



Newsletter

| 49th Edition, October 2024 |

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Welcome to the 49th edition of our newsletter. In this edition, we will present to our readers the following:

Section A will cover the topic of “Legal Alternatives for Cheques in Light of the Amended Penal Code Law No. (10) of 2022.”

As part of our commitment to keeping you informed about updates, interpretations, or amendments to Jordanian legislation that affect your core business operations, and with the aim of protecting your companies’ financial and legal standing, we are pleased to present the first part of a simplified study on proposed legal alternatives to bank checks. This study comes in response to the amended Penal Code Law, set to take effect on May 25, 2025. Future parts will be shared in our upcoming monthly newsletters.

Section B, which is dedicated to matters pertinent to the jurisdiction of Iraq, will cover two topics; Topic 1 looks into the “Office Circular / Worker Registration” in order to keep our readers, especially those interested in Iraq labor regulations and business compliance, well informed.

Topic 2 looks into “The Foreign Account Tax Compliance Act (FATCA)” to raise awareness about the Act’s implications for foreign financial institutions and companies that carry out international business operations.

Section C will address “The Importance of Contracts for SMEs”, to keep you informed about how well-drafted contracts can protect business interests, ensure clarity in commercial relationships, and mitigate risks.

"... a bright future in which we strengthen security and stability, and advance on the path of development toward more excellence, achievements, and innovation;

..."

King Abdullah II bin Al Hussein

30 January 2022

Message to Jordanians from King Abdullah II bin Al Hussein on the his 60th birthday

The official website of His Majesty King Abdullah II

Topic	Page Numbers
Section A: Legal Alternatives for Cheques in Light of the Amended Penal Code Law No. (10) of 2022."	
Introduction	3
First: What is the nature of the legislative amendment to Article (421) of the Jordanian Penal	3-4
Second: The effects resulting from the amendment of Article (421) of the Jordanian Penal Code	4-5
Third: Legal alternatives proposed as substitutes for bank cheques, their mechanisms, and evaluations	5-8
Conclusion	8
Section B: Hammouri & Partners' Iraq Office	
Topic 1: Office Circular / Worker Registration	9
Topic 2: Foreign Account Tax Compliance Act	9-10
Section C: Start Ups & SMEs	
The Importance of Contracts for SME's	10-12

SECTION A: A GLIMPSE INTO JORDANIAN LEGISLATION

" Legal Alternatives for Cheques in Light of the Amended Penal Code Law No. (10) of 2022."

Introduction

In light of the legislative changes that remove criminal penalties for issuing cheques without sufficient funds, posing a potential challenge for businesses seeking to recover their financial rights, we present this simplified study to explore swift and practical legal alternatives to cheques.

The criminal protection of cheques, as commercial instruments, has long provided a key source of security in settling and guaranteeing financial obligations. The removal of this protection raises substantial concerns for businesses.

This study outlines alternative solutions and highlights key practical aspects associated with their adoption. It includes an assessment of the effectiveness of these alternatives, their advantages, speed and ease of implementation, and the likelihood of acceptance by companies

and clients alike.

In this issue, we will also examine the legislative amendment to Article 421 of the Jordanian Penal Code, set to take effect on May 25, 2025. Specifically, we will discuss guarantees and reserve guarantees as the first legal alternatives to cheques.

First: What is the nature of the legislative amendment to Article (421) of the Jordanian Penal Code?

Before the amendment, Article (421) of the Penal Code stipulated that: "1. A person who, with bad intent, commits one of the following acts shall be punished with imprisonment for a period of one year and a fine of not less than one hundred dinars and not more than two hundred dinars:

- A. If he issues a cheque without having a sufficient and collectible counterpart for payment.
- B. If he withdraws all or part of the counterpart for payment after issuing the cheque, such that the remaining amount does not cover its value.
- C. If he issues an order to the drawee to refrain from paying the cheque in circumstances not permitted by law.
- D. If he endorses a cheque to another person or gives him a cheque payable to bearer while knowing that there is no counterpart covering its

full value or knowing that it is not collectible.

E. If a cheque is issued or signed in a manner that prevents its collection."

On May 25, 2022, the amended Penal Code was issued, which stipulated in Article (34) that:

"Article (421) of the original law is amended by adding paragraph (8) with the following text:

8. The provisions of this article shall not apply to cheques issued three years after the entry into force of this amended law."

This means that the imprisonment penalty for cheques will be abolished as of May 25, 2025; which will consequently weaken the cheque as the strongest commercial paper in terms of credit, speed, and ease of collection.

At the same time, the Execution Law was amended as of May 25, 2022, which abolished the imprisonment penalty for debts arising from contractual obligations regardless of the debt amount. Previously, imprisonment could occur if the debt amount exceeded 5,000 dinars, but after the amendment of the Execution Law, there will be no consideration of the debt amount for imprisoning the debtor, except in cases explicitly stated in the law and not related to our study.

Second: The effects resulting from the amendment of Article (421) of the Jordanian Penal Code:

Under the amended Penal Code, Article (34), the enforcement of Article (421), which criminalizes the issuance of cheques without sufficient funds, will be suspended for any cheque issued after May 25, 2025. This means that cheques issued after this date will lose their criminal protection, and the beneficiary of the cheque will not be able to file a criminal complaint regarding the issuance of a cheque without sufficient funds.

As for cheques issued before May 25, 2025, for which a criminal complaint has been filed regarding the issuance of a cheque without sufficient funds, referring to the general provisions of the Penal Code that state, "the law that is more favorable to the accused," courts may apply this rule to pending cases to ensure legal stability and prevent duplication in the application of the law. In this case, the cheque will lose its criminal protection, and the complainant (the beneficiary) will not be able to pursue a criminal complaint regarding the issuance of a cheque without sufficient funds at any stage of the complaint, unless it has been executed and completed.



Third: Legal alternatives proposed as substitutes for bank cheques, their mechanisms, and evaluations.

The removal of criminal protection for cheques may weaken their role as the most important commercial instrument in the Jordanian market, as a tool for settling commercial transactions. However, this does not imply a loss of the civil protections that the Jordanian legislator has provided for cheques. These cheques remain recognized as a self-sufficient commercial instrument, which can be directly enforced as an executive document under Article 6(c) of the Jordanian Execution Law. Additionally, there are many guarantees that a creditor can request from the debtor to ensure payment of the cheque's value, which we will outline as follows:

1) Guarantee:

A guarantee is considered one of the most important personal securities. It aims to protect the interests of both the creditor and the debtor by ensuring the element of credit for the creditor through the existence of a financially capable third party to whom the creditor can turn if the debtor fails to repay the debt. It also serves the debtor's interest by facilitating their commercial operations, allowing them to obtain what they need from transactions. Guarantees are among the most prominent

securities because they achieve two goals: security and credit. The Jordanian Civil Law defines a guarantee in Article (950) as "the inclusion of one obligation with another in the request for the performance of a commitment." The Jordanian Court of Cassation defines a guarantee as "a contract whereby a person commits to fulfill an obligation to the creditor if the debtor fails to meet that obligation."

The guarantor is defined as the person who commits to the creditor to fulfill their right against the debtor if the debtor fails to do so on their own. One of the features of a guarantee is that it is established as soon as the guarantor issues a promise; that is, the individual agreement and free expression of consent by the guarantor to accept it, unless the guaranteed party (the creditor) rejects it. Article (951) of the Civil Code states, "The promise of the guarantor is sufficient for the establishment and validity of the guarantee unless the guaranteed party rejects it."

It can be said that the guarantee is one of the most important tools that can ensure the creditor (the beneficiary of the cheque) their right to collect the value of the cheque in case it is returned without being cashed due to the absence of and/or insufficient balance. This is because it allows the



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creditor to demand payment from either the original debtor or the guarantor, or to demand from both simultaneously. The creditor benefiting from the cheque derives the right to seize the guarantor's assets from the explicit provisions of the Civil Code, which places the guarantor on the same level as the debtor. If the debtor fails to fulfill the debt, the creditor has the right to seize and enforce against the guarantor. Article (962) of the Jordanian Civil Code states,

"If the guarantor undertakes to pay the debt upon the non-delivery of the guaranteed obligation, he is required to perform it if the guaranteed obligation is not delivered."

Thus, the guarantor is responsible for ensuring that the debtor (the drawer of the cheque) fulfills their obligation. If the debtor is unable or fails to pay their obligation to the creditor, represented by the payment of the cheque amount, the creditor (the beneficiary of the cheque) has the right to approach the relevant execution department and request the enforcement of their executive document, which is represented by the cheque, against the guarantor. The execution department is also required to take enforcement actions against the guarantor if it is established that a valid guarantee contract exists and the guarantor does not dispute its validity. These actions include seizing the guarantor's movable and immovable assets as a preliminary step for

enforcement or placing a travel ban if the conditions are met.

It is worth noting that an ordinary guarantee, in terms of procedures, is merely a document drawn up between the parties that outlines the guarantor's obligations to the creditor. However, in the case of a judicial demand, the debtor may deny their signature on the guarantee document. This is not possible with notarized guarantees, as they are organized before an official employee, making it impossible to deny the guarantor's signature on the document. It should be noted that the fees charged for completing a notarized guarantee are 0.004 of the value of the debt represented by the guarantee document.

As for the proposed type of guarantee, we prefer bank guarantees over judicial and ordinary guarantees. This preference is based on the assurance of securing the amount in your favor without any obstacles, and due to the speed, flexibility, and ease of execution associated with the process of liquidating the guarantee.

2) **Contingent Guarantee:**

The Jordanian legislator has granted the cheque, as a commercial instrument, several guarantees in the Commercial Law that ensure the holder receives its value upon maturity. One of these guarantees is known as the contingent guarantor in the cheque, allowing the creditor benefiting from the

cheque to request a contingent guarantor from the debtor who issued the cheque, provided that this guarantor is financially capable of covering the cheque's value. This serves as an effective guarantee for the creditor.

We will explore the concept of the guarantee reserve, its conditions for validity, the process for reaching an agreement on it, and its implications for the benefit of the creditor, who is the beneficiary of the cheque:

a) The Concept of the Reserve Guarantee and the Reserve Guarantor

The reserve guarantee is defined as a guarantee for the fixed debt in the instrument (i.e. the value of the cheque). The reserve guarantor, as one of the signatories on the commercial paper represented by the cheque, is obligated by their signature to cover its value if the holder or beneficiary returns the cheque due to non-payment by the primary party –the drawer of the cheque. The reserve guarantor, like the guarantor, guarantees the payment of the cheque's value through their signature as a reserve guarantor. Article (161/1) of the Commercial Law states: "The payment of the entire amount of the instrument or part of it may be guaranteed by a reserve guarantor." Therefore, the reserve guarantee may apply to the entire amount of the cheque or part of it, and the reserve guarantor

may be a financially capable person or may be a bank providing this service on behalf of its clients.

b) Conditions for the Validity of the Reserve Guarantee

The law stipulates that for the reserve guarantee to be valid, it must be written by the reserve guarantor on the instrument itself (i.e. on the cheque or a connected paper, in a manner that indicates it as such). This could be done by mentioning the phrase "Accepted as a Reserve Guarantor" or any other phrase that conveys this meaning, followed by the signature of the reserve guarantor, in accordance with the provisions of Articles (162/1+2) of the Jordanian Commercial Law.

c) Mechanism for Agreeing on the Reserve Guarantee

The reserve guarantee may be placed on the face of the cheque or on its back. It is preferable for the reserve guarantee and the signature to appear on the face of the cheque, because the back of the instrument is typically reserved for endorsements, in accordance with established commercial practices.

d) Effects of the Reserve Guarantee

Article (163/1) of the Commercial Law defines

the effects of the reserve guarantee by stating: "The guarantor is obligated to fulfill what the guaranteed person is obligated to fulfill." Therefore, the reserve guarantor is considered a solidary guarantor with the guaranteed person, (the issuer of the cheque) and is obligated to pay the value of the cheque to the creditor (the holder of the cheque). In other words, the reserve guarantor assumes the same legal responsibilities as the issuer and must fulfill the obligations that the issuer of the cheque is bound to meet.

e) Advantages of the Reserve Guarantee

The reserve guarantee differs from the suretyship in that the guarantor's obligation remains valid even if the obligation they guaranteed (i.e. the obligation of the issuer of the cheque) is void for any reason, unless it is due to a formal defect related to the cheque's data as a commercial paper. This is considered a deviation from the general rules of suretyship stated in the Civil Law, which stipulates that if the original debtor's obligation is void, the guarantor's obligation is also void, as the guarantor's obligation is a subsidiary one. This protects the creditor, the holder of the cheque, from any substantive defenses that the reserve guarantor may raise when the creditor seeks to claim the value of the cheque.

Finally, it can be said that the concept of the reserve guarantor is a real and effective guarantee

for the creditor benefiting from the cheque in light of the cancellation of the criminal protection provided for the cheque. If the creditor is unable to cash the cheque due to insufficient funds, they can pursue the reserve guarantor directly. This can be done either by filing a commercial lawsuit against the reserve guarantor and taking urgent measures, such as placing a precautionary attachment on the reserve guarantor's assets, or by submitting the cheque for execution at the execution department, treating it as an executive instrument. This will lead to enforcement measures, including placing a seizure notice on the reserve guarantor's movable and immovable assets in preparation for their sale and execution in case of non-payment of the cheque's value.

Conclusion:

This newsletter addressed the nature of the legislative amendment to Article (421) of the Jordanian Penal Code No. (16) of (1960) and the consequences of this amendment.

We reviewed the general provisions related to both guarantees and reserve guarantees as alternatives to cheques, and we will discuss other proposed alternatives to bank cheques in upcoming monthly newsletters.

**SECTION B: Hammouri & Partners' Iraq
(Topic 1) Office Circular / Worker
Registration**

Based on the Retirement and Social Security Law and the Labor Law, the General Federation of Trade Unions of Iraq submitted an official letter numbered (1102) dated (20/08/2024) to the Companies Registrar, requesting the inclusion of workers in the private, public, and cooperative sectors who work in the organized sector in companies, factories, and commercial establishments.

Article 15 of the Retirement and Social Security Law No. (18) of 2023 states that:

1. Social security contributions are calculated based on a specified percentage of wages and allowances, and the wage used to determine the contribution rate shall not be less than the minimum wage set for the insured profession or the general minimum wage, whichever is higher, provided that the wage used to determine the contribution rate does not exceed five times the minimum wage.

2. The contributions made by the employer, as well as those deducted from the wages of insured workers joining the employer's service for the first time, are calculated based on the full monthly wage. This includes both the base salary and any applicable allowances received by the insured.

3. A. Contributions for an insured individual receiving a monthly wage are required starting from the first month their service begins, and also

for the portion of the month in which their service ends.

3. B. Contributions for an insured worker paid on a non-monthly basis are calculated based on the actual wages received during a full calendar month, ensuring that these wages meet or exceed the minimum wage established for unskilled workers.

And referring to what is stated in Labor Law No. 37 of 2015 in Article 57 – First/ A worker's wage may not be deducted except in cases permitted by law, including:

A – Legal alimony

B – Amounts owed by the worker to the Workers' Retirement and Social Security Department

C – Union membership fees in accordance with the provisions of the Trade Union Organization Law.

This serves as an encouragement for the private and public sectors to enroll their workers in social security. This circular acts as a form of awareness for companies and their employees, emphasizing their right to be registered in order to secure the rights and benefits granted to them under this law.

Topic 2: Foreign Account Tax Compliance Act

The implementation of this law in Iraq came as a result of international efforts to enhance financial



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transparency and combat tax evasion. This law was issued in 2010 to address tax evasion by citizens who hold financial accounts in banks and assets abroad. Consequently, Iraq signed an agreement to apply this law within its territory.

Despite the challenges that Iraqi financial institutions may face in complying with the requirements of this law, it represents an important step toward enhancing financial cooperation between Iraq and the United States and ensuring integrity in the international financial system.

This agreement requires foreign financial institutions to report information related to financial accounts owned by citizens or residents in the United States to the Internal Revenue Service or the Collection Agency.

Iraq signed this agreement with the United States on June 27, 2014. Under this agreement, Iraqi and American financial institutions are obligated to provide the relevant authorities with the necessary information regarding the bank accounts and financial assets owned by residents, companies, or individuals from both sides.

Additionally, if Iraqi financial institutions do not comply with the requirements of this agreement, a 30% withholding tax will be deducted from any financial transfers made through the United States.

The Central Bank of Iraq has also sent a circular to all banks, insurance companies, and money transfer companies to register in order to ensure that the bank is included on the list of compliant banks with the law at the U.S. Internal Revenue Service.

SECTION C: START UPS & SMEs: **The Importance of Contracts for SME's**

As a key foundation of obligations under Jordanian Civil Law, contracts play a vital role in the success and sustainability of small and medium-sized enterprises (SMEs). In this edition of Hammouri & Partners Law Firm Newsletter, we will explore the importance of contracts specifically for SMEs, highlighting the following key aspects:

Clarity and Expectations:

Contracts specify the terms of the agreement between the contracting parties, as they clearly provide what is expected from each party. This clarity helps prevent future misunderstandings and miscommunications between the parties. Furthermore, by defining the scope of work, deadlines, and deliverables under the contract, this will ensure that each party will know their rights and obligations under the contract, avoiding any potential ambiguities.

Legal Protection:

Contracts offer SMEs essential legal protection when a counterparty breaches any of the terms and conditions. As legally binding documents, valid formal contracts are enforceable in court and serve as written evidence of the agreement. This can be crucial in resolving disputes that may arise between the parties involved.

Risk Management:

Contracts can highlight potential risks and outline how they will be managed, reducing the likelihood of disputes. Accordingly, contracts can include clauses that limit liability and outline responsibilities in case of unforeseen circumstances, protecting the business from significant losses.

Financial Security:

Clearly defined financial obligations in a contract help SMEs budget and manage their finances more effectively. For this reason, it is crucial to specify payment terms, including amounts, deadlines, and penalties for late payments. This not only promotes transparency but also ensures a steady cash flow for SMEs.

Legal Compliance:

Contracts can ensure that all parties are not only aware of, but also comply with relevant regulations. Many industries have specific regulations that must be followed, and a well-structured contract helps to enforce these standards. For SMEs, carefully drafted agreements can also serve as a safeguard against legal disputes, reducing the risk of fines or other penalties.

Confidentiality and Intellectual Property Protection:

The operations of most SMEs rely heavily on sensitive business information. By executing Non-Disclosure Agreements (NDAs), businesses can protect this information from being disclosed to competitors or the public. Furthermore, including specific clauses in contracts to safeguard intellectual property (IP) rights (covering ideas, designs and inventions) can serve as a powerful legal tool. These IP clauses help ensure that your intellectual property is shielded from unauthorized use by other parties.

Dispute Resolution:

Having clear dispute resolution mechanisms can help maintain relationships and avoid the costs associated with arbitration or court battles. For



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example, by adding a well-structured escalation clause, you can provide an opportunity to resolve disputes in a less hostile manner than a formal dispute resolution method. Furthermore, it is important to carefully choose the most cost-effective and quicker dispute resolution method [whether it was litigation, mediation or arbitration], depending on the contract value and subject matter of the relevant transaction.

To conclude, contracts are essential for SMEs as they provide clarity and legal protection, while helping to manage risks and finances. By using well-structured contracts, SMEs can establish strong foundations for their operations, foster trust in business relationships, and safeguard their interests, ultimately contributing to their growth and sustainability.



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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 in reading this Newsletter, please feel free to share.

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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