

Newsletter

20th Edition, May 2022

1 Welcome to the twentieth edition of our Newsletter, which is the first issue that is published after the season's vacation for the occasion of Eid Al Fitr and Easter. This Newsletter contains an overview of two legal topics that we find may be of interest to readers. The two topics that we chose to cover concern two different areas of law in order to suit more than one interest; those topics are presented in this Newsletter as follows:

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"..... the legal effect of an electronic register, is linked to the electronic signature in different ways. Should an electronic register not be linked to an electronic signature, then the electronic signature loses the legal protection granted to it as a regular document (and it loses the position of a signed document) and is considered equal to an unsigned document"



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In this Newsletter, we shall be shedding light on two topics that might be of interest to readers of different sectors and backgrounds. We will first take you through some key points concerning registration of enterprises at Aqaba Special Economic Zone under the supervision of Aqaba Special Economic Zone Authority (both are referred to hereinafter as “ASEZA”). Then, we shall look into the subject of electronic signature under the Jordanian law.

First: Enterprises Registration at ASEZA

The place to register a new company plays a fundamental role in determining the incentives and the advantages that the company will enjoy, in addition to the restrictions on the company and its activities. When it comes to ASEZA as a place for registering companies, the enterprises that are registered in ASEZA enjoy a number of exemptions and incentives in accordance with the ASEZA Law No. (32) for the Year 2000 and its amendments (the “Law”). Before going through the most prominent advantages that registered enterprises in ASEZA shall enjoy, we shall first go through the entities that may register as enterprises in ASEZA, whereby registration in ASEZA is limited to the following enterprises:

A. Enterprises that Can Register at ASEZA

1. Companies registered with the Jordanian Companies Control Department (“CCD”) according to the Companies Law No. (22) for the Year 1997 and its amendments (the “Companies Law”) and by the legislations in effect in the Customs Territory.¹
2. Non-Jordanian companies which are not registered at the Companies Control Department (“CCD”).
3. Companies registered at the CCD according to the Companies Law and the Regulation on Registration of Enterprises at ASEZA, which have their head office located in ASEZA and out of Jordan.
4. Individual Establishments registered at the commercial register in accordance with the Jordanian Commercial Law No. (12) for the Year 1966 in force, and in accordance with the legislations in force in the Customs Territory.
5. Professional institutions such as medical clinics, engineering offices and law firms, working at the Customs Territory in accordance with the relevant legislations, excluding companies and individual establishments;
6. Non-commercial entities working at the Customs Territory according to the decision of the board of commissioners.

¹ Customs Territory as per the Regulation means: The lands and territorial waters of Jordan excluding the Zone of ASEZA.



7. Enterprises and companies registered at any of the Jordanian free zones.
8. Joint Ventures of companies registered at ASEZA according to the provisions of the Regulation on Registration of Enterprises at ASEZA provided that said Joint Venture has been certified in front of a notary public.

B. Some of The Advantages to Register an Enterprise at ASEZA

- Non-Jordanian companies registered at ASEZA are exempted from registering at the Companies Controller Department, Ministry of Industry, Trade and Supply.
- The following fees and duties are not due when an enterprise has been registered in ASEZA:
 - Customs duties, importation duties and other taxes and duties on imports into ASEZA.
 - The general sales tax or any other tax that substitutes it, on imports into ASEZA or sales of goods and services therein.
- Upon the recommendation of the Minister of Finance (which is based on the recommendation that may be put forward by the board of commissioners), the Cabinet of Ministers can partially exempt goods originating in ASEZA from customs duties when put into local circulation in the Customs Territory.
- Registered enterprises as of the date of their registration at ASEZA shall enjoy the following exemptions from taxes and duties: ⁽²⁾
 - a- Social services tax on distributing dividends of company stocks and shares on the income of registered enterprises accrued from their activities in ASEZA or outside Jordan.
 - b- Land and buildings tax for any buildings or land necessary for it owned thereby within ASEZA.
 - c- However, the above two exemptions do not apply to the following:
 - Fees and service charges collected by other governmental bodies from government departments for services that do not fall under the functions, responsibilities and authority of ASEZA.
 - Tax on the sale and transfer of land and property collected for the Treasury.
 - Any taxes or fees to be imposed or collected as stipulated in the Law.
 - Taxes and fees imposed on vehicles.
- However, vehicles used by the registered enterprises under temporary entry status may be exempted from custom duties and general sales tax.

² Article 30/b-c of the Law.



C. The Most Notable legislations pertinent to Registering an Enterprise at ASEZA

ASEZA has in place several legislations that govern specifically ASEZA, and such legal framework comprises different legal terms and conditions governing the establishment of enterprises at ASEZA than what is stated under the Jordanian Companies law. It should be noted that the main applicable laws and regulations concerning registration of enterprises in ASEZA are as follows: (*this list is non-exhaustive*)

- 1- The ASEZA Law No. (32) for the Year 2000 and its amendments (the “**Law**”).
- 2- Regulation on Registration of Enterprises at ASEZA No. (13) for the Year 2001 and its amendments (the “**Regulation**”).
- 3- Regulation of Organizing of Accounts and financial statements of Registered Entities in ASEZA No. (23) for the Year 2001. ⁽³⁾
- 4- The Regulation on Organization and Development of the Investment Climate of ASEZA No. (11) for the Year 2001 and its amendments.
- 5- Regulation for Temporary Vehicle Entry to ASEZA for the Year 2003 its amendments.

3 This regulation stipulates that a registered entity should organize its accounts and financial statements in accordance with the manner stipulated within the regulation itself.

- 6- Instruction of Registering Enterprises in ASEZA No. (104) for the Year 2009 and its amendments.
- 7- Instruction of Organizing and Controlling the Activities of Registered Enterprises No. (15) for the Year 2001.

D. Procedures to Register an Enterprise at ASEZA

1) Filing the Application

- a. The applicant can submit the filled in Application for registration electronically (online), together with all the required documents mentioned under the “fifth section” below to the regulatory unit competent to register at ASEZA (the “**Directorate**”). ⁽⁴⁾
- b. The Head of Department at ASEZA shall examine the application with regards to the following:
 - Whether the application is complete with regards to information and required documents.

4 As per a verbal communication with ASEZA and the data published on their website the application shall be filled in and submitted online



- Whether the enterprise qualifies to be registered as a “Registered enterprise at ASEZA”.
 - c. The Directorate shall issue its decision electronically as mentioned under point (2) below.
 - d. The applicant shall pay the required fees mentioned under point (3) below.
 - e. A registration certificate shall be issued after the approval of the Directorate and the payment of the fees as set out under point (3) below.
- 2) The Approval/Rejection Process of the Application ⁽⁵⁾

The process of approval or rejection of the application is as follows:

- a. The Directorate shall have the right to verify the data stated in the application and the documents enclosed therewith by the means it deems appropriate.
- b. If the Directorate established that the statements and documents included in the application for registration are

incomplete, the applicant for the registration shall be required to complete the same within the period the Directorate determines for this purpose, subject to rejection of the application. Noting that the applicant shall not be able to amend the application again. The applicant can send the modified documents that contains additional data requested by the Directorate via email or via fax as requested by the Directorate. ⁽⁶⁾

- c. Within a period not exceeding seven (7) working days from the date of the submittal of the application, the Director, or the designee thereof, shall issue its decision on the application complete with all the required documents and statements electronically.

3) The Registration fees ^{(7) (8)}

- 1000 Jordanian Dinars for the registration at ASEZA.
- 500 Jordanian Dinars annual fees for each economic activity conducted by the enterprise.

5 Article 8 of the Regulation.

6 As per a verbal communication with ASEZA.

7 Article 16 of the Regulation.

8 Please note that every registered enterprise shall renew its registration annually, upon the payment of the renewal fees which currently equals to 500 Jordanian Dinars for each economic activity conducted by the enterprise.



4) The Registration Certificate

Following the approval of the application and the payment of its fees, ASEZA issues a registration certificate with a registration number that allows duty-free items to be imported into ASEZA.⁽⁹⁾

Noting that enterprises registration is voluntary, and it is only required for those enterprises that seek to profit from the advantages that the Law offers. Following registration, registered enterprises shall begin the licensing process within thirty (30) days from the registration date.⁽¹⁰⁾

5) Obtaining the necessary documentation to initiate economic activity in ASEZA

E. Conclusion

Based on the above, we recommend prospective interested parties to consider ASEZA as one of the potential destinations to register enterprises in, given the exemptions and incentives granted for such registration.

Second: Electronic Signature Under Jordanian Law

As technology has advanced over the years, the contracting methods and types of contracts have developed to keep pace with advancements in various business areas. One such development is the change to the signature mechanism, as the electronic signature has developed as an alternative to the traditional method of signing contracts because of what it provides in terms of flexibility and faster execution of transactions; especially those conducted between parties separated by large distances. Electronic signatures assisted in a visible manner in resolving issues with concluding contracts and performing transactions due to the quarantine that resulted from the COVID-19 pandemic whereby the electronic signature assisted in resolving issues with concluding contracts in light of the quarantine and assisted noticeably in the continuation of commercial business and performing transactions remotely. In Jordan, this alternative signing process by using an electronic signature is governed by the Jordanian Electronic Transactions Law No. 15 for the Year of 2015 (the “**Electronic Transactions Law**”).

Article (2) of the Electronic Transactions Law defines an **electronic signature** as “*any of the data that takes the form of letters or numbers or codes or*

9 Article 30 of the Law.

10 In accordance with ASEZA.



of a sign or others that are stored electronically or in any other similar manner in the electronic register¹¹ or that is added or related to it in order to determine the identity of the signee and his/her sole use of it and to distinguish him/her from others". Signing the contract electronically makes it that much easier for parties who do not reside in the same areas or jurisdiction (and even for those who do) to sign an agreement. Therefore, we have found it relevant to inform you in this section of the legal framework of electronic signatures under the Jordanian law.

A. Validity of Electronic Signatures

Electronic signatures are recognized in Jordan by virtue of the Electronic Transactions Law, but do not have widespread use by comparison to the traditional signature in writing ('wet ink signature'). A possible explanation for that is that most people are unaware of the possibility of signing electronically or that it is recognized in Jordan or they may have concerns that it is not fully valid or protected. However, the use of electronic signatures is valid in Jordan pursuant the Electronic Transactions Law and in specific article (3).

The scope of article (3) of the Electronic Transactions Law extends to all transactions that are done electronically. For example, non-disclosure agreements, labor contracts, collaboration agreements, services agreements and construction contracts. However, the Electronic Transactions Law specifies a number of cases in which electronic signature cannot be used. Those exceptions are as follows:

- 1) **Creating and amending wills**
- 2) **Creating and amending the terms of an asset reserved for charitable use waqf.**
- 3) **Transactions that deal with movable and immovable assets that are required by law to be registered (for example a lease contract (for immovable assets) and financial instruments (for movable assets, such as stocks or securities);**
- 4) **Power of Attorneys documents and documents concerning civil status matters;**
- 5) **Notices related to canceling or terminating contracts for utility (water, electricity), health insurance and life insurance services;**

Note: All text from referenced Jordanian laws and legislations is an unofficial translation from Arabic in to English and the firm does not hold any legal liability or responsibility for any inaccuracies or mistranslations.

¹¹ As defined in article (2) of the Electronic Transactions Law, an **electronic register** means "the information message that contains a registry or contract or any other documentation created, stored, used, copied, sent, notified or received via electronic means"



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- 6) Statements of claims, arguments, public notary notices and court judgements;
- 7) Commercial instruments except for those mentioned in specific instructions issued by the competent authorities based on the Commercial Instruments Law No. 18 for the Year of 2017 or in any other law.

It should be noted that the scope of electronic signatures also extends to government authorities and official bodies as article (4) of the Electronic Transactions Law stipulates that they can perform their transactions electronically and that upon performing any transaction electronically, they must ascertain the terms and procedures related to electronic signatures and their terms by way of instructions issued for this purpose.

In addition, article (17/E) of the Electronic Transactions Law states that any official document can be issued and certified through electronic means on the condition that its electronic register is tied to an electronic signature; otherwise the document will not be accepted. The legal effects of documents issued in such a manner will be stated later on in this section when discussing article (16) of the Electronic Transactions Law.

¹² As defined in article 2 of the Jordanian Electronic Transactions Law No. 15 for the Year 2015, a special key means "the symbol used by an individual to create an

B. The Protection of Electronic Signatures

As to the rather important matter of the protection given to an electronic signature, we inform you that this is covered by articles (15), (16) and (17) (in paragraphs a, b and c) of the Electronic Transactions Law, where full protection is granted.

1. The Conditions for an Electronic Signature

Article (15) of the Electronic Transactions Law states stipulates the conditions for providing an electronic signature with legal protection. It states that "*The electronic signature is considered protected should it achieve the following conditions:*

- a) *Should it belong solely to the signee to distinguish it from that of others*
- b) *Should it determine the identity of the signee*
- c) *Should the "special key"¹² be under the control of the signee during signing*
- d) *Should it be connected to the electronic register* in a manner that does not allow changes to the registry after signing without changing the signature"*

electronic signature in an electronic transaction or message or electronic register"



Based on the above, this means that unless all of the four criteria listed in article (15) of the Electronic Transactions Law are achieved by the electronic signature, there will be no legal protection for it.

9 2. The Accreditation of Electronic Signatures

Supplementary to the above, article (16) of the Electronic Transactions Law continues on this matter and adds information on the accreditation of an electronic signature. It states that *“The electronic signature is considered certified should all of the conditions stipulated in article 15 of this law be achieved and was connected to an electronic certification certificate issued in accordance with the provisions of this law and the regulations and instructions issued in accordance with it during the creation of the electronic signature from any of the following authorities:*

- a) *An electronic certification authority certified in the Kingdom*
- b) *An accredited electronic certification authority*

- c) *The Central Bank of Jordan where it concerns electronic banking or financial transactions”*

Based on the above, it is understood that, under the Electronic Transactions Law, the four criteria for the protection of an electronic signature are also criteria for its accreditation and that only three types of authorities are authorized in Jordan to accredit an electronic signature.

3. The Legal Effect of Electronic Signatures Linked to Electronic Registers

We inform you that paragraphs (a, b, c and d) of article (17) of the Electronic Transactions Law discuss the legal effect of an electronic register linked to an electronic signature. They state four different legal effects for the electronic register based on whether or not it is linked to an electronic signature:

- 1) If an electronic register is linked to a protected electronic signature¹³, then it has the same legal effect as that of a normal document and its parties can use it in a claim.

13 An electronic signature is considered protected as per article 15 that states that, *“The electronic signature is considered protected should the following conditions be met: A- Should it belong solely to the signee to distinguish it from that of others. B- Should it determine the identity of*

the signee. C- Should the “special key” be under the control of the signee during signing. D- Should it be connected to the electronic register in a manner that does not allow changes to the registry after signing without changing the signature”



- 2) If an electronic register is linked to an accredited electronic signature¹⁴, then it has the same legal effect as that of a normal document and its parties and others can use it in a claim.
- 3) If an electronic register is linked to an electronic signature that is not stated in the previous two points (meaning that the electronic signature is not a protected or an accredited electronic signature), then it has the same legal effect as that of a normal document. The Electronic Transactions Law also states that, in this case, the burden of proof lies with the party who is using the electronic register for a claim.
- 4) If an electronic register is not linked to an electronic signature, then it has as proof the same legal effect as that of an unsigned document.

Based on the above, on the matter of the legal effect of an electronic register, it is linked to the electronic signature and differs accordingly. **Should an electronic register not be linked to an electronic signature then the electronic signature loses the legal protection granted to it as a regular document (and it loses the position of a signed**

document) and is considered equal to an unsigned document.

C. The Methods for Signing Electronically

It should be noted that concerning the practical usage of electronic signature in Jordan, there are two methods to sign electronically; only one of which is mostly utilized in Jordan. The first method, the one that is mostly utilized in Jordan, is the form of an electronic signature that comes as a wet ink signature where a party signs a document by hand that they received electronically from the other party (after they had signed it by hand as well) and then sends it back to the other party via e-mail or fax or telex.

The second method, that is not widely utilized in Jordan, is the use of an electronic signature where the parties do not sign the document by hand, but sign it by way of an e-signature that is digitally written (for example using Acrobat Sign) or signed by an electronic document signing service (for example DocuSign).

14 An electronic signature is considered accredited as per article 16 that states that, “The electronic signature is considered accredited should all of the conditions stipulated in article 15 of this law be achieved and was connected to an electronic accreditation certificate issued in accordance with the provisions of this law and the regulations and instructions issued in accordance with it during the creation of the electronic signature from any of the following authorities: A-

An electronic certification authority certified in the Kingdom. B- An accredited electronic certification authority. C- The Central Bank of Jordan where it concerns electronic banking or financial transactions”



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Should the parties decide to use an electronic signature in their contracts, then it is important that they include suitable wording in order to remove any doubts as to the mechanism of electronic signatures and in order to avoid any conflict in signature dates.

D. Conclusion

In conclusion, the use of electronic signatures came about as an alternative to the traditional method of signing contracts (having both parties present when signing) due to the difficulties that might be encountered when signing the document. It is recognized in Jordan (through the Jordanian Electronic Transactions Law) as a viable alternative to be used when signing documents in Jordan, subject to the fulfillment of certain conditions and subject to the exceptions stipulated in the Electronic Transactions Law. However, at present, despite it being recognized in Jordan and regulated by the Electronic Transactions Law, it does not have as broad of a usage as the traditional method of signing a document. As such, we hope that this section is useful in spreading awareness and clearing up any misunderstanding or concerns on the use of electronic signatures on general documents.

On a separate note, please note that the information stated in this section merely serves to raise awareness on the topic and provide a brief overview of the concept. It does not address certain concerns relevant to electronic signatures that can arise such as:

- 1) Does merely typing in a document in the signature section your name count as an electronic signature?
- 2) The validity of a scanned signature
- 3) The validity of a biometric signature
- 4) The protection of documents that are to be signed electronically via the utilization of encrypted documents.

Third: General Considerations

Please be noted that the information provided within this issue is for the information purposes only, and it is not to be used for any action to be conducted. Should you wish to conduct an activity relevant to the above-mentioned topics, please feel free to get in touch with one of our lawyers, using the contact details in the Contributors section below, to be provided with a legal opinion/advice in that regard.



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

1. If you wish not to have our upcoming Newsletter or if you wish to amend the contact details, please inform us by sending an email to info@hammourilaw.com, titled “non-subscription” and/or “amending the contact details”.

Warm regards,

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New chapter contribution by Hammouri & Partners

On a separate note, we are delighted to be a contributing firm to the Corporate Mergers & Acquisitions Guide with Chambers Global Practice Guides for the year 2022.

Our commentary on the Mergers & Acquisitions legal framework in Jordan provides expert insights on the industry's regulatory field, recent legal developments, stakebuilding, structuring, duties of directors, related litigation and more.

Read our chapter for more expert commentary on the legal issues around Corporate Mergers & Acquisitions in Jordan

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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 (1940-2022). Professor Hammouri was a renowned Jordanian attorney and 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, a distinguished academic and attorney and a former Minister of Industry, Trade and Supply. Dr. Tariq Hammouri is both an experienced attorney and an 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.



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