companies, Ma'arif Establishment, Alexandria, 2004, p. 255 and beyond.

1. The liquidator's extensive powers resemble those of a company manager, making them the de facto manager during liquidation.
2. Liquidator's tasks mirror those of a company manager.
3. Liquidator manages company affairs, a duty usually for the company manager.
4. The liquidator assumes the role of the company's manager.
5. Appointing a liquidator is akin to appointing a manager replacement.
6. Liquidator's managerial role in the company establishes them as its de facto manager.
7. Upon liquidator's appointment, their authority replaces the company manager's for management.
8. During liquidation, the company's manager's role ceases, and it's impractical for the company to lack management, hence the liquidator assumes the managerial position.

The researcher argues that assigning the role of the company manager to the liquidator is legally unacceptable, inconsistent with the liquidator's defined role.

1. The liquidator and company manager have distinct and separate roles with unique meanings.
2. The appointment processes for a liquidator and a company manager vary considerably.
3. The liquidator's authorities, duties, and tasks are distinct from those of a company manager.
4. The reasons for appointing a liquidator are different from those for a company manager.
5. Liquidator and manager have distinct civil and criminal liability standards.
6. The liquidator aims to liquidate the company, while the manager strives for profit and loss prevention.
7. Managers have employment contracts, while liquidators, especially judge-appointed ones, may not be company employees.

Given their differing nature and characteristics, the liquidator cannot be equated to a company manager. A legal scholar in commercial law⁷² emphasizes that the liquidator's role differs significantly from a company manager's. Notably, a company manager can't sell company assets, but a liquidator can for liquidation. Furthermore, the liquidator can't undertake new investments or contracts, while a manager can.

The researcher asserts that what's beyond a manager's control is also beyond a liquidator's control, and vice versa. This underscores their distinct and independent roles. Article 607/2 of the Civil Code, which views managers as liquidators until their appointment, doesn't change this⁷³. In this context, the Civil Code does not equate the position of the liquidator with that of the company manager. Instead, it temporarily considers the company manager, at the liquidator's discretion, until the court appoints a liquidator for the company. This legal safeguard extends to third parties, allowing them to address their claims. In essence, when a court dissolves or nullifies a commercial company, the manager is regarded as the provisional representative, facilitating third-party claims and legal protection. This provision doesn't imply

- Sanaa Adel, *Civil Liability of Company Directors: A Comparative Study*, Mahmoud Publishing, Cairo, 2008, p. 142 and beyond.

⁷² Abu Zeid Radwan, *Commercial Companies in Egyptian and Comparative Law*, Dar Al-Fikr Al-Arabi, Cairo, 1977, p. 146.

⁷³ Article 607/2 of the Civil Law states: "The company's director or directors, for the purposes of the liquidator, shall be considered as such in relation to third parties until their appointment is made."

any equivalence between the liquidator and the company manager. Rather, it emphasizes that the legal foundation for the liquidator remains distinct from that of the company manager⁷⁴.

12. The Second Inquiry: The Liquidator as an Agent for the Company's Creditors.

The second perspective⁷⁵ contends the liquidator's legal foundation is as an agent for the company's creditors, justified by these reasons:

1. The liquidator represents creditors in legal actions against partners and debtors to recover debts, benefitting creditors.
2. Liquidator sells assets to settle creditors' rights, demonstrating their role as creditors' agent.
3. Liquidator safeguards company creditors' rights throughout the liquidation process.
4. Liquidator undertakes diverse tasks during liquidation, ultimately benefitting the company's creditors.
5. The liquidator, in managing liquidation, balances protecting creditors' interests and ensuring they receive their due from the company being liquidated.

The researcher finds the arguments for regarding the liquidator as a creditors' agent unsuitable and inaccurate due to the following reasons:

1. Agency demands a clear, authorized power, which lacks in the liquidator-creditors relationship.
2. Creditors can't authorize the liquidator to collect debts; no contractual relationship exists between them.
3. Paying debts to creditors is the liquidator's duty, not evidence of being their agent; it's an obligation.
4. Liquidator's lawsuits against partners and debtors don't represent creditors but serve to collect company debts and meet obligations for the company under liquidation.
5. The liquidator's actions, when not detrimental to company and creditor interests, show adherence to duties protecting the company, partners, and creditors.
6. Creditor harm from the liquidator's actions leads to legal action based on the liquidator's liability, not a contractual agency relationship.
7. Creditors don't participate in liquidator appointment, so the liquidator isn't their agent.
8. Companies Law lacks any provision establishing the liquidator as a representative or agent for creditors.

Considering the liquidator an agent for the company's creditors is illogical, impractical, and not reflective of reality.

13. The Third Inquiry: The Liquidator as an Agent for the Partners.

⁷⁴ Ayman Mamdouh Al-Faury, Commentary on the Texts of Jordanian and UAE Civil Laws, Dar Al-Rawda, Abu Dhabi, 2015, page 746.

⁷⁵ Supporters of this aspect include:

- Hani Dawidar, Lebanese Commercial Law, Part 1, Dar Al-Nahda Al-Arabiya, Beirut, 1995, page 402 and beyond.
- Razk Antaki and Nahad Al-Sabai, The Intermediary in Commercial Rights, Part 1, Dar Al-Alam Printing, Damascus, 1982, page 327 and beyond.
- Muhammad Malash, Companies: Establishment, Management, Dissolution, Bankruptcy, Taxes, Books, Crimes, Custody, and Models in the New Egyptian Laws and Comparative Legislation, Dar Al-Kitab Al-Arabi, Cairo, 1957, page 679 and beyond.

A faction in jurisprudence⁷⁶ contends the liquidator isn't an agent for creditors, manager, or the company but serves the partners.

1. Partners often appoint the liquidator in voluntary liquidation cases.
2. The liquidator initiates the liquidation process at the partners' behest.
3. While executing liquidation tasks, the liquidator represents the partners.
4. Occasionally, a partner in the company may also serve as the liquidator.

Attributing the role of "agent for the partners" to the liquidator lacks a valid legal foundation. Applying agency rules to the liquidator-partners relationship is impractical. The liquidator doesn't genuinely represent or legally substitute the partners during liquidation activities. A contractual relationship doesn't exist between the liquidator and the partners; he represents the company, not them. Even if appointed by partners, it doesn't equate to agency; agency has distinct terms, conditions, and regulations. If a liquidator is a partner, he can't be an agent for other partners. Hypothetically considering the liquidator an agent for other partners' conflicts logically, legally, and reasonably with his position as a partner. Agents act on behalf of and for others, whereas he's a partner. Thus, the researcher asserts that the legally sound perspective doesn't support labeling the liquidator as an agent for partners in the liquidating company.

14. The Fourth Inquiry: The liquidator acts as an agent for the company.

A notable jurisprudential view⁷⁷ posits that the liquidator's legal foundation is as an agent for the company under liquidation. Supporters cite the following reasons:

1. The liquidator carries out tasks akin to those of an agent.
2. The liquidator's powers are not greater than those of an agent.
3. The liquidator, like an agent, represents the company.

⁷⁶ Supporters of this aspect include:

- Mahmoud Al-Sharqawi, *Commercial Companies*, Dar Al-Nahda Al-Arabiya, Cairo, 1986, page 221 and beyond.
- Samir Qabiyawi, *Encyclopedia of Commercial Companies*, Part Five, *Liquidation of Commercial Companies*, without a publishing house, Cairo, 2013, page 1049 and beyond.
- Noha Marshaha, *Liquidation and Insolvency*, Dar Al-Alam Printing, Damascus, 1996, page 388 and beyond.

⁷⁷ Supporters of this aspect include:

- Mohsen Shafik, *The Intermediary in Egyptian Commercial Law*, Dar Al-Nahda Al-Arabiya, Cairo, 1962, page 838 and beyond.
- Fouzi Sami, *Commercial Companies, General and Special Provisions, Comparative Study*, Dar Al-Thaqafah, Amman, 1999, page 61 and beyond.
- Ahmed Mahrez, *The Intermediary in Commercial Companies*, Ma'arif Establishment, Alexandria, 2004, page 263 and beyond.
- Mortada Nasrallah, *Commercial Companies*, Al-Irshad Printing House, Baghdad, 1969, page 85 and beyond.
- Elias Nasif, *The Complete Guide to Commercial Law*, the aforementioned reference, page 99 and beyond.
- Ali Hassan Younes, *Commercial Companies*, Ibn Sons Wahba Printing House, Beirut, 1991, page 145 and beyond.
- Abdul Shakhanbah, the aforementioned reference, page 266 and beyond.

4. Liquidator's duties conclude upon liquidation's end, mirroring an agent's task completion.
5. The liquidator's appointment methods resemble those for appointing an agent.
6. The grounds for liquidator suspension or removal mirror those for agents.
7. Liquidator's lawsuit filing and legal representation align with typical agent duties.
8. Liquidator conducts legal transactions like an agent during liquidation.
9. The parallels between the liquidator and an agent underscore the liquidator's agent-like role.
10. Both liquidator and agent represent and manage finances for others in legal and non-legal matters
11. Liquidation tasks encompass legal actions, typically within an agent's purview.
12. Given the nature of the liquidator's tasks, they can't be an employee, worker, etc. These roles align with an agent's, making the liquidator an agent for the company under liquidation.

The jurisprudential perspective labeling the liquidator as the company's agent lacks a firm legal foundation. Despite their compelling arguments, it doesn't definitively establish the liquidator as the company's agent.

1. Not classifying the liquidator as a manager, agent, guardian, trustee, employee, or worker doesn't automatically make them the company's agent. Criticisms of this notion will be discussed later.
2. According to Article 833 of Jordanian Civil Law, agency involves a contract where the principal designates someone to act on their behalf in a known legal transaction. If we hypothetically view the liquidator as an agent for the company in a court-appointed compulsory liquidation, it implies he's an agent for the court. This contradicts agency principles, which require the principal to appoint someone representing themselves, making this notion unacceptable.
3. The definition of agency requires the principal to establish the agent's role. In compulsory liquidation where the court appoints the liquidator, the company doesn't establish the agent's position as someone else does.
4. Article 838 of the Civil Law stipulates that certain acts outside of administration and custody require specific agents designated for the type of work. However, when the liquidator undertakes liquidation tasks, he engages in activities that encompass both administration and custody, as well as other non-administrative and non-custodial activities. If the liquidator were considered an agent, it would imply the need for distinct agencies for these different tasks, which contradicts the comprehensive nature of the liquidator's role in overseeing all aspects of the company's liquidation. Upon appointment, the liquidator is not granted separate agency powers for administrative and custodial tasks versus other non-administrative and non-custodial tasks.
5. According to Article 838 of the Civil Law, agency entails specifying the actions the agent must perform. Hypothetically considering the liquidator as an agent would necessitate the principal (the company) to define the agent's obligations. This, however, does not apply to the liquidator as the Company Law already prescribes their obligations upon appointment.
6. Agency is a contractual relationship between two parties. If we hypothetically consider the liquidator as the first party, who would be the second party or principal? This question becomes crucial in compulsory liquidation. Assuming the company is the principal, can it be validly considered as such if it's undergoing liquidation without representing its own will? Can the court be the principal, the second party? This assertion is rejected.

7. According to Article 836 of the Jordanian Civil Law, agency can be special or general. However, hypothetically considering the liquidator as an agent, it's not logical to categorize his duties as falling under either special or general agency due to their unique nature.
8. According to Article 836/2 of the Civil Law, agents can make donations after declaration. However, the liquidator lacks this authority, making it implausible to categorize him as either a general or special agent for the company. When the liquidator is appointed, his duties are predefined by law, eliminating the need for a separate agency contract.
9. The agent's role is predetermined by the principal with specific tasks, unlike the liquidator, who is not assigned predefined tasks, differentiating them from an agent.
10. The liquidator's authority is established by the Companies Law, while the agent's authority is proven under the agency contract.
11. Agency can be compensated or uncompensated, but the liquidator's actions are compensated and regulated by law.
12. The rules for appointing multiple agents under Article 842 of the Civil Law cannot be applied to the appointment of multiple liquidators. In some instances, an agent may work independently, but when multiple liquidators are involved, none can act independently.
13. Article 844 of the Civil Law grants agents the authority to enter into specific contracts, which does not apply to liquidators who lack such legal capacity. Hence, labeling a liquidator as an agent for the company is untenable.
14. Article 847 of the Civil Law prohibits agents from receiving funds without explicit authorization, a rule not applicable to liquidators.
15. Similarities between a liquidator and an agent don't make the liquidator an agent for the company under liquidation.
16. The agent lacks the authority to carry out all the liquidator's tasks and responsibilities.
17. Agency involves mutual contractual obligations, which don't apply in liquidation, particularly compulsory liquidation, between the liquidator, the judge, or the company under liquidation.

Hence, due to the unique nature and constraints of the liquidator's role, fully equating them to an agent is legally and practically challenging.

The researcher argues that it's more legally sound to view the liquidator as a representative or deputy for the company, not an agent.

1. The liquidation process involves legal actions that the company itself cannot perform due to the liquidation. Hence, it requires a deputy, which can be contractual (in voluntary liquidation) or legal (in compulsory liquidation).
2. The liquidator serves as the exclusive legal representative of the company, inherently acting as its deputy.
3. Jordanian Court of Cassation jurisprudence consistently views the liquidator as a legal representative (deputy) of the company under liquidation, not an agent⁷⁸.
4. Article 254 of the Companies Act recognizes the liquidator as the company's legal representative until dissolution after liquidation.

⁷⁸ In this context, refer to the decisions of the Jordanian Court of Cassation in its capacity as the Court of Cassation, published on the 'Adalah' website for information systems: Decision No. 379/1965, Decision No. 582/2014, Decision No. 725/2014, Decision No. 1525/2014, Decision No. 2378/2012, Decision No. 3381/2012, Decision No. 2994/2011, and Decision No. 3200/2008.

5. Representation replaces the principal's will in legal acts, attributing their consequences to the principal⁷⁹. In liquidation, the liquidator's will replaces the company's will in legal acts, with consequences attributed to the company, designating the liquidator as its representative.
6. A key feature of representation is that all outcomes of the agent's actions are ascribed to the principal⁸⁰. Hence, when the liquidator sells assets, collects debts, and settles obligations, these consequences are linked to the company, not the liquidator. All rights and obligations are affiliated with the company, confirming the representation context, and thus, the liquidator is deemed the company's representative.
7. The relationship between the liquidator and the company undergoing liquidation is inherently one of representation. This is evident because the fundamental principle is that an individual typically acts on their behalf, and the consequences, whether positive or negative, fall upon them. However, certain legal situations, such as the liquidation of a commercial company, can hinder an individual's ability to act on behalf of the company. In such cases, the role of the liquidator emerges as a representative of the company. The concept of representation arises precisely to address situations where individuals are unable to perform specific actions, necessitating someone to act on their behalf⁸¹. In the context of liquidation, the company's inability to perform actions necessitates the liquidator, who acts on its behalf and represents it. Hence, the liquidator is deemed a deputy and representative of the company.
8. It's well-established in law and common understanding that legally incapacitated individuals require deputies, such as guardians, custodians, or trustees⁸². Similarly, akin to the concept applied to legally incapacitated individuals, a company undergoing liquidation is legally incapacitated and incapable of entering into contracts or managing its affairs. The liquidator, by analogy, acts as the company's deputy, performing necessary legal transactions on its behalf, establishing the liquidator's role as a representative of the company under liquidation.
9. Liquidation entails physical and legal actions performed by the deputy on behalf of the company.
10. Agency, whether contractual or statutory⁸³, applies to the liquidator's role as a deputy for the company under liquidation. In contractual agency, authority arises from the agreement between the principal and agent, defining the agent's scope⁸⁴. In the case of voluntary liquidation with unanimous partner agreement to appoint the liquidator⁸⁵, it constitutes a form of contractual agency. In this scenario, the agreement between the principal (the company's partners) and the agent (the liquidator) explicitly outlines the agent's authority⁸⁶. This is particularly relevant as the liquidator, in voluntary liquidation, provides each partner with a comprehensive account of the liquidation

⁷⁹ Abdul Majeed Al-Hakim, Abdul Baqi Al-Bakri, and Mohammed Taha Al-Bashir, "The Concise Guide to the Theory of Obligation: Sources of Obligation," Part One, Sunhuri Library, Baghdad, 2008, page 54.

⁸⁰ Mohammed Al-Aani, "Agency in Sharia and Law," Dar Al-Kutub Al-Ilmiyah, Beirut, 2007, page 18.

⁸¹ Alam Mahmoud, "Al-Wafi in Explaining Civil Law," Nasr Library, Cairo, 2015, page 697 and beyond.

⁸² Anwar Sultan, "The Summary of General Theory of Obligation: A Comparative Study in Egyptian and Lebanese Law," Dar Al-Nahda Al-Arabiya, Beirut, 1983, page 26.

⁸³ Article 109/1 of the Jordanian Civil Law.

⁸⁴ Jamal Badr, Agency in Legal Actions, Basir Printing House, Alexandria, 1954, p. 10 and beyond.

⁸⁵ Abdul Majid Al-Hakim and others, the previous reference, p. 55.

⁸⁶ Article 36 of the Companies Law.

process⁸⁷. Statutory agency, on the other hand, is established by law⁸⁸, with the agent's authority being explicitly defined by legal provisions⁸⁹. In cases of court-appointed liquidators, especially in compulsory or optional liquidation without unanimous partner agreement, the basis for agency is statutory, originating from the Company Law⁹⁰. The agent's authority is explicitly governed by this law. Consequently, the liquidator appointed by the court is a legal representative of the company under liquidation, while if appointed by all partners, the representation is contractual.

11. Agency requires the agent to act based on their own will, not the principal's⁹¹. The liquidator's actions reflect their own will during the liquidation process⁹². Hence, the liquidator acts as a deputy for the company, distinguishing them from an agent who expresses the principal's will, not their own.
12. The second condition of agency is that the agent acts in the principal's name, not their own⁹³. Similarly, this condition applies to the relationship between the liquidator and the company under liquidation. When conducting legal transactions, the liquidator acts in the name of the company, not their own. This is evident from the requirement in Company Law that all documents and actions taken by the liquidator on behalf of the company must include the phrase "under liquidation"⁹⁴.
13. The third condition of agency is relevant to the liquidator's relationship with the company, involving defined authorities⁹⁵. The liquidator, like an agent, adheres to granted authorities without exceeding them during the liquidation process, ensuring compliance with limits⁹⁶. An agent can exceed limits if it's impossible to notify the principal, but they must promptly inform the principal⁹⁷. Thus, the liquidator is an agent for the company, not its attorney.

Considering all the preceding arguments, it's clear that the appropriate legal designation for the liquidator is as a deputy for the company, whether through contractual or legal means. The researcher recommends the legislator explicitly define this role in relation to the company under liquidation.

15. Conclusion

This comprehensive study has undertaken a meticulous examination of the legal status of the liquidator of a commercial company within the ambit of Jordanian civil law. Our exploration has delved deeply into the multifaceted aspects of the liquidator's role, ranging from their appointment and termination to their duties and rights, while also addressing the fundamental question of the legal foundation underlying this pivotal position. In this concluding section, we

⁸⁷ Article 40/1 of the Companies Law.

⁸⁸ Jamal Badr, as mentioned earlier, page 17, and Article 109 of the Jordanian Civil Code.

⁸⁹ Articles 36, 254, and 261 of the Jordanian Companies Law.

⁹⁰ Refer to the fourth request in the first section of this research.

⁹¹ Alam Mahmoud, the previous reference, page 699.

⁹² Abdul Majeed Al-Hakim and others, the previous reference, page 56.

⁹³ Article 112 of the Jordanian Civil Law stipulates: "If the agent, within the scope of his agency, enters into a contract in the name of the principal, any rights and obligations arising from this contract shall be attributed to the principal unless the law provides otherwise."

⁹⁴ Article 254/J of the Companies Law.

⁹⁵ Abdul Razzaq Al-Sanhouri, *The Intermediary in Explaining the Civil Law*, Part Seven, Dar Al-Nahda Al-Arabia, Cairo, 2nd edition, 1964, page 452.

⁹⁶ Anwar Sultan, the aforementioned reference, page 35.

⁹⁷ Abdul Razzaq Al-Sanhouri, the aforementioned reference, page 45.

recapitulate our key findings and provide a set of cogent recommendations aimed at refining the existing legal framework governing liquidators and their responsibilities.

16. Key Findings

Distinctive Role of the Liquidator: One of the central revelations of this study is the distinctiveness of the liquidator's role. Despite apparent parallels with other positions such as the syndic and judicial custodian, the liquidator stands apart. They serve as the sole legal representative of the company, entrusted with the momentous tasks of asset liquidation, debt settlement, and legal representation. This uniqueness underscores the importance of clearly defining their role within the legal framework.

Appointment and Termination: Our inquiry illuminated the nuanced processes governing the appointment and termination of liquidators. Depending on the type of liquidation—compulsory or voluntary—the liquidator may be appointed by the company's partners, the corporate controller, or the court (liquidation judge). Likewise, the termination of a liquidator's duties can occur due to various factors, including death, insolvency, resignation, incapacity, removal, or the successful completion of the liquidation process. These factors contribute to the complexity of the role.

Legal Lacunae: Our examination uncovered several legal gaps and ambiguities within Jordanian civil and commercial laws pertaining to liquidation and the role of the liquidator. Notably, there is a lack of a universal definition for liquidation and the liquidator's role, resulting in varying interpretations. The legislator has also neglected to outline circumstances leading to the termination of the liquidator's duties or to provide a comprehensive framework for penalties in case of negligence or breaches by liquidators.

Inconsistent Regulation: The existing legal framework for liquidation matters is dispersed, resulting in a lack of cohesion. Regulations concerning liquidation are scattered throughout different sections and chapters, leading to a fragmented and overlapping set of rules. This fragmentation can pose challenges in interpreting and implementing the law effectively.

Ambiguous Legal Foundation: The absence of a clear legal provision specifying the foundation for a commercial company's liquidator has given rise to contentious debates among legal scholars. These debates have revolved around whether the liquidator should be considered the company's manager, agent for creditors, agent for partners, or an agent for the company under liquidation. The lack of a precise legal foundation has led to differing views on the nature of the liquidator's role.

Recommendations for Legal Reform: In light of these findings, we propose a series of comprehensive recommendations aimed at refining and clarifying the existing legal framework governing liquidators and their roles within the context of Jordanian civil law.

17. Recommendations

Definition and Clarification: To address the current ambiguities, we recommend that the Jordanian legislator clearly define key terms such as "liquidation," "compulsory liquidation," "voluntary liquidation," and "liquidator." These definitions should serve as foundational elements to provide legal clarity.

Termination of Duties: The legislator should explicitly outline the circumstances leading to the termination or cessation of the liquidator's duties. These circumstances may include death, insolvency, imprisonment, resignation, removal, or the successful completion of the liquidation process. A comprehensive framework will help in the consistent application of these rules.

Inclusion of Legal Entities: It is advisable to clearly indicate that it is permissible to appoint a legal entity as a liquidator without hindrance. This recognition can enhance flexibility in selecting liquidators and accommodating the diverse needs of companies undergoing liquidation.

Consolidation of Regulations: To streamline the legal framework, we recommend consolidating and organizing all regulations concerning liquidation into a dedicated chapter or section. This consolidation will create a cohesive framework for all commercial companies, eliminating the current fragmented and overlapping regulations.

Systematic Regulation: It is crucial to systematically and coherently regulate all the rights, duties, and tasks of the liquidator. A comprehensive legal framework will provide guidance and clarity to liquidators and stakeholders, ensuring uniformity in practice.

Penalties for Negligence: The legislator should introduce explicit penalties for liquidators who neglect, breach, or fail in their assigned tasks or duties during the liquidation of public, private, or limited liability companies. These penalties will serve as a deterrent and reinforce accountability.

Legal Foundation Clarification: To address the debate surrounding the legal foundation of the commercial company's liquidator, we recommend defining the liquidator as the representative of the company. This representation can be either through a contractual agreement or an obligation based on the type of liquidation. This clarification will align the role of the liquidator with established legal principles.

Differentiation of Agency: It is essential to differentiate between the scenarios in which the liquidator functions as an appointed agent for the company through an agreement and those in which they serve as a judicial agent. Comprehensive regulations should govern each scenario, outlining the scope of authority and responsibilities.

Comprehensive Legal Framework: Finally, we recommend that the legislator comprehensively outline the scenarios in which the liquidator functions as a contractual representative (appointed by partners) or as a judicial representative (appointed by the court). These regulations should cover all aspects of the liquidator's role, ensuring consistency and clarity.

In conclusion, this study has shed light on the intricate legal landscape surrounding the liquidator of a commercial company in Jordanian civil law. The findings and recommendations outlined herein offer a pathway toward a more robust, transparent, and effective legal framework for liquidators and the companies they serve. By addressing the existing legal gaps and ambiguities, Jordan can strengthen its regulatory environment and enhance the integrity of the liquidation process, ultimately fostering a more conducive business environment.