

THE REGULATORY STRUCTURE AND GOVERNANCE OF FORENSIC ACCOUNTANCY IN THE EMERGING MARKET: CHALLENGES AND OPPORTUNITIES

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Abstract

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Forensic accounting is a rather vague term that combines the investigative role with the adversarial role of accountants (Botes & Saadeh, 2018). Jordan lacks regulatory provisions for forensic accountants. Nevertheless, the profession is indirectly exercised in Jordan without giving special legal attention to such job title. Consequently, forensic accounting services are performed with minimal service quality from those who are not specialists in the field. Since forensic accountant involves to assist in legal matters (Arslan, 2020), this research examines the available regulations, standard laws, and codes of conduct that might guide a forensic accountant in performing forensic accounting services in Jordan. Furthermore, this article investigates the applicability of the general rules of contract and tort law in addition to the Companies Act in order to provide adequate protection for forensic accountants in Jordan. As far as the authors are aware, the issue of forensic accounting in Jordan has not been researched comprehensively in a theoretical and institutional fashion before from technical and legal standpoints. This article represents the first attempt to examine the issues arising in this difficult and important subject, and the findings of this research can serve as a prototype for other Arab and developing countries.

Keywords: Forensic Accounting, Jordan, Legal Background

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1. INTRODUCTION

Forensic accounting's multidisciplinary nature has created notable obstacles in establishing appropriate

regulations (Arslan, 2020; Botes & Saadeh, 2018; Yang & Lee, 2020). Not unlike many other jurisdictions, forensic accounting in Jordan remains an ill-defined professional practice area with no

explicit regulations (Van Akkeren, Buckby, & MacKenzie, 2013; Williams, 2014). In Jordan, forensic accounting lacks an affiliating professional body and lacks standards for practice or even an ethical code of conduct. Consequently, the quality of forensic accounting services in the study context is deemed to be at high risk. Therefore, understanding the legal and professional nature of forensic accounting in the Jordanian context will serve as a cornerstone to ensure the quality of their services. This research has been conducted on the assumption that though there is no regulation of forensic accounting in Jordan, forensic accounting practitioners are subject to broader legislation that ensures their services' quality.

In relation to the legal background, the forensic accountant deals with many legal-financial issues such as financial dispute resolution, financial evidence, bankruptcy and insolvency liquidation, tax evasion and fraud, economic damages calculations, whether suffered through tort or breach of contract and money laundering (Honigsberg, 2020; Howieson, 2018; Sahdan, Cowton, & Drake, 2020; Yang & Lee, 2020). However, the Jordanian legislature's attitude is not clear towards such a profession where all the above-mentioned legal issues are governed by different provisions of law. Indeed, the term "forensic accounting" or "forensic accountant" has not been mentioned in the Jordanian legal system, and it has not been recognized by the Jordanian legislature. Nevertheless, the profession is indirectly exercised in Jordan without giving special legal attention to such job title.

This paper aims to look at the forensic accountant profession in Jordan from historical, professional, and legal perspectives; and explores how the Jordanian legal system covers the duty of such profession under different titles. As a legal background, this paper will also demonstrate the Jordanian legal system and summarize all related legal frameworks that deal with such a matter. This study provides contributions to different forensic accounting stakeholders in the Jordanian context, including the educators, practitioners, regulators, and professional associations.

The importance of this study lies in the fact that this is the first study that deals with the role of forensic accountants in Jordan and the Arab region. It examines the legal position and the current standing of the Jordanian legislature, institutions, and governing bodies toward the forensic accountant profession. This study aims to identify where the forensic accountant stands in the Jordanian legal regime and who plays such a role if it exists. As it will be shown later, the current regime does not recognize the profession; in addition, the role of the forensic accountant is played indirectly by different professionals who are not necessarily qualified to do so. Thus, this study intends to create a culture of recognizing this important profession by finding roots to this in the current legal regime; in addition, it suggests what improvements are needed in order to recognize the role of forensic accountants in the legal system.

To do so, this study suggests methods and techniques to shed light on the importance of the role of the forensic accountant in Jordan and the important implications of having a standalone profession for forensic accountants. Given the lack

of resources that deal with the topic and the lack of professionals who work as forensic accountants, the main resource that one can rely on in Jordan is legislations.

The remainder of this paper is organized as follows. Section 2 provides an overview of the related literature and research context. Section 3 presents the research methodology. Section 4 presents and discusses the research results. Section 5 concludes the paper.

2. LITERATURE REVIEW AND RESEARCH CONTEXT

2.1. Jordanian geography, population, stability and economy

The Hashemite Kingdom of Jordan is located in the heart of the Middle East in the Arab region. The country is strategically located at the crossroads of Asia, Europe, and Africa. Amman is the capital of Jordan, and it is the most populous city as well as the political, economic, and cultural hub, where all the main offices of the governmental agencies are located. The Kingdom of Jordan is an almost landlocked and relatively small country. The area of Jordan is 89,342 km² (34,495 sq mi), and the population numbering is 10,615,115¹, which makes Jordan the 11th most populous country in the Arab world. According to the estimations, one-third of the population are refugees from Palestine, Syria, and Iraq (Simadi & Nahar, 2009). Jordan has taken refugees from various neighboring countries in violence. Jordan has been regularly mentioned as an 'oasis of stability' in a region with many conflict zones. The Kingdom of Jordan has been safe from the violence that struck the Arab region during the so-called Arab Spring in 2011.

Jordan is considered a regional leader and hub of different sectors in the MENA region, including the healthcare sector and education sector (Allan, Kasim, Mustapha, & Shah, 2018; Ismael, Srouji, & Boutabba, 2018). However, The World Bank classifies Jordan's income level in the 'upper middle income' level. According to the World Bank, the Jordanian gross domestic product in 2018 equals 42.23 US dollars. During the past decade, Jordan has witnessed different structural reforms in many sectors (e.g., industries, education, and health). The Jordanian government has reformed its economy through trade liberalization, investment stimulation plans, the promotion of the private sector, elimination of trade obstacles, and privatizing governmental institutions. The privatization of Jordan's governmental institutions happened across the most important economic sectors, including electricity, telecommunications, transport, electricity, and tourism. In 2016, the International Monetary Fund (IMF) confirmed an arrangement extended to three years to support the Jordanian economy's reforms program (Al-Qadi & Lozi, 2017).

Jordan is ranked the third Arabian and 66th out of 180 countries on a global level country in the Economic Freedom Index, which measures economic freedom practices. In Jordan, there are thousands of proprietorships and partnerships businesses. In September 2020, the trading value at

¹ Population clock. Jordan Department of Statistics. Retrieved on March 30, 2020.

the Amman Stock Exchange market reached 711.1 million Jordanian dinars. The listed companies on the Amman Stock Exchange market are controlled by the regulations of the Jordan Securities Commission (JSC), including the governance code, which was issued by the JSC in 2008 (Abdullatif, Alhadab, & Mansour, 2019).

2.2. Accounting and auditing professions in Jordan

Generally speaking, accounting and auditing are deemed one of the most valuable professions that impact the country's economy and has a base in the Jordanian legal system, which combines the legal principles of Islam (Sharia) and civil law, the latter holding some historical associations with the French civil law (Haddad, Sbeiti, & Qasim, 2017). The profession of accounting has been in practice for centuries in Jordan, even without its existence as Jordan or the Hashemite Kingdom of Jordan. Also, the surrounding countries have observed various accounting models as many states over time have occupied the region (Al-Akra, Ali, & Marashdeh, 2009).

Moreover, the rise of these countries as Islamic countries has played a crucial role in developing their particular accounting systems. It is claimed that, before the use of Arabic numerals, accounting began in order to meet religious requirements, particularly for the use of 'zakat,' which is a compulsory religious tax imposed on Muslims (Zaid, 2004). Furthermore, as noted by Güvemli and Güvemli (2007), an accounting method existed during the 8th century called the Merdiban Method. This was then utilized by the Abbasid Empire and the Ottoman. The Ottoman Empire applied the Merdiban Method until 1879, and then changed to double-entry bookkeeping, a system of global importance even today.

Before declaring Jordan as an independent state in 1946, commercial matters were handled and processed based on the Ottoman Commercial Code issued between 1849 and 1850; however, this code was ousted after independence. In early 1964, the Hashemite Kingdom of Jordan established its first companies' law. Following that, Jordan enacted its first commercial law in 1966 (Al-Akra et al., 2009).

Since early 1960 in Jordan, the accounting profession has been rigidly regulated by the Accounting Professional Council as was codified in law (Al-Akra et al., 2009). This law allowed accounting and auditing practitioners who have been performing accounting and auditing for at least two years to be accredited. In 1985, this law was modified by placing the Audit Bureau, which endeavoured to manage the entry and examinations for new accountants and auditors. In addition, the Bureau had controlled the practice of the accounting and auditing profession in Jordan (Solas, 1994).

The accounting profession in Jordan is fundamentally influenced by the educational level of its practitioners who have studied in Jordanian and international universities and higher institutions (Nassar, Al-Khadash, & Mah'd, 2013). According to the Codified Law of Accounting Profession No. 42 of 1987, Jordan recognized the Jordanian Association of Certified Public Accountants (JACPA) as an affiliated professional body to supervise accounting and auditing professions (Atmeh, 2016);

this body became a member of the International Federation of Accountants (IFAC) in 1992 (Al-Akra, Eddie, & Ali, 2010; Nassar et al., 2013). The accounting and auditing professions are also regulated by the Ministry of Industry and Trade special regulations (Al-Akra et al., 2010). Around the turn of the century, two innovations significantly changed this situation, with extensive consequences. In 1997 and 2002, Jordan declared the Companies' Law and the Securities Law, respectively, which oblige all Jordanian shareholdings to adopt and comply with the international accounting and auditing standards known as the International Accounting Standards (IASs), Generally Accepted Accounting Principles (GAASs) and International Financial Reporting Standards (IFRSs) (Appendix lists the date of adoption of IASs and IFRSs in Jordan) (Al-Akra et al., 2010; Al-Akra & Hutchinson, 2013; Haddad et al., 2017). This was followed in 2003 by enacting a new law intended to advance the accounting and auditing professions and assure that Jordanian corporations implement the IASs and IFRSs.

In 2004, Jordan authorized the High Council for Accounting and Auditing, which promoted the role of JACPA, which by this step had been attributed to the Public Auditing Profession Board. Consequently, JACPA gained more strengths and authorities (e.g., the capacity to formulate by-laws) (Al-Akra et al., 2009; Haddad et al., 2017), and advanced in its status as being an autonomous professional body. Nevertheless, the Accounting Profession Law of 2003 places minimum emphasis on the auditor's independence and any related codes of ethics, even though auditing practitioners in Jordan are taken for granted as being compiled with the code of ethics and the professional standards issued by the IFAC and the international auditing standards. The lapses of this matter have critical consequences in that there is a manifest deficiency of monitoring and enforcement mechanisms. Furthermore, most Jordanian companies are family-owned, which may affect which auditor is elected, which could inevitably decrease the auditor's independence. Therefore, it can be assumed that, in general, there is inadequate independence in the status of the Jordanian auditors.

Now that its arbitrated functioning has been exhibited, it is important to backtrack five decades to trace the auditing profession in the Jordanian context in terms of its construction. The first audit firm was established in 1944. International audit firms like Whinney Murray commenced auditing in the early 1950s by establishing new offices in Jordan. In 1961, Jordan set the Auditing Profession Practice Law No. 10, which allowed accountants who have been practicing audit for two years or more to perform auditing services in the Jordanian business environment without considering their educational qualifications. Specifically, this law did not expect jobseekers to undergo a professional examination to practice auditing.

There was no recognition by a professional association in Jordan to auditing standards or auditing codes of ethics, and it is fair to say that the auditing profession was inadequately regulated by Law No. 10 of 1961 (Al-Akra et al., 2009; Haddad et al., 2017). In 1985, Jordan enacted Auditing

Profession Practice Law No. 32, which has been acknowledged as an imperative endeavour to promote the audit profession and support the succeeding establishment of JACPA, which established, as earlier mentioned, in compliance with Law No. 42 of 1987. The Auditing Profession Practice Law No. 32 (1985) also served in establishing the High Council for Accounting and Auditing by making JACPA membership mandatory for auditors. Thus, the law was meant to, in a way, monitor and organize the auditing profession in Jordan, at the very least in terms of distinguishing who is operating within the profession.

2.3. The nature of forensic accounting

Forensic accounting is a relatively new and multidisciplinary field of knowledge that combine a variety of knowledge fields such as accounting, law, criminology, IT, psychology, and sociology (Alshurafat, Beattie, Jones, & Sands, 2019b, 2020; American Institute of Certified Public Accountants, 2019; Crumbley, 2019; Fleming, Pearson, & Riley Jr, 2008; Heitger & Heitger, 2008; Honigsberg, 2020; DiGabriele & Huber, 2015; Kranacher, Morris, Pearson, & Riley Jr, 2008; Kresse, 2008; Ramamoorti, 2008; Rezaee & Wang, 2019; Tiwari & Debnath, 2017; Van Akkeren et al., 2013). In the literature, there is no agreement on a definition for forensic accounting (Sahdan et al., 2020). Botes and Saadeh (2018) reviewed the academic articles on forensic accounting definitions and found three main approaches to define forensic accounting. The first is the narrow approach to define forensic accounting; this approach focuses on the litigious and adversarial role of forensic accounting (Bologna & Lindquist, 1995; Durtschi & Rufus, 2017; Van Akkeren, Buckby, & Tarr, 2016). The narrow approach is deemed the first approach to define forensic accounting, and it was prominent till the middle of the 1990s when a second approach to define forensic accounting was produced. The second approach is the broad approach to define forensic accounting, which is used by international professional accounting associations (Botes & Saadeh, 2018, p. 139). For instance, the American Institute of Certified Public Accountants (AICPA, 2019) defines forensic accounting as:

“Services involving the application of specialized knowledge and investigative skills possessed by CPAs to collect, analyze and evaluate the evidential matter, and to interpret and communicate findings in the courtroom, boardroom or other legal or administrative venues”.

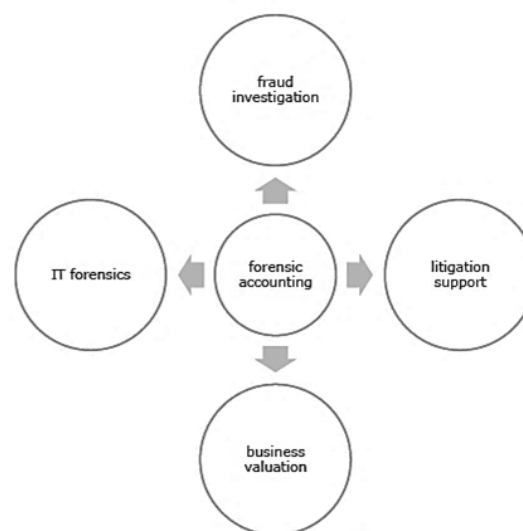
According to Botes and Saadeh’s (2018) classifications, the third approach is the comprehensive definition that combines the investigative role with the adversarial role of forensic accounting (Botes & Saadeh, 2018, p. 139). For instance, Rezaee, Crumbley, and Elmore (2004) provide the following definition of forensic accounting:

“The practice of rigorous data collection and analysis in the areas of litigation support consulting, expert witnessing, and fraud examination” (p. 194).

Forensic accounting encompasses various kinds of services, including litigation support (Abdul-Baki, 2019; Blythe & Goodpasture, 2019; Brennan, 2005; Heitger & Heitger, 2008; Quirin & O’Byryan, 2016;

Warshavsky, 2013), business valuation (American Institute of Certified Public Accountants, 2019; DiGabriele, 2008; DiGabriele & Lohrey, 2016; Jalilvand & Kostolansky, 2016; Kohn, 2014; Smith, 2012; Yang & Lee, 2020), fraud investigation (Abdullahi & Mansor, 2018; Association of Certified Fraud Examiners, 2018; Lehmann & Heagy, 2017; Ozili, 2020; Öztürk & Usul, 2020; Sahdan et al., 2020; Van Akkeren & Buckby, 2017), and IT forensics (Kılıç, 2020; Öztürk & Usul, 2020; Smith, 2015). Figure 1 shows the main categories of forensic accounting services.

Figure 1. Classification of forensic accounting services



Source: Alshurafat, Beattie, Jones, and Sands (2019a).

Many researchers recognized litigation support as the core role of forensic accounting (Alshurafat et al., 2019a, 2020; Crumbley, 2019; Curtis, 2008; Durtschi & Rufus, 2017; DiGabriele & Huber, 2015; Domino, Stradiot, & Webinger, 2015; Tiwari & Debnath, 2017). Forensic accounting is used in the courts to enhance the legal procedures in terms of financial lawsuits. For instance, Abdul-Baki (2019) explored forensic accounting’s role in settling a conflict between two government agents. The author found that the application of different problem-solving techniques of forensic accounting helps resolve the dispute and provide direction on the necessary steps to enhance accountability.

Among the diverse types of services, forensic accountants provide business valuation services (DiGabriele, 2008; Jalilvand & Kostolansky, 2016). This type of service is an extension of the adversarial role of forensic accounting. Most of the time, the forensic accountants are able to resolve the dispute before being processed at court through negotiation and arbitration engagements (Abdul-Baki, 2019). In the negotiation and arbitration engagements, forensic accountants can service to resolve commercial conflicts, evaluate lost profit, evaluate loss and damage, and reveal hidden assets (Crumbley, 2019; Smith, 2012). Moreover, forensic accounting can provide business valuation services in different engagement, for example, merge and acquisition, breach of contract, family law issues, insurance claims, insolvency, and bankruptcy

(Armstrong, 2003; DiGabriele, 2008; Jalilvand & Kostolansky, 2016; Kohn, 2014; Smith, 2012).

Far from the adversarial role, forensic accounting tools have been used to effectively protect a country's economy from fraudulent activities and detect those who harmfully affect the economy. Regarding the investigative role of forensic accounting, there are much empirical evidence on the role of forensic accounting in detect fraudulent activities (Akinbowale, Klingelhöfer, & Zerihun, 2020; Association of Certified Fraud Examiners, 2016a, 2016b, 2018; Honigsberg, 2020; Ozili, 2020; Öztürk & Usul, 2020; Sahdan et al., 2020; Yang & Lee, 2020). For example, Honigsberg (2020) explained various forensic accounting techniques used in the fraud detection process. These techniques include an accounting-focused approach that emphasizes financial statement analysis, statistical techniques that focus on the abnormalities in the financial records, and behavioral measures that focus on the criminals' personal and behavioral characteristics. Consequently, the incorporation of modern forensic accounting techniques in accounting and auditing is perceived as essential to deal effectively with the problem of discovering ingenious fraud schemes arising from audit failure to detect frauds (Honigsberg, 2020). Overall, forensic accountants may engage in services of fraud investigation, anti-money laundering, anti-corruption, financial statements fraud, anti-bribery, asset tracing, intellectual property theft, fraud risk assessment, and identity theft (Alshurafat et al., 2019b; Carpenter, Durtschi, & Gaynor, 2011; Sahdan et al., 2020; Tutino & Merlo, 2019).

The final category of forensic accounting services is the cybercrime investigation and detection services. Forensic accountants use different computer software and tools for different engagements, principally for fraud examinations in the public and private organizations (Kılıç, 2020; Öztürk & Usul, 2020; Smith, 2015). Moreover, forensic accountants are playing a vital role in preventing and detecting cybercrimes activities. To do so, forensic accounting practitioners use several data processing software Such as audit command language (ACL), monarch, NetMap, analytics, interactive data extraction and analysis (IDEA), picalo and SAS, as well as the use of the Internet and general-purpose tool such as MS Office tools (Cook & Clements, 2009; Pearson & Singleton, 2008; Van Akkeren et al., 2013). Forensic accounting practitioners help to mitigate fraud and financial crime risks associated with the digital environment. IT and technological knowledge offer forensic accounting practitioners further competencies in data gathering preservation, and analysis, and data visualization (Rezaee & Wang, 2019; Seow, Pan, & Suwardy, 2016; Singleton & Singleton, 2010; Smith, 2005; Metrejean, Smith, & Elam, 2005).

Globally, there is a tendency to establish forensic accounting regulations (Arslan, 2020; Huber, 2012, 2013; Nortje & Bredenkamp, 2020). However, this tendency is mainly within the contexts of developed countries where forensic accounting is recognized as a profession (Huber, 2014; Van Akkeren et al., 2016). For example, in Canada, forensic accounting is regulated as a specialization within the accounting profession under the professional accounting bodies' supervision at the federal level (Gosselin, 2014). In Australia, forensic

accounting witnessed multiple regulatory reforms, such as introducing the APES 215² forensic accounting services standard by the Accounting Professional and Ethical Standards Board (APESB) to maintain an acceptable level of work quality and a professional ethics, while in the USA context all big four and many accounting consultation firms employed teams of forensic accounting practitioners.

3. METHODOLOGY

The adopted methodology in this paper is the doctrinal approach. The doctrinal approach in this paper attempts to explore the weaknesses and shortcomings in relation to the governance rules of the forensic accounting profession in Jordan and thereafter, once determined, suggest solutions (McConville & Chui, 2007). According to Hutchinson (2006), doctrinal research is defined as:

"Research which provides a systematic exposition of the rules governing a particular legal category, analyses the relationship between rules, explains areas of difficulty and, perhaps, predicts future development" (p. 7).

Accordingly, the targeted issue in this paper will be studied along with a discussion on the missing provisions in the current Jordanian legal framework that cover the duties of forensic accounting profession in Jordan. This will include company law, civil law, codes of conduct, and other pieces of legislation in order to explore whether the profession is indirectly regulated as the authors argue. Moreover, in order to enhance the significance of the paper, the authors adopt a "reform-oriented approach" in order to evaluate the adequacy of the existing general rules in Jordanian legislation regarding the forensic accounting profession.

4. RESULTS AND DISCUSSION

4.1. Forensic accounting in Jordan

In Jordan, as in many other developing countries, forensic accounting lacks the fundamental constructs of being a profession as there is no affiliated professional association, no explicit standards for practice, or even ethical codes of conduct. The forensic accounting engagements are performed in the Jordanian context by either the traditional accountants or auditors. Thus, anyone in the Jordanian context with a bachelor's degree in accounting can perform forensic accounting services. Consequently, forensic accounting in Jordan faces the threat of lacking public and governmental recognition, as its services are performed with minimal service quality from those who are not specialists in the field. Another threat to forensic accounting in the Jordanian context is that there are no educational or training programs to prepare prospective forensic accountants. It is interesting to note that out of 27 universities in Jordan, there is no specialized forensic accounting educational program. Some universities only provide standalone courses in forensic accounting, such as the Hashemite University and Princess Sumaya University.

² https://www.apesb.org.au/uploads/standards/apesb_standards/31072019031339_Revised_APES_215_July_2019.pdf

4.2. General legal context in Jordan

This section provides an overview of the Jordanian legal system. Its purpose is to give a constructive perspective on the manner in which disputes find their way to resolution through the legal system in Jordan. It, therefore, describes the context within which accounting experts find themselves effectively contributing to the resolution of disputes.

Jordan shares the civil legal system tradition, as in all Arab countries, by codifying all rules that must be applied by the court. The Jordanian Civil Code (hereinafter referred to as JCC)³ can still be described as an Islamic-oriented approach which is largely based on Islamic principles as it has been derived from the Ottoman Majalla of 1876 (The Ottoman Courts Manual 'Hanafi') (Hayajneh, 2010) when Jordan was under the auspices of the Ottoman Empire from the sixteenth century until the beginning of the twentieth century⁴.

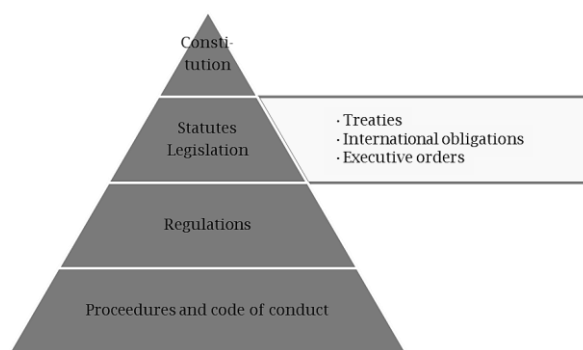
As a civil legal system, judicial decisions are considered as an ancillary source of law. This means that the provisions of the law shall apply by the court in all disputes. If the court does not find an applicable provision, then it has to apply the rule of Islamic Jurisprudence "Fiqh", then it has to apply the general principles of Islamic Sharia. If the court does not find any of the above-mentioned, then by customary rules, then by natural law or "principles of fairness"⁵. As a result, the doctrine of precedent is not applied whereby the lower courts are not enforced to follow the judgments of the higher courts on questions of law.

The JCC is considered as an umbrella of the private law, whereby all other legal issues, including commercial matters (e.g., Jordanian Commercial Code and the Jordanian Companies Act) are governed mainly by the JCC. This is the reason why the Jordanian Commercial Code and the Jordanian Companies Act represents collectively a blending of civilian rules, structures, content, and style with the law of Islam. In this regard, it is imperative to note that Islamic Law is not an unsophisticated system. Some of the maxims of Moslem law are similar to those maxims that can be found in other civil codes (Ballantyne, 1985; Haloush, 2020).

Readers should keep in mind that there is presently very little legislation dealing directly with forensic accounting in Jordan. The Jordanian law deals with this crucial issue in a rather superfluous way. Noticeably, the case law in this area is rather non-existent. This reflects, to a large extent, the scarcity of litigation in Jordan with regards to forensic accountancy (Haloush, 2020).

Understanding the hierarchy of laws in Jordan is fundamental to the rule of law and helps in developing a clear and consistent legal and regulatory framework for any contemporary matter. In general, the fundamental levels of the hierarchy of laws in Jordan consist of the Constitution, statutes or legislation, regulations and procedures.

Figure 2. The hierarchy of laws



As a snapshot of the hierarchy of laws in Jordan, from highest to lowest, all legal rules in all different levels must adhere to the Constitution.

The applied Constitution of Jordan is the one introduced on the 1st of January, 1952 with its amendments of 2011. The Constitution has nine chapters as follow: the country's governmental structure, official religion, language, capital, and flag; provision of the rights and duties of Jordanian citizens; general provisions and general organization of the country; executive branch's composition and powers; legislative branch's composition and powers; judicial branch's composition and powers; financial matters, such as taxes and the General Budget law; other governmental and municipal structures, special courts, emergency and martial law (called Defense Law), and the duties of the army; the enforcement and repealing of laws.

In relation to all accountancy related professions, such as accountants, internal or external auditors, financial analysts, or forensic accountants, they are sought to be constitutional as such professions do not contradict with any of the Constitution's provisions under the Jordanian legal system. On the other hand, the Constitution should reflect and adhere to a country's international obligations. This means that the Jordanian legislature shall take into account the International Accounting Standards (IAS) when enacting legal frameworks to govern any related financial area. This can be found in different pieces of legislation such as company law and securities law, which by definition should not contradict the Constitution.

As an obvious result of a codified legal system, most laws are exclusively enacted by the legislative authority and govern a wide range of issues that require regulation in a modern state. Such laws must adhere to the Constitution and international law. The legislative authority is represented by parliament, which is composed of two houses, namely, the Senate and the Chamber of Deputies, whereas the judge shall apply these laws. This means that judges have no authority to make laws in Jordan in contrast with the precedent legal system in common law countries.

Jordan has introduced a package of legislations to govern all financial transactions, whether they are administrative, commercial, or even civil financial transactions. This package has covered several types of transactions, which can be summarized in the following paragraphs.

The administrative financial transactions are mainly governed by the General Budget Law. This act is prepared by the government and/or other political

³ The Jordanian Civil Code No. 1 of 1976, published in the Jordanian Official Gazette No. 2645 (1976).

⁴ Ottoman Journal of Legal Rules 1876 or the Civil Code of the Ottoman Empire, Majallah al-Ahkām al-adliyyah. retrieved from [http://legal.pipa.ps/files/server/ENG%20Ottoman%20Majalle%20\(Civil%20Law\).pdf](http://legal.pipa.ps/files/server/ENG%20Ottoman%20Majalle%20(Civil%20Law).pdf). It is worth mentioning that Jordanian Civil Code is influenced by "Sharia", which refers to Islamic Law represented in the main source of rules in Islam.

⁵ Jordanian Civil Code, Article 2.

entity presenting its anticipated tax revenues (inheritance tax, income tax, corporation tax, import taxes) and proposed spending/expenditure (health care, education, defense, roads, state benefit) for the coming financial year.

The Jordanian legislature has determined the commercial transaction by Jordanian Commercial Law. A long list of commercial transactions has been introduced in articles 6 and 7 to distinguish them from any other types of transactions. They include, for example, buying or hiring goods for trade purposes, the industrial sector, banking transactions, insurance, supply contracts, transportations, brokerage and commercial agencies, storage contracts, real states, and maritime contracts. The legislature also indicates that all other financial transactions may have similarities in purposes of the mentioned transaction can also be considered as commercial transactions.

The main legal effect of determining the transaction as a commercial one is applying the provisions of commercial law, which results in several legal effects such as short prescription period, joint liability, different evidence provisions, grace period unavailability, bankruptcy, and jurisdiction.

It can be understood from the Jordanian legislature attitudes that all other financial transactions outside the context of articles 6 and 7 of the Jordanian Commercial Law are considered civil transactions. As a result, the applicable law will be the JCC.

Regulations are a form of delegated legislation, developed and enacted by ministers, department heads, or by an independent body or commission to administer their responsibilities. Regulations must adhere to the Constitution, international law, and governing statute and can be enforced in the same way as statutory law. Further, regulations provide details on the administration of principles in the law. Finally, any violation of regulation can be treated as an offense and enforced as such.

A procedure is a description of the required steps necessary to complete a process. They are generally written by an administrative body to ensure that the law and regulations are applied consistently and fairly to all parties.

The hierarchy in Figure 2 may be developed to simulate the forensic accounting in Jordan by adding the co-regulations and self-regulations, as shown in Figure 3.

Figure 3. The hierarchy of laws in relation to forensic accounting



As a codified legal system, the Jordanian law comprises a set of rules and principles that can be identified, written down, and followed. Nevertheless, the Jordanian body of law has evolved over many decades from a variety of sources and constantly subject to change and development. Ultimately, any conflicts of law or legislative gaps must be resolved either by the courts or by the legislature through the enactment of unequivocal legislation. Even then, decisions of the courts and legislation can be subject to challenge.

It can be said that the accounting industry has been self-regulated with the absolute absence of a comprehensive legislative intervention to govern such an area by special legal frameworks. Nevertheless, the court is always relying on the general principle of law when dealing with different accountancy provisions in both civil and commercial disputes. As mentioned above, the first professional code of conduct introduced by the JACPA in 2006, as a co-regulation, implies that all persons who work in the accounting field must comply with this code, regardless of the job title, whether accountant, auditor, or forensic accountant. This co-regulatory model emerged with several statutes, such as Jordanian Commercial Law and Company Law, giving legal weight to the Jordanian Accounting profession and providing heightened requirements for audit, tax, and financial services activities.

4.3. Regulatory framework of forensic accounting in Jordan

The role of the forensic accountant is critical during individuals' and companies' life circle. However, financial records and entries, which constitute a "common language" for forensic accountants, must be interpreted and understood in their legal context. The creation of such a structure, therefore, depends on building communication between legal experts who are able to explain the problem and forensic accountants who are able to understand it. Many lawsuits are the product of the parties' failure to honestly or sufficiently communicate their expectations of each other during the course of their relationship. This is a big step towards avoiding the filing of a lawsuit, to begin with. Beneficial relationships will result from a combination of frequent and timely communications between the parties.

One of the facets of such a lack of coordination between legal and accounting professions is the issue of terminology. In Jordan and other Arab countries, the terms "forensic accountant", "external auditor" and "internal auditor" are often used interchangeably. This might have serious legal implications in construing the wording of legal provisions and ensuing obligations and liabilities thereof.

Article 193 (f) of the Companies Law states, among other things, that auditors shall undertake any other duties the auditor must perform in accordance with this Law, the Auditing Profession Law, and other regulations related thereto⁶. Similarly, article 196 of the Companies Law states

⁶ Article 193 (f) of the Companies Law No. 22 of 1997 and its amendments. See also, article 6 (2) of the Regulatory Framework of Auditing of the year 2003, issued pursuant to the Jordanian law Auditing Profession No. 4606 of 2003, published in the Jordanian Official Gazette No. 4606 (2002).

that in the event the auditor recommends the rejection of the financial statements, among other things, the Company General Assembly may decide to refer the issue to the "Company Controller" in order to appoint a committee of experts from licensed auditors to settle the dispute arising between the concerned company and its auditors⁷. This broad responsibility of auditors in the Jordanian Company Code encapsulates forensic accounting, whereby forensic accounting is an investigation of a company's or individual's financial records to deduce potential evidence that can be utilized in a court of law or legal proceeding.

Article 201 of the Jordanian Companies Law provides that auditor shall be liable towards the company that he/she audits, its accounts, its shareholders, and the users of its financial statements for compensating any realized damage or lost profit incurred as a result of errors committed by him/her while carrying out his/her duties, or as a result of his/her failure to accomplish his/her duties that are specified in accordance with the provisions of this law, and the provisions of any other legislation in force, or duties demanded by internationally recognized accounting and auditing standards, or as a result of issuing financial statements that do not conform with reality in a major manner or for approving these statements⁸.

Upon reading this article, one can deduct easily that forensic accountants' responsibility contemplates that they have a dynamic role to play in performing their task before courts. This role, however, should not run the risk of being perceived as failing to fulfil the obligation of independence. An independent forensic accountant means being and being seen as unbiased toward the companies' interests and toward the options he/she presents. This concern is of particular importance since the Jordanian law does not contain any express provisions regarding the independence of forensic accountants in their appearance before courts.

From this perspective, the role of a forensic accountant cannot be identified as an "employee" to the firm's shareholders. The contract of employment is defined in the JCC as a contract whereby one party of which undertakes to perform work for the benefit of the other under his/her supervision or control in consideration of wages⁹. The role of the forensic accountant cannot be viewed as an "agent" to the firm's shareholders, too, since he/she is not subject to detailed direction or control from those stakeholders in the manner of performing the work. Instead, his/her obligation is to bring about a required result in his/her own way. Unfortunately, this notion is in stark contrast with article 199 (a) of the Jordanian Companies Law, which indicates clearly that the auditor of the company shall be the representative of the shareholders therein within the limits of the duties vested in him/her¹⁰.

It is not unreasonable to consider the role of a forensic accountant as a form of a guardian role on a company's assets. Article 894 of the JCC states that guardianship is a contract by virtue of which the two disputing parties charge to another

the keeping and management of the property¹¹. Articles 899 and 900 of the JCC went further to state that property in the hands of the guardian shall be a charge, and in his/her function, he/she shall not exceed the limits prescribed for him, and otherwise, he/she shall be liable. Besides, the agreement imposing guardianship shall define the rights and obligations of the guardian and the powers he/she possesses thereof¹².

Having said that, whether the forensic accountant can go beyond the role that the shareholders have entrusted to him or her or not, during his/her appearance in court proceedings as a forensic accountant, is a delicate question. This is particularly evident if one bears in mind that the wording of article 202 of the Jordanian Companies Law prohibits, in unequivocal terms, any disclosure of any secrets of the company secrets that came to his/her knowledge in the course of his/her duty, either to shareholders or non-shareholders; otherwise, he/she shall be dismissed and requested to compensate the damages¹³. It remains to be seen how the court system in Jordan can reconcile such conflicting interests, roles, and duties of forensic accountants mentioned in articles 199 (a) and 202 of the aforementioned law.

Forensic accountants are subject to contractual liability rather than tortious liability under Jordanian law. Generally speaking, article 363 of the JCC states that if the damages shall not be estimated under the law or in the contract, the court shall estimate them as those equal to the actual damage at the time it was inflicted¹⁴. However, in stark contrast with the wording of article 201 of the Jordanian Companies Law, which states clearly that an auditor is obliged to compensate for any realized damage or lost profit incurred as a result of errors committed by him/her, it must be borne in mind that lost profit is not recognized, and, therefore, not entitled for compensation under the Jordanian contract law according to article 363 of the JCC above-mentioned.

By the same token, pure economic loss, which is by definition does not result in a physical injury or damage of property, is not recognized and, therefore, not entitled to compensation under the Jordanian contract law. Traditionally, all common law jurisdictions adopted a restrictive approach towards claims for recovery of pure economic loss. In particular, where one party is holding itself out as an expert in a particular field, such as a forensic accountant, and that the other party relies upon that expertise to its detriment, the former would be liable for losses caused, even though they may be categorized as purely economic, thus establishing an exception to the restrictive approach (Bailey, 2011; Ndekugri, 2000). Although the Jordanian law perceives forensic accountant as possessing better technical skills than other litigants in a court of law who are non-specialists in auditing and accordingly in desperate need for protection, pure economic loss is not recognized, and, therefore, not entitled for compensation under the Jordanian law as mentioned earlier.

⁷ Article 196 of the Companies Law No. 22 of 1997 and its amendments.

⁸ Article 201 of the Companies Law No. 22 of 1997 and its amendments.

⁹ Article 805 of the JCC.

¹⁰ Article 199 (a) of the Companies Law No. 22 of 1997 and its amendments.

¹¹ Article 894 of the JCC.

¹² Articles 899 and 900 of the JCC.

¹³ Article 202 of the Companies Law No. 22 of 1997 and its amendments.

¹⁴ Article 363 of the JCC.

5. CONCLUSION

The authors of this paper are with different backgrounds: accounting, particularly forensic accounting, legal and practitioners. As such, the authors found that the Jordanian legal system does not recognize forensic accounting as a profession with a specific job title. Legally speaking, a forensic accountant's duties and responsibilities in Jordan have been covered by different pieces of legislation such as company law and civil law. In the accounting context, such duties and responsibilities can be offered by experts in the financial field in general and accounting in particular.

Clearly, the Jordanian legislature is silent on differences between preparing financial statements in different types of companies on the one hand; and making investigation in potential financial disputes, or even providing expertise in courtrooms in financial matters, on the other hand. Ironically, professionals conducting such tasks are termed indifferently and rather interchangeably as accountants, auditors, or even judicial experts.

This research presents implications for researchers, practitioners, regulators, and policymakers. Contextually, the study contributes to forensic accounting knowledge, particularly the legal background in the Jordanian context. Therefore, regulators could benefit from this study by understanding which legislative aspects need improvement and the ramifications of lacking these forensic accounting regulations in Jordan. This study contributes to the literature on forensic accounting regulations research. Theoretically, this study's most substantial contribution to the body of knowledge comes from highlighting forensic accounting status in a developing country setting which can serve as a prototype for other developing countries. This study's implication to practitioners is

also exhibited. The study shows that while the profession may face pressure to promote the public and governmental recognition for it, their way of reacting to such pressure is likely to be molded by establishing and enacting appropriate litigations. Lastly, as an implication to policymakers, the research calls legal, governmental agencies to promote attention to the forensic accounting profession in Jordan.

This research, as with all research, is associated with few limitations. First, as the research context was narrowed to the emerging markets contexts, cautions should be exercised in generalizing the findings to developed countries contexts. Second, forensic accounting is a relatively new specialization that lacks depth in the covered topics in a scholarly paper, especially in relation to socio-legal studies. Third, one of the main limitations is represented by the absence of forensic accounting practitioners in Jordan which prevented the authors from observing the professional perspective.

This study would flourish new pathways to future research. It also establishes a clear message to policymakers to the importance of the forensic accountant profession and highlights the main struggles. Also, it sends a message to universities and the academic community in Jordan to train and teach students on the importance of forensic accounting; in order to create a culture that this is a standalone profession. Thus, this study would be a cornerstone for future research and for the future development of the forensic accountant profession in Jordan and the Arab region. Moreover, this paper could be extended by examining the obstacles that hinder the application of forensic accounting services in the emerging markets context. In addition, future researchers should explore the economic and social impact of forensic accounting in the emerging context.

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APPENDIX

Table A.1. The date of adoption IASs and IFRSs in Jordan

<i>Standard No.</i>	<i>Name</i>	<i>Date</i>
IAS 1	Disclosure of accounting policies	1997
IAS 2	Inventories	1997
IAS 4	Depreciation accounting	1997
IAS 5	Information to be disclosed in financial statements	1997
IAS 7	Cash flow statements	1997
IAS 8	Net profit or loss for the period, fundamental errors and changes in accounting policies	1997
IAS 9	Research and development costs	1997
IAS 10	Contingencies and events occurring after the balance sheet date	1997
IAS 11	Construction contracts	1997
IAS 12	Accounting for taxes on income	1997
IAS 13	Presentation of current assets and current liabilities	1997
IAS 14	Reporting financial information by segment	1997
IAS 15	Information reflecting the effects of changing prices	1997
IAS 16	Property, plant, and equipment	1997
IAS 17	Accounting for leases	1997
IAS 18	Revenue	1997
IAS 19	Retirement benefit costs	1997
IAS 20	Accounting for government grants and disclosure of government assistance	1997
IAS 21	The effects of change in foreign exchange rates	1997
IAS 22	Business combinations	1997
IAS23	Borrowing costs	1997
IAS 24	Related party disclosures	1997
IAS25	Accounting for investments	1997
IAS 26	Accounting and reporting by retirement benefit plans	1997
IAS27	Consolidated financial statements and accounting for investments in subsidiaries	1997
IAS 28	Accounting for investments in associates	1997
IAS 30	Disclosures in the financial statements of banks and similar financial institutions	1997
IAS 31	Financial reporting of interests in joint ventures	1997
IAS 32	Financial instruments: disclosure and presentation	1997
IAS 33	Earnings per share	2002
IAS 34	Interim financial reporting	2002
IAS 35	Discontinuing operations	2002
IAS 36	Impairment of assets	2002
IAS 37	Provisions, contingent liabilities, and contingent assets	2002
IAS 38	Intangible assets	2002
IAS 39	Financial instruments: recognition and measurement	2002
IAS 40	Investment property	2002
IFRS 2	Share-based payment	2004
IFRS 3	Business combinations	2004
IFRS 4	Insurance contracts	2004
IFRS 5	Non-current assets held for sale and discontinued operations	2004

Source: Al-Akra et al. (2009, p. 179).