

Newsletter
[24th Edition, September 2022]

1

Welcome to the Twenty Fourth edition of our Newsletter. In this edition we shall look into the legal framework that governs the guarantees for debt repayment in Jordan in order to illustrate the intricacies of the assortment of securities that serve as a guarantee. Whereby, debt repayment is an important aspect of society that serves to secure the foundation of civil and commercial matters. As a result of the significance of its role in society, it is vital that such a concept be regulated as efficiently as possible in order to secure the rights of creditors and debtors alike.

Therefore; in this edition, we will discuss the framework of guarantees for debt repayment within the Hashemite Kingdom of Jordan through the most important provisions of the Jordanian Law Of Guaranteeing Rights On Movable Assets No. (20) for the Year of 2018 (hereinafter referred to as the “**Law**”).

Topic	Page Numbers
• Introduction	Page 2
• Defining The Right Of Guarantee	Page 3
• The Characteristics Of The Right Of Guarantee	Page 3
• The Establishment Of The Guarantee Contract & Its Effects	Page 5
• Conclusion	Page 8

“...Its benefit for the creditor can be seen in liability being placed on the party who had the asset in his/her possession should the asset be destroyed. Its benefit for the debtor can be seen in the fact that the debtor can keep the asset in his/her possession and he/she can benefit from the guaranteed asset, especially if the asset that is the subject of the guarantee is an asset that generates profit...”



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

Introduction

There are numerous Jordanian legislations that regulate the provisions of guarantees for debt repayment that have reflected their impact on civil and commercial transactions. There is a multiplicity of options that a prudent creditor may resort to as a means to enable him/her to repay the debt if the obligation is owed by a debtor and such debtor is procrastinating payment. These guarantees are divided into in-kind and personal securities. The right of guarantee belongs to the assortment of consensual in-kind securities along with the securities mortgage and the possession mortgage. The provisions of the right of guarantee have been newly regulated under the Law.

The general concept of the notion of securities is to protect the rights of creditors through a private securities that guarantees the fulfillment of the obligations of the debtor; in light of the economic and legal developments, the idea of a general guarantee for the debtor has become impractical. The concept of a general guarantee means that the debtor's financial liability and the rights and the "movable or immovable" property that it includes, guarantee the fulfillment of the obligation. However, this idea is based on the

notion that all of the debtor's assets will guarantee the payment of all his/her debts. Moreover, there is no differentiating between one creditor over another and the debtor has the authority to exercise the right of ownership and dispose of his/her asset without any restriction or condition. Here the conclusion drawn is that the creditor no longer finds sufficient security to guarantee the fulfillment of the debt, by being satisfied solely with a general guarantee, and that has negatively impacted commercial and civil transactions.

"In-kind security" is defined as a guarantee that is tied to a certain asset, whether it is owned by the original debtor or the Guarantor in kind. Therefore, the creditor has priority over the other creditors in rank and that gives him/her the right to pursue the mortgaged asset regardless of any change in ownership. These securities, in their general sense, are linked to the economy and the generation of credit.

"The security mortgage" is the most applied and widely used form of in-kind securities because of its advantages that are reflected on the parties to the transactions. The provisions of the security mortgage are considered as the base legislation for all other in-kind securities. In the event of a deficiency in the provisions



of the rest of the securities, the provisions of the security mortgage shall be deemed the applicable legislative reference.

For the purposes of identifying the right of security, it is necessary to review the provisions of the Law, which came as a result of an endeavor to add new type to the assortment of in-kind securities.

First: Defining the Right Of Guarantee

“Right of guarantee” means an in-kind accessory security right that is given to a movable asset (*other than those assets of a special nature that require registration*). This is a guarantee for the Guaranteed party who has a personal obligation between him/her and the Guarantor so that it gives him/her the right to pursue the guarantee under any ownership whatsoever and the Guaranteed party has the priority over the other creditors.

- The scope of application of this right in accordance with the terms and definitions contained in Article 2 of the Law.

Right of Guarantee: An in-kind accessory security right that falls on the movable asset as security to guarantee the fulfillment of an obligation.

Guarantee: The movable asset that is placed as a security to fulfill an obligation.

Guarantor: The person who establishes the right of guarantee.

Guaranteed Party: The beneficiary of the right of guarantee.

Insured Party: The debtor of the secured obligation that is not a guarantor.

Second: The Characteristics Of The Right Of Guarantee

The right of guarantee is one of the newly developed forms of in-kind security under Jordanian laws, which is the result of a personal obligation between the creditor and the debtor.

It is considered an in-kind accessory security right, which has legal force and is useful for the right holder, as follows:

- The creditor, under this right, has the right to take precedence over all other creditors if the debt becomes due from the debtor. Other creditors cannot dispute it and he/she have a priority and an advanced rank in having their debt repaid through the guarantee.



- The creditor has the right to pursue the guaranteed asset. Moreover, the guaranteed right remains attached to the movable asset regardless of any change in ownership. This means that the transfer of ownership of the asset from the debtor to another person does not mean the expiration of the guaranteed right. Furthermore, in this rule it is found that the new legislation seeks to find the largest possible guarantee for the creditor through the right of guarantee and by giving priority to his/her interest over the interest of the owner of the asset, even if he/she is in good faith.
- The right of guarantee is given to all movable assets of any kind, with the exception of assets of a special nature that require registration with the competent departments, such as motor vehicles (cars). The legislation has excluded these properties from being subject to the right of guarantee due to their nature as one of their requirements is documentation and registration; therefore, already achieving the purpose of publicity for others.
- This right, like other in-kind securities, is governed by the principle of the subordination of an in-kind right to the secured obligation, which was the reason for the creditor to allocate his/her guarantee. The right of guarantee shall be existent if the original

obligation is existent and should the original obligation be terminated, then the right of guarantee shall be terminated. Hence, if the obligation is terminated for any reason, then the right of guarantee is terminated by law.

- Possession of the guaranteed asset is not transferred to the creditor and this is one of the most prominent features of the right of guarantee, whereby the guaranteed asset is kept in the hands of the Guarantor or of the Insured Party to not prevent the achievement of an economic benefit from the asset. This is in contrast to the possession mortgage, which requires the transfer of possession of the asset to the creditor by “handover”. Thus, the Law came into force to regulate the provisions of the right of guarantee in a more comprehensive and wide manner for both the creditor and the debtor. Its benefit for the creditor can be seen in liability being placed on the party who had the asset in his/her possession should the asset be destroyed. Its benefit for the debtor can be seen in the fact that debtor can keep the asset in his/her possession and he/she can benefit from the guaranteed asset, especially if the asset that is the subject of the guarantee is an asset that generates profit, for example should the right of guarantee be on the production lines in a factory. The placing of the right of guarantee



on a certain asset does not mean that the right of ownership for the debtor or the Guarantor in kind is impaired so that his/her powers of benefiting or disposing of the asset subject of the guarantee are not impaired. In return, he/she is obligated to keep in his possession enough movable assets to exercise the right of guarantee.

The authenticity and enforceability of the right of guarantee against third parties is achieved through publicity, which is the documentation of the right of guarantee in the special register at the Ministry of Industry, Trade and Supply. The matter here is not only related to documenting the creditor's right to the money that forms the subject of the guarantee, but it is possible to know whether or not the asset was allocated in previous stages to guarantee other debts. This enables the creditor to ascertain the solvency of the debtor and whether his/her assets are subject to other priority rights¹.

Third: The Establishment Of The Guarantee Contract & Its Effects

1. Procedurally

The guarantee contract falls under the so-called procedural contracts, in which the legislator stipulates the validity and completeness of the contract that it be concluded or registered in a specific form and under certain conditions for the purposes of establishing it correctly in order to have it produce its legal effects on the contracted asset. The Jordanian legislator has set forth the necessity to have the guarantee contract be in writing and it is deemed in writing should it be done on paper or electronically. Its parties are not bound by a certain form when establishing it, but it could be placed as one of the conditions of the original obligation. For example, the right of guarantee could be referenced in a loan contract between a bank and a customer. Therefore, the procedure of drafting from a legal perspective a guarantee contract is one of the pillars of the contract and the result of a potential non-observance of the procedure of the contract being in writing means the invalidity of the contract as if it had never existed. Once the fundamental elements of the contract are completed, it is considered valid and it produces its legal effects on the concerned parties. In this regard, we state that the right of guarantee is subjugated by the

¹ Article 27 of The Law Of Guaranteeing Rights On Movable Assets



obligation that the contract was concluded for. Should the original obligation be terminated, then the right of guarantee is terminated. As such, the obligation must be specified or capable of being specified. A right of guarantee can also arise on a future obligation.

2. Customizing The Guarantee.

The guarantee in place as stated in a guarantee contract must be specified in a clear and detailed manner, in such a manner that leaves no room for doubt in order to preserve the rights of the Guaranteed Party and those of the Guarantor.

3. Enforcement Of The Guarantee Contract Against Third Parties.

A guarantee contract produces effects on third parties either through declaration or through the possession of the asset being used as a security in the hands of the Guaranteed Party. Declaration is done by documenting the right of guarantee in our case under study, which should correspond to a movable asset in the special registry of the Ministry of Industry, Trade and Supply.

Possession of an asset that forms the subject of the guarantee can dispense with registration subject to certain restrictions. Those

restrictions are that it is carried out with the intention of publicizing the exit of the asset from the hands of its owner and not with the intention of benefiting from the asset being used as a security (as is the case in a possessory lien) and that this possession be associated with a fixed date. Here, it would have been better to not have authorized the possession of an asset that is being used as a security in the hands of the Guaranteed Party, in order not to move away from a contemporary single security rights system (the right of guarantee) into a traditional mortgage possession. The savvy behind this right was to keep the asset being used as a security in the hands of its owner in order to enable him/her to achieve economic benefit.

4. Effects Of The Right Of Guarantee.

The Guarantor is obligated to maintain the safety of the asset being used as a security in order to preserve the rights of the Guaranteed Party; the asset is held in his/her trust, and he/she has to exercise the usual standards of care in preserving it. In the event of loss, whether total or partial, the general provisions of in-kind securities are applied. If the asset perishes for a reason that is not related to the Guarantor, then there is no liability on him/her. However, if the loss was due to the



failure of the Guarantor to exercise the usual care according to the normal course of action, then the Guarantor is deemed as being liable; that is in order to protect the right of the creditor.

The feasibility of the right of guarantee for the Guaranteed Party is reflected in the fact that actions by the owner of the asset on the asset being used as a security are contingent upon the authorization by the Guaranteed Party. Therefore, the action is not carried out unless the Guaranteed Party agrees to it and if the said party has not agreed to the action that would result in its invalidity, as a general rule. However, the action is considered valid if the Guarantor has kept enough assets to exercise the right of guarantee for the purposes of fulfilling the obligation. In addition, the Guaranteed Party, at any time he/she selects so, has the right to an urgent examination procedure to establish the reality of the condition of the asset being used as a security, through the judge of urgent matters, to ascertain the extent to which there is enough left to exercise the right of guarantee².

The Guaranteed Party benefits from the principle of the inadmissibility to divide the

right of guarantee; meaning that if the assets subject to the contract are more than one, he/she has the right to enforcement on all these assets in order to settle the debt.

5. Funds That Are Outside The Scope Of Its Application.

- Movable assets owned by banks, with the exception of equipment that is necessary for their work to finance their purchase.
- Usable items intended for personal or household purposes, except to finance the purchase of said items.
- Public assets, endowment funds, funds of foreign embassies and bodies that enjoy immunity.
- Privileges and licenses granted by the state.
- The entitlements of the insured or the beneficiary under an securities contract, unless those entitlements are the proceeds of the guarantee.

² Article 28 of the Law On Guaranteeing Rights On Movable Assets



- Alimony, wages, salaries and labor compensation.

6. Special Conditions.

8

The Jordanian legislator, under the Law, departed from the general rules of in-kind securities when it enabled the parties to include special conditions that are valid and generate legal effects:

A/ The condition that the ownership of the asset being used as a security transfers to the Guaranteed Party if the obligation is due and the Guarantor does not fulfill it. If this condition is explicitly stated in the guarantee contract, then it is valid. Once it becomes due because of non-fulfilment, the ownership of the asset being used as a security is for the Guaranteed Party. On the one hand, this condition may create a situation for the exploitation of the Guarantor's need, especially if the economic positions of the parties are unequal. On the other hand, the value of the guaranteed asset often exceeds the value of the original obligation, and thus the Guaranteed Party may enrich him/herself at the expense of the Guarantor. What results out of this case is the application of the provisions of enrichment without cause, given that the contract is the law of the contracting parties

and as long as the condition is not prohibited by law.

B/ The condition of a paved road or non-judicial execution on the asset being used as a security; that is when the Guaranteed Party, in the event the obligation is due as a legal liability of the Guarantor because of non-fulfillment, then the Guaranteed Party has the right to sell the asset being used as a security without being bound when selling it by the legal methods stipulated in the Enforcement Law No. (25) for the Year of 2007 and the instructions issued thereunder. It is worth pointing out that the sale of an asset guaranteed by this mechanism may cause a loss for the Guarantor, especially if the sold price is less than the actual value of the asset.

Fourth: Conclusion

After extrapolating the general and specific provisions of the “right of guarantee”, we find that this right, provided it is organized following a good study that fulfills the demands of its parties, is one of the most prominent forms of in-kind securities in application. However, from our perspective, the Law is characterized by the generality of some loosely constructed text that allows for a wide scope interpretation. Since this



legislation is supposed to find a new method to be added to the group of in-kind securities that will fulfill the purpose according to the interests of the parties and that this Law did not provide sufficient legal protection for the Guaranteed Party. Even if it stopped the Guarantor from disposing of the asset on his/her will (the creditor); it should have been a priority to find adequate penal protection

that achieves deterrence and which embodies a sufficient guarantee to prevent the Guarantor from disposing of the asset being used as a security or from making any change in it that would affect the right of guarantee.



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 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.

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,

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 THE EDITION IN ARABIC

11



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



OMAR SAWDHA,
SENIOR ASSOCIATE LAWYER, HEAD OF
THE LITIGATION DEPARTMENT
omar.s@hammourilaw.com



MOHAMMAD OMAR,
ASSOCIATE LAWYER
mohammad.o@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 EDITION IN ENGLISH

17



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



ROZANA ALHROOB
TRAINEE LAWYER
rozana.h@hammourilaw.com



MOHAMMED HINDAWI
ASSOCIATE LAWYER
m.hindawi@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 the late 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.



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

+962 6 569 1112

info@hammourilaw.com

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, Securities 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