

Newsletter

Eleventh Edition, August 2021

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Welcome to the eleventh edition of our Newsletter. In this edition we will look into “the most prominent provisions of Regulating Insurance Business Law No. (12) of 2021”. In that regard, we shall analyse the following:

- The general features of the current Regulating Insurance Business Law.
- The change in the entity that carries out the supervision and that regulates the insurance sector’s business.
- The most prominent provisions of the law for licensing of insurance companies.
- Primary obligations of the entities practicing insurance business.
- Prohibitions on entities that engage in the insurance business or which provide insurance services, what those should avoid and the penalties that may be imposed on them for breaches.

“Regulating Insurance Business Law No. (12) of 2021 obligates the insurance company, as a means of guarantee for the execution of its obligations, to submit a “cash deposit” to the Central Bank.”



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The Jordanian insurance sector, which came into existence back in 1946, grew and expanded to reach in 2020, 24 insurance companies and 1,139 insurance service providers. That growth has not been overseen by the Jordanian legislator, and laws were dedicated to monitoring the insurance business and regulating those. These laws have been sequenced and amended over the years to keep pace with the changes that occur in the insurance industry and adapt to its own nature, with the **most recent being the Regulating Insurance Business Law No. (12) of 2021** (hereafter known as the “**Current Law**”), which abolished and replaced the Regulating Insurance Business Law No. (33) of 1999 and its amendments (hereafter known as the “**Repealed Law**”).

The Current Law has retained some provisions of the Repealed Law, and has made amendments to some other, including of minor and major ones. For example, the Current Law maintained that the entities subject to its provisions may keep a ‘miniature’ electronic copy of the original papers related to their financial business,⁽¹⁾ however, (the Current Law) **explicitly required that the provisions of the Electronic Financial Transactions Law must be observed** in order for these ‘miniature’ copies to be authentic in

evidence,⁽²⁾ the Current Law also maintained the formation of the insurance dispute resolution committee, indicating the effect of filing a complaint before the expiry of the limitation period.

Further, the Current Law reorganized the provisions of the board of directors of the insurance company, as it requires special conditions for the chair and membership in the board, which conditions were not stipulated in the Companies Law; For example, a requirement that [membership] age shall be no less than 25 years old, and the requirement to obtain the prior approval of the Central Bank for the nomination or appointment of any person as a member or representative of a member of the board; the Central Bank has been granted the power to specify additional qualifications, experience, and conditions that must be met by the chairperson or by the member.

The Current Law also introduced new wording and provisions, adding wording to explicitly clarify the scope of the law's application instead of the dispersed provisions in the Repealed Law.

The nature of the clarity of the Current Law appears through its enumeration of what is included in the work of insurance service providers, including; actuaries, insurance agents and brokers, loss

¹ The general principle is that the company shall keep the original papers related to its financial business, but the Repealed Law, as well as the Current Law, permitted the company to keep a miniature (microfilm or glare) “modern technologies” of the original of these papers.

² Article (104) of Regulating Insurance Business Law No. (12)/ 2021.



3 adjusters and consultants.⁽³⁾ The Current Law stipulates the establishment of a regional office named the “Unified Office”, to carry out the tasks mentioned in the Unified Insurance Card Agreement for Motor Vehicles Crossing Arab Countries, which the Hashemite Kingdom of Jordan is a signatory to.⁽⁴⁾

We are unable to cover all the provisions of the Current Law in the folds of this Newsletter, consequently we thought it will be suitable to try to shed light on the most prominent provisions contained in the Regulating Insurance Business Law, by presenting the key amendments implemented to the regulatory and supervisory framework of the insurance sector, and the provisions affecting the business of insurance companies.

Responsibility of Supervising the Insurance Sector and Regulating its Work

The change that occurred in the body that monitors and regulates the insurance sector's business is one of the most important and prominent provisions of the Current Law, and as such it is the first one we are addressing in this Newsletter. The supervision of this sector used to be carried out under the umbrella of the Ministry of Industry, Trade and Supply, but the

Current Law has made an amendment to that and has assigned the authority and task of monitoring the insurance sector and regulating its work to a new body, the Central Bank, and accordingly:

- Starting from the entry into force of the Current Law, the Central Bank shall complete all work, tasks and decisions issued under the Repealed Law and the legislations issued under the Repealed Law. The Central Bank is now carrying out all what was delegated to the "Insurance Regulatory Commission", "Insurance Commission" or "Insurance Department". Therefore, the Central Bank is the authorized entity to issue the necessary instructions to implement the provisions of the Current Law, and it is the body which collects the fines imposed under its provisions.⁽⁵⁾
- The board of directors of the Central Bank replaced the “Insurance Commission Board of Directors” and the governor of the Central Bank replaced the "General Director of the Insurance Commission" in his/her duties.⁽⁶⁾ The board of directors of the Central Bank is receiving licensing applications submitted by foreign insurance companies to open a branch

³ Article (82) of Regulating Insurance Business Law No. (12)/ 2021.

⁴ Article (94) of Regulating Insurance Business Law No. (12)/ 2021, as the Unified Insurance Card Agreement for Motor Vehicles Crossing Arab Countries referred to the establishment of a regional office in each member state of the agreement called the Unified Office, and therefore the updated article in the current Regulating Insurance Business Law came in line with the provisions of this agreement.

⁵ Article (97) of Regulating Insurance Business Law No. (12)/ 2021.

⁶ Article (110) of Regulating Insurance Business Law No. (12)/ 2021.



in the Kingdom of Jordan,⁽⁷⁾ and the board has become the authorized entity to issue decisions to cancel insurance companies' licenses in the cases prescribed by law.⁽⁸⁾ While the governor is now the authorized person to issue the necessary decisions to implement the provisions of the law and other legislation issued pursuant thereto.

The Current Law has granted the Central Bank, its officials and employees with the necessary protection and immunity to carry out their powers. One aspect of this protection is that the Current Law does not consider these persons responsible in the event of harm caused to others as a result of an action or procedure carried out by them or as a result of their refusal to perform an action or procedure, if the act or omission is for the purposes of carrying out their powers and tasks, and they are only responsible if it is found that the action / procedure or omission constitutes gross negligence or was performed in bad faith.⁽⁹⁾

It should be noted that the entities that are under the supervision of the Central Bank are not limited to insurance companies, but they also include insurance service providers,⁽¹⁰⁾ and this control may extend to

any entity or fund that provides its members or beneficiaries with insurance benefits “*such as those provided by the insurance contract without the presence of an insurance company.*”⁽¹¹⁾

By the entry into force of this Current Law, it has become necessary for all the entities that are under the aforementioned Central Bank supervision to reconcile their status in accordance with the provisions of the Current Law, and if they do not do so, their license will be cancelled.⁽¹²⁾

Secondly, we shall look into the provisions for insurance companies under the Current Law, and perhaps the most important point to address is the matter of granting a license to practice insurance business, with the following being some provisions on insurance companies licensing.

Insurance Companies Licensing

The basic condition for granting the Insurance company license is related to the type of company, since the Current Law requires that the company requesting the license to be a public shareholding company, with the possibility that the company (an exception to this condition) could be one of the

7 Article (9-A) of Regulating Insurance Business Law No. (12) /2021.

8 Article (11-A) of Regulating Insurance Business Law No. (12)/ 2021.

9 Article (107) of Regulating Insurance Business Law No. (12)/ 2021.

10 Article (83) of Regulating Insurance Business Law No. (12)/2021.

11 Article (7) of Regulating Insurance Business Law No. (12)/2021, and that in the case the Central Bank decided to impose its control on the entity or the fund upon its request.

12 Article (103) of Regulating Insurance Business Law No. (12) of 2021.



following:

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- Branch of the foreign insurance company.⁽¹³⁾
- Subsidiary company of the insurance company.⁽¹⁴⁾
- Jordanian insurance company operating outside the Kingdom (offshore company).
- Restricted insurance company provided that it shall be a private shareholding company or a limited liability company.⁽¹⁵⁾

The board of directors of the Central Bank has the authority to grant the license, and its powers are either to approve or reject it with reasoning, and the approval may be in an explicit or an implied/automatic manner, as the license application is considered as automatically approved in the event that the board does not issue a decision within a period of ninety days from the date of completing the requirements of obtaining the license.⁽¹⁶⁾

When the decision to approve the license is issued, insurance companies have various duties and obligations, including informing the Central Bank of any change that may occur to the data on which the license was granted, and the obligation

to approve an actuary within 30 days from the date of granting the license.⁽¹⁷⁾

The board also has the power to reject with reasoning (to explain of the reason for reject the license) in the event it finds that licensing the company that submitted the application will not add value to the insurance sector or if the licensing will lead to “negative or unacceptable” consequences for the insurance sector.

The board has the power to cancel the insurance company’s license if one of the cases stipulated in the Current Law applies, such as the case that the insurance company did not start carrying out business within 12 months from the date of obtaining the license.⁽¹⁸⁾

However, cases of license cancellation in the event that the company the license of which is to be cancelled is a branch of a foreign insurance company is not limited to the aforementioned cases, and the Current Law includes additional cases that allow the board to cancel the branch of a foreign insurance company. For example, the case of changing the nationality of the parent company, and the case of the company at the

¹³ It should be noted that there are special terms and provisions for the licensing of foreign insurance companies.

¹⁴ Whether it is Jordanian or foreign, this is a new addition to the Current Law.

¹⁵ This is a new addition to the Current Law.

¹⁶ Article (8) of Regulating Insurance Business Law No. (12)/2021.

¹⁷ Article (14) of Regulating Insurance Business Law No. (12)/ 2021.

¹⁸ As well as the case in which the license was granted based on incorrect or misleading information contained in the license application or the enclosed documents, and in the event that the insurance company submits a request to cancel its license, and in the event that the license of another insurance company that has a dominant interest in the insurance company is cancelled, and this cancellation has negative repercussions on the insurance company, and that is within certain provisions contained in article (11) of Regulating Insurance Business Law No. (12) of 2021.



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head office ceasing the business of insurance, and in the event of an effective change in the ownership or the memorandum of association of the parent company or its articles of association, and in the event of a fundamental deficiency in the financial position of the parent company, and in the event that it was proven that the competent authorities in the company's main country did not apply a sound basis in monitoring the insurance business, within certain provisions.

Following the matter of licensing insurance companies that has been discussed, it is necessary to outline the guarantee that those companies must provide, which is to submit a cash deposit, and the following is an overview of the provisions related to this guarantee.

Submitting a Deposit Obligation⁽¹⁹⁾

The Current Law obligates the insurance company, as a means of guarantee for the execution of its obligations, to submit a "cash deposit" to the Central Bank (for the benefit of the Governor in addition to his/her function), and the Current Law includes several provisions for said deposit, which we list as follows:

- 1) The only person who has the right to dispose of said deposit is the governor of the Central Bank in addition to his/her function, which

means that no other person has the right to dispose of said deposit, including of the insurance company.

- 2) The governor has the authority to deduct from the amount of the deposit the due amounts on the insurance company [based on the Current Law and the legislations issued thereunder, such as fines and fees] which the insurance company failed to pay.
- 3) It is not permitted to use the deposit for any purpose other than the purpose of deducting the amounts that the insurance company has not committed to pay, and for the benefit of the insured persons in some cases.
- 4) The insurance company has an obligation to pay any shortfall in the amount of the deposit, assuming that the amount of the fine incurred by the insurance company has been deducted from the deposit it provided. In that case, the insurance company shall pay said deducted amount within a period specified by the Central Bank.
- 5) Attachment or enforcement on the deposit to the benefit of any party is not permitted, unless such attachment or execution is for the benefit of the insured persons.

¹⁹ Article (13) of Regulating Insurance Business Law No. (12)/2021.



7 Noting that a special regulation will be issued to determine the amount of this deposit and to regulate the rest of the relevant matters.

Provisions in relation to Information Exchange

All information and data provided to the Central Bank in accordance with the provisions of the Current Law are confidential information and data that may not be viewed by others, and access to those is through the statistical data that the bank publishes,⁽²⁰⁾ hence, each of the insurance companies and insurance service providers and their current or former employees⁽²¹⁾ shall observe strict confidentiality with regard to the work and services it provides. They shall, as a general rule, refrain from giving out any data on said works and services, or even about the insured persons and the beneficiaries, even if the relationship ends between the company/insurance service provider and the insured persons and the beneficiaries.⁽²²⁾

As an exception, such information may be legally exchanged in the following cases:

- 1) When the Central Bank carries out its legal work and tasks or exchanges information related to the insurance sector with the

entities and institutions that regulate and supervise the financial sector, inside and outside the Kingdom of Jordan, within certain restrictions if the exchange takes place with external parties.

- 2) To establish the right of the entity practicing insurance business or providing its services in a judicial dispute that arose between it and its client.

It is also necessary to give out or disclose certain information such as the duty of insurance companies and insurance service providers to disclose to clients any of the commissions or fees related to the service provided, or the duty of insurance companies to exchange information related to insurance contracts to limit the risk of committing any violation of the insurance legislations.⁽²³⁾

It should be noted is that the prohibition of disclosing such information is not the only prohibition in the Current Law, rather there are various prohibitions and restrictions that those who practice insurance business or provide insurance services must adhere to, and in the next page an outline of the most important of these prohibitions is presented.

20 Article (91) of Regulating Insurance Business Law No. (12)/2021.

21 Anyone who, due to his/her profession, function or work, has access, directly or indirectly, to such data and information.

22 Articles (88) & (89) of Regulating Insurance Business Law No. (12)/ 2021.

23 Article (100) of Regulating Insurance Business Law No. (12)/ 2021.



What the insurance company may not do

The Current Law stipulates in separate texts certain prohibitions that must be avoided in the insurance sector, and the following is an enumeration of the most prominent of those prohibitions:

It is not permitted to engage in insurance business or insurance service business by a person who does not have the license required by law.

The insurance company may not make any amendment to its memorandum of association or articles of association without obtaining a prior written approval from the Central Bank, even in cases in which the amendment is limited to the objectives of the insurance company or its capital.

The insurance company may not stop carrying out its business without obtaining a prior written approval from the Central Bank, regardless of the reason for the suspension.

It is not permitted for the insurance company to carry out its business, suspend it, or change the location of its practice without obtaining a prior written approval from the Central Bank and according to certain instructions.

It is not permitted to change the ownership of the insurance company or even transfer its shares if such transfer leads to a person's ownership of a dominant interest in the capital of the insurance company or leads to an increase in the percentage of such interest, bearing in mind that dominant interest means controlling at least 10% of the company's capital.

The insurance company may not distribute any profits to shareholders without obtaining a prior written approval from the Central Bank and prior to amortizing its losses.

The insurance company may not undertake any of the merger procedures without obtaining a prior written approval from the Central Bank and within the controls set by the Bank.

The insurance company may not deal with any of insurance service providers that are not licensed or approved by the Central Bank.

The entities subject to the supervision of the Central Bank indicated in this Newsletter may not be engaged with an employment contract with "any person who was an employee of the Central Bank during a period of two years from the date of termination of his/her service" or any non-Jordanian employee without obtaining a prior written approval from the Central Bank.

It is not permitted for an insurance company licensed to carry out takaful insurance business to engage in insurance business in violation of the provisions and principles of Islamic Sharia.

In the event of canceling the license of a branch of a foreign insurance company, it is not permitted for the branch or the parent company to dispose of any of the "assets and funds of the branch or transfer it outside the Kingdom" before it settles all its obligations inside the Kingdom of Jordan.

It is not permitted to insure with an insurance company outside Jordan on the liability arising within it or on any of its movable and immovable assets or on the employees of any included party.



Accordingly, the failure of the insurance company to refrain from the above exposes it to penalties and therefore we will review next the penalties stipulated in the Current Law and the violations imposed on them.

Penalties

The Current Law has included a set of penalties and measures that the Central Bank may impose and take in certain cases. The following is a description of the most common of penalties and violations imposed:

Violation by the insurance company or any of its board members or employees of the provisions of the law or the legislations and decisions issued pursuant thereto

Or the insurance company or one of its subsidiaries or any of its board members or employees of unsafe or unsafe operations or practices for the company or its insured persons.

- Here, a penalty or procedure or other or any two of the following may be imposed:
 - Sending a written warning to the insurance company.
 - Requesting the insurance company to provide an appropriate plan for the actions that will be taken to lift the violation and rectify the situation.
 - Preventing the insurance company from concluding additional insurance contracts.
 - Setting an upper limit for the total premiums that the insurance company obtains from the insurance contracts it concludes.
 - Maintaining in Jordan assets equivalent in value to all company's net obligations arising from its business in Jordan or a certain percentage of their value.
 - Restricting the insurance company from practicing any of its investment activities or from liquidating its investments.
 - Preventing the insurance company from disposing of its assets or transferring any assets or funds outside Jordan.
 - Determining the activities and business of any of its subsidiaries and determining the aspects of ownership in those companies.
 - Imposing a fine on the insurance company of not less than One Thousand Dinars and not more than Two Hundred Thousand Dinars, and that to be doubled upon repetition.
 - Requesting the insurance company to deprive any of its board members or employees of his/her entitlements of bonuses and allowances.
 - Requesting the insurance company or the head office of the foreign insurance company's branch to take the necessary measures to rectify the administrative situation therein.
 - Disqualification of the chairperson of the board of directors of the insurance company or any of its members.
 - Disqualification of the authorized manager and the appointment of a temporary administrative committee.
 - Dissolving the insurance company's board of directors and taking over its management by the Central Bank or by a temporary committee.
 - Requesting the insurance company to file a lawsuit against any of its board members or employees.
 - Suspending or cancelling the license of the insurance company or the license to practice for a specific branch or for more branches of the insurance company.



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Exposing the insurance company to unsafe or unsound conditions or to problems that have a material impact on its financial position or on the rights of the insured persons or the beneficiaries

- Here, the council can take action to dissolve the insurance company's board of directors and form a temporary committee

In the event that any of the above measures or penalties is imposed, each person of interest has the power to appeal against that before the Administrative Court within 30 days of the issuance of the measure or penalty, however, the appeal does not result in suspending the execution of the decision, unless the court decides so.

Violation by any of the insurance service providers of the provisions of Regulating Insurance Business Law and the legislations issued pursuant thereto

- A monetary fine of not less than One Thousand Dinars and not more than One Hundred Thousand Dinars.

Violation by any person other than insurance companies and insurance service providers of the provisions of Regulating Insurance Business Law and the legislations issued pursuant thereto

- A monetary fine of not less than One Thousand Dinars and not more than Four Hundred Thousand Dinars.

Failure by the insurance companies and insurance service providers to observe strict confidentiality in matters related to insurance business and the services they provide, and that those or any of their current or former employees or any person who has direct or indirect access to data, discloses data on such business and services and on the insured persons and the beneficiaries, in cases other than those permitted by law

- A penalty of imprisonment for a period of no less than six months or a fine of no less than Ten Thousand Dinars and not more than Fifty Thousand Dinars or both of these penalties may be imposed.

In conclusion, we would like to point out that what was covered in this Newsletter is not exhaustive of the entire provisions of the Regulating Insurance Business Law No. (12) of 2021, but rather is presented to shed light on its most important features and the associated additions.



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If you feel that other persons would be interested to read this Newsletter, please feel free to share this Newsletter.

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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 Professor Mohammad Hammouri. Professor Hammouri is the Chairman of the board of Hammouri & Partners Attorneys at-Law, a litigator as well as 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, an academic, attorney and a former Minister of Industry, Trade and Supply. Dr. Hammouri is both an experienced attorney and arbitrator, an expert in the Corporate sector, Commercial Transactions, Financial Markets, Banking, International Trade and negotiations. He is an Associate Professor at the School of Law, University of Jordan and (formerly) the Dean of the School of Law.

Hammouri & Partners team consists of 25 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.

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 has the capabilities and competence to represent parties in the most complex and novel legal matters, as it encompasses expertise in several areas of law, whether it is before courts or arbitral tribunals. Hammouri & Partners Attorneys at-Law was one of the first firms in Jordan to establish a specialized International department to cater for the needs and requirements of international clients on an array of tasks with an international element, such as those regarding bilateral and International Trade negotiations, projects, contracts and others.

In addition, Hammouri & Partners provides legal advice and consultation to various industries such as those of Construction & Infrastructure, Manufacturing, Engineering, Trade, Insurance 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, in Europe, the United Kingdom and the USA. Hammouri & Partners' proven capability on the above areas of law has earned the firm international acclaim by the most reputable legal directories. The International Financial Law Review (IFLR 1000), the Legal 500 and the Chambers and Partners Global, all highlight Hammouri & Partners as a leading law firm in the Jordanian legal services industry.



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