

Welcome to the thirty-fifth edition of our newsletters. In this edition, we will present to our readers the most prominent legal provisions of the Finance Companies Regulation No. (107) for the Year 2021.

1

Topic	Page Numbers
• Introduction	Pages 2 - 3
• First: The Legal Significance Of The Finance Companies Regulation And The Scope Of Its Application	Pages 3 - 5
• Second: The Most Prominent Provisions Introduced In The Finance Companies Regulation.	Pages 5 - 10
• Third: The Legal Status Of Companies Licensed Before The Provisions Of The Finance Companies Regulation.	Page 10
• Conclusion	Pages 10 - 11

*“With regard to the scope of application of the provisions of the Finance Companies Regulation No. (107) for the Year 2021, Article (3) of it came to define this scope, as it indicated that the provisions of this regulation apply to companies that engage in financing activity, and the latter means for the purposes of this regulation: “the activity that it involves the granting of direct credit and includes microfinance, financial leasing, factoring, real estate financing, mortgage refinancing, and crowdfunding based on lending and those made in accordance with the provisions of Islamic law.”*



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## Introduction

2 Although the banking sector is considered one of the most important components of the financial sector in various countries of the world, this matter does not in fact diminish the importance of other financial sectors, since the non-banking financial sector is considered an effective partner for the banking sector in promoting economic growth on the one hand and achieving financial and social stability, on the other hand.

Perhaps this effective role of the non-banking financial sector is what justifies the supervisory authorities' study of the reality of the sector in order to accurately define its activity and challenges after the global financial crisis of 2008. There was a consensus by these authorities on the need to focus on collecting accurate data on this sector. The goal would be to monitor and evaluate the size of the sector and the relevant risks, enhance its strength and protect the consumers that use financial services.

In the same context, providing supervisory cover for all non-banking financial institutions is, in fact, a starting point for the

government's efforts in strengthening the vital role of these institutions, in directing savings to various investment fields, and in providing sources of long-term financing for various economic projects. Ultimately, the efforts in promoting financial inclusion, which in turn is based on the idea of making various financial services available to different groups of the society and working to enable those groups to use these services, provided that financial services are provided with appropriate quality and reasonable prices through the channels of approved financial agencies.

The concept of the non-banking financial sector differs from one country to another, as it has not been agreed upon a unified, comprehensive and clear concept of non-banking financial institutions; In addition to the existence of discrepancies amongst countries regarding the supervisory authority that is in turn responsible for monitoring this sector, but in general concerning the Financial Stability Board which is an international body that monitors the global financial stability situation and makes recommendations regarding it, it has defined those institutions being all financial institutions which are not central banks,



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commercial banks or public financial institutions.

The non-banking financial sector actually consists of two sectors:

- A. The insurance sector, which in turn is an important element in promoting financial stability, as its role is to protect individuals and property from potential risks, in addition to collecting and developing national savings to promote economic development. This sector plays a fundamental role in the Arab countries by supporting the national economy as one of the most important sectors of non-banking financial services, as it contributes to the enhancement of investor confidence and the support of economic activities.
- B. Non-bank financing companies, which are the focus of this Newsletter, as the importance of those companies is highlighted through their role in providing financing mainly to groups that face challenges in obtaining credit from banks.

### First: The legal significance of the Finance Companies Regulation and the scope of its application

In addition to the important role played by non-bank financing companies in the banking sector, since they provide financing to groups that face an issue and / or a challenge in obtaining it from banks - as we have mentioned above - because they are not qualified, those companies actually contribute through the financial services they provide in the development of all sectors that are necessary for the growth of the economy; in that manner, the correct distribution of funds is ensured, which in turn ensures that all sectors get the opportunities they need. This will also encourage investment and ensure greater returns, as there will be an increase in the flow of cash and a rise in spending rates, which means encouragement for investment and achieving greater returns.

In spite of this important role of non-bank financing companies, it was observed in some countries that there were systemic risks represented in burdening individuals with indebtedness as a result of the absence of supervision and regulation of this sector



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and the absence of responsible financing elements, which resulted in a negative impact. Based on the Jordanian legislator's keenness in using non-bank financing companies as a tool, that contributes to financial and social stability, and which achieves goals that have a positive impact, and which controls any risks that may arise from them, a respective legislative system has been approved. Said system in turn established an encouraging framework that regulates the companies that grant credit and provide loans, and which specifies the means for obtaining the necessary licenses and which determines the activities that are allowed to be practised, and which is subjecting this type of company to the control and supervision of the Central Bank.

The Finance Companies Regulation No. (107) for the Year 2021, in turn abolished the Microfinance Companies Regulation No. (5) for the Year 2015 in order to expand the business base of finance companies after it was limited to microfinance activity only, as this regulation introduced a set of licensed activities to be practised through financing companies after they fulfill the necessary legal conditions for that, and this requires

taking full advantage of the available opportunities.

With regard to the scope of application of the provisions of the Finance Companies Regulation No. (107) for the Year 2021, Article (3) of it came to define this scope, as it indicated that the provisions of this regulation apply to companies that engage in financing activity, and the latter means for the purposes of this regulation: *"the activity that it involves the granting of direct credit and it includes microfinance, financial leasing, factoring, real estate financing, mortgage refinancing, and crowdfunding based on lending and those made in accordance with the provisions of Islamic law."*

At the same time, this regulation has excluded certain parties from its provisions, namely:

1. Licensed banks, in accordance with the provisions of the Banking Law.
2. Cooperative and charitable societies, that provide financing.



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3. Payment and electronic fund transfer companies, that issue and manage credit payment instruments.

4. Life insurance companies, when granting financing to holders of life insurance contracts.

### Second: The most prominent provisions introduced in the Finance Companies Regulation No. (107) for the Year 2021

1. Perhaps the most prominent provision introduced by the Finance Companies Regulation No. (107) for the Year 2021 is the amendment to the concept of corporate finance activity, as it was previously limited to microfinance activity for low-income persons or persons who are unable to obtain financial services from the banking sector (in whole or in part); under the said Regulation it has now become a broader concept that in turn includes other forms of financing activity in addition to microfinance, and accordingly, financing activity, according to the provisions of the Finance Companies Regulation No. (107) for the

Year 2021, it includes the following forms:

**A. Financial leasing:** The financial leasing sector is considered one of the most prominent non-traditional sources for obtaining the necessary financing, with different timeframes. Funding is obtained according to this method through a contractual relationship that allows the lessee to use a specific asset owned by the leasing company, as a legal contractual agreement is concluded between the two parties in exchange for payments, within a specific period of time, in the sense that the finance company rents a specific asset based on the customer's choice and in proportion to the circumstances of his/her activity and lifestyle. This is in exchange for installments that are agreed upon in advance and that are paid within a specific period of time in return for the ownership of the leased asset. This transfer occurs automatically to the lessee after the end of the contract or for a specific amount to be agreed upon in advance. The lessee is permitted to



purchase the leased property during the contract period.

The Regulation has indicated that the regulated financing activity in the provisions of the Finance Companies Regulation No. (107) for the Year 2021 includes the activity of leasing that results in ownership, which is the same as financial leasing, but it is based on a non-interest basis in accordance with the provisions of Islamic Sharia.

- B. Microfinance:** The companies that practise this type of financing aim to provide loans to low-income persons or to persons who are unable to obtain financial services from the banking sector, in whole or in part, in accordance with the standards set by the bank, and those loans are in small amounts for short periods, with the aim of financing micro or small projects. Funds are also provided for the purposes of supporting innovative projects and youth and women's projects, thus transforming those groups from aid-receiving groups into productive and income-generating groups.

- C. Factoring:** It is a financial activity that involves the company purchasing current and future financial rights arising from the sale of goods or from the provision of services.

- D. Lending-based crowdfunding:** The companies that practise this form of financing are known as "crowdfunding companies"; Those companies operate through electronic platforms, that allow for a large number of individuals and companies to make small individual financial contributions on the basis of lending, investment or donations. Thus, it enables the collection of large sums of money to finance individuals and micro and small projects, without the mediation of traditional financial institutions, such as banks.

There are several internationally known models of crowdfunding, which include:

- Crowdfunding for donation purposes, without expecting any financial income or profits.



- Financing in exchange for a reward obtained by the financier in the amount of his/her contribution share.
- Collective financing for the purpose of investment, so that the financier has a percentage of the ownership of the project or of its profits in return for the funded share.
- Solidarity lending or peer-to-peer lending, in which the lender provides loans to borrowers and expects to have those repaid with an agreed interest or with an increase in the respective crowdfunding platform.

As a matter of fact, the importance of the role of crowdfunding platforms has increased in recent years, especially in providing liquidity to micro, small, and medium enterprises by collecting an amount of money from several persons to grant credit or by facilitating the action for obtaining it through an electronic platform, as crowdfunding is suitable for people with innovative ideas. However, the lack of financing stands in the way of their implementation. Accordingly, crowdfunding has reflected positively on inclusive financing.

- Real estate financing: This activity is based on the idea of the company providing loans and financing for the purpose of buying, building, improving, expanding or maintaining a property in return for obtaining real estate guarantees.

**E. Mortgage refinancing:** This activity means refinancing mortgage loan portfolios with banks and finance companies in return for transferring their rights in the mortgage or in return for certain guarantees determined by the bank according to instructions issued for this purpose.

In this framework, the Finance Companies Regulation No. (107) for the Year 2021 regulated the types of finance companies according to the business license they carry out, as follows:

- A. Microfinance Company:** It is the company licensed to practise the activity of microfinance as previously stated, and which in the process of practising it, performs the following activities specified in Article (5/a) of the Law:
- Granting loans.



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- Granting financing in accordance with the provisions of Islamic Sharia.
- Carrying out Insurance agent activities for its clients in accordance with the relevant legislation.
- Carrying out Payment Services Provider Agent activities in accordance with the requirements specified by the Bank.
- Performing Crowdfunding based on lending.
- Carrying out any activity that involves training the company's clients, who obtain a loan or financing.

**B. Specialized Finance Company:** It is the company licensed to carry out the following activities:

- Granting direct credit.
- Financial lease or rentals ending in ownership.
- Mortgage financing.
- Factoring.
- Payment services provider agent in accordance with the requirements specified by the bank.
- Crowdfunding based on lending.
- Any of the activities referred to above that are carried out in

accordance with the provisions of Islamic Sharia.

**C. Mortgage Refinancing Company:** It is the company licensed to engage in any of the mortgage refinancing activities, mortgage refinancing in accordance with the provisions of Islamic Sharia.

2. The Finance Companies Regulation No. (107) for the Year 2021 stipulates that any company wishing to engage in financing activity must obtain a license from the Central Bank of Jordan that allows it to do so, by submitting an application that includes data and documents specified in article (8) of the said regulation.

3. The Finance Companies Regulation No. (107) for the Year 2021 stipulates that a financial company wishing to obtain a license to practise any form of financing activity must take one of the following legal forms only (*by way of being limited to those only*):

- A. Public shareholding company.
- B. Private shareholding company.
- C. A branch of a foreign company practising the same financing activity.





4. The Finance Companies Regulation No. (107) for the Year 2021 obligated finance companies to include in their name a phrase indicating the practice of a financing activity, such as: “microfinance” or “specialized financing” and other designations as the case may be.

5. The Finance Companies Regulation No. (107) for the Year 2021 prohibits financing companies from engaging in certain types of activities, namely:

- A. Accepting deposits of all types.
- B. Industry or commerce business to the extent that it practises the business it is licensed for in accordance with the provisions of the Regulation.
- C. Money exchange or financial intermediary business.
- D. Granting a loan or financing to any of the partners or shareholders by guaranteeing his/her shares or stocks in the company.
- E. Granting a loan or financing for the purpose of purchasing shares or financial securities.
- F. Issuing and managing credit payment instruments and operating and

managing any electronic payment system.

- G. Any other financing activity that it is not licensed to practise.
- H. A real estate finance company or a mortgage refinance company is prohibited from engaging in real estate investment, real estate development, or real estate appraisal.
- I. A mortgage refinance company is prohibited from engaging in crowdfunding activity based on lending.
- J. A specialized finance company is prohibited from engaging in microfinance or mortgage refinancing activities.
- K. The factoring company is prohibited from purchasing financial rights arising from cash lending operations.

6. The Finance Companies Regulation No. (107) for the Year 2021 stipulates minimum limits for the share capital of companies wishing to obtain a license to practise financing activity. The amount of the company’s share capital varies according to its type, so that the minimum is set as follows:



- A. (500,000) Five hundred thousand dinars for a company that wishes to engage in crowdfunding activity based on lending to facilitate obtaining credit only.
- B. (2,000,000) Two million dinars for the specialized finance company that engages in collective financing activity based on lending and that does not engage in factoring, financial leasing or real estate financing activities.
- C. (2,000,000) Two million dinars for the microfinance company.
- D. (5,000,000) Five million dinars for a specialized finance company that does not engage in real estate financing or financial leasing.
- E. (8,000,000) Eight million dinars for the specialized finance company that practises the real estate finance activity and the financial leasing activity or either one of them.
- F. (12,000,000) Twelve million dinars for the Mortgage Refinance Company.

### **Third: The Legal Status Of Companies that Were Licensed Before The Provisions Of The Finance Companies Regulation No. (107) For The Year 2021 Came Into Force**

The Finance Companies Regulation No. (107) for the Year 2021 established the continuity of licensing microfinance companies previously licensed by the Central Bank, provided that they rectify their status. This regulation granted previously licensed financing companies a period of time to rectify their status, that being within a period not exceeding one year from the date of its entry into force. The regulation is deemed to come into force after 180 days after its publication in the Official Gazette (1/12/2021).

With regard to specialized financing companies and mortgage refinancing companies, they were granted, in accordance with the Regulation, a period of two years to rectify their status from the date of its entry into force. This period may be extended by a decision of the Governor of the Central Bank for one time only.

The regulation imposes on those finance companies, after having rectified their status in a manner consistent with the provisions of the



Finance Companies Regulation No. (107) for the Year 2021, the obligation to apply for a license to the Central Bank that is signed by the Chairman of the Board of Directors, according to the form prepared for this purpose and to attach with it a set of documents specified in Article (20) of the Regulation.

### Conclusion

Based on the above, it can be understood that the non-banking financial sector contributes to economic development and to the increase of the flow of investments in addition to mobilizing savings and increasing investor confidence, since it is considered complementary to the traditional banking sector; that is due to the sources of financing it provides for various economic projects and the

protection of property and individuals. Accordingly, the Jordanian legislator's approach to providing a regulatory and oversight framework for financing companies in their categorization (as one of the components of the non-banking financial sector by way of launching the Financing Companies' Regulation No. (107) for the Year 2021) is, in fact, only a new step in the path of financial and social stability that the Jordanian legislator always seeks to preserve. Such step would enhance the vital role of these institutions in directing savings to various investment fields after mobilizing them, and providing sources of long-term financing for various economic projects, and all of this will ultimately contribute to the enhancement of financial inclusion.



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

12

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Warm regards,

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14



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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 the late Professor Mohammad Hammouri. Professor Hammouri was a renowned Jordanian attorney and 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, a distinguished academic and attorney and a former Minister of Industry, Trade and Supply. Dr. Tariq Hammouri is both an experienced attorney and an 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 more than 30 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 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 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, Securities 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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