

Newsletter First Edition | November 2020 |

Welcome to the first edition of our Newsletter. In this edition will look into Defense Law Order No. 21 and explain the most prominent provisions of the Order, which can be summarized as follows:

1

- The enforcement of the provisions of Defense Law Order No. 21.
- The most important provisions developed for the filing of court cases and the reporting mechanism according to Defense Law Order No. 21.
- A glimpse into the future of litigation procedures in Jordan within the preliminary features indicated by the provisions of Defense Law Order No. 21.

"We find that the provisions included in Defense Law Order No. 21 indicate a change that will occur in the near future in the litigation procedures and system. This Order was issued to prevent the exacerbation of the epidemiological situation in Jordan and to move swiftly onto electronic procedures."



The COVID-19 pandemic casts a shadow over all sectors of life and the judicial system is not immune to that. This is especially in light of the large numbers of visitors to the courts (judges, lawyers, employees, visitors for a legal matter and so on) who are affected in the same manner as most sectors. Unfortunately, the pandemic ran its course in the body of justice and we have –regrettably – lost some of the best judges and lawyers as a result of this pandemic – (rest in peace) – and this disease has afflicted many of those seeking justice. Therefore, not a day has passed without the alarm ringing at the Courts and hearing about infected persons in the vast majority of courts of all types (regular, religious, special courts), and the concerned parties have had to confront this matter and respond to the demands of the people. A group of lawyers has called for the necessity of moving towards automating judicial procedures and eliminating bureaucratic procedures. The government must implement the legislator’s wisdom in the Defense Law by issuing the necessary Defense Law Orders to suspend legal texts that pose a challenge or that are an obstacle in dealing with the pandemic and, in our case, interrupt the necessary provisions of the law that usually impose a certain procedure within a melting pot of formalities which they may be understandable in the normal situation, but now the epidemiological circumstances necessitate a rapid transition to electronic procedures in order to mitigate the impact of the pandemic, whether through the

procedures taking place in the corridors of the courts (registries and departments) or before the honorable officers of the judicial bodies.

Hence, we find that the provisions contained in Defense Law Order No. 21 indicate a change that will occur in the future in the litigation procedures and system, [in Jordan]. This order was issued to prevent the deterioration of the epidemiological situation in Jordan and to move swiftly to electronic procedures. **It should be noted that Jordan has come a long way in keeping pace with digital development and introducing it into the judicial system** – and due to the impact that it has on lawyers and clients alike, we have decided to simplify the provisions of said Defense Order and clarify it in this newsletter. This matter includes provisions related to the temporary suspension of the work of the regular and religious courts, the postponement of their sessions, the cessation of legal periods and other provisions related to the registration of civil rights cases, the reporting mechanism and the manner of holding court sessions. We have noted that the provisions contained in this order apply to two different time periods and this temporal discrepancy in the application of the provisions is due to their different nature and the novelty of what will be applied under the second time period. The following is an explanation of the most prominent of these provisions:



The First Phase: Suspending The Courts For A Period of 10 Days

The Defense Law Order decided to **suspend the work of regular courts** – as well as religious courts - for a period of 10 days as of the 15th of November 2020. This is due, in our view, to the existing need to sterilize the courts and prevent the transmission of disease among its visitors as much as possible, especially after the participation of a large number of the members of the judicial system in supervising the electoral process that took place recently. As it was seen, this period of suspension has been used to arrange the transition to the electronic approach and to empower decision-makers such as the Head of court, the Minister of Justice and any responsible individuals / bodies in preparing and implementing the tasks and powers they are entrusted with to facilitate the application of electronic and updated procedures.

The suspension of the work of the courts was described as a temporary and semi-total suspension, as this moratorium began on the 15th of November 2020 and it expired at the end of the 24th of November 2020 and excluded individuals and entities listed in paragraph 2 of article 1 of Defense Order No. 21. Exceptions were made for individuals such as Heads of courts, Public Prosecutors, and judicial bodies such as the Court of Cassation and its technical office. In addition to the judicial bodies entrusted with examining and adjudicating violations related

to Defense Law Orders, appeals to the validity of the representation of members of Parliament and in urgent requests that the Head of the Court decided that they cannot be postponed or delayed – such as a precautionary seizure, given that the Defense Law Order has left the issue of determining those requests to the Head of court, which means that it may have been found that some of these requests are requests likely to be postponed, in addition to the Prosecution departments continuing to investigate the crimes committed during the period of suspension, and other exceptions mentioned in the Defense Order. We believe that these exceptions stem from the concern for the regularity of the judicial work process with regard to what is necessary and / or new.

Following the foregoing, the sessions were postponed and all legal periods and dates were put on hold, so the postponement of the sessions is an inevitable result of stopping the work of the regular courts. With regard to case sessions in the regular courts that were scheduled on the 11th of November 2020 and on the 12th of November 2020, i.e. before the courts' operation was suspended, they were also postponed because they coincided with the days of the last comprehensive lockdown that followed the holding of parliamentary elections and the Judicial Council set new dates for all these sessions according to a decision.



As for the ruling of putting all legal periods and deadlines on hold it is, as we have indicated in the previous paragraph, a ruling associated with the suspension of work in the courts as it is unreasonable to have the periods set for taking litigation procedures continue during the court suspension period. Among these periods it is also the statute of limitations period, which is the legally prescribed period for filing a lawsuit, and the filing of a lawsuit after the expiration of this period entails a right for the defendant to submit a request to dismiss the lawsuit for the lapse of time. If the court finds that a lawsuit was filed after the expiration of this period, it will dismiss the case, hence the importance of pausing the continuance of such timeframes during this period.

As a sole exception to the suspension of time periods, the Defense Law Order kept the continuance of the period for challenging the validity of the House of Representatives' representation, which we find is self-evident as the Defense Law Order - as we mentioned earlier - has not stopped the consideration of this appeal.

Upon the expiry of the suspension period, the suspended periods that were put on hold shall

recommence, the regular courts will continue to operate and the postponed sessions will be held according to their new dates¹. However, shortly after this recommencement, judicial work will be subject to new provisions that will be reviewed in the second section.

The Second Phase: The Period Starting on 13th December 2020

The second section of the Defense Law Order includes provisions that are more flexible and wider than those contained in the legislations in force, especially what is codified in the Code of Civil Procedures and Electronic Transactions. We find that these new provisions came to facilitate procedures and to ensure physical distancing to the extent possible. It should be noted that the **scope of the application of these provisions is limited to civil cases and their procedures before regular courts and civil judgments enforcement departments** and it does not extend to other cases except in one case that will be explained further below. Evident from these provisions is a qualitative shift and a great difference in some procedures. The most important of these provisions can be summarized as follows:

¹ It should be noted that the Defense Law Order included similar provisions to what has been mentioned with regard to the religious courts that are mentioned in articles four and five thereof.



How to register and sign: The Defense Law Order showed the methods for recording new claims, requests and appeals, the mechanism for paying their fees and the submission of statements of claim, evidence and pleadings, which are either: 1 electronically, or 2 by filing them with the Registry of the Competent Court. The Defense Law Order authorized the Head of the concerned court to decide on the form of the method of registration or deposit and considered that the date of transmission electronically or filing at the relevant department is the date of registration or submission. It also considered the signature affixed to the statements, warrants, and pleadings submitted to the court using electronic means as an authenticated signature that has the same validity as a normal signature. As for the electronic signature, it also has the same validity as of the date determined by the Minister of Justice in accordance with instructions issued by him/her. We find that the issuance of the instructions was not meant to be limited to setting the date, but it includes the organization and handling of these signatures in some detail.

Reporting mechanism: The Defense Law Order has established different forms of notification from the previous one – in which notification was conducted as indicated in the Code of Civil Procedures where it is usually done on paper by process servers or by public announcement as necessary – since notifying the opponent, his/her lawyer, the witness or

the expert will be via e-mail, text message, or by using the WhatsApp application on the stated mobile phone number. In order to ensure the effectiveness and efficacy of this notification, the Defense Law Order imposed an obligation on the opponent or his/her attorney to provide the competent court with any of this information before the 13th of December 2020, according to the mechanisms that the Defense Law Order left to be determined by the Minister of Justice. In the event of failure to implement this obligation or in the event that it is incapable of being known, the court will proceed with the trial procedures for the litigant or his/her representative in accordance with the provisions legally established for absence. With regard to the witness or expert, he/she will be notified according to the procedures stipulated in the legislations - i.e. the same as the previous one. The Defense Law Order clarified other powers that the court could exercise in the absence of litigants and organized them **and it is worth noting that the notification rule alone applies to the notification procedures in criminal cases.**

Holding the sessions: The Defense Law Order granted the court the power to use audio-visual communication techniques to hold any hearing or take any action, including expert discussion. The issuer of the Order sensed the need to provide fair safety mechanisms to protect certain procedures and prevented the holding of sessions using such techniques, as mentioned in article 2,



6

paragraph 9 subsection B of the Order, those are the sessions devoted to hearing witnesses, the expert's understanding of the task and his/her oath taking and others, the examination of the litigants, the session set for taking the oath, and the closing session.

In conclusion, it can be said that all of these provisions under the Defense Law Order No. 21 affect three fundamental issues, namely the authenticity of signature, the mechanism of notification and the place of attendance, all of which we see that they must be regulated in detail because they impose challenges and obstacles in application. The question that arises is the extent to which its provisions - that is, the provisions of the Defense Law Order, specifically the new provisions relating to the holding of sessions and electronic procedures - are in line with the available capabilities. We see that judgment should not be preemptive and hasty until the

implementation, as we envision that these are the first steps towards a safer electronic litigation system. This is a matter that we infer through the electronic nature of some procedures and the fact there is no fixed date for the end of this period, this part of the Defense Law Order certainly indicates the future of litigation procedures in Jordan. In order to avoid any errors or shortcomings in implementing this approach, we see the necessity of singling out additional legislative texts and even legislative tools to organize these procedures in a detailed and clear manner. We find that it is possible that changes will occur to the content of these procedures within the coming days and we look forward to providing you with all developments in this regard and will be sending out follow-up newsletters to clarify developments according to what will be issued under Defense Law Orders, circulars or instructions from the competent authorities on this matter.

If you would like to discuss further any aspects of this Newsletter, please feel free to get in touch with one of our lawyers, using the contact details in our Contributors section below.

If you feel that other persons would be interested to read this Newsletter, please feel free to share this Newsletter.

Warm regards,

HAMMOURI & PARTNERS ATTORNEYS AT-LAW



CONTRIBUTORS TO THIS EDITION

7



TARIQ M. HAMMOURI, LL.M, PHD

MANAGING PARTNER

tariq@hammourilaw.com



KHALID MOUSA

ASSOCIATE

Khalid.m@hammourilaw.com



OMAR SAWADHA

SENIOR ASSOCIATE | HEAD OF LITIGATION

Omar.s@hammourilaw.com



ABOUT HAMMOURI & PARTNERS ATTORNEYS AT-LAW

Hammouri & Partners is a Jordanian multi-practice law firm, founded over two decades ago (established in 1994) by Professor Mohammad Hammouri. Professor Hammouri is the Chairman and Chief Senior Council of Hammouri & Partners Attorneys at-Law, a renowned attorney in Jordan, both as a litigator as well as an arbitrator, a former Minister of Higher Education and a former Minister of Culture and National Heritage, who wrote a plethora of books and articles, primarily on constitutional rights. Professor Mohammad Hammouri also founded the first School of Law in the Hashemite Kingdom of Jordan at The University of Jordan, in which he was its first dean. Today, the firm is managed by Dr. Tariq Hammouri, an academic, attorney and a former Minister of Industry, Trade and Supply at the Jordanian government. Dr. Hammouri is both an experienced attorney and arbitrator in the Corporate sector, Commercial Transactions, Financial Markets, Banking, International Trade and negotiations. He is an Associate Professor at the School of Law, University of Jordan and (formerly) the dean of the School of Law.

Hammouri & Partners team consists of 24 attorneys and other professionals working in the firm's specialized departments, and they provide professional legal services at a local, regional and international level.

The firm's legal services cover numerous areas of practice, including the following: Corporate and Commercial Law (whether that is corporate set-up or drafting of all types of commercial agreements), Intellectual Property law, Banking and Finance Law (the Firm advises local and international banks regarding all Banking Transactions an Regulatory Compliance). Additionally, the Firm's Litigation and Arbitration department has the capabilities and competence to represent parties in the most complex and novel legal matters, as it encompasses expertise in several areas of law, whether it is before courts and arbitral tribunals. Hammouri & Partners Attorneys at-Law was one of the first firms in Jordan to establish a specialized department to cater for the needs and requirements of international clients on an array of tasks with an international element, such as those regarding bilateral and International Trade negotiations, projects, contracts and others.

In addition, Hammouri & Partners provides legal advice and consultation to various industries such as those of Construction & Infrastructure, Manufacturing, Engineering, Trade, Insurance and Energy, as some of its clients are major energy, healthcare, information technology and telecoms companies.

Hammouri & Partners Attorneys at-Law provides its broad services throughout Jordan as well as worldwide, through established collaborations with reputable law firms in the MENA region, in Europe, the United Kingdom and the USA. Hammouri & Partners' proven capability on the above areas of law has earned the firm international acclaim by the most reputable legal directories. The International Financial Law Review (IFLR 1000), the Legal 500 and the Chambers and Partners Global , all highlight Hammouri & Partners as a leading law firm in the Jordanian legal services industry.

