

Newsletter

16th Edition, January 2022

Welcome to the sixteenth edition of our newsletter. In this Newsletter, we will look into arbitration as an alternative method to litigation. The provisions for resorting to arbitration are stipulated in the Jordanian Arbitration Law No 31 /2001 as amended in 2018 (hereinafter referred to as the “**Law**”). We see that arbitration is one of the methods for resolving and settling disputes arising out of commercial agreements (especially those of a high monetary value and that include multiple obligations) in an unconventional manner and in the quickest time possible and with the least effort possible; which is what we will be reviewing in this Newsletter.

Table of contents of this Newsletter:

1.	What is arbitration?	Page 2
2.	Why should we learn more about arbitration rules?	Page 2
3.	Pros and Cons of arbitration	Page 3
4.	Appealing an arbitral award	Page 3
5.	What are the results of submitting to the court a request for the annulment of an arbitral award?	Page 4
6.	Enforcing an arbitral award	Page 5
7.	Advice for a more effective arbitration.	Pages 5-6

“Arbitration, locally and internationally, has proven its ability to resolve intertwined disputes between individuals, companies and institutions; especially in disputes of significant financial value”.



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

+962 6 569 1112

info@hammourilaw.com

Hammouri & Partners Attorneys at-Law
©2022

This Newsletter includes the most important points related to arbitration rules, which are as follows:

1. What is arbitration?

- Arbitration according to jurisprudence is defined as: an alternative path to the judiciary that gives the right to the arbitral tribunal and/or an individual arbitrator to resolve and rule on disputes between the conflicting parties. This right is granted by the mutual will of the disputing parties.
- Arbitration according to the provisions of the Law is defined as: an agreement between the disputing parties that the dispute is referred to an arbitral tribunal, provided that the agreement is in writing and that it is claimed by one of the parties before entering into the substance of the case, in accordance with the provisions of articles (10) and (12) of the Law.
- Arbitration according to international treaties and protocols is defined as: an agreement between two parties in which they agree to subject the resolution of an existing dispute between them to the authority of an arbitrator, or arbitrators or international arbitral institutions, as the case may be.

- Therefore, arbitration is a means that the parties resort to in order to resolve their disputes instead of the traditional method that people are accustomed to that is resorting to courts and litigation.

2. Why should we learn more about arbitration rules?

Arbitration, locally and internationally, has proven its ability to resolve intertwined disputes between individuals, companies and institutions; especially in disputes of significant financial value. It has also proven that it can resolve disputes in a short period of time which is less than the period in which the case proceeds before the courts. Therefore, we have to learn more about arbitration. Perhaps the most important advantage in resorting to arbitration is its flexibility, whether by selecting the legal procedures that will govern the dispute and/or by selecting the arbitrators and/or by selecting the seat of arbitration.



3. Pros and Cons of arbitration

a) Pros of arbitration:

- All arbitration procedures are confidential and only the arbitral tribunal and the parties can gain knowledge of those. This is not found in customary litigation procedures that allow any person to attend litigation sessions and hear what is going on inside the courtroom (*except for some cases in which the law considers court sessions as confidential*).
- The parties have the right to determine the period during which the arbitral award will be issued. In the event that the parties do not agree on that, the decision must be issued within twelve months from the date of the commencement of the arbitration procedures, with the right of the arbitral tribunal to extend further for a period of twelve months, unless the parties agree on a longer period than that according to the provisions of the Law.
- The parties may agree to implement any procedure followed in any institution or arbitration center, whether in Jordan or abroad.
- Arbitration has the advantage of specialization, as it is possible that among the members of the arbitral tribunal there are arbitrators of a certain profession and

specialization. This helps and enriches the decision of the arbitral tribunal in disputes of a professional nature.

- The arbitrator may have a nationality other than the Jordanian nationality, which allows for the selection of the most experienced and qualified in a particular field without the obstacle of nationality being present.

b) Cons of arbitration:

- There are no public bodies and/or institutions in Jordan specialized in arbitration, although there are arbitration associations, but they are not sufficient to introduce and promote arbitration as a means of resolving important disputes that may be of equal importance to the judiciary at the time.
- Usually the costs of arbitration in Jordan are high.

4. Appealing an arbitral award

The provisions of Article (48) of the Law stipulate the following:

“Arbitral awards issued in accordance with the provisions of this law shall not be subject to appeal by any of the means of appeal stipulated in the Civil Procedure Law. However, it is permissible to file a



lawsuit to annul the arbitral award in accordance with the provisions set forth in articles (49), (50) and (51) of this Law.”

Accordingly, and based on the foregoing; the arbitration award is not subject to appeal in any of the means stipulated in the Jordanian Civil Procedure Law. However, one of the parties may submit a request to the Court of Cassation in order to request the annulment of the arbitral award, within the thirty days following the date of notification of the arbitral award (*please note that the cases of annulment of arbitration have been mentioned by way of exclusivity and not by way of example*), which are as follows:

- a) If there is no valid and written arbitration agreement or if this agreement is void or lapsed by the expiry of its term.
- b) If one of the parties to the arbitration agreement, at the time of its conclusion, does not have or lacks capacity in accordance with the law that governs his/her capacity.
- c) If either of the two parties to the arbitration is unable to present his/her defense because he/she was not duly notified of the appointment of an arbitrator or of the arbitration procedures,

or for any other reason beyond his/her control.

- d) If the arbitral award excludes the application of the law that the parties agreed to apply to the subject matter of the dispute.
- e) If the arbitral tribunal was formed or the arbitrators were appointed in a manner contrary to this Law or the agreement of the parties.
- f) If the arbitral award decides on issues not covered by the arbitration agreement or if it exceeds the limits of said agreement.
- g) If the arbitral tribunal did not observe the conditions that must be met in the award in a way that affected its content, or if the award was based on invalid arbitral procedures.

5. What are the results of submitting to the court a request for the annulment of an arbitral award?

We clarify to you that, based on the provision of article (51) of the Law, if a request to annul the arbitral award is submitted to the Court of Cassation, then the Court of Cassation may rule on any of the following (and based on the provisions of the relevant legislation):



- a) Approving the arbitral award; therefore, it must order its enforcement according to the rules; or:
- b) The Court of Cassation may issue a decision annulling the arbitral award.

In both cases, whether the Court decides to approve the arbitral award or to annul it, its decision is final and not subject to any appeal, bearing in mind that the annulment of the arbitral award does not entail the annulment of the arbitration agreement, unless the arbitration agreement is invalid in itself.

6. The enforcement of an arbitral award

The provisions of article (53) of the Law regulate the enforcement of an arbitral award (but it should be noted that the request for the enforcement of an arbitral award is not accepted unless the date for filing an action for the annulment of the arbitral award has lapsed (which is within a period of thirty days from the day following the notification of the arbitral award)). The request for enforcement shall be submitted to the Court of Cassation, along with the following:

- a) A copy of the arbitration agreement.
- b) The original award or a signed copy thereof.

- c) A translation of the arbitral award, certified by an accredited body, into the Arabic language if the award was not issued in it.

7. Advice for a more effective arbitration

- It is preferable that among the arbitral tribunal should be an arbitrator specialized in the issue of the existing dispute and specialized in law, in order to take into account the legal procedures and rules. We see now that there are sectors that seek to have specialized arbitration centers in order to keep pace with legal progress in international societies.
- To avoid the annulment of the arbitration clause, it must be considered, that there exist a set of legal disputes that may not be referred to arbitration. For example, the rights of employees and everything related to that right cannot be referred to arbitration as the decisions of the Jordanian Court of Cassation have settled on the invalidity of the arbitration clause with regard to labor contracts.
- In the event that one of the parties to the contract violates the arbitration clause and turns to the judiciary, the other party must be



careful with regard to the legal period specified by the Civil Procedure Law to submit a plea for the existence of the arbitration clause. The plea must be made before the subject matter of the lawsuit is

entered into, as should the plea not be submitted and the legal period has elapsed, this would preclude resorting to arbitration.



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



+962 6 569 1112



info@hammourilaw.com

If you wish to know more about Arbitration under Jordanian law or 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.

7

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, 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, 3rd Floor

+962 6 569 1112

info@hammourilaw.com

Hammouri & Partners Attorneys at-Law
©2022

CONTRIBUTORS TO THIS EDITION

8



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



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



AHMED KHALIFEH
SENIOR ASSOCIATE, HEAD OF CORPORATE
ahmed.k@hammourilaw.com



LUNA AL-ZIOUD
ASSOCIATE
luna.z@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

Hammouri & Partners Attorneys at-Law
©2022

CONTRIBUTORS TO THE ENGLISH VERSION

9



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



RAMA ALQASEM
TRAINEE LAWYER
rama.q@hammourilaw.com



ROZANA ALHROOB
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

Hammouri & Partners Attorneys at-Law
©2022

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, an 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 Law and International Trade. He is an Associate Professor at the School of Law, University of Jordan and (formerly) the Dean of the School of Law. Dr. Hammouri is also an officially appointed member of the International Center for Settlement of Investment Disputes (ICSID) Panel of Arbitrators upon designation by the Government of the Hashemite Kingdom of Jordan, for the period of 2020 to 2026.

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 have 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 to 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 to what has previously been stated, 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, Europe, the United Kingdom and the USA. Hammouri & Partners has earned regional and international acclaim by the most reputable legal directories. Chambers and Partners Global, International Financial Law Review (IFLR 1000) and the Legal 500 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