

Newsletter Ninth Edition | June 2021 |

1

Welcome to the ninth edition of our newsletter. In this edition we will review “the provisions of an irrevocable Power of Attorney (‘POA’) document in light of the Jordanian Ownership of Immovable Property Law No. (13) for the Year 2019 (the “Law”)", which includes the following:

- The differences between an irrevocable POA and a general principle POA.
- Scope of the discontinuation of an irrevocable POA.
- The date of the discontinuation of the provisions of an irrevocable POA, the subject matter of which is the transfer of immovable property.
- Legal effects and provisions of an irrevocable POA, the subject matter of which is the transfer of immovable property, according to the time period during which it was organized.
- Questions that may arise as a result of the updated provisions of the Law.

"The issue of clarifying the provisions of an irrevocable agency to transfer the ownership of immovable property in light of the issuance of the Ownership of Immovable Property Law requires specific attention to the time period during which the POA was organized, as those provisions differ according to the said period."



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



+962 6 569 1112



info@hammourilaw.com

The Provisions of an Irrevocable POA in light of the Law No. (13) for the Year 2019

Over time, the usage of the term “irrevocable POA” has become widespread, especially in the sale of immovable property, for different reasons. One of the most important reasons is the legal protection enjoyed by the person it is registered under such POA as the agent or in those cases where the POA relates to the right of a third party, since this protection may amount to considering what is written in the POA as a reason for acquiring ownership when it is applied in practice. This takes place smoothly, away from the complications that would have been faced by the agent or by a third party had the relationship not been regulated under a duly registered irrevocable POA.

What should be noted in this regard is that the irrevocable POA is an exception to the general principle, as the general rule allows the principal to revoke his/her agent whenever he/she wishes to do so, however the irrevocable POA restricts this right because it relates to the right of a third party or because it was issued in favor of the agent.

Since the Jordanian legislator has recently issued the Law that includes provisions on what affects the continuity of work of some of the provisions of an irrevocable POA, we have decided, given the imminent application date of such texts, to present in this edition, in two sections, its nature and impact on the provisions of an irrevocable POA. The first

section is to indicate when an irrevocable POAs can be discontinued and the scope of this discontinuation, while the second section deals with the most important legal effects that may arise as a result of said discontinuation, according to the provisions of the Law.

Section One: The Scope and Date of the discontinuation of an Irrevocable POA

As mentioned earlier, the Law includes provisions that affect the governance and validity of irrevocable POAs, specifically under Article (15). This Article deals with the discontinuation of some of the provisions of an irrevocable POA and it specifies the permissible period during which an irrevocable POA can be registered. As the previously mentioned Article stipulates that it is not permissible to register irrevocable POAs that relate to the right of a third party or which were issued in favor of the agent after the lapse of three years from the date of enforcement of the provisions of the Law, however, from reading the Article, it becomes clear that this prohibition or restriction, though it extends to include POAs organized within the Kingdom of Jordan or abroad, it is limited specifically to POAs the subject matter of which is the transfer of immovable property.

Thus, it is understood from the foregoing that the suspension stated in this Article



is limited to POAs the subject matter of which is the transfer of ownership of immovable property; that is, which include any procedure that arranges for the transfer of ownership such as sale, donation, exchange and last will and testament. The irrevocable POAs that were organized in this manner (the subject matter of which is the transfer of immovable property after the lapse of three years from the entry into force of the Law, i.e. after the end of the business day of 13/9/2022¹) will be treated as if it did not relate to the right of a third party or as if it was not issued in favor of the agent, in addition to prohibiting the registration of the POA and depositing it in the immovable property registry. Two points are apparent from the Article and from what is conversely implied, which are:

- 1) That after the expiry of the said period, an irrevocable POA issued in favor of the agent or which relates to a right for a third party can be organized, but it cannot be “registered” with the immovable property registry at the Department of Lands and Survey and it will be treated as though it

was not issued for the agent or not related to a right for others.

- 2) That this discontinuation in the registration of POAs does not extend to POAs the subject matter of which is the transfer of immovable property, such as those related to movable assets for example selling or mortgaging a vehicle.

Section Two: The Legal Effects and Provisions of an Irrevocable POA

The issue of clarifying the provisions of an irrevocable agency to transfer the ownership of immovable property in light of the issuance of the Ownership of Immovable Property Law requires specific attention to the time period during which the POA was organized, as those provisions differ according to the said period. From reading the Law we concluded that there are three time periods that we will discuss in this section, which are:

- POAs organized prior to the Law.
- POAs organized during the period that spans from the commencement of the Law until the lapse of three years from its entry into force.

¹ The Law has been published in the Official Gazette under Issue No. 5573 on 16/5/2019, the first Article of which stipulates that the law shall be effective in one hundred and twenty days from the date of its publication in the Official Gazette, and therefore the date specified in Article 15 “after three years have passed from the effective date” will be the end of the business day of 13/9/2022.



- POAs organized after the lapse of the three-year period from the enforcement of the Law.

First: POAs Organized Before the Law Came Into Effect

This period refers to the POAs the subject matter of which is the transfer of immovable property that were organized prior to the enforcement of the provisions of the Law; that is, before 13/9/2019. Article (15/b) of the Law indicates that these POAs remain *“in effect with their time periods and provisions in accordance with the provisions of the law under which they were organized and registered”*. This means that, in general, no change has occurred to this type of POA and that the Law did not modify any of its provisions, except for what is included in Article (15/c) of the Law, where it is stated that ***“POAs the subject matter of which is the transfer of immovable property and its mortgage cannot include any wording that authorizes the agent to delegate another person and no text to the contrary stated in any POA organized before the entry into force of this law will be enforced.”***

Accordingly, if the POA the subject matter of which is the transfer of immovable property and its mortgage organized before the enforcement of the Law includes wording that grants the agent

the right to delegate another person, this text will not be enforceable.

Second: POAs Organized Since the Enforcement of the Law Until the Lapse of Three Years From Its Entry Into Force

These POAs refer to the POAs the subject matter of which is the transfer of immovable property, which were organized during the period from 13/9/2019 until 13/9/2022, as the enforcement of such POAs is valid. When the principal organizes an irrevocable POA that cannot be revoked, whether inside or outside the Kingdom the subject matter of which is the transfer of immovable property and mortgaging it during the three-year period referred to above, that is subject to the legal protection derived from the Articles of the Law in accordance with the following provisions:

- The POA, according to what is stipulated in Article (15/a/2) of the Law, is considered enforceable in all cases at the registration directorates and courts within one year from the date of its organization, unless there is wording in the POA's body that specifies the period to be less than one year. In the event the principal revokes the agent or one of them passes away the POA is not discontinued and it continues to produce legal effects and its objectives must be implemented,



such as the sale of the property. In the event that a person made a POA and stated in the POA that the price has been received or anything that relates to a right for a third party, it is not permissible for the principal to revoke the agent. In the event of the agent's passing, the Registration Directorate at the Land and Survey Department shall enforce the objective of the POA at the request of one of the heirs.

- Article (15/2/d) of the Law requires that, upon registration of the POA and payment of the due legal fees -that amount to (0.016) of the estimated value of the immovable property- to the competent directorate, that a mark be placed on the registry entry stating that the immovable property is restricted by an irrevocable POA.
- It is also indicated under paragraph (2/f) of the same Article to deduct the fee referred to above of "0.016" from the fees and taxes legally prescribed for the sale of the immovable property if the objective of the POA was enforced within six months from the date of its organization. If its purpose was not enforced during this period, the full fees and taxes legally prescribed for the sale of the immovable property shall be collected upon submission of the POA for the enforcement of its provisions.
- When the POA is duly registered, it is prohibited according to Article (15/2/e) of the Law, for the principal or a third party to take any action of any kind on the immovable property that had an irrevocable POA issued on it, including seizing it. In the event that the immovable property owner visits the Land and Survey Department for the purposes of selling the immovable property or carrying out any act such as mortgaging the immovable property, the competent employee shall prevent him from this procedure due to the presence of a restriction related to a right of a third party. In the event that the owner of the right by POA visits the competent department during this period, in that case the objective for which the POA was organized must be implemented, such as the transfer of ownership.
- With regard to POAs that are organized between relatives or between spouses or between heirs amongst themselves, in accordance with the text of Article (15/2/g) of the Law, that POA extends for a period of ten years, and the Law includes special provisions for this type relating to fees and mandatory registration.
- It is not permissible for these POAs to include any text that enables the agent to delegate another person, pursuant to Article (15/c) of the Law.



6 Third: POAs Organized After the Lapse of Three Years From the Enforcement of the Law

Those are the POAs the subject matter of which is the transfer of immovable property and that are organized after 13/9/2022. The most important legal implications of the provisions of these POAs can be summarized as follows:

- The agent or third party would not enjoy the full legal protection previously mentioned, as it is not permissible to register the irrevocable POA in the immovable property registry, which results in the refusal of the competent department to register the POA in the immovable property records for the immovable property that is the subject matter of the POA. This means that the owner of the immovable property “the principal of the POA” has the right to sell the immovable property or transfer the mortgage at any time he/she wishes to do so without this POA producing any effect with the Department of Lands and Surveys, or that a third party can file a lawsuit against the owner of the immovable property and place the mortgage mark on the immovable property entry, and as a result sell the immovable property via a public auction.

The POAs that were organized during this period raise several questions that the

jurisprudence and the opinion of academics may provide their answers, including to which extent can the agent or a third party review the competent court and request that the department or principal be mandated to register the action stipulated in the POA for the benefit of the agent or for a third party? Or can an agent enforce the POA at the Department of Lands and Survey as a special POA for selling on behalf of a third party and sell the immovable property? Is it possible in this case for the principal to recourse the agent for the price based on the provisions of discontinuation?

As a final note, it must be noted that this newsletter sheds light only on the most prominent provisions related to the time period stipulated in the Law. This is due to the fact that the provisions of an irrevocable POA are multiple and complex, such as the concept of simulation in an irrevocable POA; meaning the concealment of a real sale contract, for example, under the form of the POA contract, as well as the formalities of enforcing an irrevocable POA that may contain one of the reasons for invalidation when enforcing it (such as the loss of competency, implementing or imposing the mortgage or seizure before the POA is registered and its fees are paid). Not to mention that the provisions of an irrevocable POA may still be in force



7

according to the provisions of the Civil Code, and therefore the discontinuation of the operation of an irrevocable POA dated as of 13/9/2021 is limited to actions for the transfer of the ownership of immovable property and within the strictest limits mentioned exclusively in the provisions of the Law.



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



+962 6 569 1112



info@hammourilaw.com

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 our 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 do not wish to receive our upcoming newsletters or wish to amend your contact details, please inform us by sending an email to info@hammourilaw.com, titled “Unsubscribe” and/or “Amend contact details”.

Warm regards,

HAMMOURI & PARTNERS ATTORNEYS AT-LAW



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



+962 6 569 1112



info@hammourilaw.com

CONTRIBUTORS TO THIS EDITION

9



TARIQ M. HAMMOURI, LL.M, PHD
MANAGING PARTNER
tariq@hammourilaw.com



OMAR SAWADHA
SENIOR ASSOCIATE | HEAD OF LITIGATION
omar.s@hammourilaw.com



KHALID MOUSA
ASSOCIATE
Khalid.m@hammourilaw.com



ALAA ALBILBESI
ASSOCIATE
alaa.b@hammourilaw.com



SABA AI - QABELAT
TRAINEE LAWYER
saba.q@hammourilaw.com



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



+962 6 569 1112



info@hammourilaw.com

CONTRIBUTORS TO THE ENGLISH EDITION

10



YOTTA PANTOULA-BULMER
OF-COUNSEL, HEAD OF INTERNATIONAL DEPARTMENT
yotta.b@hammourilaw.com



ROZANA HROOB
TRAINEE LAWYER
Rozana.h@hammourilaw.com



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



+962 6 569 1112



info@hammourilaw.com

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, an expert 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 or 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, 3rd Floor



+962 6 569 1112



info@hammourilaw.com