

Newsletter
|48th Edition, September 2024|

Welcome to the 48th edition of our newsletter. In this edition, we will present to our readers the following:

- i) Section A will cover the topic of "Flexible Work Regulation No. (44) of 2024". As part of our commitment to keeping you informed about any updates, explanations, or amendments related to legislation affecting your core business operations – particularly those related to facilitating your commercial activities – and to keeping you abreast of the latest global practices and modern work models, we present this simplified study on the Flexible Work Regulation, which took effect on September 1, 2024. This is designed to help you gain a comprehensive understanding of the system and leverage its benefits for both parties in an employment contract, both employers and employees alike. Additionally, it will assist you in avoiding any obligations that this system might impose if implemented.
- ii) In section B, which is dedicated to matters pertinent to the jurisdiction of Iraq, we will address the topic of the Ur digital gateway.
- iii) In section C, which is dedicated to matters pertinent to our Start-ups and SMEs Department, we will address the topic of legal governance for start-ups.

"... a bright future where we fortify security and stability, and move ahead on the path of development towards further excellence, achievements and innovation;.."

King Abdullah II Ibn Al Hussein

30 January 2022

Letter to Jordanians by King Abdullah II Ibn Al Hussein on the occasion of his 60th birthday

the website of His Majesty King Abdullah II



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

+962 6 569 1112

info@hammourilaw.com

Kurdistan, Erbil
Waziran, mhla 213, zaqag 57

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Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

+962 6 569 1112

info@hammourilaw.com

Kurdistan, Erbil
Waziran, mhla 213, zaqaq 57

SECTION A: A GLIMPSE INTO JORDANIAN LEGISLATION

Introduction

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In line with recent technological advancements and the integration of modern technologies into business operations, along with global events like wars, pandemics and other obstacles that have disrupted traditional work environments, many employees are unable to perform their duties in the workplace. At the same time, international agreements such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) seek to eliminate restrictions preventing women from accessing equal opportunities in the labor market. These agreements aim to prevent discrimination based on marriage or motherhood and ensure women's full right to work.

In a related context, the goal of implementing this flexible work system was also to reduce the operational costs for employers. This, in turn, would naturally lead to employing a larger workforce, thereby reducing unemployment and allowing young individuals to gain early experience, considering that this system enables them to work while they are in secondary or

higher education. Implementing the system provides various benefits to both parties in the employment relationship, including offering opportunities to individuals with diverse health and social conditions for productive work. It is important to note that this type of work is exclusively applicable to private sector employees. This is due to the challenges of applying it to public sector employees, in order to preserve the constant and efficient operation of public facilities for the fulfilment of the community's requirements in a manner that is efficient, quick and constant. This is also due to public sector services being subject to various conditions related to the nature of the beneficiaries of the service and the nature of the work, workplace, timing and importance of the services, such as health services for example, in addition to other reasons.

Therefore, the flexible work system has numerous justifications and goals that secure the advancement of work models; it can also address various issues that are faced by both the employee and the employer in the performance of tasks, and it can alleviate the burdens associated with performing work in a traditional manner.



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

+962 6 569 1112

info@hammourilaw.com

Kurdistan, Erbil
Waziran, mhla 213, zaqaq 57

First: What is the Flexible Employment Contract?

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A flexible employment contract refers to a written agreement between an employer and an employee, in which the employee commits to work for the employer under one of the flexible work arrangement models specified in the mentioned regulation, and under the employer's supervision, management, and direction, in exchange for a salary.

It is evident from the aforementioned definition that flexible work does not differ from a regular employment contract, as stipulated in the Jordanian Labor Law, except for the following two ways. Firstly: A flexible work contract must be written, whereas a regular employment contract under the Labor Law does not require a written agreement; the employment relationship can be established through either a verbal or a written agreement. Secondly: A flexible employment contract specifies the exact form of flexible work agreed upon by the parties involved in the employment relationship, whereas a regular employment contract only requires the employer to specify the nature of the work to be provided and the general form of employment, in

addition to including the essential details that any contract must contain.

This is confirmed by Articles (2) and (5) of the new Flexible Work System. Therefore, a contract cannot be considered a "flexible employment contract" unless it explicitly states so and adheres to the conditions and provisions outlined in this study and the regulation.

Second: Forms of Flexible Work

The Flexible Work Regulation under study outlines several forms and characteristics of flexible work, which can be summarized as follows:

1. Remote Work

This refers to work performed by an employee for compensation outside designated workplaces. In other words, the employee is not required to fulfill their duties and obligations at the workplace, but instead performs their work remotely.



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

Kurdistan, Erbil
Waziran, mhla 213, zaqag 57

+962 6 569 1112

info@hammourilaw.com

2. Part-Time Work

5 This is defined as an agreement for the employee to work fewer hours than those stipulated by law, provided that the nature of the work allows it. If the actual hours required to complete the tasks are less than the established working hours within the organization, the employer can set those hours for employees, with the condition that tasks are completed and delivered within that time. This arrangement can create a higher level of discipline in certain work environments and reduce operational costs for the organization.

3. Flexible Work Hours

This refers to an agreement on distributing the employee's daily work hours throughout the day, ensuring that the total number of daily hours worked is not less than the hours stipulated by law or the internal bylaws of the organization. For example, an organization may not restrict the completion of tasks to the period specified for work, but instead it may require that employees submit their work by the end of the designated day.

4. Intensive Work Week

This refers to an agreement to distribute the weekly working hours over fewer days than the usual number of the agreed-upon working days, provided that the working hours in a single day do not exceed eleven hours. The aim is to complete tasks within specific days of the week, particularly when the establishment is experiencing peak work periods or during certain times of the year when the establishment's activities are more active.

5. Flexible Year

This refers to an agreement to work during specific months of the year, with the wages for the months worked being distributed over the entire year. The period of non-working time within a single year should not exceed two months.

In this context, flexible work can be applied to workers who, for example, practice accounting.

6. Any form of flexible work that the Cabinet of Ministers decides to add based on the recommendation of the Minister of Labor.



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

+962 6 569 1112

info@hammourilaw.com

Kurdistan, Erbil
Waziran, mhla 213, zaqaq 57

Third: Conditions for Contracting Flexible Work

The Jordanian legislator has imposed several conditions for contracting flexible work between employers and their employees, which can be summarized as follows:

1) The agreement on flexible work must be in writing, with the flexible work contract including the following essential data and provisions:

- Employee information.
- Information about the establishment and the employer.
- The agreed-upon form of flexible work and the tasks required of the employee.
- The agreed-upon number of working hours, as well as their start and end times.
- The start and end dates of the flexible work contract, and the start and end dates of the original work contract, if applicable.
- The agreed-upon wage and allowances.

- The rights and obligations of both the employee and the employer.

- Any other matters agreed upon or required by the nature of the work.

2) The employer is bound by the following obligations:

- To provide the employee with all necessary equipment, tools, systems, programs, and electronic means to perform their job.
- To avoid discrimination between flexible workers and non-flexible workers.
- To ensure the privacy of employees when using computers or electronic devices while performing their duties.
- To establish a mechanism for evaluating employees.
- To establish a mechanism for supervising and guiding employees.
- To provide reasonable arrangements and accessibility for employees with impairments.

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Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

+962 6 569 1112

info@hammourilaw.com

Kurdistan, Erbil
Waziran, mhla 213, zaqaq 57

It is emphasized that opting or not for the flexible work system is a discretionary (optional) power vested in the employer. In other words, the decision to adopt this type of work depends on the employer's approval to apply this system, in agreement with the employee. Additionally, there should be no discrimination among the employees within the organization when it comes to changing the nature of their work.

According to article (6) of the regulation, the employer is prohibited from changing the nature of work from flexible to regular or vice versa with the intent of diminishing the employee's rights. Any such conversion could be considered an act of misuse of a right and, consequently, it may result in compensation, similar to cases of unfair dismissal. In this context, we will provide you with the position of the Jordanian judiciary in a subsequent study once this system is in place and how any disputes that arise are viewed by the courts, along with the judiciary's overall viewpoint on the matter.

Fourth: Groups Addressed for Flexible Work

Article (4) of the regulation under review stipulates that the groups addressed are:

- 1) An employee at an academic or professional program during all of the program's stages.
- 2) Breastfeeding women and pregnant women if their health condition requires so, based on a report from a medical authority approved by the establishment.
- 3) Employees who are responsible for the care of one or more children.
- 4) An employee who is responsible for the care of a family member or a first-degree relative who needs assistance with daily life tasks, based on a report from a medical authority approved by the establishment.
- 5) An employee with an impairment.
- 6) Any employee in the establishment who the nature of his/her job aligns with any form of flexible work stipulated in this regulation.

It should be noted that there is no barrier in converting any employee's contract to a flexible work contract if such conversion is deemed as advantageous to the employee. This is in accordance with the general principle in labor legislations, which aim to provide the employee



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Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

Kurdistan, Erbil
Waziran, mhla 213, zaqaq 57

+962 6 569 1112

info@hammourilaw.com

with the any rights that are considered more advantageous to the employee in the context of this contractual relationship.

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Fifth: Mechanism for Implementing the Flexible Work System in the Establishment and its Requirements

1) The employee submits a request to the employer to convert their work to one of the flexible work forms, in alignment with the nature of the work and the number of employees in the establishment. The employer must notify the employee of their decision to approve or reject the request within ten working days from the date that the request is submitted.

2) The employer is not permitted to change the nature of the employment contract to or from a flexible work contract if that change would diminish the employee's rights as stipulated by law.

3) Both the employee and employer may switch from flexible work to non-flexible work and vice versa, but only after a period of at least three months from the date of the conversion.

4) An employer with ten or more employees who implements flexible work in their establishment is required to amend their internal bylaws in accordance with the regulation; provided that the amended bylaws include the following.

a. Forms of flexible work applied in the establishment.

b. Categories of workers to whom flexible work applies in the establishment.

c. Weekly rest days in accordance with the employee's flexible work contract.

d. Annual leave in accordance with the employee's flexible work contract.

e. Amendment of the disciplinary action list to align with flexible work.

f. Conversion of the nature of the employment contract from permanent to flexible or vice versa, provided that it includes the following:

- Specifying the deadlines for submitting contract conversion requests.

- Submitting a written request by the employee who wishes to convert their contract from



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

+962 6 569 1112

info@hammourilaw.com

Kurdistan, Erbil
Waziran, mhla 213, zaqaq 57

permanent to flexible or vice versa, using the form approved by the employer.

- The period(s) during which the employee requests to convert their contract to flexible, including the start and end dates of the flexible work contract.
- Exceptional reasons for accepting contract conversions outside the specified deadlines.
- The timeframe for deciding on the contract conversion request and notifying the employee of the conversion from permanent to flexible or vice versa, or rejecting the request, with a maximum period of ten days from the date of submission.
- Reasons for accepting the change of a flexible work contract to a permanent one before the agreed-upon date.
- Objection procedures against the management's decision to reject the contract conversion request and the entity to address the objection.

5) The employer is obligated to provide the Social Security Corporation with the data specified in section (Third/1) above.

6) Employees engaged in any form of flexible work as stipulated in the regulation shall be subject to the provisions of the Social Security Law in accordance with the regulations and instructions applicable at the Social Security Corporation.

Please note that to this date, the Minister of Labor has not issued any instructions related to the new flexible work regulation. In the absence of the issuance of such new instructions and without the cancellation of the old instructions by the Cabinet of Ministers and/or the relevant minister, the old instructions will remain in effect as long as they do not conflict with the new regulation.

This is confirmed by article (5) of the Jordanian Civil Law, which states that: "*A legislative text may not be repealed except by a subsequent legislation that explicitly provides for such repeal or includes a provision that contradicts the old legislation or regulates a new subject that was previously determined by that legislation.*"

Additionally, article (5/6) of the Jordanian Judiciary Law stipulates that: "*The Administrative Court, exclusively, is competent to review all appeals related to final administrative decisions, including:*



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

Kurdistan, Erbil
Waziran, mhla 213, zaqaq 57

+962 6 569 1112

info@hammourilaw.com

6. Appeals filed by any aggrieved party requesting the annulment of any regulation, instruction, or decision, based on a violation of the law by the regulation that it was issued under, or a violation of the law or the regulation issued under the law by the instructions, or a violation of the regulation or the instructions or the law it was issued under by the decision."

Based on the above, we recommend waiting and exercising caution until it is confirmed whether new instructions will be issued or if the current instructions will remain in effect. This will allow you to adjust your internal bylaws in alignment with the new flexible work system requirements without the need for multiple amendments, thereby avoiding instability in the company's policies.

Conclusion

In this section of the newsletter, we explored the nature of flexible work contracts, their various forms, the conditions for contracting, the groups addressed, and the mechanisms for their implementation within organizations.

On a parallel note, although there is no specific provision in the regulation that indicates any incentives for employers who adopt the system under review, it is anticipated that instructions will be issued pursuant to article (13) of the mentioned regulation. Those instructions are expected to outline the incentives that will be granted to employers, which are anticipated to be primarily financial, including customs or tax exemptions and other potential privileges. Additionally, those instructions may be accompanied by or lead to further amendments in related legislation. We will provide you with all new information regarding these benefits as soon as they are issued. Our expectation of the issuance of these instructions arises from the fact that the adoption of the flexible work system is at present discretionary for the employer, and that the purpose of enacting this system is clearly for the purpose of having it applied in practice. The most important guarantee for the system's implementation, that ensures that it is not a mere formality, is the presence of incentives for employers to certainly adopt this type of work.



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

Kurdistan, Erbil
Waziran, mhla 213, zaqqaq 57

+962 6 569 1112

info@hammourilaw.com

SECTION B: Hammouri & Partners' Iraq Office

The Ur Digital Gateway

11 The Ur Digital Gateway represents a pioneering experience in the digital transformation of government services in Iraq. It is designed to provide comprehensive and easy access to a wide range of services offered by ministries and government institutions through a single platform. This is considered part of the government's efforts to move government services to a fully digital format with the following aims of enhancing transparency by reducing direct interactions, providing precise electronic oversight, speeding up transactions to reduce the lengthy time required for completing traditional transactions, combating corruption by minimizing opportunities for document manipulation or deliberate delays, and simplifying procedures by offering multiple services within a single platform.

Key features of the gateway include:

The platform includes a broad array of services, totaling 421 electronic services covering numerous sectors such as health, education,

commerce, public services, and specialised services such as obtaining passports, national ID cards, residence permits, and more.

The establishment of this gateway has streamlined many procedures, such as converting the issuance of the document for the authenticity of paper documents into electronic format. This reduces the time needed to issue documents and minimizes the risks of forgery.

Additionally, government transactions, that previously required days or months to be completed, can now be completed in a much shorter timeframe.

The government aims to continuously expand the range of services available through the gateway by collaborating with international organizations and local entities.

New features have been introduced through the gateway, including the service for electronic payment of fees for different departments, which simplifies the payment process and reduces the need for cash transactions or physical visits to government offices. Additionally, services such as vehicle license plate registration have been added.



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

+962 6 569 1112

info@hammourilaw.com

Kurdistan, Erbil
Waziran, mhla 213, zaqaq 57

Moreover, the General Secretariat of the Cabinet of Ministers has provided a hotline at (5599) to offer support and guidance to citizens regarding the services available through the gateway. The official link to the Ur Digital Gateway is: (<https://ur.gov.iq>)

SECTION C: START UPS & SMEs

Legal Governance for Start Ups

For startups and small to medium-sized enterprises [“SMEs”], legal governance is crucial for ensuring compliance, protecting assets, and setting a strong foundation for growth. In this edition of Hammouri & Partners newsletter, we will shed light on some key aspects of legal governance that these businesses should focus on. These are as follows:

Business Structure and Formation

SMEs should choose the right business structure [e.g. sole proprietorship, limited liability company, private shareholding company] based on the objectives of the business, the liability concerns, tax implications, and funding needs.

Accordingly, SMEs should ensure proper registration with the relevant authorities and should obtain the necessary approvals, licenses and permits.

Compliance and Regulations

SMEs should stay informed about and comply with laws and regulations applicable to their industry, including employment laws, environmental regulations, and industry-specific standards.

Contracts and Agreements

SMEs should draft clear contracts with suppliers, clients, and employees, which are vital for defining responsibilities and protecting interests. This includes employment contracts and agreements with third parties. For example, SMEs should draft and enter into clear agreements with suppliers and vendors in order to define terms, payment schedules, and responsibilities; SMEs should use employment contracts to set expectations and protect both the employer and employee, and develop contracts with clients that outline services, payment terms, and intellectual property rights.



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

Kurdistan, Erbil
Waziran, mhla 213, zaqag 57

+962 6 569 1112

info@hammourilaw.com

Intellectual Property

Protecting intellectual property through trademarks, patents, and copyrights helps safeguard innovations and brand identity. Securing trade secrets is also important for maintaining competitive advantage.

Corporate Governance

SMEs should establish a board of directors or advisory board, if applicable, to provide strategic guidance and oversight. Additionally, they should always have in place and adhere to corporate bylaws that outline the management structure and operating procedures.

Financial and Tax Compliance

It is important that startups and SMEs seek professional tax advice to understand the tax implications on their business. Nonetheless, you should always maintain accurate financial records, comply with accounting standards, and file taxes accurately and on time.

Risk Management

It is advisable that startups and SMEs obtain appropriate insurance coverage [e.g. liability, property, professional indemnity] to protect against potential risks. Furthermore, it is vital to have a strategy for handling legal disputes, including access to legal counsel and dispute resolution mechanisms.

Regular Legal Reviews

Lastly, it is imperative to conduct regular legal audits to ensure ongoing compliance and address any emerging legal issues and to engage with legal professionals for advice on complex issues and review of important documents.

In conclusion, implementing these governance practices will undeniably assist startups and SMEs to manage risks, avoid legal pitfalls, and create a stable foundation for growth and success.



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

+962 6 569 1112

info@hammourilaw.com

Kurdistan, Erbil
Waziran, mhla 213, zaqqaq 57

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.

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

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,

HAMMOURI & PARTNERS ATTORNEYS AT-LAW



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

+962 6 569 1112

info@hammourilaw.com

Kurdistan, Erbil
Waziran, mhla 213, zaqag 57

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CONTRIBUTORS TO THE EDITION IN ENGLISH

(Section A – A Glimpse into Jordanian Legislation “The Flexible Work Regulation No. (44) of 2024”)

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TARIQ M. HAMMOURI, Ph.D.
MANAGING PARTNER
tariq@hammourilaw.com



YOTTA PANTOULA-BULMER
OF-COUNSEL, HEAD OF THE
INTERNATIONAL DEPARTMENT
yotta.b@hammourilaw.com



ROZANA ALHROOB
ASSOCIATE LAWYER
rozana.h@hammourilaw.com



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor

Iraq, Baghdad,
Almansour, Alrwad Str.

+962 6 569 1112

info@hammourilaw.com

Kurdistan, Erbil
Waziran, mhla 213, zaqag 57

CONTRIBUTORS TO THE EDITION IN ARABIC

(Section A – A Glimpse into Jordanian Legislation “The Flexible Work Regulation No. (44) of 2024”)



TARIQ M. HAMMOURI, Ph.D.
MANAGING PARTNER
tariq@hammourilaw.com



OMAR SAWADHA,
SENIOR ASSOCIATE, HEAD OF
LITIGATION
omar.s@hammourilaw.com



WARDEH HASSAN
ASSOCIATE LAWYER
wardeh.h@hammourilaw.com



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor
Iraq, Baghdad,
Almansour, Alrwad Str.
Kurdistan, Erbil
Waziran, mhla 213, zaqag 57
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+962 6 569 1112

info@hammourilaw.com

CONTRIBUTORS TO THE EDITION IN ENGLISH

(Section B – Hammouri & Partners Iraq Office (Baghdad) “The Ur Digital Gateway”)

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TARIQ M. HAMMOURI, Ph.D.
MANAGING PARTNER
tariq@hammourilaw.com



YOTTA PANTOULA-BULMER
OF-COUNSEL, HEAD OF THE INTERNATIONAL
DEPARTMENT
yotta.b@hammourilaw.com



ROZANA ALHROOB
ASSOCIATE LAWYER
rozana.h@hammourilaw.com



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor
Iraq, Baghdad,
Almansour, Alrwad Str.
Kurdistan, Erbil
Waziran, mhla 213, zaqaq 57
Hammouri & Partners Attorneys at-Law ©2024

+962 6 569 1112

info@hammourilaw.com

CONTRIBUTORS TO THE EDITION IN ARABIC

(Section B – Hammouri & Partners Iraq Office (Baghdad) “The Ur Digital Gateway”)



TARIQ M. HAMMOURI, Ph.D.
MANAGING PARTNER
tariq@hammourilaw.com



OMAR SAWADHA,
SENIOR ASSOCIATE, HEAD
OF LITIGATION
omar.s@hammourilaw.com



MUSTAFA BAQQAL
PARTNER – IRAQ OFFICE
mustafa.b@hammourilaw.com



EHAB AHMAD
ASSOCIATE LAWYER
ehab.a@hammourilaw.com



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor
Iraq, Baghdad,
Almansour, Alrwad Str.
Kurdistan, Erbil
Waziran, mhla 213, zaqag 57
Hammouri & Partners Attorneys at-Law ©2024

+962 6 569 1112

info@hammourilaw.com

CONTRIBUTORS TO THE EDITION IN ENGLISH
(Section C – Startups & SMEs: “Legal Governance for Start Ups”)

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OMAR ABU AYYASH
ASSOCIATE LAWYER, HEAD OF THE SMEs DEPARTMENT
omar.a@hammourilaw.com



YOTTA PANTOULA-BULMER
OF-COUNSEL, HEAD OF THE INTERNATIONAL
DEPARTMENT
yotta.b@hammourilaw.com



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor
Iraq, Baghdad,
Almansour, Alrwad Str.
Kurdistan, Erbil
Waziran, mhla 213, zaqaq 57
Hammouri & Partners Attorneys at-Law ©2024

+962 6 569 1112

info@hammourilaw.com

CONTRIBUTORS TO THE EDITION IN ARABIC
(Section C – Startups & SMEs: “Legal Governance for Start Ups”)

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OMAR ABU AYYASH
ASSOCIATE LAWYER, HEAD OF THE SMEs DEPARTMENT
omar.a@hammourilaw.com



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor
Iraq, Baghdad,
Almansour, Alrwad Str.
Kurdistan, Erbil
Waziran, mhla 213, zaqaq 57
Hammouri & Partners Attorneys at-Law ©2024

+962 6 569 1112

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 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 and a branch in the city of Erbil in Kurdistan Region to provide legal services through it in a direct manner. The Iraq 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.



Jordan, Amman, Shmeisani, Al Sharif Naser Bin Jamil Street,
Cairo Amman Bank Building, # 96, 2nd & 3rd Floor
Iraq, Baghdad,
Almansour, Alrwad Str.
Kurdistan, Erbil
Waziran, mhla 213, zaqaq 57
Hammouri & Partners Attorneys at-Law ©2024

+962 6 569 1112

info@hammourilaw.com