

# Kluwer Arbitration Blog

## Waiting for Godot: the Enforcement of Arbitral Awards in Lebanon Amid the Unprecedented Fall of the Lebanese Currency

Karim Zein · Monday, December 20th, 2021

Much like Beckett's *Vladimir* and *Estragon*, desperately waiting for Godot without success, the citizens of Lebanon are protagonists of a living theater of the absurd which their country has become, desperately waiting for legal, institutional and social reforms to no avail. While the collapse of the Lebanese financial system and the *de facto* capital controls imposed have called authors to consider whether potential investment arbitrations could be brought against Lebanon ([here](#)) and whether international investment agreements provide remedies for foreign investors harmed by the Lebanese financial crisis ([here](#)), this blog post focuses on the impact of said collapse on the enforcement of arbitral awards in Lebanon.

### Background of the Lebanese economic and financial crisis

News and headlines from all around the world tackling the current Lebanese economic crisis strive to describe the indescribable. While the World Bank [stated](#) on 1 June 2021 that Lebanon is sinking into one of the most severe global crises, *The Independent*, on 6 July 2021, has [emphasized](#) that said crisis is "one the world's worst in the past 170 years."

From December 1997 until late 2019, the exchange rate of the Lebanese Pound ("LBP") was pegged at 1,507 for every 1 US Dollar ("USD"). However, over the past two years, the economic and political crisis has worsened by the day and this rate has dramatically declined reaching LBP 25,000 per USD 1 as of the writing of this blog post. The currency has therefore lost approximately 95 percent of its value. The current currency exchange rate represents the black-market rate which now forms the basis of most, if not all, private transactions in Lebanon.

Paradoxically, the official exchange rate remains unchanged. It is still set at LBP 1,507 by the Lebanese Central Bank, which is the rate followed by government institutions. [Two other exchange rates](#) also exist: one at LBP 3,900 per USD 1 (recently modified to LBP 8,000 per USD 1), and another at LBP 12,000 per USD 1, both applied by private banks (under different schemes sanctioned by the Central Bank) with regard to the

withdrawal by depositors of funds from their USD denominated accounts.

Four exchange rates therefore coexist for the very same currency, with an official rate set by the Central Bank which is in complete disharmony with the economic reality. Yet, no corrective legislative or regulatory steps have been taken in this respect. To put it bluntly, the Lebanese legislature and the Central Bank remain true to their usual ostrich policy: see no collapse, hear no collapse, speak no collapse - *circulez, il n'y a rien à voir!*

### **Issues arising out of the Lebanese economic and financial crisis with respect to the enforcement of arbitral awards in Lebanon**

The discrepancy between the official exchange rate and the black-market rate certainly impacts the [enforcement](#) in Lebanon of domestic and foreign arbitral awards requiring the payment of a debt denominated in a foreign currency.

Several issues may arise before Lebanese courts, notably:

1. Whether the award debtor is able to compel the award creditor to receive payment of a debt, denominated in a foreign currency, in LBP;
2. Whether the award creditor may refuse a payment made in LBP of a debt denominated in a foreign currency, and compel the award debtor to pay its debt in the foreign currency provided for in the arbitral award; and
3. Which exchange rate applies to the payment of a debt denominated in a foreign currency in an award when enforcing said award before the Lebanese courts.

The answers to these questions have considerable financial consequences for award creditors and award debtors. If a company awarded USD 1,000,000 by an arbitral tribunal seeks enforcement in Lebanon and receives payment in LBP at the official rate, it will be granted a sum of LBP 1,507,000,000 (roughly USD 60,280 at the current black-market-rate), i.e., 6.03 % of the total amount awarded by the arbitral tribunal.

To date, this issue appears to have only arisen before the Lebanese courts in domestic and contractual matters. The conclusion reached in those instances is that, with regard to contracts concluded before the economic crisis and the drastic plunge of the Lebanese currency, the debtor can indeed pay off their debt in LBP, even when such debt is denominated in a foreign currency. It is expected that the same solution reached by the courts would apply in cases seeking to enforce a domestic or international arbitration award in Lebanon (similar issues are arising in [other](#) currency devaluation circumstances).

### **Lebanese law provides that debtors are entitled to pay their debts in LBP**

Article 7 of the Lebanese Code of Money and Credit grants banknotes of a value of 500 pounds and above “*unlimited legal tender throughout the Lebanese territory*”.

Additionally, Article 301 of the Lebanese Code of Obligations and Contracts provides that *“where the debt is a sum of money, it must be paid in the currency of the Country”*.

These public policy provisions are mandatory. They relate particularly to the economic public order as they aim to protect the national currency. Therefore, parties to a contract, or even a tribunal in the case of an arbitration award, cannot circumvent these provisions by mandating that the debtor make a payment in a foreign currency: any agreement to such effect would be null and void and an arbitral award which makes such a requirement risks being set-aside, at least partially, for violating public policy.

### **Creditors are prohibited from refusing payment in LBP**

It logically follows that Lebanese law prohibits creditors from refusing payment in the Lebanese currency. In fact, the Enforcement Judge of Beirut [ruled](#) that while creditors may not force a debtor to pay their debt in a foreign currency, it is not possible for creditors to refuse to receive payment of a debt in the national currency, even if said debt was initially denominated in a foreign currency. Indeed, Lebanese law even imposes criminal sanctions on those who refuse payment in LBP. Article 192 of the Code of Money and Credit provides that *“refusal to accept Lebanese money within the framework of conditions laid down in articles 7 and 8 is subject to penalties listed in article 319 of the Penal Code”*. The sanctions contemplated by Article 319 of the Penal Code are imprisonment for 6 months to 3 years and payment of a fine varying between LBP 500,000 and LBP 2,000,000.

It is therefore incontrovertible that debtors in Lebanon, including debtors of arbitration awards, are legally entitled to pay their debts in the national currency even when said debts are denominated in a foreign currency. However, the question remains as to the rate of conversion which would be applied.

### **The applicable rate to the currency conversion**

While the applicable rate to the currency conversion is [not a concern that is specific to Lebanon](#), the Lebanese legal landscape binds the judiciary by a fixed official rate - whether or not said rate takes into account the economic reality of the country.

Article 2 of the Code of Money and Credit provides that the law determines the value of the LBP and therefore vests the Lebanese legislature with the power to determine said value. Although the Lebanese Parliament has not outright done this by legislation, it has at least indirectly acknowledged the rate set by the Central Bank - which varies between LBP 1,507 and LBP 1,515 for USD 1 - by passing law number 193 dated 16 October 2020 which requires banks to process money transfers to Lebanese students abroad at the Central Bank's rate. This means that the rate set by the Central Bank is (and remains to date) the official rate.

The **majority** of Lebanese courts have therefore **applied** the official rate set by the Central Bank when assessing enforcement requests of debts denominated in foreign currencies. Indeed, the Enforcement Judge in Beirut stated in an opinion rendered on 24 September 2020 that the currency conversion rate from LBP to USD is set by the Central Bank and was valued at 1,507.50 as of the date the opinion was rendered. The Enforcement Judge in Beirut also confirmed that no other legal rate exists under Lebanese law. Concretely, this means, as per the hypothetical provided above, that a party enforcing an award of USD 1,000,000 will receive LBP 1,507,000,000 (roughly USD 60,280 at the current black-market-rate), i.e., 6.03 % of the total amount awarded by the arbitral tribunal.

However, there have been sporadic rulings by the Lebanese courts which have applied different conversion rates. For instance, one ruling from the Beirut Commercial Court opted for a LBP 3,900 to USD 1 exchange rate in debts between traders. The author considers that this decision is unlawful in light of the exclusive jurisdiction of the legislature to determine this rate pursuant to Article 2 of the Code of Money and Credit and is likely to be struck down on appeal. In any case, concretely, this approach entails that a party enforcing the same award of USD 1,000,000 will receive LBP 3,900,000,000 (roughly USD 156,000 at the current black-market-rate), i.e., 15.6% of the total amount awarded by the arbitral tribunal - a figure which remains at odds with the economic reality.

## **Conclusion**

Today, although as shown above, case law is not unanimous, debtors of debts denominated in foreign currencies, including arbitral award debtors, are entitled to pay their debts in LBP at the official exchange rate determined by the Bank of Lebanon - and creditors cannot refuse such payment without risking criminal prosecution. This means that at present the enforcement of an arbitration award in Lebanon may effectively extinguish over 90% of the owed amount, and perhaps even more considering the ongoing depreciation of the LBP.

This raises the question of whether an award debtor, whose award has been enforced on the basis of the official exchange rate, could have **grounds for an investment arbitration** against Lebanon on the basis of indirect expropriation. The answer will depend on whether the arbitral award itself constitutes an “investment” under the applicable BIT, whether the financial rights enshrined in the award constitute “property” capable of being expropriated, and whether the actions of the Lebanese courts were illegal (see for example *Saipem S. p. A. v. Bangladesh*, in which the court determined that an ICC arbitral award was capable of constituting an investment under the BIT and Article 25 of the ICSID Convention in light of the “entire operation” involved).

Just as *Vladimir* and *Estragon* were told that *Godot* will not be coming today but will certainly be coming the next day, the Lebanese citizens are constantly told that reforms are about to see the light of day... yet they never do. Until then, refrain from enforcing your awards in Lebanon.

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