

Newsletter

[41st Edition, February 2024]

Welcome to the forty-first edition of our newsletters. In this edition, we will present to our readers the Personal Data Protection Law No. (17) of 2023, (which will be referred to as the “New Law”) and the most prominent reasons that called for its approval, as well as the main contractual terms in contracts as follows:

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“ ...Determined to build a society of justice and equality, preserve human dignity, and protect public freedoms... ”

King Abdullah II Ibn Al Hussein

06 October 2021

From the saying of His Majesty King Abdullah II Ibn Al Hussein – the official website of the Jordanian Armed Forces



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SECTION A: A GLIMPSE INTO JORDANIAN LEGISLATION

In this edition, the Personal Data Protection Law No. (17) of 2023.

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Introduction

In view of His Majesty's King Abdullah II great interest in protecting the rights and fundamental social, political and economic freedoms of Jordanians and his great efforts in safeguarding and developing those rights in the light of the accelerating technological advances in the world as a whole, the "New Law" has come into force during 2023 complementing his Majesty's views and the legislature approach in the enactment of a whole system of legislation aimed at regulating the electronic environment and meeting the requirements for its strict protection.

In this edition of the newsletter, we will present to our readers the following topics in terms of the "New" Law of 2023:

First: The Justifications of Enforcing the "New Law";

Second: Highlights of the "New Law";

Third: Criminal liability for violation of the provisions of the "New Law".

First: The Justifications of Enforcing the "New Law".

The legislature passed the "New Law" for several reasons, most notably:

1) Implementation of the maximum protection of the rights and freedoms of Jordanians and the inviolability of their private lives, in accordance with Article 7 of the Jordanian Constitution, which states that: *A. Personal freedom is safeguarded.*

B. Any violation of Jordanians' public rights, freedoms or private life is punishable by law.

2) Regulating the digital environment and protecting the personal data of Jordanian citizens and residents in order to avoid multiple violations and illegal exploitation such as means of electronic assault, which is characterized by ease and speed in changing and modifying data.

3) Establishing the basis and conditions for protecting the personal data and exceptional cases in which any third party may access, process and/or use personal data.



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4) Promote trade and enhance the investment environment and secure the safety and stability of cyberspace.

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5) Framing the legal relationship between the owners of personal data and their clients, defining the obligations and duties of personal data administrators and recipients of such data.

6) Clarifying the nature of personal data and sensitive personal data to ensure that the addressees of this legislation are aware of the mechanism of dealing with personal data, the limits of dealing with personal data, and the responsibility resulting from violating the provisions of the “New Law”.

7) Establishing a Council specialized in the Protection of Personal Data, and defining its tasks and duties and the Regulatory Unit concerned with data protection in the Ministry of Digital Economy and Entrepreneurship.

Second: Highlights of the New Law.

The “New Law” addresses many substantive issues, aimed at regulating the handling of personal data, as follows:

1) The legislator has defined “**Personal Data**” in Article 2 of the “New Law” as: *“Any data or information related to a natural person that would identify him/her directly or indirectly, regardless of its origin or form, including data related to his/her person, family status or whereabouts”*².

The legislator defined ³“**Sensitive Personal Data**” in the same Article of the “New Law” as: *“Any data or information related to a natural person that directly or indirectly indicates his or her origin, race, or indicates his/her opinions, political affiliations or religious beliefs, or any data related to his or her financial status, health, physical, mental or genetic status, biometric fingerprints, his/her criminal record or any information or data that the Council decides to*

¹ An unofficial translation of Article (2) of the Jordanian Personal Data Protection Law No. (17) of 2023

² An unofficial translation of Article (2) of the Jordanian Personal Data Protection Law No. (17) of 2023

³ An unofficial translation of Article (2) of the Jordanian Personal Data Protection Law No. (17) of 2023



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consider sensitive if its disclosure or misuse is harmful to the person concerned."

The legislator also defined "**Processing**" as:⁴ "One or more operation conducted in any form or means with the aim of collecting, recording, copying, preserving, storing, organizing, revising, exploiting, using, transmitting, distributing, disseminating, linking, making available, transmitting, presenting, concealing, coding, restricting, erasing, editing, disaggregating or disclosing other data by any means whatsoever".

2) The "New Law" stipulates the right of a natural person to protect their personal data and to not process it except after it has obtained the prior consent of the person concerned,⁵ or in the cases authorized by law, where the processing is legitimate and legal and it may be applied without prior consent or informing the person concerned in the following cases⁶:

a. Processing carried out directly by a competent public authority to the extent required to carry out the tasks entrusted to it in accordance with

the provisions of the legislation in force, or through other contracted entities, provided that the contract includes observing all the obligations and conditions stipulated in this law and the regulations and instructions issued thereunder.

- b. If the processing is necessary for preventive medical purposes, medical diagnosis or the provision of health care by the licensee for any medical profession.
- c. If the processing is necessary to safeguard a person's life or vital interests.
- d. If the processing is necessary to prevent or detect a crime by a specialised authority or to prosecute crimes committed in violation of the provisions of the "New Law".
- e. If the processing was required or authorised by any of the legislation or its implementation or by a decision of the competent court.
- f. If the processing is required for the purposes of the controlled entities and the supervision

⁴ An unofficial translation of Article (2) of the Jordanian Personal Data Protection Law No. (17) of 2023

⁵ Stated in Article (2) of the Jordanian Personal Data Protection Law No. (17) of 2023

⁶ Stated in Article (6) of the Jordanian Personal Data Protection Law No. (17) of 2023



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of the Jordanian Central Bank to operate as determined by the decisions of the Jordanian Central Bank, including the transfer and exchange of data inside or outside the Kingdom.

- g. The processing carried out in accordance with the provisions of the regulations promulgated under the “New Law”.
- h. If the processing was necessary for the purposes of scientific or historical research, provided that its purpose is not to take any decision or action regarding a specific person.
- i. If the processing was necessary for statistical purposes, national security requirements or in the public interest.
- j. If the processing was on publicly available data from the person concerned.

Taking into consideration, that the "New Law" prohibits the retention of the information mentioned in the preceding clauses after the end of the purpose for which data was processed. With regard to prior consent to the competent processing of the personal data of the person concerned, the following is required:

- a. Prior consent should be express and authenticated in writing or digitally/electronically.
- b. Prior consent should be specific in terms of duration and purpose of the application being in a clear, simple, non-misleading and easily accessible language.

3) The "New Law" discussed the importance of full prior consent, and the abuse of protected data by the person authorized (the administrator) to deal with it, since prior consent would be non-applicable in the event of either of the following cases:

- If issued on the basis of incorrect information or deceptive or misleading practices and it is the reason for the person's decision to grant them.
- If the type or objectives of the processing are changed without obtaining consent.

4) The “New Law” demonstrates the rights given to the person concerned according to its rules, as follows:

- a. Recognizing, accessing and examining the data available with the administrator and the permission to obtain that data.



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- b. Obtaining approval in advance.
 - c. The right to amend, modify, or renew the data.
 - d. Defining the scope of data processing.
 - e. Erasure or concealment of data in accordance with the provisions of the “New Law”.
 - f. To object on the processing of personal data, if it is not necessarily for the purposes for which the data was collected for, or if the processing of personal data was against the rules and regulations of the "New Law", and if the processed personal data was published on public websites and social media.
 - g. The right to transfer the data from one administrator to the other.
 - h. Being informed of any violation or breach of the data.
- 5) The “New Law” specifies the obligations that fall on the administrator in charge of processing the data under their custody, as follows:
- a. Taking necessary procedures in order to protect the data under their custody, and any data handed to them by anyone.
 - b. Taking the necessary technical and organizational measures, and the necessary security precautions, to ensure the protection from breach of data security and safety, or any unauthorized inspection, alteration, or addition, or destruction in accordance with the instructions issued by the Council.
 - c. Establishing the mechanisms and procedures of data processing, and receiving complaints regarding the procedures, and/or the processing is against the regulations and instructions of the "New Law", and/or publishing the processed data public websites social media.
 - d. Providing the means that would enable the person concerned to perform their rights in accordance with the provisions of the “New Law”.
 - e. Correction of incomplete or inaccurate data if it is found to be incorrect or non-conforming with reality before commencing processing, with the exception of data collected to prevent, detect or prosecute crime.



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- f. Correction of inaccurate or incomplete data if it is found to be incorrect or non-conforming with reality before starting the processing, with the exception of data collected to prevent, detect or prosecute crime.
 - g. Object to data processing, withdraw prior consent, access and update its data, and provide the means it deems appropriate to enable it to do so in a secure manner.
 - h. Enabling the person concerned to object on the processing and to withdraw prior consent, access and update their data, and provide the means it deems appropriate to enable them to do so in a secure manner.
- 6) The “New Law” stipulates the formation of a council called the “Personal Data Protection Council”, chaired by the minister of Digital Economy with the membership of:
- Information Commissioner as Vice-Chairman.
 - General Commissioner for Human Rights.
 - The President of the National Cybersecurity Center.

- A Central Bank representative.
- Two representatives of the security services, nominated by the directors of those agencies at the request of the Minister.
- Four people with experience and specialisation nominated by the Council of Ministers, including a representative of the telecommunications sector, a representative of the banking sector and a representative of the information technology sector.

The Council assigned to perform several duties and powers, most notably:

- a. Declaring policies, strategies, plans, and programs related to the protection and monitoring of data proceedings.
- b. Adopting data protection standards and measures, including of conduct for the proper performance and work of the administrator and processor.
- c. Issuing licenses and permits for protecting and transferring of the data.



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- d. Approving the forms related to prior consent, and withdrawal of the consent; also, the objections and requests submitted by the person concerned in accordance with the provisions of the “New Law”.
- e. Considering complaints and requests submitted by a concerned person or their authorized representative against an official, or complaints and requests submitted by an official against any another official and take the necessary measures in this regard.
- f. Considering the complaints and requests submitted by a concerned person or their authorized representatives, or the complaints and requests submitted by one administrator against another, and taking the necessary action in this regard.
- g. Expressing their opinions on treaties, conventions, legislation and instructions related to the data.
- h. Representing the Kingdom in national, regional and international forums related to data protection.

Third: Criminal Liability for Violation of the Provisions of the “New Law”.

The legislator gradually progressed the method of dealing with the violations committed against the provisions on the “New Law”, so that in the event of a violation being committed against the rules and regulation of this law, the Regulatory Unit concerned with the protection of personal data at the Ministry of Digital Economy and Entrepreneurship would provide the violator with a warning to stop their acts of violation and to eliminate its causes and effects within a timeframe specified in the warning. Should said timeframe lapse without the violator eliminating the content of the warning, the Personal Data Protection Council shall impose, upon the recommendation of the Unit, any of the following penalties:

- 1- A warning to suspend the license or permit that was issued to the violator, partially or completely.
- 2- Suspension of the license or permit, partially or completely.
- 3- Cancellation of the license or permit, partially or completely.



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- 4- Imposing a fine not exceeding (500) Jordanian Dinars for each day that the violation continues, provided that the total amount of the fine imposed does not exceed (3%) of the total annual revenues of the previous year of the person authorized the [data] administrator, that has committed the violation.

It should also be noted that taking any of the aforementioned administrative procedures does not prevent the concerned person from filing a civil compensation lawsuit for the damages suffered as a result of violating the provisions of this law and the regulations and instructions issued pursuant thereto.

With regard to criminal liability resulting from the violation of the provisions of the “New Law”, the law stipulates that, without prejudice to any more severe penalty provided for in any other legislation, anyone who violates the provisions of this law and the regulations and instructions issued pursuant thereto shall be punished by a fine of no less than (1,000) one thousand Jordanian dinars, and no more than (10,000) ten thousand Jordanian dinars, and the penalty is doubled in the event of repetition. In addition to the previous penalty, the law allows the competent court at the request of the Public Prosecution or of the harmed

party, to order the destruction of the data or the erasure of the database that is the subject of a lawsuit in which a final judgement of conviction was issued.

Conclusion

This newsletter addressed the matter of data protection, and the reasons that compelled the Personal Data Protection Law, in order to achieve the constitutional rights and freedoms stipulated in the Jordanian Constitution, and for the Kingdom to be among the countries that regulate the digital environment. Also, in order to protect personal data, in light of the ease of data collection, retention and processing, and to prevent violating the rights of citizens and residents and to protect their personal data and privacy established under the provisions of the Jordanian Constitution and the relevant laws. Furthermore, this newsletter dealt with the justifications of enforcing the Personal Data Protection Law and its scope of application, in addition to the nature of personal data, which falls under the scope of protection of the law. It also addressed the personal data protection mechanism established under it, and it concluded with explaining the responsibility that results from violating the provisions of this law.



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SECTION B: START UPS & SMES

In this edition, main Contractual Terms in Contracts

10 The rapid increase in the number of complex transactions whether between individuals and/or legal entities, has resulted in the necessity of creating contractual terms that meet the needs and aspirations of the contracting parties. However, despite the evolvement of new legal terms in a contract, yet certain clauses cemented their importance and hence they can be found in almost all contracts.

Contracts vary according to the purpose for which they were created, as such variation depends on the different terms that can be included within each contract, however, there are key clauses that must be included in all types of contracts, regardless of its type or the purpose of its creation. These clauses include [without limitation] the following:

1. When drafting a contract, it is very important to firstly identify all the parties engaged/involved in the contract. Accordingly, the party to the contract can be a company, an individual or a legal entity. Each of the aforesaid parties needs to be identified in the contract using certain unique parameters, for example: in

a contract, a company needs to provide its full name, its registered number, and its official address. Whereas, an individual, needs to provide its full legal name, the passport number or national ID number and current address.

2. The preamble [referred to as well as the “recitals”], is a very important element of a contract, as it usually contains a fundamental principle that makes a contract legally binding on the parties and that is the “offer” and “acceptance”. The preamble also usually includes, an introduction of the contract, which includes the reason behind entering the contract by the parties and it may also include a brief background about the parties.
3. The term of the contract is another important clause that needs to be clearly provided by the parties in the contract. This clause identifies the duration of the contract, whether it was months or years. This clause stays applicable until the term expires, renewed or is terminated by a party or by mutual agreement of both parties.



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4. The termination clause in a contract, covers the circumstance in which a contract terminates before its actual duration. This clause should provide for the situations and the procedures in which a party or both parties can terminate/end the contract before its actual duration.
5. Moreover, the non-disclosure of confidential information under a contract is usually covered under the “confidentiality” or “confidential information” clause. This clause prevents the parties of the contract from sharing sensitive/confidential information with third parties. This clause also provides the situations in which a party may be obliged to share such information and with which entity.
6. Moving on, “Force majeure”, which is a French term that literally means a “superior force”, is a very important clause in a contract as it provides for the circumstances in which a party will be released from its obligations under the contract if a breach occurred due to a situation that occurred beyond their reasonable control, such as a pandemic, war or natural disaster.
7. Furthermore, the contractual rights and the obligations of the parties are important clauses that need to be carefully specified drafted by the parties. The core of these clauses usually includes what each party receives from benefits in the contract in return of fulfilling their obligations toward the other party.
8. Last but not least, another important clause that needs to be highlighted, is the financial obligations clause. In this clause, all of the financial terms and provisions are covered including but not limited to: the outstanding payments’ amounts that a party must make, the payments’ method, and the amount of compensation to be received in case of late payments.
9. Lastly, every contract, despite its type and purpose, must specify the rules and laws that will govern the contract in the event that a dispute arises between the parties; this is known as the “Governing law” clause. Therefore, it is commonly known that the law of the country in which the contract will be performed, will be the applicable law on the contract. However, the parties may agree to opt for a different governing law that may



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be more suitable for them and that better safeguards their rights and obligations under the contract. Moreover, in the event that a dispute arises between the two parties as a result of any of their contractual obligations in the contract, the two parties usually determine in the contract the mechanism through which said dispute will be resolved; this is known as the “Dispute resolution” clause. This term clearly identifies the dispute resolution method and process, which is either by resorting to the courts [choosing the competent court] or resorting to arbitration [choosing the competent arbitral tribunal and the rules that govern it].

In conclusion, contracts recently became a very important tool in protecting the rights and demonstrating the duties of the parties. Therefore, all precautions must be taken while reviewing or drafting contracts, to ensure that all rights, duties and obligations of the parties are clearly included and to avoid any kind of vagueness. As weakly drafted contracts may damage rather than contribute towards improving your business.



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If you would like to discuss further any aspects of this Newsletter, please feel free to get in touch with one of our lawyers, using the contact details in the Contributors section below.

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

- 1: If you wish not to have our upcoming Newsletter or if you wish to amend the contact details, please inform us by sending an email to info@hammourilaw.com, titled “non-subscription” and/or “amending the contact details”.

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 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. It should be noted that Hammouri & Partners are in the midst of establishing a new office for the firm in the city of Baghdad in the Republic of Iraq to provide legal services through it in a direct manner. This office is operational since September 2023.

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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