

SEIZING THE MOVABLE FUNDS AND EXECUTING THEM FOR SALE IN ACCORDANCE WITH THE RULES OF THE JORDANIAN RIGHTS GUARANTEE LAW OF 2208

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Abstract

Legal rules reflect the extent to which the judicial and legislative authorities care about the rights of citizens and their regularity in dealings with each other and with the financial, legal and governmental authorities in a country. Therefore, any legal violations are followed by serious measures that work to curb and stop them to restore rights to their owners. The seizure of movable funds is one of the legal procedures that work to fulfill the rights and abide by what is required of individuals towards each other and towards the financial institutions that assist them in commercial and other operations. This topic is based on a statement of the definition of seizure of movable properties, the enforcement of movable properties through sale, and the procedures followed for implementation. The study concluded the following: the seizure of movable funds and execution of it by sale is one of the most important elements and provisions of Law No. 20 of 2018, and that there are a set of conditions that must be followed and the limitations required by this law. Also, the seizure is necessary for the expropriation of property from people in order to fulfill rights and ensure the operation of the law. This study recommends conducting specialized studies on the effectiveness of the law of seizure of movables to know its suitability.

Keywords: The Moveable Funds, Execution, the Rules of the Jordanian Rights Guarantee Law of 2018, the Mechanisms of Seizure of Movables.

INTRODUCTION

Individuals from different societies engage in various transactions, including commercial transactions, loans, and other transactions that require individuals to abide by the terms of those transactions, the most important and prominent of which is the obligation to pay financial dues, such as when a person takes a loan or engages in a certain trade that requires him to fulfill his obligation to pay or achieve profits and things like that. In many cases, the debtor may fall into financial distress or incur financial losses that make him unable to fulfill his financial obligations to creditors making him face the fulfillment of his financial

obligations in anyway, especially in light of the pressures on him by the creditors.

Accordingly, the creditor or group of creditors, whether they are common or legal people, has the right to claim his financial dues according to the Jordanian law in the Jordanian context, according to the conditions stipulated in the contract concluded between the two parties to the contract based on the debtor party's obligation to pay the financial dues to the creditor, and in accordance with the legal texts stipulated in the law of The Jordanian Rights Guarantee for the year 2018, which is the law under the current study, where the concerned court issues regarding the judgment of seizure of movable and immovable funds, but the

beginning lies in the seizure of movable funds, which are all money that can be transferred from one place to another such as goods, cars, jewelry, and everything has a value that can be moved from one place to another. As for immovable funds, which cannot be moved from one place to another, such as buildings, factories, farms, and so on.

In light of the foregoing, it can be said that the seizure of movable funds is within the legal effect stipulated in the Jordanian Law of People's Rights, where the Jordanian legislator deals with the seizure of movable funds with great caution. Sometimes with complexity, it is important to take into account the circumstances of the debtor because it is possible for him to pay his dues at any stage of the seizure of the movable funds. Public auction, but this is done under special conditions and according to a specific legal format.

Due to the legal reality of related issues after the debtor has been able to pay, which makes the creditor forces him to court and apply for seizure of the debtor's money, and regarding the huge amount of such cases which has been escalated. There is a real need to be given to the legal developments requiring renewal in objective studies in line with the requirements of the law, and due to the existence of shortcomings to the public about what the seizure procedures are on movable funds and how the creditor obtains his financial rights. This study attempted to present the adequacy of the legal rules in the Jordanian Rights Guarantee Law to seize movable funds and implement them by sale, and to show the adequacy of the legal rules in the Jordanian Rights Guarantee Law and the existence of solutions to be more efficient and effective that will speed up the process of seizure of the funds and execution on them by sale.

By answering to the following main research question: What are the conditions for seizure of movable funds and their mechanisms in accordance with the rules of the Jordanian Rights Guarantee Law of 2018?

Based on this question the following sub-questions are presented:

1. What is the concept of seizure of movable funds?
2. What are the conditions and procedures for seizing movable property and its mechanisms?

The importance of the study is presented as follows: it appears from the importance of the topic investigated itself, through which the researcher seeks to clarify and reveal everything related to the seizure of movable funds and to reveal the ambiguity that surrounds the scientific, cognitive and legal aspects of this type of fund seizure. The researcher aims to clarify this by revealing the procedures of seizure of movable funds and their execution by sale in accordance with the rules of the Jordanian Rights Guarantee Law of 2018, and the statement of the most important effects of this type of seizure and the adequacy of the Jordanian law for the legal rules in force for seizure of movable funds. Also, it is important due to the formation of the integrated scientific and cognitive material to reveal this reservation and cover the knowledge gap about all the pillars and the information and data associated with it.

Furthermore, there is a practical importance shown through a clear and explicit statement of the seizure of the movable funds in accordance with the rules of the Jordanian Rights Guarantee Law of 2018, and the development of the appropriate scientific ground that contributes to clarifying the steps and procedures for seizing these funds so that individuals themselves can be fully aware of them, and indicate what creditors and civilians have common and legal rights and duties. Hence, the researcher seeks to reach the results of the study through the appropriate scientific research curricula and impose appropriate recommendations along them, to serve as a sound launch and a real scientific and knowledge base for future scientific research related to the current study.

This study is limited as follows:

It is based on studying the conditions of seizure of movable funds and their mechanisms in accordance with the rules of the Jordanian Rights Guarantee Law of 2018, within the Kingdom of Jordan and within its geographical borders. There is no explicit time period was specified in the current study, so the current study includes time limits that start with the beginning of the enforcement of the Jordanian Rights Guarantee Law issued in 2018, which is the beginning of the study period, and the study period ends in 2021, which is the year which can be stopped for information and data that will be the theoretical framework data for the study. It is also based mainly on Jordanian legislation represented only by the Jordanian Rights Guarantee Law of 2018. Hence, the objective of the current study is to investigate the seizure conditions on movable funds and their mechanisms in the Jordanian Rights Guarantee Law of 2018.

Definition of Terms

movable funds: it has been defined to be the materials that are movables such as the car and the intangible movables including shops and other movable materials or objects such as fruits and crops”.

In this study, the researcher defines movable fund as everything having values that can be easily transferred and sold to obtain money that can be used in any of the projects for which it was sold and to pay off the creditor's debts to the debtor, and it includes many things that are transferred and sold, such as jewelry, and cars, merchandise, stocks, bonds, and so on.

Methodology

In the light of the current study, the researcher finds that it is more appropriate to use the descriptive and analytical approach, as this approach is based on describing all the pillars of the topic under study, which is the study of the seizure of movable funds and implementation of them by sale in accordance

with the rules of the Jordanian Rights Guarantee Law of 2018. In accordance with the descriptive-analytic approach, a logical analysis is conducted for all the information gathered, and the analysis of legal texts consistent with the requirements of the study and scientific research, to come up with a sound understanding about the topic of this study, and to reach its results in an efficient and effective manner.

The Conditions of Seizure of Movable Property and Execution of it by Sale and its Mechanisms

The process of the seizure regarding the movable properties and execution of them by sale is one of the most important elements and provisions of Law No. 20 of 2018. Accordingly, this research is about the most important conditions and mechanisms that must be followed and the limitations required by this law.

The Concept of the Seizure of Movable Funds

Legal rules reflect the extent to which the judicial and legislative authorities care about the rights of citizens and their regularity and honesty in dealings with each other and with the financial, legal and governmental authorities in the country. Therefore, any legal violations are followed by serious measures that work to curb and stop them to restore rights to their owners. The seizure is one of the legal procedures that work to fulfill the rights and abide by what is required of individuals towards each other and towards the financial institutions that assist them in commercial and other operations. This topic is based on a statement of the definition of seizure of movable properties, the definition of movable property, the enforcement of movable properties through sale, and the procedures followed for implementation.

The Concept of Seizure

Seizure, according to Lisan al-Arab, is the act of keeping something from someone else, or preventing the judge who owns the money from disposing of it until the debt is paid.

Seizure refers to placing money under the custody of the court in order to prevent its

owner from taking any legal or financial action that would remove the money or its proceeds from the seizing creditor's guarantee . Seizure is also defined as a legal practice used as an exceptional measure that is authorized and enforced by numerous statutes. Seizure restricts the accused's freedom for the purposes of inquiry or security . Seizure is also defined as a procedure in which a request is made to the competent authorities to seize a portion or the entire amount of the debtor's money when the debtor is unable to fulfill his responsibilities and pay the debt. What is required of him is then sold in order to fulfill the required right by seizing it through its sale price. In addition, whether fixed or variable, her right is fulfilled .

In all of the preceding definitions, seizure is a mechanism employed by the judiciary to prohibit the respondent or debtor from disposing of funds. Unpaid funds are seized at the creditor's request, in which the creditor submits a request to seize the debtor's funds in whole or in part in order to satisfy his entitlement to such funds and maintain them. As a result, seizure is one of the judicial procedures or measures placed in the hands of the creditor by the legislator in order to maintain his lost or threatened right in the event that this is proven to the relevant court .

Seizure is required for the expropriation of property from individuals in order to fulfill rights and secure the law's operation. The seizure also attempts to determine which funds should be expropriated from individuals, as well as to seize some funds in order to limit the debtor's use of them so that the creditor can fulfill his entitlement to those assets .

Based on the foregoing, seizure is one of the legal means or methods approved by the legislator to extend legal protection to the creditor in order to collect his right when the latter is unable to collect it by traditional means such as claiming it. On the payment of the debt (precautionary attachment), and if it is not paid, the creditor has the right to execute on these funds or property such as selling them and collecting the value of the debt (executive attachment).

The Legal Nature of Seizure of Movable Funds

The seizure of movable funds and execution of it by sale from the perspective of Jordanian legislation within the scope of Jordanian legislation, Law No. 20 of 2018 on Securing Rights to Movable Funds stipulated in Article (3/A/3) that it is possible to sell movable funds on condition of transferring its ownership until the price is paid, and selling movable objects on condition that it is recovered or repurchased when renouncing the fulfillment of obligations.

Article (32/A/1/D) also stipulates that the execution chief may, at the request of the insured, agree to authorize the use of coercive force for the purposes of implementing the seizure decision, provided that this is done in the presence of the execution officer. Also, any material or intangible funds that are the subject of a guarantee, debts or rights, existing or future, whether owned or owed to the guarantee or the secured. This includes credit accounts with banks such as the current account, deposit account, deferred or accrued debts, or written documents transferable by delivery or endorsement that prove the entitlement of an amount or ownership of goods and real estate by allotment.

As for the Jordanian Execution Law No. (36) of 2002 and its amendments, it was stipulated in Article (2) that the executive bonds stipulated in the law shall be executed by a department called (the Execution Department) at each Court of First Instance headed by a judge named the Chief of Execution whose grade is not less than the fourth He is assisted by one or more judges who take his place in his absence. Article (4) stated that the competent enforcement department is the department that is located in the area of the court that issued the judgment or the court of the residence of the convict, or the department in whose region the executive bonds were created (Jordanian Execution Law No. (36) of 2002 and its amendments).

The Conditions of Seizure of Movable Funds

In this section, the study discusses the details of the conditions for seizing movable funds.

The Terms and Conditions of the Seizure of Movable Funds

The Jordanian legislator has mentioned specific conditions and controls for establishing and enforcing the guarantee right between its parties, such as concluding a written guarantee contract, and that the guarantor is authorized to create the guarantee right on the guarantee, and that the guarantee contract includes a general description, and that the guarantor is obligated to pay the allowance.

This is what was stipulated in Article No. (7) of the Movables Guarantee Law No. 20 of 2018, which states that:

For the establishment and enforcement of a security right between its parties, the following shall be required:

- a. To conclude a written guarantee contract in the form of a regular or official bond or an electronic document, or to be included as a condition in the contract that created the secured obligation.
- b. The guarantor is authorized to create a right of guarantee on the guarantee.
- c. The guarantee contract should include a general or specific description of the secured obligation, and the obligation may be described by specifying the upper limit of the obligation or the guaranteed amount.
- d. The warranty contract should include a general or specific description of the guarantee, provided that the description is specific if the guarantee is used items intended for personal or household purposes.
- e. For the insured to pay the allowance or abide by it.

With reference to paragraph (a) of Article No. (7) of the Law on Securing Rights in Movables No. 20 of 2018, we find that there are types of bonds, which are ordinary bonds and official electronically written bonds. As for the ordinary bond, it was defined in the text of Article No. 10 of Evidence Law No. 30 of 1952, which is (the ordinary document is the one that includes the signature of the person

from whom it was issued, on his ring or fingerprint, and does not have the status of an official document .

As for the official document, it was defined in the text of Article No. (6) of the Evidence Law No. 30 of 1952, which is:

A- The bonds organized by the employees who are in charge of organizing them according to the legal conditions and ruling on them without requiring the presenter to prove what is stipulated in them and they shall be applied unless proven to be forged.

b- The bonds organized by their owners and ratified by the officials who are in charge of ratifying them in accordance with the law, and their work is limited to date and signature only .

In the event that the previous conditions are not met, it falls under the name of the ordinary bond, as it was stated in Paragraph No. (2) of Article No. (6) of the Evidence Law No. 30 of 1952 that (If these bonds do not meet the conditions mentioned in the previous paragraph, they have no other than The value of the ordinary bonds, provided that the concerned parties have signed them with their signatures, their seals, or their fingerprints .

As for the electronic document (electronic bond), it is the document that is created, signed and circulated electronically. Article No. (2) of the Jordanian Electronic Transactions Law No. (15) for the year 2015 stated everything related to and includes the electronic document or electronic document, Whether from identification, authentication, intermediary, signature or originator, the article states that “the following words and phrases, wherever they appear in this law, shall have the meanings assigned to them below unless the context indicates otherwise :

Transactions: Any procedure that occurs between one or more parties in order to produce an obligation on one party or a reciprocal obligation between two or more parties, regardless of whether the procedure is related to a commercial or civil enterprise or is with a government body.

- Electronic Transactions: Transactions carried out by electronic means.
 - Electronic means: The technology of using electrical, magnetic, optical, electromagnetic or any similar means.
 - Electronic information: data, text, images, graphics, shapes, sounds, symbols, databases and the like.
 - Electronic information system: a set of programs and tools designed to create, send, deliver, process, store, manage or display information by electronic means.
 - Electronic information message: Information that is generated, sent, received or stored by any electronic means, including e-mail, short messages, or any electronic exchange of information.
 - Electronic Record: The information message that contains a record, contract, or any other document or document, any of which is created, stored, used, copied, sent, communicated or received using an electronic medium.
 - Electronic bond: the bond that is created, signed and circulated electronically.
 - Electronic signature: data that takes the form of letters, numbers, symbols, signs or others and is included in electronic form or any other similar means in the electronic record, or is added to or linked to it with the aim of identifying the owner of the signature and making him unique by using it and distinguishing him from others
 - Originator: The person who composes or sends the information message
 - Electronic medium: The electronic program that is used to perform an action or respond to a procedure automatically with the intent of creating, sending or receiving an information message
 - Electronic Authentication Certificate: The certificate issued by the electronic authentication authority to prove the attribution of an electronic signature to a specific person based on approved authentication procedures.
 - Electronic Authentication: Verify the identity, validity and validity of the electronic authentication certificate user.
 - The electronic authentication system for the root certificate: a set of interconnected and integrated elements that contain the electronic media by which the root electronic authentication certificate is issued and managed.
- Referring to paragraph (B) of Article No. (7) of the Law on Securing Rights in Movables No. 20 of 2018, the guarantee is considered a trust in the hands of its holder, and this is what is stated in Article No. (8) of the same law if it states that “a guarantee is considered a trust.” It is in the hands of its holder as soon as it is possessed by virtue of the guarantee contract and until its expiry, and the holder of it must exercise the care of the usual man in preserving it in a manner commensurate with its nature .
- It is worth mentioning here the term legal capacity as a condition for the creation and enforcement of the guarantee right between its

parties. Eligibility is defined in the language as “entitlement and eligibility. It is said that so-and-so is worthy of honor, i.e. deserving of it .

As for eligibility in Islamic jurisprudence, it is “a quality that the legislator appreciates in a person that makes him a valid place for a legislative discourse” The fuqaha’ have distinguished in terms of capacity in terms of the mandate that is entrusted to it between two types, so they divided it into two parts:

- Competence and Obligation: Its core is human life, and its ruling is the human capacity for compulsion and commitment. (Abu Zahra, pg. 1357)
- Capacity to perform: It is based on reason and discernment, and its ruling is the person's ability to issue his actions and words in a manner that is legally reliable. (See the Fiqh Entry, Al-Zarqa, 2 / 739).

And Article No. (116) of the Jordanian Civil Law No. (43) of 1976 defines capacity as “every person qualified to contract unless his capacity is deprived or limited by law.” Accordingly, the availability or absence of eligibility is determined by virtue of a provision in the law.

Article 127 of the Jordanian Civil Law No. (43) of 1967 states: “1- The young, the insane, and the lunatic are self-quarantined.

2- As for the foolish and the negligent, the court shall place a ban on them and lift the ban on them in accordance with the rules and procedures established in the law.

3- The decision of the stone is notified to the interdicted, and the reason is announced to the people, and his actions before that are effective . That is, the young, the insane, and the lunatic are incompetent. If he signs a deed before the seizure, it is considered the result of exploitation or complicity.

This was clarified in accordance with the text of Article No. (129/2) of the Jordanian Civil Code No. (43) of 1976, if it stipulates that “as for his actions before the confinement, they are considered unless they are the result of exploitation or collusion.”

Among the most important conditions that must also be observed in the types of movables that are seized and their provisions:

1. If the attachment is on movables, the procedures prescribed for selling the movables seized by the debtor shall be followed.
2. If the seizure is on fruits and crops, it is not permissible to sell connected fruits or existing crops before their maturity, except that they may be placed under guard.
3. The officer may not break the doors or unlock the locks by force for the purposes of executing the seizure except on the basis of a decision from the president and in the presence of the police or two people from the neighborhood with the obligation to sign the report, otherwise the seizure will be void .

“4. Seizure does not require moving the seized items from their place, and the minutes of seizure must be drawn up at the place of its occurrence, unless necessity requires otherwise, and it includes the following provisions :

- 1- The minutes of seizure must include a mention of the executive document, the place of seizure, the procedures taken by the warden, the obstacles and objections he encountered during the seizure, and what he took in their regard. Or weighed and approximate its value.
- 2- The warden and the debtor, if he was present, must sign the minutes of seizure, and if the debtor refuses to sign, this is recorded in the minutes.
- 3- The mere signature of the debtor is not considered his consent to the seizure.
- 4- If the seizure is on connected fruits or existing crops, the report must indicate the exact number of the plot of land, its location, area and borders, along with the type of crops and trees, and what is expected to be harvested, harvested or produced from, and its approximate value.
- 5- If the seizure is on jewelry, gold or silver ingots, or any other metal, or on jewelry or precious stones, then they are weighed and their descriptions are accurately indicated in the

seizure report, and these things are evaluated with the knowledge of an expert appointed by the chief.

6- Other valuables may be valued in the manner indicated previously at the request of the distrainer.

7- The expert's report shall be included in the seizure report in all cases in which the evaluation of the seized items is carried out.

8- If the situation requires the transfer of the seized items for weighing or evaluating them, the officer must place these items in a sealed safe and mention this in the report along with the description of the seals.

If the seizure is not completed in one day, the officer may complete it in successive days, and all things are considered seized when they are mentioned in the seizure report.

This is what was stipulated in Articles No. (49) and (50) of the Jordanian Execution Law, if they stipulate that "If the seizure was not completed in one day, it may be completed on successive days, and the officer must take what is necessary to preserve the seized items.

Things are considered sequestered as soon as they are mentioned in the seizure record, even if a guard is not appointed on them, and the movable objects to registration becomes seized after being registered in the relevant registry .

The provisions of the Law of Guaranteeing Rights in Movables Funds No. 20 of 2018 do not apply to any of the transactions and contracts on many movables such as public funds, endowment funds, privileges and licenses granted by the state, and Article No. (5) of the Guarantee Law has been clarified and mentioned Rights to movables No. 20 of 2018 mentioned previously, as it stipulates that:

A. The provisions of this law do not apply to any of the following transactions and contracts :

1. Assignment of the right for the purposes of debt collection.
2. Establishment of rights in order to guarantee the obligation of the movables, tangible and

intangible funds whose registration is required by any legislation.

3. Purchase of debts that are part of a project ownership transaction.

B. A security right may not be created on any of the following:

1. The movables owned by the banks with the exception of the equipment necessary for their work to finance their purchase.

2. Useful objects for personal or household purposes, except to finance their purchase.

3. Public funds, endowment funds, funds of foreign embassies and bodies enjoying immunity.

4. Privileges and licenses granted by the state.

5. The entitlements of the insured or the beneficiary under the insurance contract unless these entitlements are the proceeds of the guarantee.

6. Alimony, wages, salaries, and labor compensation

And Article (3) of the same law stated that the provisions of this law apply to transactions and contracts that include a condition to guarantee the fulfillment of an obligation to arrange a security right over a debt, right or movables.

Article No. (3) of the Movables Guarantee Law No. 20 of 2018 states that "The provisions of this law apply to transactions and contracts that include a condition to guarantee fulfillment of an obligation to arrange a security right over a debt, right or movables, including:

1. Mortgage without possession in accordance with the provisions of Article (6) of this law.

2. Selling the movables, provided that the transfer of its ownership is postponed until the price is paid.

3. Selling movables on condition that it be recovered or repurchased upon failure to fulfill obligations.

B. Any tangible or intangible movables, debts or rights, existing or future, whether owned or

owed to the guarantor or the secured person, may be subject to the guarantee, including the following:

1. Debts, whether due or deferred.
2. Credit accounts with banks, including the deposit account and the current account.
3. Written bonds transferable by delivery or endorsement evidencing entitlement to an amount or ownership of goods including commercial papers, bank certificates of deposit, shipping documents and goods deposit bonds.
4. The property is allotted.
5. Trees before they are cut and minerals before they are extracted.

C. The guarantee right is created to guarantee one or more obligations, whether it was prior to, concurrent with, or subsequent to the creation of the guarantee right, and the obligation may be specific or assignable. (18)

It is also one of the most important conditions that the rights contained on movables, debts, or rights continue to be subject to the provisions of the laws regulating their establishment, provided that the provisions of this law relating to their enforcement against third parties and the procedures for implementation on them apply to them, as well as the priority of fulfilling rights from their proceeds and the proceeds of implementation.

As for the rights contained in movables, debts, or rights, they were clarified in Article No. (4) of the Law on Securing Rights in Movable Funds No. 20 of 2018, as it stipulated that "with due regard to the provisions of this law, the rights contained in movables, debts or rights remain. The following are subject to the provisions of the laws regulating them in terms of their establishment, provided that the provisions of this law related to their enforcement against third parties and the procedures for implementation against them and the priority of fulfilling rights from their proceeds and the proceeds of implementation apply to them :

- a. The right of the mortgagee creditor in the transaction of mortgaging movables mortgaged.
- b. The right of the mortgagee creditor to treat the mortgaged debt as a possession.
- c. The right of the transferee to the assignment.
- d. The right of the lessor in the operating lease if the term of the contract is one year or more.
- e. The right of the lessor in the financial lease.
- f. The right of the owner of the goods placed in the sale fee.
- g. Franchise over the movable. "

Furthermore, it is permitted to mortgage moveable property and debts as a pledge without possession, and possession shall be replaced by declaring the mortgage in accordance with the terms of this legislation in order to complete the mortgage, its necessity, and enforcement against third parties.

Announcing the pledge gives the pledger the right to track the pledged money in any hand and the right to precede other creditors in collecting the debt from the proceeds and the proceeds of the sale of the pledged money upon execution according to the provisions of this law .

It is worth mentioning here the conditions of seizure in the Civil Procedure Code No. (24) of 1988.

Some conditions are mentioned in the texts of this law, as Article No. (141) states that:

1- The creditor may request a precautionary attachment, whether before filing the case, when it is filed, or while it is being considered by the summary judge or the court based on what he has of documents and evidence, or Based on a judgment or arbitration decision on the movables and immovable of the debtor and his money in the possession of the third person as a result of the lawsuit.

2- If the court decides to respond to the request by signing a precautionary seizure, the requester must provide a cash security, a bank guarantee, or a notary guarantee. With the exception of the confiscated, the court or the

urgent matters judge shall define its type and amount, and supply it with a full guarantor who guarantees the damages and failures that may be caused to the confiscated if it seems that the seizure requester is not correct in his claim. The government, official and public institutions, municipalities, and banks operating in the Kingdom may provide insurance or guarantee, and the court or judge of urgent situations may confirm the guarantor's solvency.

3- When it is intended to seize money, the amount of the debt must be known, due for payment and not restricted by a condition. If the amount of the debt is unknown, the court shall specify its amount by its decision on the basis of estimation. It is not permissible to seize from the debtor's money except to meet the amount of the debt, fees and expenses, unless the attachment is indivisible."

Article No. (142) of the same law indicated the funds exempted from seizure, which are:

- 1 - The clothes, beds and mattresses necessary for the debtor and his dependents.
- 2- The necessary housing house for the debtor and his family.
- 3- Cooking utensils and eating utensils necessary for the debtor and his dependents.
- 4 - Books, machines, containers and luggage necessary for the debtor to practice his profession or trade.
- 5 - The amount of supplies that suffice the debtor and his dependents, and the amount of seeds that are sufficient to sow the land that he used to cultivate, if he is a farmer.
- 6- Animals necessary for his cultivation and livelihood if he is a farmer.
- 7 - Enough fodder for the animals excluded from confiscation for a period not exceeding the threshing floor season.
- 8 - The official dress of government officials and their other official supplies.
- 9 - The garments, robes, and tools that are used during the prayer.

10- The share due to the government from the crops, whether they are harvested or harvested or not.

11 - Municipal funds and objects, whether movables or immovable.

12 - Alimony.

In this regard, we can see that the legal systems are similar and complimentary in terms of seizure conditions and monies excluded from seizure.

The Mechanisms of Seizure of Movables

The seizure of moveable funds is carried out only through a set of methods, which are established and clarified in the Law on Securing Rights in Movables No. 20 of 2018. These mechanisms are as follows:

Submitting a Request for Hand Placement

In the event that voluntary execution of the guarantee is not possible due to the absence of the agreement between the two opponents or for any other reason, the guaranteed person may submit a request to the Chief of Execution at the competent court to issue a decision to seize the guarantee to sell it, attached to this request the guarantee contract and evidence of the enforcement of the right of guarantee against third parties, and the application must include the following matters :

- a. The name and address of the applicant.
- b. The name of the guarantor and the guaranteed person and the address of each of them.
- c. The name of the holder of the guarantee, the owner of the movables to which the guarantee is attached, its holder, the owner of the property in which the guarantee is located, its holder and the address of each of them.
- d. reasons for implementation.

Reporting

As in this mechanism or step, the person responsible for implementation, which is the executive department, notifies a copy of the request and data to the guarantor and the

insured, including the necessary fees and expenses, and the notification includes the following :

1. Warranty holder
2. The owner of the movables to which the guarantee is attached, its holder and the owner of the real right over it.
3. The owner of the real estate in which the guarantee is located, its holder, the mortgagee creditor of that real estate and the owner of the real right over it.
4. The guarantor or the insured may pay the obligation subject of execution in addition to the fees and expenses to the execution department fund within fifteen days from the date of notification of the seizure request to any of the persons referred to previously.

Checking the Request

Here, the execution chief checks the request and decides on it without the parties present within seven days from the end of the period stipulated in this law .

Appealing

The defendant has the right to appeal the decision of the chief execution officer and to request an appeal before the court of first instance within seven days from the date of notification, provided that the appellant attaches a bank guarantee in an amount determined by the president .

The Execution Record

Forced execution of seizure is carried out by a decision of the head of execution, provided that it takes place in the presence of the execution officer and in his presence he prepares an execution report that includes a detailed description of the real estate or the movables as the case may be, and a copy of this report is deposited in the file of the seizure request

Warranty Repairing

The guarantor can repair the guarantee after placing his hand on it with the permission of the chief executive to prepare it for sale and according to what the chief deems appropriate .

Execution by Sale

After the guarantee is seized by the guaranteed person, a request is submitted to the Chief Executioner to proceed with the sale procedures under the supervision of the Execution Department so that it is sold at a price not less than the market price without any procedures, with its purification of guarantee and concession rights, and these rights are transferred to the proceeds and the proceeds of execution .

After-sales Guarantee

Article (35) of the same law stipulates that "The sale of the guarantee, in accordance with the procedures stipulated in this law, results in its purification of guarantee rights and franchise rights, and these rights are transferred to the proceeds and the proceeds of execution."

The proceeds and the proceeds of execution shall be deposited in the Execution Department fund along with the minutes of sale .

The Chief of Execution decides to prepare a distribution list for the proceeds and the proceeds of execution in accordance with the priorities specified in Article (38) of this law, and to notify it to the requester for execution and other rights holders on the guarantee , and they have the right to object to the distribution list within seven days from the date of their notification, provided that the President decides on that in an urgent manner .

Distribution of the Proceeds of Implementation

Article (38) of the same law stipulates that

a. If the proceeds of the guarantee and the proceeds of execution are not sufficient to pay the rights arising there from, they shall be distributed in the following order:

1. Expenses of warranty repair, improvement and preparation for sale.
2. Execution fees and expenses on the guarantee and its expenses.
3. The consequences of the holders of security rights according to the priorities in accordance with the provisions of this law.

4. The consequences of the holders of the concession rights that are announced on the guarantee according to the priorities in accordance with the provisions of this law.

b. The insured shall remain liable to the insured for any deficiency, in which case the deficiency is considered an ordinary debt.

The Suspension of Execution

Execution may be suspended upon a request by the guarantor or any of the other guarantee rights holders to decide to stop the guarantee's execution at any stage of the implementation for the period he deems appropriate and for one time if he deems that the results of the implementation cannot be remedied, and if the execution chief decides responding to the request for a stay of execution the requester for a stay shall be charged with a cash security or a bank guarantee in an amount not less than the value of the guarantee or the sum of the values of the secured obligations, whichever is less, in order to guarantee the failure and damage that may befall the insured, and this decision is subject to appeal before the Court of First Instance in its capacity of appeal within seven days from the date Notify him, and the Court of First Instance, in its appellate capacity, decides on the appeal in a matter of urgency, and its decision in this regard is final.

Article No. (40) of the same law stipulates that:

a. The Chief of Execution, upon the request of the guarantor, the guarantor on his behalf, or any of the other rights holders of the guarantee, may decide to stop the execution of the guarantee at any stage of the implementation for the period he deems appropriate and for one time if he deems that the results of the execution may not be remedied.

b. If the execution chief decides to respond to the request for a stay of execution, the requester of the stay shall be charged with a cash guarantee or a bank guarantee in an amount not less than the value of the guarantee or the total values of the guaranteed obligations, whichever is less, to guarantee the failure and damage that may befall the insured.

c. The decision of the Chief Executive is subject to appeal before the Court of First Instance in its appellate capacity within seven days from the date of his notification.

The Publicity of Implementation

Announcing the execution is one of the procedures and mechanisms of this law in which the guaranteed person and the parties stipulated in Article (16) of this law have the right to publicize the rights that arose from any transaction that took place before the provisions of this law came into effect, including the transactions of possession mortgage in accordance with the provisions of this law without the need for the approval of the guarantor, and publicity takes place within a year from the date of the announcement of the Minister of Industry, Trade and Supply to start the work of the record in the Official Gazette, and the priority of rights that were announced from the date of their effectiveness against third parties is determined in accordance with the laws under which they were created, otherwise it becomes effective against third parties from the date of its publication .

And Article No. (41) of this law stipulates that:

A fee of ten dinars is collected for each of:

1. Publication registration, amendment announcement, extension announcement, and objection announcement.

2. Issuing a certified paper investigation report.

b. Cancellation notices are exempt from fees.

c. The process of re-registration of the registered advertisements in accordance with both the law of placing movables as trustees of the debt in force and the law of financial leasing in force is exempted from fees.

Conclusion

The study reached a number of conclusions, which are:

1. The seizure of movables and execution of it by sale is one of the most important elements and provisions of Law No. 20 of 2018, and that

there are a set of conditions that must be followed and the limitations required by this law.

2. The seizure is necessary for the expropriation of property from people in order to fulfill rights and ensure the operation of the law. The seizure also aims to determine the funds that should be expropriated from individuals and to seize some funds in order to restrict the debtor's disposal on them so that the creditor can fulfill his right from those funds.

Recommendations

The researcher recommends the following:

1. Conducting specialized studies on the effectiveness of the law of seizure of movables in order to know its suitability to the current reality.
2. Determining the extent to which the law of seizure of movables can be amended in light of the overlapping of cases and legal violations.

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