

## Newsletter

| Fifth Edition, March 2021 |

1

Welcome to the fifth edition of our Newsletter. In this edition we look into the concept of the security of interest in movable assets, in its new regime, and we explain the main concepts under the [Jordanian] Law of Security of Rights in Movable Properties No. 20 of the year 2018 (hereinafter referred to as the “Law”<sup>1</sup>). Amongst those are the following:

- Granting a security interest in movable assets (mortgage of movable properties).
- The procedures to be followed for the registration of the security interest in movable assets.
- The types of movable assets that can be used as a security interest.
- The conditions for granting a security interest in movable assets.
- The types of protection granted under the law to the creditors to encourage them to accept the security interest in movable assets without taking physical possession of the property.

---

<sup>1</sup> Referenced as the [Jordanian] Secured Transaction Law, at the official website of the Ministry of Industry, Trade and Supply



*"Prior to the issuance of the Law, the Jordanian legislations were not granting sufficient securities that would have encouraged the creditors to accept mortgaging of movable assets without taking physical possession of the property, therefore, the Jordanian legislator, through the provisions of the Law, adopted a different approach to the usual mortgage procedures."*



Jordan, Amman, Shmeisani,  
Al Sharif Naser Bin Jamil Street, Cairo  
Amman Bank Building, # 96, 3<sup>rd</sup> Floor

+962 6 569 1112

info@hammourilaw.com

### Granting a security interest in a movable asset in its new regime (the main concepts under the Law).

3

It is well known that legislative instruments (whether the law per se or the regulations or the instructions) may act as a barrier to the economic development of a country. However, on the other hand, they may act as a stimulus to the economy and the investments of the country, in addition to contributing to the enhancement of the business environment. Due to Jordan's scarcity of natural resources, it arose the necessity to have in place a legislative system and the amendments thereof, that would enrich the business environment and that would assist in getting to grips with the challenges faced by individuals and companies during their workflow and the projects. Putting the aforementioned into perspective, we see that this was the reason behind the issuance of the new legislation, which increases the chances for obtaining both financing and a security, and which also reduces the associated costs, and the consequences on both individuals and companies; the said legislation is the Law.

The creditors, for a lengthy period of time, were not accepting movable assets as a security interest for their rights (particularly the financial institutions that offer loans), although the law has affirmed the mortgage of movable property. This is due to the lack of a legislative instrument, which would provide creditors with the desired legislative protection, and which would strengthen creditors'

*"THE PHYSICAL POSSESSION OF THE MORTGAGED MOVABLE PROPERTY WAS A SECURITY AND A PROTECTION FOR THE CREDITORS' RIGHTS"*

trust in accepting such properties as a security. This rejection had been seen as an obstacle to the implementation of many projects in the sector of small and mid-sized companies; also for companies that have available the needed finances for their development and growth, since such companies do not have other than limited assets, and movable and immovable assets are rarely found amongst those assets. Therefore, an urgent need arose to provide the means for flexible financing in line with the size and the potential of such companies, and to meet their requirements.

The provisions of the Law, govern the aforementioned cases, since the Law affirms the possibility of using a movable asset, in its different types, as a security interest without the need [for creditor] to take physical possession of the property. That means that the Law shall be considered as an instrument that would enable individuals and small and mid-sized companies to benefit from the movable assets, in order to secure financing and to obtain credit, to increase the capability of the financial institutions to amplify the mortgage process.

It is worth mentioning that many countries have issued a legislative instrument similar to the



Jordanian Law in an attempt to improve their ranking under the Global Competitiveness Index <sup>2</sup>, noting that the best evidence for the Law, is that Jordan improved its ranking by going up (29) places in the Doing Business World Bank report 2020<sup>3</sup>, one of the report's topic was that this law has facilitated the granting of a security<sup>4</sup>. Below is a summary about said law, and its provisions.

**Firstly: granting of security interests in movable assets without the creditor taking physical possession of the property.**

Prior to the issuance of the Law, the Jordanian laws were not granting securities sufficient to encourage creditors to accept a mortgage on a movable property without taking physical possession of the property. Therefore, the Jordanian legislator, under the provisions of the Law, adopted a different approach to mortgages than usual, since the Law not only accepts a mortgage on the movable properties and the debts without taking physical possession of the property, but it also stipulates instead of that the concept of the Notice. Article 6 of the

Law, clearly affirms the concept of mortgage on movable property without the need of handing over the property to the creditor, [and] at the same time, the law has established the concept of Notice, consequently this law has addressed the lack of clarity under the previous law in that regard.

One reason for this is that the legislator has recognized that the physical possession of the mortgaged movable asset is a security interest for the rights of the creditors and that it is also considered as a protection to their rights. Consequently, the legislator did not neglect the necessity for granting an alternative to the concept of physical possession of the movable property, which will enrich creditors' trust and encourage them to accept the movable property as a security for the debt. Hence, the legislator has addressed another concept to secure the rights of both the creditor and the debtor, which is the Notice. For this purpose, an electronic registry named "The Registry of interests in movable property" was

---

<sup>2</sup> Such as the United Arab Emirates (the UAE Federal Law No. 4 of the year 2020, regarding security of rights through the movable properties of the year 2020) also, the Kingdom of Saudi Arabia (the Regulation of security of rights through movable properties of the year 1441 H which is 2020).



<sup>3</sup> Jordan's ranking was 104 in the report of 2019, its ranking has increased in the report of 2020 to be 75.

<sup>4</sup> The report includes many topics, amongst those the granting of a security.

launched, in order to register the security interests on the movable assets.

## Second: The Registry of interests in movable property.

The Registry of interests in movable property is an electronic registry launched by the [Jordanian] Ministry of Industry, Trade, and Supply for the security of the rights of a company in movable property. It includes all relevant information, as one can register a notice of a security interest in movable property to guarantee the fulfillment of the debtor's obligations against the creditor.

The main aim of said Registry is to establish the concept of Notice, which grants and protects the rights of creditors, since: On the one hand, it provides creditors with the ability to review the movable properties submitted by the debtors as a security, and accordingly said creditor can either accept or reject the property. On the other hand, the Registry enables the creditor to pursue the movable

properties in any one's possession that are registered as a security.

The procedures of registration are simple electronic procedures; initially the creditor shall, directly after signing the contract of the secured obligation with the debtor, log in into the Registry of interests in movable properties available electronically<sup>5</sup>, and create an electronic account, and then the creditor shall fill in the electronic form to register the movable property as an interest security and the Notice shall become effective on the movable property owned by the debtor.

*"ON THE ONE HAND THE REGISTRY PROVIDES THE CREDITOR WITH THE ABILITY TO REVIEW ALL THE MOVABLE PROPERTIES SUBMITTED BY THE DEBTORS AS A SECURITY, AND ACCORDINGLY SAID CREDITOR CAN EITHER ACCEPT OR REJECT THE PROPERTY. ON THE OTHER HAND, THE REGISTRY ENABLES THE CREDITOR TO PURSUE THE MOVABLE PROPERTIES IN ANY ONE'S POSSESSION REGISTERED AS A SECURITY. "*

Following completion of the Registry process, the security interest in the movable property shall be effective against third parties without the need for the creditor to take physical possession of the property. Further, the creditor shall take priority over other creditors in accomplishing the rights (in accordance with the date of registration of his/her rights and in accordance with the

<sup>5</sup> The website ([/http://jcr.mit.gov.jo](http://jcr.mit.gov.jo)) the central commercial registry/ the registry of interests in movable properties



nature of the rights of the other creditors)<sup>6</sup>.

### Third: The types of movable assets to be used as a security interest for a right.

The Jordanian legislator did not stipulate the types of assets that can be used as a security of rights, however, it is stated that movable assets - whether tangible or intangible- and debts and rights -whether current or future- can be submitted as a security. The legislator provided a few examples of the kinds that can be submitted as a security, ie<sup>7</sup>, commercial papers, bills of lading, insurance policies, debts, deposit accounts at the banks, Fixture immovable by destination.

However, the legislator has explicitly stated the types of security that cannot be submitted as a security, being an alimony, wages, salaries, labour compensation, public funds, 'Al Waqf'

(*Endowment under Islamic law*), the funds of foreign embassies, entities with sovereign immunity, privileges and licenses granted by states, and other assets as mentioned under the Law <sup>8</sup>.

### Forth: The conditions of granting a security interest in a movable property.

There are certain conditions that need to be fulfilled for the issuance of a security right and for its validity between the parties<sup>9</sup>. One of those conditions are to conclude a security agreement between the creditor and the debtor that includes a general

description or a detailed description of the secured obligation and of the security (the movable asset), in order to avoid any ambiguity regarding the type of the movable asset. It is also required for the creditor to make the payment or to commit to it, and it is also required that the debtor shall

"IN ORDER TO ENCOURGE THE CREDITORS TO ACCEPT THE SECURITY INTEREST ON THEIR RIGHTS IN A MOVABLE PROPERTY, AND IN ORDER TO ENHANCE THE TRUSTWORTHINESS OF THE NEW CONCEPT OF THE SECURITY RIGHT, THERE ARE CERTAIN REQUIRMENTS AND CONDITIONS STIPULATED BY THE JORDANIAN LEGISLATOR."

<sup>6</sup> Article (17/a) of the Law

<sup>7</sup> For more information, please see article (3/b) of the Law, in addition to the guidelines issued by the registry in the Ministry of Industry, Trade and Supply (the registry of interests in movable rights)

<sup>8</sup> Sub clauses a and b of article 5 of the Law.

<sup>9</sup> To know more about the conditions of the security right, please read in more details the Law, more specifically article (7).



be entitled to issue this right on the movable property.

#### Fifth: legislative protection of the creditor's right.

To encourage the creditors to accept movable assets as a security to their rights, and in order to enhance the trustworthiness of the new concept of the security right, the Jordanian legislator has stipulated many conditions and safeguards, amongst those:

- The right of the creditor to review and to carry out a diligence assessment on the Registry content and to issue a report with the number of notices registered on the movable property, and any other data<sup>10</sup>.
- The creditor's right to submit a request to the urgent matter judge in order to carry an inspection on the movable property that is registered as security interest; if it was revealed that the debtor has disposed of or damaged the property, then the creditor shall have the right:
  - o to notify the debtor that the debt shall become due immediately or
  - o to notify the debtor of the necessity to repair and maintain the movable property within certain period of time or

- o [to notify the debtor] of the necessity to submit an additional or alternative security<sup>11</sup>.

- The possibility for the creditor and the debtor to agree on the direct execution on the movable property when the debt is due<sup>12</sup>, and if there was no such agreement, the creditor shall have the right to submit a request to the head of the executive department at the competent court, to issue a decision to take physical possession of the property.<sup>13</sup>

- The possibility for the creditor to offer to own the property when the debt is due in order for his/her right to be enforced, since there is no other security valid against third parties.<sup>14</sup>

In conclusion, we would summarize from the above that part of the provisions of the Law, is new and unprecedented provisions, therefore, we have provided in this newsletter what constitutes our understanding and analysis of the subject matter. Further, we would highlight that what we have stated in this newsletter is not exhaustive of all the provisions of the Law, but it is rather a glimpse on some of its provisions.

<sup>10</sup> Article 27 of the Law

<sup>11</sup> Article 28 of the Law

<sup>12</sup> Article 29/a of the Law

<sup>13</sup> Article 30 of the Law

<sup>14</sup> Article 29/c of the Law





8

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 the Contributors section below.

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

If you wish not to have our upcoming newsletter or if you wish to amend the contact details, please inform us via sending an email to [info@hammourilaw.com](mailto:info@hammourilaw.com), titled “non-subscription” and/or “amending the contact details”.

Warm regards,

**HAMMOURI & PARTNERS ATTORNEYS AT-LAW**



Jordan, Amman, Shmeisani,  
Al Sharif Naser Bin Jamil Street, Cairo  
Amman Bank Building, # 96, 3<sup>rd</sup> Floor

+962 6 569 1112

[info@hammourilaw.com](mailto:info@hammourilaw.com)

Hammouri & Partners Attorneys at-Law  
©2021



## CONTRIBUTORS

9



TARIQ M. HAMMOURI , LL.M, PH.D

MANAGING PARTNER

[tariq@hammourilaw.com](mailto:tariq@hammourilaw.com)



OMAR SAWADHA

SENIOR ASSOCIATE, HEAD OF THE LITIGATION DEPARTMENT

[Omar.s@hammourilaw.com](mailto:Omar.s@hammourilaw.com)



Jordan, Amman, Shmeisani,  
Al Sharif Naser Bin Jamil Street, Cairo  
Amman Bank Building, # 96, 3<sup>rd</sup> Floor

+962 6 569 1112

[info@hammourilaw.com](mailto:info@hammourilaw.com)

Hammouri & Partners Attorneys at-Law  
©2021



KHALID MOUSA

ASSOCIATE, TEAM LEADER LITIGATION DESK

[Khalid.m@hammourilaw.com](mailto:Khalid.m@hammourilaw.com)



SABA AL QABELAT

TRAINEE LAWYER

[Saba.q@hammourilaw.com](mailto:Saba.q@hammourilaw.com)



LUNA AL ZYOUD

ASSOCIATE

[Luna.z@hammourilaw.com](mailto:Luna.z@hammourilaw.com)



Jordan, Amman, Shmeisani,  
Al Sharif Naser Bin Jamil Street, Cairo  
Amman Bank Building, # 96, 3<sup>rd</sup> Floor

+962 6 569 1112

[info@hammourilaw.com](mailto:info@hammourilaw.com)

## CONTRIBUTORS TO THE ENGLISH VERSION



YOTTA PANTOULA BULMER

OF- COUNSEL, HEAD OF INTERNATIONAL DEPARTMENT

[Yotta.b@hammourilaw.com](mailto:Yotta.b@hammourilaw.com)



RUBA MADI

ASSOCIATE

[Ruba.m@hammourilaw.com](mailto:Ruba.m@hammourilaw.com)



Jordan, Amman, Shmeisani,  
Al Sharif Naser Bin Jamil Street, Cairo  
Amman Bank Building, # 96, 3<sup>rd</sup> Floor

+962 6 569 1112

[info@hammourilaw.com](mailto:info@hammourilaw.com)

Hammouri & Partners Attorneys at-Law  
©2021

## ABOUT HAMMOURI & PARTNERS ATTORNEYS AT-LAW

Hammouri & Partners Attorneys at-Law, is a Jordanian multi-practice law firm, founded over two decades ago (established in 1994) by Professor Mohammad Hammouri. Professor Hammouri is the Chairman of the board of Hammouri & Partners Attorneys at-Law, a litigator as well as an arbitrator, a former Minister of Culture and National Heritage and a former Minister of Higher Education, who wrote a plethora of books, 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. 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 25 attorneys and a number of other professionals working in the firm's specialized departments, providing 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 and 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 International 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.



Jordan, Amman, Shmeisani,  
Al Sharif Naser Bin Jamil Street, Cairo  
Amman Bank Building, # 96, 3<sup>rd</sup> Floor

+962 6 569 1112

info@hammourilaw.com