

# Newsletter

12<sup>th</sup> Edition, September 2021

Welcome to the 12<sup>th</sup> edition of our Newsletter. In this edition we will look into the concept of consumer protection and the most prominent rights and safeguards that are provided to the consumer by the Jordanian legislator in accordance with the Consumer Protection Law No. 7 of 2017, and we will address the most prominent provisions of said Law, including:

## Subject

**The Concept of Consumer and Supplier**

**Consumer Rights and Supplier's Obligations Towards the Consumer**

**After-Sales Service**

**The Legal Protection of the Consumer**

**The Mechanism for Filing a Complaint Against Supplier who Breaches his/her Obligations**

**Provisions and Safeguards that Ensure the Protection of the Consumer Against the Supplier**

**The Criteria for Misleading Advertisement**

**The Concept of Arbitrary Conditions**

**The Claims of the Consumer Against the Supplier**

**The Penalty for Breaching any of the Provisions of the Law**

*“Consumer protection laws aim at preventing fraudulent acts and reducing fraud and unfair practices that fall on the most vulnerable and least legally literate groups of society, namely individual consumers.”*



Jordan, Amman, Shmeisani,  
Al Sharif Naser Bin Jamil Street, Cairo  
Amman Bank Building, # 96, 3<sup>rd</sup> Floor

+962 6 569 1112

info@hammourilaw.com

Hammouri & Partners Attorneys at-Law  
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## 2 Section One: The Concept of each of the Consumer and the Supplier

The Consumer Protection Law (hereinafter referred to as the “**Law**”) regulates the relationship between the supplier and the consumer within a framework that safeguards maximum protection for the consumer in order to restore the contractual balance in their business relationship for reasons that focus primarily on the fact that the consumer is not familiar with all the information surrounding purchase of good. Therefore, the Law assumes that the supplier is in a more advantageous position than the consumer and therefore it is possible [for the supplier] to impose conditions that violate one of the most important general rules in contracts, that of the contractual balance between the contracting parties. That prompted the legislator to introduce legal rules to ensure the implementation of such a principle, and consequently the Law was issued. However, before moving on to present and analyse the most prominent provisions of the Law and addressing the rights of the consumer and the obligations of the supplier towards the consumer, we must first refer to the concept of both the consumer and the supplier. <sup>(1)</sup>

**Consumer:** A natural or legal person, who obtains a good or a service for (or without) a consideration to satisfy his/her personal needs or the needs of others. This does not include those who purchase the good or service for resale or rent out.

**Supplier:** A natural or legal person from the public or from the private sector, who exercises on his/her behalf or on the behalf of others the activity of distributing, trading, manufacturing or renting out a commodity or providing services to the consumer.

## Section Two: Consumer Rights and Supplier’s Obligations Towards the Consumer

The Jordanian Consumer Protection Law consists of 27 (twenty-seven) articles. Its provisions are concerned with protecting the consumer and stating the most prominent obligations on the supplier in order to attain the consumer’s economic and legal interests; the Law ensures that the consumer benefits from purchasing the commodity or service without being treated in an unfair or misleading manner and by being protected from contractual terms that diminish or restrict his/her rights by sellers. Our goal in this newsletter is to inform each of the supplier and

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<sup>1</sup> Article 2 of the Consumer Protection Law No. 7 for the Year 2017 defines both “consumer” and “supplier”.



the consumer with their rights and obligations in order to make both parties aware of the legal provisions that govern the matter.

### 3 Subsection One: The Most Prominent Rights of the Consumer: <sup>(2)</sup>

The Law provides a set of rights for consumers towards suppliers, which at the same time constitute obligations on the supplier and by which they must abide and not breach under the risk of legal liability. We list those as follows:

- Obtaining goods or services that achieve their purpose without causing any harm to his/her interests or health during the normal or expected use of those goods or services.
- Obtaining in a clear manner the complete and correct information about the commodity or service that he/she is purchasing and their terms of sale.
- Obtaining complete and clear information prior to completing the purchase process about the obligations owed by the supplier and the supplier's rights towards the consumer.
- Selecting the good or service that he/she wishes to purchase without undue influence or restriction.

- Obtaining complete and correct information about the supplier and his/her [business] address.

- Obtaining proof of purchase of the commodity or service and the basic details of the purchase process (purchase invoices).

- The right to return the commodity in the event of a defect in it and obligating the seller to refund the price of the defective good if the consumer requests so. The Law has singled out the cases that make a good or service defective, such as the lack of safety requirements, non-conformity with health rules, and non-conformity with the advertised specifications and features.

In view of the confusion about the consumer's right to return the defective goods mentioned above, and in view of the questions that it raises for the consumer, the most important of which is when a commodity is considered defective, the legislator has specified in the Law **the cases that make the good or service defective** pursuant to the Law, whereby the Law has listed specific conditions for the goods to be defective; should one of these conditions be met, the goods or service are considered defective. Those are as follows: <sup>3</sup>

- The lack of safety requirements in it for the purposes of normal or expected use.

<sup>2</sup> Article 3 of the Consumer Protection Law No. 7 for the Year 2017 states the rights of the consumer.

<sup>3</sup> Article 6 of the Consumer Protection Law lists the cases that make a good defective.



- Not conforming to the advertised properties.
- Failure to achieve the declared results for the consumer.
- 4 -Non-compliance with the applicable mandatory technical rules.
- Failure to achieve the authorized levels of performance or quality in the good or service.
- The presence of a defect or deficiency in it or its unsuitability for use in accordance with what it was manufactured to do for a period appropriate with its nature.

**However, it should be noted that the supplier may not always be responsible when there is a defect in the commodity. Therefore, the legislator has identified specific cases in which the supplier is not liable for the defect** even if it is found amongst one of the defect cases mentioned in the Law, and those are:

- 1) If the supplier did not put the good or service into circulation to be exchanged.
- 2) If the damage occurred due to the fault of the affected party (the consumer) or for a reason not related to the supplier.

### Subsection Two: The Most Prominent Rights of the Supplier

In the Law, the legislator stipulated many obligations for the supplier **that he/she must abide by and perform. By doing so, he/she would be subject to the supervision of the Directorate** (the regulatory unit that specializes in consumer protection in the [Jordanian] Ministry of Trade, Industry and Supply) – which will be talked about in detail later on in the third section of this newsletter. This subsection will focus on discussing the most prominent rights of the supplier and it will be divided into three paragraphs. In the first one and in the second one, we will talk about general obligations for the supplier and after-sales obligations. In the third one, we will address the most prominent forms of breach of contractual obligations that join together the consumer and the supplier.

#### First: General Obligations <sup>4</sup>

The legislator stipulated a number of obligations that fall on the supplier, including:

- A- Verifying the advertised quality of the goods or services he/she deals with and their suitability for use or consumption in accordance with what they were manufactured for.

<sup>4</sup> Article 4 of the Consumer Protection Law No. 7 for the Year 2017 states the rights of the supplier.



- B- Ensuring that the goods or services he/she deals with conform to the advertised characteristics and that those goods or services achieve the results advertised to the consumer.
- C- Delivering the commodity to the consumer or providing the service to him/her within the agreed period or during the usual period for it without any delay.
- D- Offering products that do not infringe intellectual property rights.
- E- Providing goods or services that achieve their purpose without causing harm to the interests or health of the consumer during the normal or expected use of those goods or services.
- F- Providing a clear picture of the complete and correct information related to the good or service that the consumer is purchasing and the terms of sale for it.
- G- Providing complete and clear information before completing the purchase process about the obligations that the consumer owes to the supplier and the rights of the supplier towards him/her.

- H- Having the consumer choose the good or service he/she wishes to purchase without undue influence or restriction.
- I- Providing proof of the consumer's purchase of the good or service and the basic details of the purchase process.
- J- Providing complete and correct information about the supplier and his/her address.

### Second: After-Sales Obligations<sup>5</sup>

The supplier is under the obligation to provide after-sales service, in particular maintenance services and spare parts necessary for goods or services that their nature requires it or to verify that they have been insured, whether in return for a fee paid by the consumer or without any consideration. In view of the fact that this is the most important and controversial obligation, **we have decided to clarify this commitment to some detail to remove the ambiguity and confusion surrounding it.** With reference to the Consumer Protection Instructions No. (1) of (2017),<sup>6</sup> it differentiates in determining the duration of the supplier's commitment to after-sales service or spare parts according to the nature of the commodity, whether it is a consumable or non-consumable commodity, as follows:

<sup>5</sup> Article 5 of the Consumer Protection Law states that the supplier is obligated to provide the consumer with after-sales service.

<sup>6</sup> Article 3 of the Consumer Protection Instructions determines the time period during which the supplier is obligated to provide the after-sales service.



• With regard to **consumable goods**, which are goods that the consumer benefits from for a maximum period of 1 (one) year, the duration of the supplier's commitment to provide after-sales service, spare parts and maintenance **is for a period not exceeding one year and/or as agreed between the consumer and the supplier.**

• With regard to **non-consumable goods**, which are goods that the consumer has benefited from for a period of more than one year, the duration of the supplier's commitment to provide after-sales service, spare parts and maintenance **is for a period of not less than 5 (five) years and/or for a period that is commensurate with the nature of the commodity.**

❖ It is necessary to note a rather important obligation that falls on the supplier after the sale and that is the obligation to guarantee the hidden defect within a good, whereby if the buyer discovers a hidden defect in the good after purchase and use then he/she has the right to return it to the supplier to indemnify the good. This is what the legislator explicitly stated in the Jordanian Civil Code, but it is applicable within certain conditions amongst which are:

- 1) The defect should be hidden; meaning not apparent to the buyer upon purchase and it does not appear except after use.

- 2) The defect should be old; meaning present in the good before the sale or it happened after when the good was in the hands of the seller prior to handing it over.
- 3) The defect should affect the good.

Should those conditions be met, the buyer can raise a claim for the guarantee of a hidden defect. However, this claim is not heard after the lapse of 6 (six) months from the date of receiving the good, unless the seller agreed to guarantee it for a longer period.

### Third: The Most Prominent Forms of a Breach by the Supplier<sup>7</sup>

In view of the importance of some of the supplier's obligations, the legislator has clearly and explicitly stipulated in the Law that the supplier is breaching his/her obligations in any of the following cases:

- Failure to deliver the commodity to the consumer within the agreed period.
- Providing incorrect information to the consumer about the commodity.
- Concealing essential information about it.
- Unavailability of after-sales service or spare parts for goods and services that their nature requires so.

<sup>7</sup> Article 6/B of the Consumer Protection Law states the cases that constitute a breach of contractual obligations.



- If he/she did not provide the consumer with all the information related to the obligations of the consumer and the rights of the supplier prior to completing the purchase process.

## 7 Section Three: Legal Protection of the Consumer

In this section, we will talk about the body that monitors the implementation of the provisions of the Law, and we will also look into the mechanism of filing a complaint against the supplier who breaches his/her obligations, in addition to addressing some provisions and safeguards that ensure consumer protection. Finally, we will address the penalties for violating the provisions of the Law.

In order to ensure that the supplier adheres to his/her obligations and implements those in accordance with the provisions of the Law, and to ensure that he/she does not breach the provisions of the laws and legislation in force, the legislator has stipulated that the work of the suppliers must be monitored by a specific authority entrusted by the legislator with this task, which is explained as follows:

### Subsection One: The Body that Monitors the Implementation of the Provisions of the Law

The *Directorate*, which is the regulatory unit concerned with consumer protection in the Ministry of Industry, Trade and Supply, monitors the supplier's compliance with the provisions of the Law and informs the

competent authorities of any act committed by the supplier in violation of the provisions of the legislations. Among the most important provisions included in the Law is to give to those Directorate employees authorized in writing by the Minister of Industry, Trade and Supply, while performing their duties, the status of a judicial police.

### Subsection Two: The Mechanism for Filing a Complaint

In the event that the supplier commits practices that violate the provisions of the Law, which constitute a breach of his/her contractual obligations imposed by the Law and which affect the interests and rights of the consumer, the Law grants the consumer a right and legal mechanism to protect his/her rights. That right is to file a complaint against that supplier. On that matter, to be noted the following:

- 1- Initially, the complaint is filed by the consumer to the Directorate and/or Consumer Protection Associations and/or the Consumer Associations Federation in one of the following manners:
  - a. Through the mobile application of the Ministry of Industry, Trade and Supply.
  - b. Through e-mail ([info@mit.gov.jo](mailto:info@mit.gov.jo)) or through the Ministry's website ([www.mit.gov.jo](http://www.mit.gov.jo)).
  - c. By directly calling the toll-free number for complaints.



- d. Fill out the approved complaint form at the Directorate and submit it to the Ministry's office.
  - e. Through the national call center system.
- 2- The complaint shall be accompanied by the following data: the name and address of the complainant, the name and address of the defendant and the content of the complaint, provided that it shall be supported by evidence and documents for such data.
  - 3- The Directorate may not consider a complaint that does not satisfy the data and documents mentioned to above.

After the Directorate receives complaints from consumers or associations about any violation committed by the supplier, then the complaint shall be verified. In the event that it is ascertained that he/she committed the violation, the Directorate has the right to send a notification to the supplier specifying the procedures he/she must carry out to correct the

violation together with the specified period for that.

After that, if the supplier removes the violation and rectifies its conditions as determined by the Directorate in the notification before referring the violation to the competent court, then the legal responsibility shall be waived. In this case, the prosecution of the supplier for that violation shall cease unless it constitutes a punishable offense under any other legislation. The Directorate may produce an official report of the committed violation and **refer it to the competent court in any of the following two cases:**<sup>8</sup>

- If the Directorate decided not to notify the violator to correct the violation due to its gravity or its recurrence.
- If the notified violator refuses to rectify the violation or part of it within the period specified for him/her in the notification.

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<sup>8</sup> Article 13/b of the Consumer Protection Law states: “the Directorate shall organize an official report with the committed violation as per the provisions of this law or the legislations in force or the regulations issued thereto and shall refer it to the competent court in any of the above mentioned events”.





### Subsection Three: Provisions and Safeguards that Ensure Consumer Protection

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1-The invalidity of any contractual agreement or condition that nullifies or restricts consumer rights.

2-The invalidity of any term or agreement that exempts the supplier from liability from its obligations under the law.

3-The invalidity of any arbitrary conditions in any contract concluded between the consumer and the seller.

The most prominent provisions and safeguards that ensure consumer protection

4-The law grants to civil and criminal lawsuits related to consumer protection a state of urgency.

5- The prohibition of publishing any advertisement that misleads the consumer or leads him/her to make a mistake regarding the good or service.

6- Initiating lawsuits for anything that would violate, harm or restrict his/her rights.



Jordan, Amman, Shmeisani,  
Al Sharif Naser Bin Jamil Street, Cairo  
Amman Bank Building, # 96, 3<sup>rd</sup> Floor

+962 6 569 1112

info@hammourilaw.com

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When talking about the safeguards granted by the Law, it is necessary to refer to the concept of misleading advertisement, which we will outline below, in addition to clarifying the meaning of arbitrary conditions that the Law considers as void conditions if they exist in the contracts between the seller and the consumer, which we will outline under point 2 (Second) below.

### Firstly: Definition of Misleading Advertisement

As we have previously mentioned, among the safeguards and provisions that ensure consumer protection against the supplier it is prohibiting the supplier from publishing any advertisement that would mislead the consumer or lead him/her to make a mistake since the Law clarified the criterion to determine what constitutes a misleading advertisement<sup>9</sup>; that is if it **included false, incorrect or incomplete data or information related to the following:**

1. The nature of the commodity, its quality or composition or essential qualities or the elements that compose it and their quantity.
2. The source of the commodity, its weight, size, method of manufacture, expiry date, conditions of use, or prohibitions for such use.

3. The type of service, the place agreed upon for providing it or the prohibitions on receiving it or its essential qualities.
4. The terms of the contract, the total amount of the price and the method of payment.
5. Advertiser obligations.
6. The identity and qualifications of the service provider if they are taken into account when contracting.

**Concerning the method of publication**, the Law did not address this matter, and therefore the prohibition under the Law includes any method of publication; whether traditional publishing methods via television, radio or newspapers and other methods or modern publishing methods using electronic means of communication.

### Second: Concept of Arbitrary Conditions

In reference to the third point of the safeguards mentioned above, which stipulates the invalidity of arbitrary conditions in the contract, the legislator has specified in the Law what cases can be considered as arbitrary conditions.

Since the contract under which the consumer obtains the good or service is prepared by the supplier, and since the legislator was aware of the fact that this means that the contract may

<sup>9</sup> Article 8 of the Consumer Protection Law states on the cases in which the advertisement is considered misleading.



contain provisions that may favor the supplier and thus constitute an maltreat of the consumer's right, the Law stipulates conditions that are considered as arbitrary conditions. If those included in a contract, they give the judge the right to either amend, nullify, or exempt the consumer from them. Some of the conditions are the following:<sup>10</sup>

1. Each condition that leads to a breach between the rights and obligations of both the supplier and the consumer, contrary to the consumer's interest.
2. Each condition that waives or limits the obligations or responsibilities of the supplier from what is stipulated in this Law or any applicable legislation.
3. Each condition that includes a waiver by the consumer of any right assigned to him/her under this Law or any applicable legislation.
4. Each condition that includes granting the supplier the right to modify or terminate the contract at his/her own will.
5. Each condition that includes obligating the consumer, in case of breach of his/her obligations, to pay compensation that does not commensurate with the damage suffered by the supplier.
6. Each condition that includes an obligation on the consumer, in the event of termination of the contract before the expiry of its term, to pay an amount of money not commensurate with the damage suffered by the supplier.
7. Each condition that waives the consumer's right to resort to the judiciary or to alternative dispute settlement methods in accordance with the legislations in force.
8. Each condition that exempts the supplier from his/her obligation to provide after-sales service or to provide spare parts, unless this condition is added to the contract in the handwriting of the consumer in a manner that explicitly and clearly indicates that the consumer is aware of and is accepting its content.

#### **Subsection Four: The Claims of the Consumer Against the Supplier**

The Law gives the lawsuit filed to protect the consumer the status of urgency, whether it was filed by the consumer himself/herself or by one of the consumer protection associations, meaning that the competent court looking into this lawsuit must decide on it on an expedited basis. As a consequence of this feature, the defendant (the supplier) must

<sup>10</sup> Article 22/b of the Consumer Protection Law states on the conditions that are considered arbitrary towards the consumer.



submit his/her response to the claim of the plaintiff (the consumer), his/her evidence, defenses and objections within 7 (seven) days, starting from the day following the date of his/her notification of the statement of claim.

### Subsection Five: Penalties for Breaching Any of the Provisions of the Law

The Law imposes the following penalties on violators:

- A fine ranging between 250 - 10,000 Jordanian dinars.
- Imprisonment for a period not exceeding 6 (six) months, or both penalties together (fine and imprisonment).
- In the event of repetition, the Law gives the court the option to rule on barring the seller from practicing any commercial activity.

It should be stated that these penalties are directed specifically towards suppliers even if the legislator did not explicitly stipulate that. This is due to the fact that the majority of the provisions of the Law primarily address the supplier and aim to provide legal protection to the consumer in the face of the supplier.

**In conclusion**, we can say that the Law has constituted the first step in the protection of consumer rights, and that its existence is necessary for a competitive environment by promoting and encouraging competition in markets that serve consumers. However, the existence of the Law alone is not sufficient enough to protect the rights of consumers and to ensure that those are not being violated. What is required is to implement the Law, apply it more effectively and highlight it sufficiently to reduce deceitful practices, fraudulent methods and unfair practices against consumers both by goods distributors and service providers.



Jordan, Amman, Shmeisani,  
Al Sharif Naser Bin Jamil Street, Cairo  
Amman Bank Building, # 96, 3<sup>rd</sup> Floor

+962 6 569 1112

info@hammourilaw.com

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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,

**HAMMOURI & PARTNERS ATTORNEYS AT-LAW**



Jordan, Amman, Shmeisani,  
Al Sharif Naser Bin Jamil Street, Cairo  
Amman Bank Building, # 96, 3<sup>rd</sup> Floor



+962 6 569 1112



[info@hammourilaw.com](mailto:info@hammourilaw.com)

## CONTRIBUTORS TO THIS EDITION



TARIQ M. HAMMOURI, LL.M., PH.D  
MANAGING PARTNER  
[tariq@hammourilaw.com](mailto:tariq@hammourilaw.com)



OMAR SAWADHA  
SENIOR ASSOCIATE, HEAD OF LITIGATION  
[Omar.s@hammourilaw.com](mailto:Omar.s@hammourilaw.com)



KHALID MOUSA  
ASSOCIATE  
[khalid.m@hammourilaw.com](mailto:khalid.m@hammourilaw.com)



MARWA DARWISH  
LITIGATION TEAM



Jordan, Amman, Shmeisani,  
Al Sharif Naser Bin Jamil Street, Cairo  
Amman Bank Building, # 96, 3<sup>rd</sup> Floor

+962 6 569 1112

[info@hammourilaw.com](mailto:info@hammourilaw.com)

Hammouri & Partners Attorneys at-Law  
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## CONTRIBUTORS TO THE ENGLISH VERSION

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YOTTA PANTOULA-BULMER  
OF-COUNSEL, HEAD OF INTERNATIONAL DEPARTMENT  
[yotta.b@hammourilaw.com](mailto:yotta.b@hammourilaw.com)



RAMA ALQASEM  
TRAINEE LAWYER  
[rama.q@hammourilaw.com](mailto:rama.q@hammourilaw.com)



ROZANA ALHROOB  
TRAINEE LAWYER  
[rozana.h@hammourilaw.com](mailto:rozana.h@hammourilaw.com)



Jordan, Amman, Shmeisani,  
Al Sharif Naser Bin Jamil Street, Cairo  
Amman Bank Building, # 96, 3<sup>rd</sup> Floor



+962 6 569 1112



[info@hammourilaw.com](mailto:info@hammourilaw.com)

## 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, an 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 Law and International Trade. He is an Associate Professor at the School of Law, University of Jordan and (formerly) the Dean of the School of Law. Dr. Hammouri is also an officially appointed member of the International Center for Settlement of Investment Disputes (ICSID) Panel of Arbitrators upon designation by the Government of the Hashemite Kingdom of Jordan, for the period of 2020 to 2026.

Hammouri & Partners team consists of 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 have the capabilities and competence to represent parties in the most complex and novel legal matters, as it encompasses expertise in several areas of law, whether it is before courts or arbitral tribunals. Hammouri & Partners Attorneys at-Law was one of the first firms in Jordan to establish a specialized International department to cater to 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 to what has previously been stated, Hammouri & Partners provides legal advice and consultation to various industries such as those of Construction & Infrastructure, Manufacturing, Engineering, Trade, 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, Europe, the United Kingdom and the USA. Hammouri & Partners has earned regional and international acclaim by the most reputable legal directories. Chambers and Partners Global, International Financial Law Review (IFLR 1000) and the Legal 500 all highlight Hammouri & Partners as a leading law firm in the Jordanian legal services industry.



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+962 6 569 1112

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