



Newsletter

| 50th Edition, November 2024 |

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Welcome to the 50th edition of our newsletter. In this edition, we will present to our readers the following:

Section A of this edition will continue to 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 related to legislation impacting your core business operations, we present the second part of this simplified study on mortgages and their types as a proposed legal alternative to bank cheques. This follows the introduction of the amended Penal Code, set to come into effect as of May 25, 2025.

Section B of this edition, dedicated to matters pertinent to the jurisdiction of Iraq, dives into the topic of "Foreign Investment under the Amended Iraqi Investment Law No. 13 of 2006" with the aim of keeping you informed about critical legislative changes impacting the investment landscape in Iraq.

Section C of this edition, dedicated to matters pertinent to SMEs, explores the topic of commercial agency agreements in order to keep you informed about the essential legal frameworks and compliance requirements that impact agency operations within Jordan. This seeks to provide you with insights into how these agreements can secure rights and mitigate risks for SMEs entering or expanding within the market.

"... 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

13 November 2022

Message to Jordanians from King Abdullah II bin Al Hussein at the opening of the second regular session for the 19th Parliament

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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 response to the growing need for quick, practical legal alternatives to bank cheques – especially following the recent decriminalization of issuing cheques without sufficient funds, which removes the criminal protections that companies have relied on to secure their payments – we offer this simplified study on alternative methods. This change could pose a major challenge for businesses in collecting dues, as criminal protection has traditionally been a key assurance for meeting financial obligations. This study covers the main practical aspects involved in choosing them, our assessment of their effectiveness, and the benefits they offer in terms of speed and simplicity, along with their acceptance by companies and individual clients.

In this edition, we will outline the legislative amendment to Article 421 of the Jordanian Penal Code, which will take effect on May 25, 2025. Accordingly, in this issue of our monthly newsletter, we will explore various types of mortgages as a legal alternative to cheques.

A mortgage is one of the most prominent and widely used guarantees provided by lawmakers to creditors for debt collection. In light of the removal of criminal protection for cheques, it has become essential for parties dealing with cheques to turn to effective tools that ensure payment of the cheque’s value upon its due date, particularly in commercial transactions that involve numerous cheques over extended periods. We will thus proceed to discuss the concept of movable asset mortgages, its conditions, followed by its provisions, and the implications for the benefit of creditors relying on cheques.

First: Mortgage of Movable Assets

1) Concept of Movable Asset Mortgage

The mortgage holds a significant place among legally regulated guarantees due to the benefits it offers to both parties involved. It allows the mortgaging debtor to borrow against their assets while maintaining liquidity to manage their business operations. At the same time, it enables the secured creditor to claim their rights through this guarantee if payment cannot be fulfilled by mutual agreement.

A commercial mortgage, which involves movable assets and debts, is among the most important factors supporting and financing commercial activities. Traditionally, it has been characterized as a possessory mortgage, meaning the mortgaged asset must be transferred from the mortgagor to the mortgagee, or the debt documentation must be transferred if the mortgage is on a debt. This requirement is outlined in the provisions of the Jordanian Commercial Code.

Some key practical applications of possessory mortgages include:

- Placing the mortgaged asset in the hands of the creditor, who will take possession of it if the debtor fails to meet their obligation.

- Placing the mortgaged asset with a third party (a neutral trustee) under a custodian agreement specifically prepared for this purpose. This third party ensures that both parties fulfill their obligations and subsequently settles the obligations as outlined in the agreement.

It is worth noting that the Jordanian legislator did not limit debt security in commercial transactions to possessory mortgages alone. An additional and important type was introduced, known as the non-possessory mortgage. This type shares the same subject matter as the possessory mortgage but is distinguished by its unique framework and different provisions. These provisions were established by the Jordanian legislator in the Movable Assets Security Rights Law No. 20 of 2018.

Article 2 of the law defines the security right as "*the ancillary real right that applies to movable assets as collateral for the fulfillment of an obligation*" while it defines the guarantee as "*the movable asset placed as collateral for the fulfillment of an obligation.*" Additionally, Article 6 of the Movable Assets Security Rights Law states, "*Notwithstanding any provisions in other legislation, movable assets and debts may be mortgaged non-possessory, with the mortgage being registered in accordance with the provisions of this law to complete, enforce, and validate the mortgage against third parties.*"

Article 3(b) of the same law permits any movable assets, whether tangible or intangible, debts, or rights—whether existing or future—to serve as the subject of the security right. Tangible movable assets are numerous and varied, making them impossible to enumerate exhaustively. For example, goods involved in commercial transactions can serve as the basis for the security right, along with other types of movable assets.

2) Conditions for Establishing a Security Right According to the Movable Assets Security Rights Law

According to the provisions of the Movable Assets Security Rights Law, the following conditions must be met for the establishment and effectiveness of the security right between the parties involved:

- The security agreement must be executed in writing as a regular or official document, as an electronic record, or as a condition in the contract that created the secured obligation.

- The guarantor must be authorized to establish the security right over the collateral.

- The security agreement must include a general or specific description of the secured obligation, which, in this case, is the payment of the cheque's value arising from the principal debt between the parties, including its amount.

- The agreement must include a general or specific description of the collateral, meaning the movable assets subject to the security right. If the collateral consists of consumable items designated for personal or household use, the description should be specific.

The security right, under the law, becomes enforceable against third parties when it is registered in the electronic registry set up by the Ministry of Industry Trade and Supply, especially if it involves shares or stocks. Registration is done by filling out the electronic form, prepared for this purpose in the registry, and must include the following basic information:

- The guarantor's details, meaning the mortgaging debtor, which should include their name as per official documents, their national ID number if they are a Jordanian natural person, their passport number and expiration date, and the unified personal number designated for non-Jordanians, if applicable.
- For legal entities, the registration number and national ID number of the establishment should be provided if it is a Jordanian entity, and the registration number if it is a non-Jordanian entity.
- The name and details of the secured party (the creditor) along with their address.
- A description of the collateral, which refers to the movable assets subject to the security right.
- The duration of the validity of the security right registration.

Registering the mortgage gives the secured creditor the right to track the mortgaged asset regardless of its holder and grants priority over other creditors when collecting debt from the proceeds of the asset's sale upon execution. This applies in the event that the debtor fails to fulfill their obligation to pay the value of the cheque.

3) Effects of Non-Possessory Mortgages

The secured creditor has the right to execute against the mortgaged asset upon the maturity of the obligation if the debtor fails to fulfill their debt represented by the cheque's value, particularly in the event of a bounced cheque. Article 29 of the Movable Assets Security Rights Law states, "*The guarantor and the secured party may agree to grant the secured party the right, after the maturity of the secured obligation, to execute against the collateral to collect their right, and this agreement shall not be recognized unless it is included in a specific agreement.*" This is referred to as voluntary execution.

Furthermore, Article 30 of the same law stipulates that if voluntary execution on the collateral is not possible - either due to the absence of the agreement specified in Article 29 or for any other reason - the secured party can request an order from the head of execution at the competent court. This order would allow the party to take possession of the collateral, proceed with its sale, and recover their dues from the proceeds. The Movable Assets Security Rights Law provides the mortgagee with two methods for executing against the mortgaged asset: one being judicial execution in accordance with the procedures outlined in the law.

Finally, it is important to highlight one of the most common applications of movable asset mortgages, which is the mortgage of shares or stocks owned in companies registered with the Companies Control Department at the Ministry of Industry and Trade. This process involves drafting a mortgage deed at the notary public within the Ministry of Industry and Trade, with the presence of both the creditor and debtor.

It is worth noting that the required fees are 0.003 of the value of the shares, in addition to other miscellaneous fees needed to complete the transaction according to the regulations. It is also confirmed that the release of the mortgage is done in the same manner, which involves executing a release deed and presenting it to the notary public to initiate the procedures for lifting the mortgage.

Second: Mortgage of Immovable Assets (Real Estate)

The mortgage is considered an ancillary real right established to protect the creditor's right. It grants the creditor direct control over the debtor's mortgaged asset, allowing them to trace and execute against it to recover the debt represented by the cheque's value if the issuer fails to fulfill it. A mortgage does not exist independently; rather, it is contingent upon a prior debt to ensure its payment. In Jordanian civil law, a mortgage is viewed as a guarantee for the repayment of the debt.

A mortgage is a contract through which a property is designated as collateral for the repayment of a debt in favor of the creditor, without transferring ownership of the property from the mortgagor (the debtor) to the mortgagee (the creditor). The mortgagee has the right to recover their debt from the mortgaged property upon the maturity of the obligation (due date) if the debtor fails to settle the outstanding debt.

Article 1322 of the Civil Code states: "*The mortgage contract grants the creditor a real right over a property designated for the repayment of their debt, allowing them to prioritize their claim over ordinary creditors and subsequent creditors in recovering their right from the sale proceeds of that property, regardless of who possesses it.*"

Some of the most notable characteristics of mortgages in Jordanian civil law are:

- 1) ***The mortgage provides a real security guarantee:***
This means that the creditor can revert to the mortgaged property to sell it or recover their right from it if the debtor defaults on the repayment of the debt.
- 2) ***No transfer of ownership:*** The mortgaged property remains the ownership of the debtor and does not transfer to the creditor. However, the creditor holds a right over the mortgaged property that ensures they can recover their right from the value of the property if the debt is not repaid.
- 3) ***Enforceability:*** In the event of non-payment, the creditor may request execution against the mortgaged property and sell it at public auction to recover their right, retaining the priority to collect the debt from the sale proceeds before other creditors.
- 4) ***Documentation:*** The mortgage must be documented and registered with the Jordanian Department of Lands and Survey to be enforceable against third parties, ensuring the rights of the parties involved and achieving legal security. Article 1323 of the Civil Code states that "*the mortgage contract shall not be valid unless registered, and the mortgagor is responsible for the costs of the contract unless otherwise agreed.*"
- 5) ***Right of preference:*** The mortgage grants the creditor a preferential right over other creditors to recover their debt from the value of the mortgaged property, ensuring they have priority over other creditors in the event of the property's sale.



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The mortgage in Jordanian civil law is a legal mechanism that allows the creditor to secure repayment of their debt by designating a property owned by the debtor as collateral, while retaining the debtor's ownership rights unless there is a default on payment. This type of security is recommended when the value of the check exceeds one hundred thousand Jordanian dinars.

The mortgage deed, as an official executive document, can only be challenged on grounds of forgery. Its execution takes place within the appropriate execution departments if the debtor fails to fulfill their obligation to pay the check—such as when the check is returned due to insufficient or nonexistent funds. The execution process begins with the electronic registration of the execution lawsuit, followed by manual registration. After that, a notification or summons is sent to the debtor.

When drafting the mortgage deed, the debtor must specify their address, which should be clear and accurate, including a phone number to expedite the procedures. The notification period is 15 days, during which the debtor is required to pay the full amount represented by the mortgage deed, which is equivalent to the value of the check. If the amount is not paid within this period, the procedures for taking possession of the mortgaged property will begin, with an appraiser determining its value.

Subsequently, the property is put up for public auction by publishing an electronic announcement on the Ministry of Justice's website and advertising it in local newspapers. The priority in distributing the amounts collected from the sale is given to the creditor who holds the mortgage.

In a related context, the mortgagee creditor may bid on the property. If the value of the mortgaged property is less than the value of the mortgage deed, they can request an exemption from paying the earnest money and the price. The debtor has the right to reclaim the property within one year from the date of transfer of ownership to the last bidder by depositing the amount paid by the bidder into the court's treasury.

In our opinion, resorting to this option may be beneficial only in very limited circumstances, given that the costs associated with completing the mortgage are high, and the procedures for enforcing the mortgage on immovable property take a significant amount of time.

Conclusion

This section of the newsletter addressed the nature of the legislative amendment to Article 421 of the Jordanian Penal Code No. 16 of 1960 and the implications of this amendment. We reviewed the general provisions related to both guarantees and precautionary measures as alternatives to cheques.

Section B: Foreign Investment under the Amended Iraqi Investment Law No. 13 of 2006

Introduction

Iraq is striving to attract foreign investments by offering tax and customs benefits, as well as fostering an economically favorable environment for foreign investment. Foreign investment is essential for developed countries as it boosts and develops their economies, enhances productivity, reduces unemployment, and keeps pace with technological advancement.

In this section of the newsletter, we will outline the general concept of investment, then explore the different types of foreign investment along with their advantages and disadvantages. Finally, we will review the activities prohibited for foreign investors and the obligations imposed on both Iraqi and foreign investors.

First: Definition of Investment

Investment is defined as the allocation of capital into any economic activity or project that benefits the national economy.

An investor can be Iraqi—holding Iraqi nationality—or foreign and may be a natural person or a legal entity. It should be noted that engaging in any investment activity requires obtaining prior authorization from the relevant authorities.

Second: Types of Foreign Investment

Investment is divided into two types:

- 1) **Direct Investment:** This involves transferring funds from the investing country to the host country through projects that support the host country's economy. The significance of this type of investment lies in the fact that it does not burden the host country with debt, as it is not a loan with interest.
- 2) **Indirect Investment:** This type of investment involves loans extended by foreign public or private entities or through subscriptions to bonds issued by the host country or its projects. This can occur either through fixed-interest bonds or shares, provided that foreigners are not granted a share percentage that would give them management control over the project.

Third: Exceptions in the Investment Law

The Iraqi legislator, in the amended Investment Law No. 13 of 2006, included exceptions regarding the fields of investment governed by this law. Article 29 states: "All areas of investment are subject to the provisions of this law, except for the following:

- 1) *Investment in oil and gas extraction.*
- 2) *Investment in the banking and insurance sectors."*

Fourth: Benefits and Guarantees for Foreign Investors as per Articles (10, 11, 12, 15) of the Iraqi Investment Law

- 1) Iraqi and foreign investors may own land designated for residential projects that belong to the state and public sector. They may also purchase land from the private or mixed sectors to establish housing projects, provided it aligns with the primary design use.
- 2) The law permits investors to transfer the capital they brought into Iraq, along with its returns.
- 3) Under the law, foreign investors have the right to trade shares and bonds listed in the Iraqi stock market.
- 4) Iraqi and foreign investors can invest in or lease real estate from state, private, or mixed sectors to set up investment projects for up to 50 years. This term can be renewed with approval from the licensing authority and relevant bodies, depending on the project type and its economic viability. Industrial projects established in industrial cities may be owned for a fee per the regulations.

5) Investors may transfer ownership of the entire investment project or part of it to another investor during the license period after obtaining approval from the licensing authority, provided that 40% of the project has been completed. The new investor will assume all rights and obligations under the law and the contract.

6) The developer or investor, in agreement with the relevant authority, may connect infrastructure services up to the project boundaries based on the agreement.

7) Investors are allowed to employ non-Iraqi workers if suitably qualified Iraqi workers are unavailable, in line with regulations issued by the authority.

8) Foreign investors and non-Iraqi employees in investment projects have the right to residency in Iraq and may enter and exit Iraq with ease.

9) The investment project will not be subject to confiscation or nationalization, except by a final judicial ruling.

10) The project's ownership cannot be expropriated except for public interest, whether in whole or in part, and with fair compensation.

11) Projects with an investment license from the authority are exempt from taxes and fees for 10 years from the start of commercial operations for each phase of the project's development, excluding customs fees under items (First) and (Second) of Article 17 of this law.

12) Residential investment projects are exempt from subdivision and real estate registration fees, including the transfer fees for residential units to citizens (legal fees).

Fifth: Obligations of Iraqi and Foreign Investors Alike

Article 14 of the Investment Law outlines specific obligations for both Iraqi and foreign investors. It requires them to notify the General Investment Authority, the relevant regional authority, or the governorate in writing once their assets are in place and the project is ready for operation, including the date when commercial activities are set to begin. These obligations include:

1) Maintaining official accounts audited by a certified public accountant in Iraq in accordance with the law.

2) Providing a feasibility study, both economic and technical, of the project and any information, data, or documents requested by the authority or other relevant bodies concerning the project and its progress.

3) Keeping special records of imported materials for the project that are exempt from fees under the law.

4) Ensuring environmental safety and adherence to the quality control system in force in Iraq, along with globally accepted standards in this field, and compliance with laws concerning security, health, public order, and Iraqi societal values.

5) Adhering to Iraqi laws in force related to salaries, leave, working hours, work conditions, and other.

6) Ensuring the progress of work matches the schedule submitted by the investor, with delays not exceeding six months, under penalty of the authority revoking the license granted to the investor.

7) Training Iraqi employees, enhancing their efficiency, and improving their skills and capabilities, with a priority for employing Iraqi workers.

Sixth: Disadvantages of Foreign Investment

Despite the encouraging advantages of foreign investment, the primary goal of a foreign investor is to maximize profit and achieve the highest possible return on investment, rather than actively contributing to the development of the local economy. This objective may sometimes come at the expense of the optimal use of local economic resources. Additionally, the technology and production techniques used in such partnerships often focus on maximizing profit, which may not be suited to the needs of a developing economy, especially regarding local labor employment, and may therefore fall short in achieving certain local development goals.

Moreover, large foreign investments or companies typically have advanced and specialized management teams capable of promoting a high standard of living and engaging in activities that may not align with local economic and social development priorities. Their substantial size can sometimes enable them to form monopolistic entities that dominate certain sectors of local production, potentially conflicting with the interests of those overseeing these sectors.

Conclusion

In conclusion, foreign investment in Iraq remains an aspiration that requires realization amidst the current unstable political and security conditions. Its success depends on the government's outlook and vision for this sector and its understanding of the significant role that foreign investment can play in economic development. This also entails the government's ability to provide the necessary political and security stability to advance the economy, promote economic projects, and activate both substantive and procedural safeguards for investment activities and their stakeholders.

Section C: Commercial Agency Agreements

In an increasingly globalized economy, businesses often rely on strategic partnerships to expand their market presence. Commercial contracts form the foundation of business relationships, where trust and mutual understanding are legally enforced. For companies seeking to extend their reach into new regions, commercial agency agreements provide an essential legal framework for establishing representation and distribution channels. In this edition of the newsletter, we will discuss the critical aspects of the Commercial Agency Agreements within the Kingdom, emphasizing the importance of proper registration and compliance with local laws and public authorities.

Pursuant to the *Jordanian Commercial Agents and Intermediaries Act No. 28 of 2001*, the Commercial Agency Agreement establishes a legal framework between the principal - such as a producer, manufacturer, or authorized distributor - and a commercial agent, which may be a natural person or a Jordanian company operating within the Kingdom. The principal appoints the agent to represent their interests or distribute their products, and the commercial agent agrees to import, distribute, sell, display, or provide commercial services for the principal's products. The agent may act on behalf of the principal or independently, whether as a commission agent or through any other form of remuneration.

Furthermore, it is widely recognized that commercial agents often face significant vulnerabilities in these agreements, as the principal typically holds a stronger bargaining position. Standard provisions in such agreements cover the scope of work, the nature of products or services involved, the rights and obligations of the parties, liability clauses, payment terms, force majeure, and termination conditions.

To ensure the enforceability of these terms and to safeguard the rights of both parties, the commercial agent must comply with *Art.6* of the *Jordanian Commercial Agents and Intermediaries Act No. 28 of 2001*. This requires the commercial agent to apply for registration of the commercial agency, along with the agency contract, duly certified, within 60 days from the date of its execution to the Ministry of Industry, Trade, and Supply.

Art.10 of the *Jordanian Commercial Agents and Intermediaries Act No. 28 of 2001*, states the following:

“ A. Neither party to an unregistered agency shall enjoy, in accordance with the provisions of this law, any of the advantages granted by law to the principal or the commercial agent. However, a third party may file a lawsuit based on an unregistered agency if its existence is proven in reality.”

Accordingly, engaging in commercial agency activities without registering at the Ministry of Industry, Trade, and Supply is strictly prohibited, as the commercial agent would lose the privileges and protections provided by the law. Specifically, an unregistered party is precluded from seeking compensation for losses arising from the agreement if a dispute occurs. Therefore, non-compliance with registration requirements renders the agreement void, leaving the parties unable to assert their rights or enforce their obligations.

These agreements under the *Jordanian Commercial Agents and Intermediaries Act No. 28 of 2001*, are crucial for both the principal and the agent. Proper registration with the Ministry of Industry, Trade, and Supply not only ensures compliance with local laws, but also safeguards the rights and privileges conferred by these agreements. Engaging in commercial agency activities without registration can expose parties to significant risks, including the inability to seek compensation for losses in the event of a dispute. By adhering to the legal requirements, businesses can build strong partnerships and effectively operate in the global market.



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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. We also have a strong presence in Iraq, with an office located in Baghdad, the capital of the Republic of Iraq, and a branch in Erbil, within the Kurdistan Region, to offer comprehensive legal services across the country. The Iraq office has been 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 cross-border elements, 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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