

Jordan

Chamber of commerce:

Jordan Chamber of Commerce
PO Box 7029
Amman 11118
Jordan
Tel: +962 6 5665492
Fax: +962 6 5685997
Email: info@jocc.org.jo
Web: www.jocc.org.jo

Professional body:

Jordan Bar Association
PO Box 9024
Amman
Tel: +962 6 665818
Fax: +962 6 677231

Taking security in Jordan

Haitham Hawashin
Khalifeh & Partners
Amman

In recent years, Jordan has seen an increase in the number of corporate and project financing transactions particularly in the context of major infrastructure projects which usually involves a number of key international and supra national lending institutions. Such involvement has required the implementation of internationally accepted financing structures particularly when it comes to creating security over a wide range of assets.

This article provides an overview about two types of security commonly used in Jordan, namely possessory and security mortgages. The article also touches upon other types of security arrangements commonly implemented and/or considered.

Possessory mortgage

A possessory mortgage is commonly used to effect security over certain types of moveable assets (usually equipment and machinery) for which no formal registration mechanism exists to perfect such security. In order for a possessory mortgage to be completed and binding, possession must be transferred from the mortgagor to the mortgagee or an impartial third party (known as the Adel). To be valid against third parties, a possessory mortgage must be in writing, on a fixed date, and must specify the secured debt and the mortgaged property that is transferred to the mortgagee or the Adel. The effectiveness of the possessory mortgage towards third parties is subject to the mortgaged property being in the hands of the mortgagee or the Adel.

Security mortgage

The form of security over assets for which a formal registration mechanism does exist (for example over land, motor vehicles and shares) is a security mortgage. Such mortgage will

only become valid after registration with the relevant governmental agency.

As is the case in many jurisdictions, a security mortgage gives the creditor a right against the mortgaged property to satisfy a debt, with priority over ordinary and subsequent creditors. This extends to tracing the proceeds of sale into whatever hands they come. Creditors with a security mortgage rank by priority of registration.

Holding a possessory mortgage

A possessory mortgage differs significantly from a security mortgage in that, as its name indicates, it requires actual possession of the property. As such, a mortgagor must place the property in the hands of the mortgagee or the Adel. The Adel is usually a person appointed by the lender to take possession of the mortgaged assets.

In order to allow the mortgagor to use the mortgaged assets to operate its business during the term of the mortgage, a possessory mortgage agreement usually includes provisions authorising the Adel to lend back the mortgaged assets to the mortgagor on an i'arah basis. The mortgagee and the Adel usually take precautionary steps such as placing a notice on the assets or facility housing the assets stating that the assets are mortgaged to the lender.

During the term of the mortgage and i'arah, the mortgagor is not permitted to deal with the mortgaged property in any way. Despite the prohibition, the law does not void the sale of the mortgaged property by the mortgagor, yet the mortgagee is entitled to pursue the proceeds of the sale rather than the actual property. The mortgagee is however prohibited from dealing in the property, including by sale, except in the event of possessing a power of attorney to sell.

Holding a security mortgage

Security mortgages must be duly registered to effectively create a security interest in favour of a lender or an agent bank. The registration is an official notation by the registrar on the

relevant title deed showing that the property is encumbered. There is no requirement for the deposit of the original title deed with the mortgagee.

Registration does not constitute a transfer of title, nor does it affect title. In effect, it is a time-limited constraint on the property by which the mortgagee shall be entitled to seek liquidation of the asset in the event that the obligations under the mortgage deed are not met by the mortgagor.

Other types of security

It is also a common feature to a security package for major deals in Jordan to include direct agreements granting step-in rights, assignment of insurance and re-insurance proceeds, cash waterfall arrangements (including debt service, margin and other accounts) and a number of other types of assignments of rights. Such arrangements are mostly of a contractual nature and are regularly used by lenders to secure financings. The creation of a commercial pledge (which is similar to a pledge of assets in other jurisdictions) and the entering into sale and leaseback arrangements are also used in Jordan by companies to effect a security over its moveable assets.

Practical considerations

In order to enforce any security in Jordan, including possessory and security mortgages, the mortgagor will need to commence legal proceedings as Jordanian laws do not recognise or enforce self-help remedies.

Further, the creation of a security interest usually attracts stamp duty fees which can range from 0.3% (3 per thousand) of the secured amount in the case of a share pledge for private companies and up to 0.16% (sixteen per thousand) in respect of a mortgage over land. Stamp duties are also payable on the loan agreement at 0.3% or 0.6% (depending on the type of company), despite the mortgage agreement already having attracted stamp duties.

At the time of writing this article, the Government of Jordan has been working on a

new law for the pledge of movable assets that will provide for establishing a central governmental register where pledged assets can be registered as is the case in other jurisdictions. We expect this will simplify the way security is created over movable assets.

Financial and corporate

Recommended firms

Tier 1

Ali Sharif Zu'bi Advocates & Legal Consultants
IBLaw (International Business Legal Associates)
Khalifeh & Partners
Obeidat Freihat

Tier 2

Jordanian Counsellor (JC Law)
Nabulsi & Associates
Rajai KW Dajani & Associates

Tier 3

A&T Najdawi Law Office
Beirut Attorneys & Counsellors at Law
Dallal & Associates
Sanad Law Group

Tier 4

Al Tamimi & Company
Dajani & Associates
Nabeel Law Group
Safwan Moubaydeen Law Firm (in association with SNR Denton)

Although the global crisis primarily affected the Gulf and Dubai, the knock on effect to Jordan was considerable according to lawyers. One partner estimates that "about three of four deals done here have Gulf based investors, so this has a big effect and over the past few years there have been a lot of projects from Gulf companies doing acquisitions in the local market."

According to one firm there were "no major completed M&A this year due to the financial downturn," and, instead, the market saw "postponements and cancellations from lack of funding." "We saw a huge slow down this year compared to last year," says another, "especially in real-estate and with privatisations." Although others point out that most privatisation projects are already underway and the focus is turning to public private partnerships (PPP), a trend which will benefit firms with PPP expertise.

When it comes to projects, an issue of concern is the government's considerable budget deficit, and a question lingers over when and

whether government funded projects will be completed, although there are signs that projects are on the move again. But firms have benefited from the ambitious mandates, and among these are a \$30 billion 30 to 40 year development project around the Red Sea, a new Port of Aqaba, oil refinery and phosphate terminal, construction projects in Amman and a potential national rail project. Negotiations were also underway for a Uranium mining concession.

The president has implemented a fiscal reform with the help of USAid, has reduced corporate tax from 20% to 14% on average and raised income tax to about 30% to 35%. It is redrafting the railways law and "looking to harmonize investment laws by trying to merge the Free Zone Corporation, Industrial Development Corporation and Development Corporation into one entity to handle all sector investments," says a partner.

In the legal market, three firms moved into bigger offices and SNR Denton moved into the country. Lawyers traditionally focussed on litigation developed their transactional profiles and a trend away from family run firms increased, most notably with forward-looking organisations such as JC Law and Sanad Law Group.

Ali Sharif Zu'bi Advocates & Legal Consultants

Ali Sharif Zu'bi Advocates remains the all-round top firm in Jordan. "If you want the quality I wouldn't recommend anyone else," says a client. "We were happy with the service, they provided good quality, timely and relevant advice," says an international client. "Excellent, excellent people to work with and for sure on major transactions," says a third client.

Led by Khaled Asfour and Sharif Zu'bi, the firm focuses exclusively on big deals. Asfour is described as "excellent" by one peer. "He is 100% professional and great with understanding the needs of the client," says a client. Head of corporate commercial Saleh Abd El-Ati also receives commendations from competitors.

In highlight work, Asfour and associates Faris Nesheivat and Kareem Zureikat advised City Group KSC on a \$20 million acquisition of a 51% interest in Jordan's biggest public transport bus company, the Comprehensive Multiple Transport Company. Asfour also advised the Aqaba Petroleum Company on a \$150 million agreement with the Aqaba Development Corporation to develop, operate and secure financing for the Aqaba Oil Port.

Sharif Zu'bi represented Areva in negotiations with the government on a multi-billion

dollar Uranium mining concession and, in a fourth deal, Asfour and Zureikat advised HSBC as arranger in the proposed \$120 million financing to Modern Cement for of a new cement manufacturing facility which may mark an end to the monopoly in the sector.

Elsewhere, the firm has been extending its interest into Iraq.

Leading lawyers

Khaled Asfour
Sharif Zu'bi

IBLaw (International Business Associates)

IBLaw moves up a tier in recognition of the consistent high-profile mandates that come its way. The firm is seasoned in advising international clients and handling public projects and has worked on a repeated basis alongside firms including White & Case, Freshfields and Jones Day.

"Their drafting and knowledge of requirements of US publicly-held companies is totally appropriate, they were well attuned to commercial work and had a standard of legal services that was equal to services on the international level," says an international client.

The firm has a strong network within the country. Partner Mohannad Jarar is held in high esteem by competitors for his corporate practice and consultant Lana Alamat is recommended by clients for her drafting skills. Founding partner Salaheddine Al Bashir returned from his ministerial post in early 2009 to take back the reigns of the company.

In a highlight deal, Al Bashir, Jarar, Alamat and Mohammed Bashayreh were mandated to advise the Aqaba Development Company, owner of the airport and the existing Aqaba port, on a \$500 million build-operate-transfer (BOT) construction of a new Port of Aqaba.

The firm is advising the Ministry of Transport on a potential infrastructure project related to a government plan to develop a national railway network on a BOT basis. The initial project would entail a \$2.7 billion investment.

In a third highlight deal, IBLaw was selected to advise the Business Park Company on the creation of the King Hussein Business Park Development Zone in Amman.

Leading lawyers

Salaheddin Al Bashir
Mohannad Jarar

Khalifeh & Partners

Khalifeh & Partners "is one of the most developing firms in Jordan and it is acquiring more

and more of the market share,” says a peer, adding that “it has a good reputation and is excellent on corporate.” Ala’ Khalifeh, Khalidoun Nazer and Haitham Hawashin are recognised leading lawyers in their fields. “Hawashin has great experience on international transactions,” says a client.

According to a peer, the firm is a “younger generation firm with a more constant team than most”. It recently became the first firm to recruit a professional office manager and the organization seems to be showing. “I think they are very strong and particularly good at meeting the needs of Western clients,” says an international client, adding that the firm has “the experience and the capability of providing high quality legal support.”

The firm won mandates from the International Financial Corporation (IFC) for a \$110 million loan to a resources company and a Capitalbank led syndicate for a \$77 million loan to a container terminal operator. The firm also advised McDonalds on a \$15 million loan from Opic (Overseas Private Investment Corporation).

Hawashin advised Ithmar Invest as private placement agent for a \$173 million guaranteed bond issued by the Aqaba Development Corporation. In energy, the firm advised Terna Energy and Kawar Energy as part of consortiums on a \$100 million wind farm and a \$400 million solar energy plant.

The firm also won a key mandate from Montgomery Watson Haza International and Arabtech Jardaneh Engineers to advise the government on the \$30 billion Jordan Red Sea Development Project, the country’s biggest infrastructure undertaking.

Leading lawyers

Haitham Hawashin
Ala’ Khalifeh
Khalidoun Nazer

Obeidat Freihat

Obeidat Freihat has a very strong reputation in the market and is widely considered a top ranking firm. Peers consistently refer to telecoms as one its primary corporate strengths. The firm has also developed a strong track record in IT matters and privatisations.

Thamer Obeidat is recommended by a peer as “an excellent lawyer especially in telecoms and also cross border”, while associates Ward Tarawneh and Hussam Al-Kurd are also praised by competitors.

The firm recently advised Zain Telecom on an aborted merger with PalTel and represented one of the bidding consortiums in the project for the development of a new Port of Aqaba. In the IT sector the firm acts as one of two corporate counsel in Jordan to Yahoo,

which it also advised on the acquisition of Maktoob.

In a highlight public project, the firm acted for Disi Water/Gama Energy in the \$450 million construction of a water pipeline from Disi to Amman.

Leading lawyers

Thamer Obeidat

Jordanian Counsellor (JC Law)

JC Law is managed by Jumana Toukan and Lana Salameh, who are recognised as pre-eminent corporate finance lawyers. The firm moves up a tier in recognition of its technical expertise and good client feedback. They are “very responsive, commercially minded and give good legal advice,” says a client, while another adds that they “are practically minded and compare favourably to leading firms.”

According to another client the firm is “responsive and does not overpromise, they tell you when they can meet a deadline and when they cannot, some of our clients come with unreasonable deadlines so we need to know from the start and there is a tendency to overpromise, with egos no one wants to say no.”

This year Salameh and Toukan advised Standard Chartered Bank Jordan on a \$450 million financing for the Disi-Mudawarra to Amman water conveyance system and is advising the Jordanian Petroleum Refinery Company on a potential multi-billion dollar investment from a strategic partner.

It wins regular mandates from the International Finance Corporation (IFC), and advised on an update to a \$40 million loan to Zara Investment Holding, a \$30 million loan to the Nuqul Group and a \$10 million loan to Baraka Farms, as well as assisting it in its capacity as advisor to the government regarding the light-rail transit system.

Elsewhere, the firm is advising Pinsent Masons/Mazars consortium in relation to national PPP legislation and it has been active with regards to transportation infrastructure, aircraft leasing (for clients including Boeing) and in telecoms.

Leading lawyers

Lana Salameh
Jumana Toukan

Rajai KW Dajani & Associates

Rajai KW Dajani & Associates acts as the local partner to White & Case. Yousef Khalilieh impresses clients and peers: “He speaks especially good English and he is very easy to deal with, which is ideal for our board

of managers; his professionalism is good,” says a client.

Khalilieh “is an excellent lawyer with a lot of experience,” says a competitor. One client also recommends Omar Nabulsi for his knowledge of local law. The firm has a good network of contacts in Jordan and has developed a strong corporate portfolio especially in the IT and media fields as well as in projects.

This year the firm was engaged by Clifford Chance to advise the Millennium Challenge Corporation on directing \$100 million in US government-monitored funds towards water projects. It advised on the compact with the Kingdom and completed due diligence and bidding documents for two water projects.

In M&A, the firm advised Maktoob on its acquisition by Yahoo and was subsequently retained as one of two corporate counsel to Yahoo in Jordan. It also acted for an unsuccessful bidder in the Disi-Amman water project and worked alongside White & Case to complete the project documentation for the IFC-funded Queen Alia Expansion.

The firm is advising a consortium bidding to become a strategic partner to the Jordan Petroleum Refinery Company with a potential \$2 billion investment, and advising a US non-profit in a venture with the Overseas Private Investment Corporation and Middle Eastern Investment Initiative to establish a \$250 million fund to finance home loans.

Leading lawyers

Yousef Khalilieh

Nabulsi & Associates

Nabulsi & Associates is a prestigious firm with an established name in the market. The leading corporate lawyers at the firm are partners Zaid Nabulsi and Rand Hannun, who joined in 2008. The two partners have largely taken over from founding partner Omar Nabulsi, one of the most well known and highly respected lawyers in the country; “a legend” according to a peer.

“We deal with the firm on a daily basis,” says a client, “they understand the law well and give good practical and quick advice”. The firm is well placed in the market and has a good network of clients.

In recent transactions, the firm advised Misr Banque on a \$40 million medium term loan to Jordanian Egyptian Fajr for a natural gas transmission supply and also advised a bidder on the Amman-Zarqa light railway project.

The firm advised the Jordan Petroleum Refinery Company (JPRC) alongside Norton Rose in connection with the introduction of a strategic partner.

Leading lawyers

Rand Hannun
Zaid Nabulsi

Other ranked firms

A&T Najdawi Law Office has continued to move more and more into the transactional arena, impressing clients as it goes. "They have a particularly good reputation and we have been very pleased so far," says one client. Another client highlights its "dedication, knowledge of international best practice, credibility and adequate resources."

The firm has been increasing its staff and recently won over a number of clients including Bin Dar, Prestige Jets, Orange Telecom and the USAid funded Development Alternatives Inc (DAI). It has a very strong reputation for public private projects and Thaer Najdawi commands a top reputation among peers.

Najdawi and Aseel Al-Ramahi "are very good and professional," says a client, "and they produce very high quality, are easy to work with and have integrity, which goes a long way in this context." The firm also recruited French and English speaking senior associate Pascale Meuron.

The firm this year advised Orange and Jordan Telecom on a construction project to connect up the Abdali district in Amman and acted for the Amman Urban Development Company, a subsidiary of the Greater Amman municipality, on a \$97 million deal for three major construction projects to revamp downtown Amman.

It took over all issues for the Jordanian Airports Company and Ministry of Transport on the \$3 billion extension of the Queen Alia International Airport and DAI on an \$83 million transaction involving advice on fiscal legislation and its business in Amman.

Elsewhere, the firm was appointed legal counsel to the Executive Privatisation Commission to support the country's public-private partnership programme and was selected to act as legal counsel to the National Resources Authority (NRA) with regards new energy projects.

Al Tamimi & Company opened an office in Jordan in September 2008 with Khaled Saqqaf as its managing partner. The Dubai-based firm is distinguished in the market as the only established foreign law firm, and boasts the resources of its considerable Middle East network.

"[They] responded in a professional manner and in a convenient time, dealing with them is very comfortable ... they have a good turnaround time and good experience," says a client. Another client recommends Saqqaf and says the firm was "able to progress with us

in establishing the company and all my colleagues were happy with them, I would definitely work with them again especially related to international business or any subject using English law content."

In highlight work, the firm advised Petra Aluminium, a major industrial company with revenue of \$30 million, on a group restructuring exercise, and acted for ABB on a \$30 million transaction to conduct several due diligences.

The firm advised Standard Chartered Bank on a \$6.5 million gold loan agreement, a rare transaction for a bank, and was mandated by a north African government to advise on procuring and tendering laws. The firm is frequently used by some leading banking groups.

Beirut Attorneys & Counsellors at Law is a well established firm with a prestigious name. The very highly reputed Mohammad Beirut heads the corporate team at the firm which has built up a strong portfolio of corporate clients in the telecom and oil sectors. The firm's reputation is boosted by its litigation record.

"It is an excellent corporate practice and does a lot of energy work," says a peer. "They have a high standard and are quality," says another peer, adding "Mohammad Beirut is a really good lawyer and always delivers."

The firm advised Jordanian Egyptian Fajr on a \$40 million cross-border medium-term loan from Misr Banque for a natural gas transmission supply. The firm is also advising Gazmin and Fajr on a \$300 million Arab gas pipeline, which is already connected to Syria and Lebanon.

Beirut advised an international institution on a large capital raising exercise which necessitated an innovative structure, and the same client on a multi-million acquisition of a local entity. In a fourth transaction, the firm was mandated to advise a local corporation in relation to a multimillion dollar concession agreement.

Dajani & Associates has a solid profile in the corporate arena. "It works with local banks and has good litigation team," says a peer.

Dallal & Associates delivers very high quality, say peers and clients. The firm is especially known for its expertise in telecoms and finance and for being the corporate counsel to Saudi Ojer, one of the biggest clients in the country. Managing partner Mubadda Dallal is consistently praised by competitors a "very good" or "excellent" lawyer.

The firm won over some new clients in 2009, including Motorola, Microsoft, Dell and Bloomberg. In top deals, it advised Saudi Ojer, Calyon Bank and Audi Bank on three large finance loans facilities.

It won mandates from the Trade Bank of Iraq and Kuwait Finance House, the first *sharia'h* bank in Jordan, and advised the National Commercial Bank on a \$200 million loan. In the energy sector, the firm acted on the acquisition of some marine energy projects and a power plant in Jordan.

Dallal is working with Towers & Hamlins to advise Gateway Golf Global on a large ongoing project and a professional and engineering services company on the construction of a canal between the Red Sea and Dead Sea.

Nabeel Law has been active in the market for many years and managing partner Tareef Nabeel has developed a good reputation. "They have a long heritage and are excellent in corporate law and company law," says one peer.

Safwan Moubaydeen Law Firm (in association with SNR Denton) is recommended by a number of banking clients and peers.

Sanad Law Group is a well known young law firm which a number of peers tip as up and coming. The firm currently advises USAid on most corporate matters. Nadim Kayyali, former in-house counsel of Microsoft, brings a strong reputation to the firm, while Faisal Tabbaa is also recommended by some competitors.

"They are forward looking," says a peer, adding that "they are new young individuals that are doing good work, decent, straightforward and that have an excellent background."

Other notable firms

Anis Kassim Law Office has a long standing in the market and is recommended by some banking clients and peers for corporate finance.

Hammouri & Partners is a boutique law firm that focuses on multinational contracts and complex corporate finance. The firm is managed by Tariq Hammouri, who led on its big deals.

In highlight transactions Hammouri and Omar Sawadha were mandated by Alshamel Properties Investment & Development to advise on a \$300 million deal to create the country's first ever IT city. Hammouri and Mais Diraneyeh advised the Ayass Company for Car Manufacturing on a \$100 million deal to establish the first car assembly facility in Jordan.

Samer Zraiqt and Rita Nazzal advised Speciality Hospital on establishing a network of hospital links throughout the region to create hospital tourism, and Diraneyeh and Amr Khalid advised Alrakaez Company for Investment on a corporate bond issue of \$4.5 million.

Rabah & Associates appeared on some of the large transactions, and advised Jordan's

biggest public bus company Comprehensive Multiple Transport Company on its sale of a 51% stake to City Group KSC.

Sami & Adib Habayeb is recognised in the market for having a strong French clientele which it advises on corporate and finance issues.

Osama Sukkari & Associates is working to establish a presence in the corporate transactional law arena. The firm is headed by Osama Sukkari, the former lead in-house counsel at the Bank of Jordan. Sukkari leads on all main deals with support from Anwar Sukkari and Najeh Bustami.

The firm dedicates half its time to transactional work and recently advised the Site Group for Services and Well Drilling Co on a \$53 million subcontract agreement for in relation to the Disi Water Project. The firm advised the same client on its \$18 million sale of 60% of its share capital to Bauer Resources, which subsequently recruited the firm as its corporate counsel in Jordan.

The firm won a mandate by Mayr-Melnhof Packaging International on a \$6.5 million acquisition of a 100% stake in a local company and is also acting for Al Fakher Tobacco and Trading on a \$40 million acquisition of a 100% stake in a Jordanian tobacco company. The firm has also been retained by the Arab Islamic Bank Palestine.

Zalloum & Laswi Law Firm is managed by litigation expert Azzam Zalloum and former Bank of Jordan lawyer Rasha Laswi. The firm has recently begun making a move into the corporate arena and has won the approval of clients such as the World Bank.

The team advised Arab Bank Europe on a \$50 million loan to DarHold, a 30% shareholder in Hikma Pharmaceuticals. The firm advised Asco on a \$118 million turn key agreement related to establishing a sugar manufacturing plant which will be the biggest in the Middle East and north Africa.

The firm advised Zahi Al Masri in relation to a \$2 million contract and provided legal advice on Jordanian law to the King's Healthcare NHS. In other work, the firm has been working with the World Bank in relation to insolvency legislation.