

PANORAMIC

**COMMERCIAL
CONTRACTS**

Jordan



LEXOLOGY

Commercial Contracts

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CONTRACT FORMATION

Good faith in negotiating

Is there an obligation to use good faith when negotiating a contract?

Good faith in negotiating is not explicitly set out in law. However, the concept is generally presumed to underlie contractual negotiations. This is because most legal systems require contracts to be executed in good faith. Therefore, while the negotiation phase may not have explicit legal requirements concerning good faith, the expectation is that parties should negotiate in a manner consistent with an intention to execute the contract in good faith.

'Battle of the forms' disputes

How are 'battle of the forms' disputes resolved in your jurisdiction?

In legal terms, acceptance must be in conformity with the offer. This occurs when both parties agree on all the essential matters that were negotiated. If the acceptance deviates by adding or modifying conditions, it is generally considered a rejection of the original offer and serves as a new offer.

Language requirements

Is there a legal requirement to draft the contract in the local language?

While Arabic is the legal language of the Hashemite Kingdom of Jordan, there is no specific legal requirement that mandates contracts to be drafted exclusively in the local language, however, according to the Arabic Language Protection Law, some agreements must be written in Arabic or in another foreign language but to be translated to Arabic. As an example, article (15) of the Jordanian Labour Law allows for the possibility of drafting a contract in a foreign language if one of the contracting parties is not of Arab nationality. However, such foreign-language contracts must be regulated and approved according to instructions issued by the Minister. This implies that there is no prohibition against drafting contracts in foreign languages, provided they comply with the valid ministerial instructions.

Signatures and other execution formalities

In what circumstances are signatures or any other formalities required to execute commercial contracts in your jurisdiction? Is it possible to agree a B2B contract online (eg, using a click-to-accept process)? Does the law recognise the validity of electronic and digital contract signatures? If so, how are they treated in comparison to wet-ink signatures?

In Jordan, contracts are concluded once parties reach an agreement on all terms and conditions, whether through written or oral means, unless specific formalities are required by law. If an agreement is concluded in writing, this can be achieved using traditional methods or electronically. When using electronic means, it is important to adhere to the guidelines set forth in the Jordanian Electronic Transactions Law. Therefore, it is possible to establish

(B2B) contracts online through click-to-accept, since the Jordanian law acknowledges the legal validity of electronic and digital signatures on contract, provided that are concluded according to the law, treating these signatures with the same legal standing as traditional wet-ink signatures.

STATUTORY CONTROLS AND IMPLIED TERMS

Controls on freedom to agree terms

Are there any statutory or other controls on parties' freedom to agree terms in contracts between commercial parties in your jurisdiction?

In Jordan, parties are generally free to agree on the terms of their contracts. However, this freedom in contracting is subject to certain statutory and legal controls. Specifically, parties cannot agree on terms that contravene public policy or contradicts public morals.

Standard form contracts

Are standard form contracts treated differently?

Standard form contracts in Jordan are generally subject to the same legal rules and regulations as other types of contracts. However, due to the special nature of these type of contracts further regulations are stated and may be subject to regulatory oversight and judicial intervention where one party possesses more power than the other, or in contracts related to essential services and goods. In cases where the term of contract is unclear or exhibits bias in favour of the adhering party, the court may interpret such terms in favour of the adhering party. The judge also has the authority to modify arbitrary terms to a reasonable extent that upholds justice, and can exempt the adhering party from obligations, particularly when those are deemed to be arbitrary.

Implied terms

What terms are implied by law into the contract? Is it possible to exclude these in a commercial relationship?

Jordanian laws grant parties considerable freedom to contract, while also providing certain implied terms to ensure fair execution and the protection of the interests of both parties involved. This is achieved by incorporating a legal provision regarding product and service quality warranties, including, for example, but not limited to:

- Breach of contractual liability: Governed by the [Jordanian Civil Law](#), this refers to the failure of one party to meet their contractual obligations, allowing the injured party to seek legal remedies such as compensation or in-kind implementation. This liability could be excluded by a mutual agreement between contractual parties; however, this agreement shall be subject to the applied law and the Jordanian Civil Law.
- Warranty for hidden defects: the Jordanian Civil Law offers protection against hidden defects, safeguarding the interests of the buyer. This warranty could be extended or excluded by a mutual agreement between contractual parties; however, excluding

this warranty shall be subject to the good faith of the supplier, unless there has been negligence or a party has conducted a material default.

- Reasonable care and skills: in service contracts, there is an implied term requiring the service provider to execute their duties with reasonable care and skill, implied terms are generally non-excludable to maintain a level of fairness and quality in commercial relationships. This clause is related to contractual liability.

Vienna Convention

Is your jurisdiction a signatory to the United Nations Convention on Contracts for the International Sale of Goods (the Vienna Convention)?

Jordan is not a signatory to the United Nations Convention on Contracts for the International Sale of Goods, commonly known as the Vienna Convention.

Good faith in entering and performing

Is there an obligation to use good faith when entering and performing a contract?

The Jordanian Civil Law enshrines the principle of good faith in the formation and execution of contracts that contracts must be executed in accordance with their content, performing their rights and obligations in a manner that aligns with good faith. For example: The leased property to the tenant is supposed to be completed with the necessary accessories to achieve the purpose of the lease contract. Various other legal provisions that implicitly uphold the tenet of good faith throughout the contractual relationship, such as articles that prohibit fraud and abuse.

LIMITING LIABILITY

Prohibition on exclusions and limitations

What liabilities cannot be excluded or limited by a supplier in a contract?

Under the provisions of the Jordanian Civil Law, it is not possible to exempt from damage and loss in contracts. Any clause that exempts contracting parties from liability resulting from a harmful act such as gross negligence is considered null and void.

Financial caps

Are there any statutory controls on using financial caps to limit liability for breach of contract?

Jordanian law provides liability limitation provisions that restrict the amount of compensation available regardless of the damages sustained in:

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Article (10) of compulsory vehicle insurance regulations. Here, regulations dictate that the amount of compensation awarded by insurance company should not exceed the maximum limit set by the regulations, in accordance with the compensation schedule stipulated in the mentioned regulations.

- Article (183) of the commercial law stipulates that failure to send the notification, submit the instrument for acceptance or payment, or send the protest on the specified dates does not result in the loss of any of the rights of the person who must do, but he shall be responsible for compensation for the damage that resulted from its negligence provided that the compensation does not exceed the value of the promissory note.
- Except for the cases mentioned above, and according to the Jordanian Civil Law the compensation in contractual liability is determined by what is equivalent to the actual damage when it occurs.

Indemnities

Are there any statutory controls on indemnities used to cover liability risks in contracts?

There are no statutory in the Civil Law controls governing the use of indemnities to cover liability risks in contracts. However, it is commonly used in:

- Contracting contracts: The engineer's responsibility to compensate the owner for the contractor's defective work if the contract relates to full construction supervision by the engineer.
- Labour contract: the employer's responsibility to compensate others for the damages caused by its employees.
- Rental contracts, such as the landlord requiring the tenant of commercial shops to carry out insurance for the commercial premises, or in the transportation contract when the seller guarantees the carrier's responsibility to confront the buyer during the transportation process.

In all cases, the breaching party to be liable for damages stipulated in the contract and to pay compensation, and for it to be due, what is required for contractual liability to arise is for the injured party to prove that the damage occurred.

Liquidated damages

Are liquidated damages clauses enforceable and commonly used in your jurisdiction?

Yes, liquidated damages clauses stipulated by jurisdictional laws in Jordan and commonly used in contracts. Contracting parties may agree the value of the compensation either within the contract or through a subsequent agreement. Such compensation is due in the event of breach of obligation, whether due to non-implementation, delay, or defective implementation by one of the contracting parties. It should be noted that the competent court may, in all

cases, upon the request of one of the parties, amend the liquidated damages clauses in the contract to ensure that estimates align with actual harm suffered, and render any agreement contrary to this null and void.

And it is commonly used in labour contracts in the case where an employee unfairly competes with the employer or discloses the employer's secrets.

PAYMENT TERMS

Statutory time limits on payments

Are there statutory time limits for paying invoices? Is it possible to agree a different payment period?

According to Jordanian commercial law, any invoices or payments must be paid by the due date specified in the invoice, provided it is signed by the issuing person. In other words, payments are made on the due date agreed upon by the contracting parties. Parties may also stipulate that all outstanding invoices become due immediately if any payment is missed.

Late payment interest

Is statutory interest charged on late payments? Is it possible to agree a different rate of interest?

According to Jordanian law, parties have the flexibility to agree on the rate of interest for late payments. If the contract specifies a rate, and payment is not made on time, interest will be calculated at that agreed rate starting from the due date. If the contract does not stipulate an interest rate, the Civil Procedures Law stipulates that the injured party is entitled to interest under two conditions: if the breaching party delays paying the amount agreed in the contract, an independent agreement, or a ruling by the court; and if a legal claim has been filed, interest shall be charged from the date of that filing.

Civil penalties

What are the civil penalties for failing to comply with statutory interest rate or late payment of invoices?

According to the general provisions of contracts stipulated in the relevant laws, several penalties are available for failure to comply with statutory interest rates or late payments of invoices in Jordan:

- Withholding obligations: Either party has the right to refrain from implementing its obligation if the other party does not fulfil its contractual obligations about interest rate or late payment of invoices, if obligations are not due to be fulfilled.
- liquidated damages clause: The injured party has the right to invoke any liquidated damages clause stipulated in the contract with the competent court.
- Specific performance: The injured party may demand the specific implementation of the contract with the competent court.

- Termination of contract: If specific performance is not possible, the injured party may demand termination of the contract and any stipulated compensation. The breaching party may request that the compensation be modified to suit the damage actually incurred with the competent court.
- Court-ordered compensation: If no compensation is stipulated in the contract, the competent court will determine the amount of compensation due to the injured party as a result of a breach by another party.

TERMINATION

Implied terms

Do special rules apply to termination of a supply contract that will be implied by law into a contract? Can these terms be excluded or limited by including appropriate language in the contract?

Supply contracts are considered unnamed contracts according to Jordanian law; therefore, general contract provisions shall be applied as per Jordanian Civil Law. Under these rules, contracts can be terminated by any of the following: a mutual consent of parties, a court decision, by virtue of the law, or if it is agreed between parties that a contract could be terminated by the sole discretion of either party by serving a notice to the counterparties. General contract law provisions, including those related to terminating the contract, could be excluded or limited by a mutual agreement; however, such exclusions or limitations must not contradict the related law provisions, if any.

Notice period

If a contract does not include a notice period to terminate a contract, how is it calculated?

According to the general contract provisions, it is possible for a non-obligatory contract to be terminated, requiring a notice period, unless it infringes the law. If not agreed upon or if the clause infringes the law, then the statutory provisions related to that type of contract shall be applied, including any stated notice periods; if not, then a reasonable period – based on the principle of goodwill – will be used to calculate the notice period. In all scenarios, a contract shall be terminated when the notice reaches the other party, unless otherwise stipulated in the termination notice.

Automatic termination on insolvency

Will a commercial contract terminate automatically on insolvency of the other party?

According to Insolvency Act No. 21 of 2018, any contractual clause that provides a party the right to terminate the contract or stipulates its automatic termination in the event of the debtor's declaration of insolvency or similar procedures shall be considered void and invalid. Moreover, the declaration of insolvency will not affect the continuation of implementing

contracts. However, certain provisions must be applied in regard to continuing or terminating a contract when one party is insolvent.

Termination for financial distress

Are there restrictions on terminating a contract if the other party is in financial distress?

There is no statutory provision that generally permits a party to terminate a contract when the other party is facing financial difficulties; however, the contract may be terminated if one party violates the agreement to the point where it is no longer reasonable for that party to be bound by the agreement. This could happen, for example, if the other party is in default on payments.

Force majeure

Is force majeure recognised in your jurisdiction? What are the consequences of a force majeure event?

According to the Jordanian Civil Law, in binding contracts, if a force majeure event occurs that makes the implementation of either obligation impossible, then the counter obligation will be considered expired, effectively terminating the contract. In cases where only part of the obligation becomes impossible to fulfil, then only the corresponding part on the other side is voided. The Jordanian Civil Law has outlined examples of partial impossibility, which is the temporary impossibility in continuous contracts, in which the creditor may terminate the contract provided that the debtor is informed. It is worth mentioning that force majeure shall be applied to contracts even if not explicitly stipulated in the terms.

SUBCONTRACTING, ASSIGNMENT AND THIRD-PARTY RIGHTS

Subcontracting without consent

May a supplier subcontract its obligations under the contract without seeking consent from the other party?

As a general rule under the Jordanian Civil Law, implementing a contract must be done by the party itself, their representative, or any third party that has an interest in implementing the contract. According to the general contract provisions, a supplier cannot subcontract obligations under the contract without first obtaining consent from the other party, who will not otherwise be bound by the subcontract. There are some exceptions to the latter provisions, as according to the applied provisions to the contractor agreement, a contractor could subcontract any of its obligations unless otherwise agreed in the agreement, or the nature of the obligation requires it to be implemented by the contractor itself.

Statutory rules

Are there any statutory rules that apply to subcontracting in your jurisdiction?

According to the general contract provisions, subcontracting is subject to the mutually agreed-on provisions by all parties. However, if such agreement is not required or if neither party has agreed on the sequences of subcontracting, then the provisions of the main contract and the applied rules of law will apply.

Note that the term: 'sequences of subcontracting' refers to the order and manner in which subcontracting occurs, subject to the main contract and applicable laws.

Assignment of rights and obligations

May a party assign its rights and obligations under the contract without seeking the other party's consent?

According to the applied general provisions of the contract law, neither party may assign its rights and obligations under the contract without seeking the consent of the counter-party, unless otherwise stated in the contract.

Assignment of rights and obligations

What statutory controls apply to the assignment of rights or obligations under a supply contract?

According to the Jordanian Civil Law, an assignment of rights and/or obligations is valid only if approved by the assignor, the assignee and the counterparty. Therefore, assignments (including the assignment of receivables) are affected by the execution of an agreement.

Enforcement by a third party

How may a third party enforce a term of the contract?

In reference to Jordanian Civil Law, the general rule in contractual relationships is that the contract's provisions do not extend to any third party, thereby excluding any third-party enforcement of contract terms. However, some exceptional cases grant the right to a third party to enforce a term and/or terms of the contract, including:

- Contracting for the benefit of a third party: Jordanian laws permit contracting parties to enter into an agreement for the benefit of a third party. In such instances, the third party has the right to request the enforcement of the terms made in their favour.
- Transferring the contract to general and private successors: According to Jordanian Civil Law, the rights and obligations of contracts transfer to general successors (such as heirs) and private successors (such as buyers). These third parties therefore gain the right to request the enforcement of the contract under specific conditions.

DISPUTES

Limitation periods

What are the limitation periods for breach of contract claims? Is it possible to agree a shorter limitation period?

The Jordanian law specifies limitation periods within which claims must be filed. As a general rule, this period is 10 years for claims arising from commercial relationships (article 58 of the Jordanian Trade Law), and 15 years for non-commercial claims (article 449 of the Jordanian Civil Law). However, there are specific provisions that require claims to be filed within shorter periods, especially when the claim is related to certain types of contracts. For example, according to article (450) of the Jordanian Civil Law, in claims arising from lease contracts, the claim must be filed within five years from the date of the contract breach (five years from the date of the non-payment of the due amounts).

These limitation periods are considered mandatory legal provisions. Deviation from these statutory limitation periods it is not allowed.

Choice-of-law clauses

Do your courts recognise and respect choice-of-law clauses stipulating a foreign law?

Article (20) of the Jordanian Civil Law clearly stipulates that parties in a contract are permitted to agree on the application of a foreign law in their contractual relationship. Additionally, the Jordanian Court of Cassation, in its decision number (4793/2014), clarified that the agreed-upon foreign law must not contravene Jordanian public order or the application of legal procedures.

Choice-of-law clauses

Do your courts recognise and respect choice-of-jurisdiction clauses stipulating a foreign jurisdiction?

According to the Jordanian Civil Procedures Law, Jordanian courts have the authority to hear and decide on all claims arising in Jordan. However, it is important to note that according to the Jordanian Court of Cassation, evidenced by decisions such as number (4074/2009), when both contractual parties are Jordanian citizens, they cannot agree that a foreign jurisdiction will have authority to hear their disputes. In other words, if one of the parties is not a Jordanian citizen, then the parties have the right to agree that a foreign jurisdiction will hear and decide on their disputes.

Efficiency of the local legal system

How efficient and cost-effective is the local legal system in dealing with commercial disputes?

In Jordan, the judicial system places considerable emphasis on the efficient resolution of commercial disputes. While the country lacks specialised commercial courts, there

is a department in the Amman Court known as the Economic Room. This department deals with high-value and commercially critical cases, such as those relating to insurance, contracting, banking transactions and commercial agencies. The judges in this department have extensive expertise in commercial matters, resulting in highly efficient resolution of commercial disputes.

Regarding the costs of settling commercial disputes in Jordanian courts, there are fees that must be paid by the plaintiff. These fees are calculated as a percentage of the claim value, although the maximum limit is capped at 5,000 Jordanian dinar.

New York Convention

Is your jurisdiction a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Which arbitration rules are commonly used in your jurisdiction?

The Hashemite Kingdom of Jordan is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Jordan ratified the convention on 10 June 1958, and it entered into force on 15 November 1979. As for the arbitration rules used in Jordan, there are no specific rules for arbitration procedures. According to article (24) of the Jordanian Arbitration Law, the parties have the right to agree on any arbitration rules they deem suitable.

REMEDIES

Available remedies

What remedies may a court or other adjudicator grant? Are punitive damages awarded for a breach of contract claim in your jurisdiction?

In general, if a party to a contract is found to have breached its obligations in a manner considered to be a violation of the contract, the other party can request the court for coercive enforcement of the contract. In the event that enforcement is not possible, the court may award financial compensation to the affected party. The amount of this compensation may either be determined by the court, or by court-appointed experts if the subject of the compensation requires technical expertise. The court may also award the affected party legal interest at an annual rate of 9 per cent from the date of the compensation claim.

UPDATE AND TRENDS

Recent developments

Are there any other current developments or emerging trends that should be noted?

Until the time this report was drafted, there are no new proposed developments or amendments to the main legislation governing commercial contracts in Jordan, namely the Jordanian Trade Law and Jordanian Civil Law.