

Newsletter
|44th Edition, May 2024|

Welcome to the forty-fourth edition of our newsletters. In this edition, we will address the topic of “eviction award¹” or “key-money” and discuss whether it is deemed from a legal perspective as a compensation or a security deposit or pure trade, as follows:

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¹ ‘Eviction award’ (بدل الخلو) is a legal term under Jordanian law that does not refer to actual eviction in the sense of removing a tenant from a property that is being leased. It is an alternative term for key-money.



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SECTION A: A GLIMPSE INTO JORDANIAN LEGISLATION

2 In this edition, we will address the topic of “eviction award” or “key-money” and whether it is a compensation, a security deposit or pure trade.

Introduction

Various customs and practices are prevalent in different societal circles. Among these circles is the commercial sector and the merchant class in particular; where it is common, for example, to compensate for the property that is used for commercial objectives and purposes. This compensation is an optional custom, meaning it is not obligatory, and the principle of "what is known as a custom is like what is expressly stipulated" does not apply to it, as established by the jurisprudence of the Jordanian Court of Cassation.

The term "compensation" has been used for an eviction award or leasing for several considerations or reasons. It is considered as a

compensation for the good will of the commercial premises on the one hand, and on the other hand, it compensates for all that has been expended by the lessor to improve the leased premises. It is also regarded, from another perspective, as part of the rental value, as some legislations may impose a limit on the owner when agreeing on the rental value so that the rental value does not exceed that legal limit. In this case, the owner (lessor) may resort to demanding an eviction award or “key-money” as part of the rent and not as a compensation in the proper legal sense.

First: Definition of Eviction Award

The Jordanian legislator did not define the Eviction Award in the Landlord and Tenant Law No. (11) of 1994 and its amendments. However; the legislator made a passing reference to this term in Article (70/1) of the Civil Law No. (43)



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of 1976, which states that:²"The original rights in rem are ownership, disposal, usufruct, use, residential/housing, ownership of buildings and vegetation located on the property of others, abstract rights, endowment, monopoly, endowment renting, and eviction award."

The Jordanian legislator also included "key-money" or what is known as an "eviction award" in the Income Tax Law, in which Article (3/A/6) of the Income Tax Law No. (34) of 2014 and its amendments states that: "*The income that is subject to tax is any income generated in or from the Kingdom by any person, regardless of the place of payment, including the following income: (...) 6. Income [generated] from leasing immovable properties located in the Kingdom and income from eviction awards and "key-money".*"

It is worth noting that the Jordanian Court of Cassation played a major role in defining the eviction award or "key-money", and in the elaboration of its forms, legal nature, and impact. The jurisprudence of the Court of Cassation

settled on defining the eviction award as: "Compensation paid by the lessee to the lessor for the privilege of the property location before concluding the lease contract."

Second: Forms of the Eviction Award and its Legal Basis

A) Forms of the eviction award

There are various cases and forms in which the eviction award may be agreed upon, including:

1. An agreement between the owner (lessor) and the lessee on the eviction award at the beginning of the lease contract.
2. An agreement between the owner (lessor) and the lessee on the eviction award during the term of the lease contract or upon its termination in exchange for vacating the premises.
3. An agreement between the old lessee and the new lessee on the eviction award during the term of the lease contract or upon its

² **Note:** All text from referenced Jordanian laws and legislations is an unofficial translation from Arabic to

English and the firm does not hold any legal liability or responsibility for any inaccuracies or inconsistencies.



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termination, taking into consideration the consent of the lessor in the case of subleasing or subletting.

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4. An agreement between the owner (lessor), the old lessee and the new lessee during the term of the lease contract or upon its termination.

B) Source of obligation for the eviction award

As previously mentioned, the eviction or “key-money” award is a contractual compensation, or a “sale of the benefit received from the property” according to the honorable Court of Cassation decision. It can only be made based on an agreement between the owner and the lessee, the owner and the old lessee, or between the old lessee and the new lessee, according to the forms of the eviction award previously mentioned.

This agreement is independent of the lease contract, even if it is included in the lease contract and its inclusion in it would not affect its validity. Whether it is formulated independently or it is included in the lease contract text is at the personal discretion of both parties. This was decided by the Court of Appeal in one of its decisions, which stated the following: “*In our*

response to the third reason for appeal, in which the appellant denounces an error of the Court of First Instance in applying the provisions of Articles 78, 88, and 90 of the Civil Law since the basis of the contract is a lease contract, our court finds that Articles 77, 88, and 90 of the Civil Law are included in the chapter on sources of personal rights and included a general definition of the object of the contract and how it is concluded. Therefore; there is no reproach on the Court of First Instance for applying the provisions of these articles to the contract signed between the appellant and the appellee regarding the eviction award, which is different from the lease contract. As a result, the reason for appeal does not apply to the appealed decision and must be rejected.”

Having the eviction award be considered an agreement means that the agreement cannot be terminated by unilateral will in accordance with the provisions of Article (241) of the Civil Law. It also means that in case of a violation, a party has the right to demand performance of the obligation, after receiving a notice, or to demand termination of the contract pursuant to the provisions of Article (246) of the same law. Additionally, it means that requesting compensation for loss of profit or future damages



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is prohibited under the provisions of Article (363) of the Civil Law as well as it is prohibited to seek compensation for moral damages.

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Third: Special Conditions in the Eviction Award Agreement

As long as the eviction award is an agreement or, more precisely, a sale of the benefit received from the property, this means that the creditor has the right to dispose of the premises or of the property being rented. The ‘right to dispose’ extends to the right to benefit exclusively without extending to the right of ownership. The right to dispose may be temporary, as in the case of the owner temporarily relinquishing the usufruct right for the benefit of the lessee, or it may be permanent, as in the case of an old and new lessee.

The right to dispose may be related to part of the property or to the property in its entirety. It is not valid to conclude the eviction award agreement after the lessee has vacated, as the old lessee at that time does not have a connection with the property.

Conclusion

This edition dealt with the topic of eviction award or “key-money”. It explained its nature, its forms, and its legal basis. This issue also explained the special conditions in the eviction agreement.

In a related context, it is important, in commercial circles, for the individual to be aware of the importance of the eviction award, as the eviction award plays an important role in encouraging merchants to develop a property continuously, and consecutively increase its market value. In addition, it puts the store and its elements at the forefront, encourages the investor to enter into commercial transactions with shop owners, and provides them with future guarantees against the creditor and debtor in the eviction award.

SECTION B: Hammouri & Partners’ Iraq Office (Baghdad)

In this edition, we will address the topics of 1) the Legal Aid Law and 2) the Iraqi General Assembly for Tax’s instructions for tax exemptions from interest and penalties for taxes that have not been paid.



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1) The Legal Aid Law:

In Issue No. 4770 of the Iraqi Gazette, on 22/04/2024, the President of the Republic decided on 22/04/2024 to issue the Legal Aid Law No. (7) of 2024.

In its first chapter, the said law addresses several objectives from different areas that aim at serving the public interest, including of the following:

- 1 - Providing legal assistance to those who are subject to its provisions through the provision of legal advice or representation before the courts and administrative authorities.
- 2 – Raising legal awareness by informing citizens of their constitutional and legal rights.
- 3 - Supporting the rights of the groups who are subject to the provisions of the said law by enabling them to resort to the judiciary to obtain their rights and defend their interests.

4 - Preparing a guide to legal and judicial assistance, that includes informing citizens of their constitutional and legal rights and raising legal awareness.

5 - Coordination with national, regional and international bodies and non-governmental organizations in order to improve the quality of legal assistance and to provide it in a more efficient manner.

In other chapters, it discussed the establishment of a center named “the Legal Aid Center” that will be established in the High Commission for Human Rights. It will have two offices in Baghdad and it will possibly also open other offices in provincial centers. The office includes a post hierarchy starting from the secretarial office with a primary degree in law and a committee consisting of a group of individuals, including the President of the Commission, who is the Chairman of the Committee, advisors, and a representative of the Bar Association and the Supreme Judicial Council as well as representatives of governmental and non-governmental departments.

The Legal Aid Law also promotes awareness of constitutional and legal rights; such as providing



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legal consultations, amicable settlement between parties in a dispute, drafting petitions, statements and requests, and representation before the courts.

7 The law also includes several exceptions on those who can benefit from the provisions of this law, such as those convicted in accordance with the Anti-Terrorism Law and the Narcotics Law, those convicted of one of the crimes of financial and administrative corruption, commercial lawsuits, and lawsuits related to taxes. There are also lawsuits that the Cabinet of Ministers will decide to exclude from the law's provisions, provided that the relevant decision is published in the Official Gazette.

The law includes as well how to contract with lawyers in addition to exempting the beneficiary from any financial obligations and the lawyer not receiving any sum in exchange for his service from the beneficiary of the provisions of this law.

Among the necessary reasons for which this law was enacted are to spread the values of justice and law, to help people who do not have the financial ability to bear the expenses of litigation and legal advice and to complete the

transactions of people whose transactions require legal assistance.

2) The instructions by the Iraqi General Assembly for Tax on tax exemptions from interest and penalties for taxes that have not been paid

General Assembly for Tax

The Iraqi General Assembly for Tax issued instructions for tax exemptions from interest and penalties on the site where it publishes its announcements. The content of the formal decision was as follows:

We would like to inform you that there is a tax exemption from paying interest and penalties for individuals (companies or natural persons) who have not paid previous taxes.

This formal letter is considered effective from the date of 1/05/2024 and until the date of 31/5/2024.

During this period, companies can benefit from the exemption that is issued until the end of the current month for interest and penalties that they are have not paid.



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The General Assembly for Tax also obligated the relevant and aforementioned entities to submit financial statements for the year 2023 and specified that the deadline for this submission is the date of 31/5/2024.

SECTION C: START UPS & SMES

In this edition, we will address the topic of trademark registration in Jordan.

Trademark registration in Jordan

Trademark ('TM') registration is vitally important for both Startups and SMEs as well as for large companies. That is due to the fact that there are many advantages in registering a trademark, for example TM registration grants protection from unauthorized use or misuse of trademarks (irrespective of such use or misuse being intentional or unintentional)], it grants protection from emulators and/or imitators and it allows owners to sue and claim damages for any infringement of their registered trademark.

In this month's edition of Hammouri & Partners newsletter, we will discuss the registration of trademarks in Jordan by highlighting the main aspects provided under the Jordanian

Trademarks law for registering a trademark in the country.

Accordingly, in Article [2] of the Jordanian Trademarks Law No. [33] of [1952], as amended in [2008], trademark is defined as "*any visually perceptible sign used or to be used by any person for distinguishing his goods or services from those of others*". More to the point, Article [7] of the said law, sets out the elements for a trademark to be registrable in Jordan, whereby a trademark should have a distinctive feature as to words, letters, numbers, figures, colors or other signs or any combination thereof and be visually perceptible. Moreover, the word "distinctive" as mentioned in Article [7] means "*being in a distinct way that secures distinguishing the goods of the proprietor of the trademark from those of other persons*". Additionally, it is worth noting that to be able to register a trademark in Jordan, the trademark must be new and not registered or used by anyone before and that it does not violate applicable laws.

Moving on, when it comes to who is eligible to register a trademark in Jordan, the relevant law did not specify certain characteristics or requirements that must be met by any party that wishes to register a trademark, however the law



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was comprehensive to include any party whether natural or legal, and whether Jordanian or a non-Jordanian.

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Further, it takes around [8] to [12] months from first applying for registration of a trademark, whereby within the aforesaid period, the trademark will be published in the official Gazette, where any party that opposes the registration of the trademark, has a [3] month period from the publication date to object such registration. Furthermore, trademark registration according to the Jordanian law is valid for [10] years commencing from the date of filing the application for registration or the priority date and it can be renewed for similar terms each time, yet the request for renewal shall be done within [12] months before the expiry of the [10] years' period. In addition, the law provides a grace period of [12] months for late renewal of trademarks, by which if the registration of the

trademark was not renewed within the said period, the trademark will automatically be cancelled.

Equally important, it is vital to note that Jordan is a “first to file jurisdiction”, meaning who registers a trademark first, will have the right to claim ownership and benefit from the protection and the rights that the law bestows over them. And although the Jordanian Trademarks Law does not make registration of trademark compulsory for use, yet an unregistered trademark will not be granted any kind of protection under the law, which makes it vulnerable to unauthorized use, imitation or even a total loss of the trademark if another party registered it first.



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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.

- 10 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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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. 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 more than 30 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. It should be noted that Hammouri & Partners are in the midst of establishing a new office for the firm in the city of Baghdad in the Republic of Iraq and a branch in the city of Erbil in Kurdistan Region to provide legal services through it in a direct manner. The Iraq office is operational since September 2023.

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 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 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.



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