

GETTING THE DEAL THROUGH

# Project Finance

in 45 jurisdictions worldwide

# 2015

Contributing editor: Phillip Fletcher



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**Project Finance 2015**

**Contributing editor:**  
**Phillip Fletcher**  
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*Getting the Deal Through* is delighted to publish the fully revised and updated eighth edition of *Project Finance*, a volume in our series of annual reports, which provide international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Following the format adopted throughout the series, the same key questions are answered by leading practitioners in each of the 45 jurisdictions featured. New jurisdictions this year include Canada, China, the Dominican Republic, Greece and India. This year the publication again includes quick reference tables, focusing on public-private partnerships in US states.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually in print. Please ensure you are referring to the latest print edition or to the online version at [www.gettingthedealthrough.com](http://www.gettingthedealthrough.com).

*Getting the Deal Through* gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We would also like to extend special thanks to contributing editor Phillip Fletcher of Milbank, Tweed, Hadley & McCloy LLP for his continued assistance with this volume.

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# Jordan

## Khaled Asfour, Leena Nusseir and Dima Khuffash

Ali Sharif Zu'bi Advocates & Legal Consultants CPSC

### Creating collateral security packages

#### 1 What types of collateral are available?

Typically, a project finance transaction involves taking security in the following types of collateral:

- moveable assets: namely furniture, equipment and machinery. It should be noted that registrable moveable assets are not usually considered as 'moveable' per se;
- real estate, including land and buildings as long as they are owned by the borrower, as security cannot be granted over real estate that is leased from a third party;
- registrable moveable assets, such as vehicles, ships and aircraft;
- shares and securities;
- assignment of contracts, including leases, construction contracts, offtake agreements, insurances, reinsurances, etc; and
- bank accounts, both onshore and offshore.

#### 2 How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party?

##### Moveable assets

Moveable assets are mortgaged mainly through a possessive mortgage agreement, which involves, in principle, the handover of the assets to a third-party trustee called the *Adel*. The *Adel* is allowed to hand back the assets on an *Iarab* (loan) basis to the borrower for use. The handover is documented through a separate agreement, which is typically called the *Adel* Appointment Agreement. Both the possessive mortgage agreement and the *Adel* Appointment Agreement would need to get a date certain through notarisation (and if executed outside Jordan, through legalisation through the Jordanian embassy). A recent 'floating charge' law has been enacted that allows the placement of a floating charge over all moveable assets including bank accounts. Such a floating charge would have a lower priority than a possessive mortgage even if it precedes it. A financing statement would need to be filed with the relevant pledgor's file at the controller of companies department at the Ministry of Industry and Trade.

##### Real estate

Real estate is mortgaged through the execution of a mortgage deed at the relevant land registry department. A 'fill-in-the-blanks' standard form adopted by the land registry is used and cannot be amended.

##### Registrable moveable assets

Registrable moveable assets are mortgaged at the relevant registry department. In certain cases, there is a standard form (eg, vehicles), in others the parties are free to adopt their own form (eg, aircraft).

A date certain is obtained automatically upon the filing of mortgage deed with the relevant registry department and therefore no notarisation is needed.

##### Shares and securities

Shares and securities are pledged through filing a pledge deed with the relevant issuer and registry. If the company is not public, then filing must be done with the controller of companies at the Ministry of Industry and Trade. If the company is public, then filing must be done with the Securities Depository Centre. The pledge deed would need to be notarised to get a date certain.

##### Assignment of contracts

Assignment of contracts are effected through the execution of an assignment agreement, which lists the documents to be assigned. A notice of assignment is issued to each counterparty, who in turn needs to consent to the assignment. Both the notice of assignment and consent need to get date certain through notarisation.

##### Bank accounts

Bank accounts can be secured in one of two ways: for a fixed deposit through a pledge agreement that is executed in front of a notary and notified to the relevant bank, or through an assignment agreement (see question 5), which effectively means that the bank account converts to the name of the lender.

In all these types of collateral, priority would be to the first notarised if no filing is required or to the first filed if filing is required.

Stamp duties are payable on all agreements either at the rate of 0.6 per cent of the value of the agreement or 0.3 per cent of the value of the agreement depending on the nature of the agreement and whether a governmental entity is a party to the agreement.

#### 3 How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

Yes, as long as there is a registry for the relevant asset. If there is no registry, as in the case of possessive mortgages of moveable assets or assignments of contracts, then there is no way to check whether there are other liens that have priority.

#### 4 Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

Self-help remedies are not available in Jordan. A secured creditor would need to go through the courts to enforce its rights. This can be done in two ways:

- through a summary proceeding at the relevant court's execution department, where the security instrument is submitted for enforcement. The owner of the collateral can object within a few days on one of two bases: it can deny the existence of the debt or deny the genuineness of its signature. If the owner objects in

either of these ways, the creditor would have to file a full lawsuit. If the court eventually determines that the objection of the owner of the collateral is improper, fines would be imposed on it, which are payable to the government; or

- a full lawsuit to claim the amounts due and force the sale of the collateral.
- 5 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the collateral? Are there any preference periods, clawback rights or other preferential creditors' rights (eg, tax debts, employees' claims) with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

Following the commencement of bankruptcy proceedings, lenders may not enforce their rights over collateral; settlement of secured debts shall be made through the receiver. The receiver pursues the following priority order when satisfying the debts of the project company:

- payment of a one month's salary to every employee or his or her heirs in accordance with the provisions of the Labour Law No. 8 of 1996;
- liquidation expenses including the receiver's fees;
- sums due to employees of the insolvent company;
- sums due to the public treasury and municipalities such as taxes and fees;
- rent due to the owner of any immovable property leased to the insolvent company;
- amounts secured by virtue of mortgage and pledge deeds over moveables or immovables as per their priority based on the date of perfecting the mortgage or pledge; and
- amounts due to the creditors in accordance with their respective rights of priority as set out in the Civil Code unless granted more senior priority by virtue of special laws. It is worth noting that a special privilege right is usually applicable to a specific asset of the debtor's property while general privilege rights are applicable to all the debtor's property.

Based on the above, a secured party will be able to claim its secured debt through a receiver if the collateral created and perfected under Jordanian law was of a higher rank than ordinary unsecured obligations of other creditors, but such a secured debt shall also be settled after settlement of the special privilege rights, which have a higher priority as delineated above.

As for clawback rights, and since such rights differ depending on the type of procedures followed, it is important to highlight that the project company may be dissolved in the event of the occurrence of any of the following circumstances:

- compulsory liquidation pursuant to the Companies Law;
- insolvency procedures under the Commercial Code; and
- voluntary liquidation pursuant to the Companies Law.

The concepts of liquidation and insolvency differ. Under the insolvency procedures the court and the receiver of the estate will attempt to reach simple composition with the creditors and continue the operations of the company or otherwise dissolve the project company. In the case of liquidation, the objective is the dissolution of the company and there are no procedures for composition with creditors prior to liquidation.

Given that there are two main pieces of legislation dealing with insolvency and liquidation, it should be noted that transactions entered into (i) three months prior to the formal commencement of liquidation proceedings against a project company (namely, in the case of voluntary liquidation, at the time of the extraordinary general assembly of the party taking the decision to liquidate or, in the case of obligatory proceedings, upon the issuance of a court order declaring the liquidation) shall be considered void only with respect to the amounts that exceed the amounts paid to the project company pursuant to these transactions when concluded or thereafter in addition to the legal interests thereon, unless the project company has proved its ability to settle all its debts after the closing of the liquidation process; or (ii) after the date on which the project company has become unable to settle its debts as determined by the court or 20 days prior thereto shall be considered void.

Governmental entities established by special laws are excluded from regular bankruptcy and liquidation proceedings, and are dissolved pursuant to the provisions of the special laws under which they were established.

Other than the appointment of a receiver to seize the assets of the project company in an enforcement, there is no other way to seize the assets of the project company. In fact, Jordanian law also provides for a stay order by virtue of which all cases filed or procedures taken against the project company are suspended and new proceedings or judicial procedures are not pursued if filed against the project company.

There is no differential treatment of claims of foreign creditors from the claims of local creditors.

#### Foreign exchange issues

- 6 What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange?

Although the laws of Jordan allow the Central Bank of Jordan to regulate and place restrictions on foreign currency, there are currently no restrictions on the transfer of local or foreign currency in Jordan. The Central Bank of Jordan, however, sets the exchange rate of the Jordanian dinar against major currencies.

- 7 What are the restrictions, controls, fees and taxes on remittances of investment returns or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions?

There are no restrictions on the transfer of local or foreign currency in Jordan. Accordingly, investors or lenders are free to transfer their investment returns or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions, subject to the usual bank charges. Moreover, the Investment Law 2003 guarantees the ability of foreign investors to repatriate their investments in Jordan and profits thereon as long as such investments were made and transferred legally through the banking system.

- 8 Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

There are no such restrictions.

- 9 May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

Yes.



**Foreign investment issues**

**10** What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

The following restrictions apply to foreign investment in Jordan:

- non-Jordanian ownership in certain sectors is restricted to 50 per cent (eg, trading) and in other sectors to 49 per cent (eg, wet lease of aircraft);
- foreign investment is totally restricted and is not allowed in the following sectors:
  - transport of passengers and goods on roads;
  - quarries for natural sand, dimension stones, aggregates and construction stones used for construction purposes;
  - security and investigation services;
  - sports clubs, including the organisation of sports events services but excluding health and fitness clubs services; and
  - clearance services;
- the minimum shareholding of any non-Jordanian in any project is 50,000 Jordanian dinars except in the case of investment in a public shareholding company; and
- every foreign shareholder must submit proof of transfer of the total foreign shareholding in convertible currency into a bank account opened in Jordan prior to the Controller of Companies providing a final approval for registration of the company and issuance of a registration certificate, or to effecting the transfer of shares to a non-Jordanian shareholder, as the case may be.

The above restrictions apply to foreign investors in the case of foreclosure on a project.

There is a bilateral treaty between the United States and Jordan (Treaty Concerning the Encouragement and Reciprocal Protection of Investment 1997 (the Treaty)). The Treaty lifts the restriction on US investments in Jordan with the exception of certain sectors as stipulated in Annexe 1 to the Treaty, including, but not limited to, investments by non-Jordanians below US\$50,000.

The Euro-Mediterranean Agreement establishing an association between the European Communities and their member states of the one part and the Hashemite Kingdom of Jordan of the other part also affords relief from the restrictions on foreign investment by member states.

The above would apply when a project company needs to be established with the Companies Control Department since undertaking any commercial activity in Jordan requires registration of an entity pursuant to the Companies Law. The fees associated with registration of the project company would not be affected, given that there is non-Jordanian participation therein. Such fees would depend on the type of company to be established. In addition to such fees a stamp duty ranging from 0.3 per cent to 0.6 per cent is payable on the articles and memorandum of association of the project company.

There are certain restrictions on the ownership of immovable property by non-Jordanians where certain approvals have to be sought depending on the area of the land and the objective behind such ownership. There are similar restrictions with respect to taking on lease lands that exceed 10 *dunums* (1 *dunum* = 1,000 square metres) and for a period of over three years where certain approvals have to be additionally procured.

With respect to taxes on foreign investment in projects in Jordan, there is no distribution tax on dividends in Jordan. However, any payments of interest by project companies to its non-Jordanian lenders would be subject to a withholding tax at the rate of 7 per cent if such payments are made out of the custom territory in Jordan and at the rate of 10 per cent if such payments are made out of the Aqaba Special Economic Zone. Additionally, any payments that are not exempt from income tax and that are made by residents to non-residents are also subject to the withholding tax delineated above.

Interest payments made by a project company to its non-Jordanian financiers would also be subject to a sales tax at the rate of 16 per cent. This sales tax would be payable by the importer of goods or services.

A project company that is established in Jordan would be subject to income tax at the applicable rate where in most sectors such a rate is 14 per cent.

**11** What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

Insurance over assets and liability in Jordan must be obtained through insurance companies licensed to operate in Jordan. Reinsurance with foreign reinsurance companies is allowed. Insurance policies may be payable to foreign secured creditors.

**12** What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

A foreign worker must hold a valid work and residency permit in order to work in Jordan. The Labour Law requires employers to employ locals unless it can be substantiated that local expertise is not available or sufficient.

**13** What restrictions exist on the importation of project equipment?

There are no particular restrictions except the usual restriction on hazardous, pharmaceutical and other sensitive materials and equipment and as long as the equipment meets any published applicable standards. Import duties and sales taxes apply at different rates depending on the type of materials and, where an investment treaty applies, on the source of such equipment.

**14** What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

Nationalisation and expropriation cannot occur unless there is fair compensation. The expropriation of immovable assets is governed by the Expropriation Law No. 12 of 1987.

**Fiscal treatment of foreign investment**

**15** What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

The Investment Law 2003 grants certain import duty and sales tax exemptions on imports for qualified project, usually for a period of three years from the date of approval with respect to the equipment needed for the construction of the project.

Projects established in the free zones and special economic zones may also benefit from income tax exemptions or lower rates.

**Government authorities**

- 16** What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

<b>Oil and gas and mineral extraction</b>	Ministry of Energy and Mineral Resources (MEMR) Ministry of Industry and Trade (Standards and Measure Department)
<b>Chemical refining</b>	Ministry of Industry and Trade (Standards and Measures Department)
<b>Water treatment</b>	Ministry of Water and Irrigation Water Authority of Jordan Jordan Valley Authority
<b>Power generation and transmission</b>	Ministry of Energy and Mineral Resources; Electricity and Minerals Regulatory Commission (EMRC)
<b>Transportation</b>	Ministry of Transport Public Transport Commission Greater Amman Municipality
<b>Ports</b>	Aqaba Special Economic Zone Authority
<b>Telecommunications</b>	Ministry of Telecommunications Telecommunications Regulatory Authority

**Regulation of natural resources**

- 17** Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

All natural resources existing within the borders of the Hashemite Kingdom of Jordan, whether found on the surface, underground or in territorial waters, rivers and internal seas, are state owned and may not be exploited, transported or traded in without the approval of the chairman of MEMR/EMRC pursuant to the Organisation of Natural Resources Affairs Law No. 12 of 1968 and after procuring a mining right in the relevant area.

There are other rights that MEMR/EMRC may grant prior to reaching the mining stage and these include the following:

- prospecting rights: 'prospecting' means any investigation, aerial survey, or ground survey in any area determined with the approval of the chairman of MEMR/EMRC with a view to ascertaining the existence of minerals or rocky materials therein. Prospecting also includes consultation as well as economic, technical and geological surveys;
- exploration rights: 'exploration' means any work relating to investigation and exploration of minerals and rock materials for the purposes of ascertaining their existence and determining their quantities and qualities including drilling, excavation, assaying and necessary detailed examination; and
- discovery rights: 'discovery' means the announcement of the existence of a mineral or minerals in exploitable quantities, to be submitted to the chairman of MEMR/EMRC by the discoverer, at a site located on the set technical maps after obtaining permits from the concerned authority for exploring or prospecting for minerals.

Foreign nationals may not be granted exploration permits, prospecting licences or mining rights except according to special agreements concluded by MEMR/EMRC based on the approval of the Council of Ministers in accordance with the laws and regulations in force.

However, pursuant to article 117 of the Jordanian Constitution, any privilege or concession granted with respect to investment in minerals or public facilities must be ratified by law and therefore approved by Parliament and a mining right approved by the Council of Ministers as indicated above, shall not suffice in this case.

With respect to water, a drilling licence can be granted by the Water Authority of Jordan in addition to what is known as an extraction licence. Drilling licences are valid for one year and may be renewed once for a further year. An extraction licence does not have a validity term but annual renewal fees are applicable. The Water Authority of Jordan may specify the amount that can be extracted per annum.

- 18** What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

Royalty fees are specified in Jordanian dinars per ton in the Mining and Quarries Fees Regulation No. 86 of 2002 and are calculated depending on the quantity of mineral mined. Such a royalty varies depending on the type of mineral mined. It is usually the case that the royalty is calculated on all minerals mined on an annual basis.

A mining licence is for a period not exceeding 30 years. The licence itself will not be reissued but an annual licence fee will be applicable. There is an annual mining licence fee amounting to 500 Jordanian dinars per square kilometre or any part thereof. Other specified fees apply to quarries and mining manufactured and non-manufactured raw materials depending on the type of raw material mined.

With respect to the exploration licence fee, the amount is 200 Jordanian dinars per square kilometre or any part thereof for the first year and 300 Jordanian dinars is payable upon renewal of the licence.

The fees for the issuance of a water-drilling licence amount to 1,750 Jordanian dinars, representing the following:

- a licence fee of 1,000 Jordanian dinars;
- supervision fees on drilling of the well: 500 Jordanian dinars;
- description of rock samples: 100 Jordanian dinars;
- fees for the water extraction licence: 100 Jordanian dinars; and
- site inspection and fixing of the location of the well: 50 Jordanian dinars.

The annual fees for renewing the water extraction licence amount to 50 Jordanian dinars.

A separate fee of 250 Jordanian dinars is payable for supervising the pumping test. Once water is extracted, the licensee has to pay a fee amounting to 250 Jordanian fils per cubic metre of extracted water.

If drilling is not completed within one year and an application for renewal of the drilling licence is submitted prior to the expiry of the one year term, a renewal licence fee of 500 Jordanian dinars is payable by the licensee. However, if the renewal application is submitted after the expiry date of the original licence, the renewal fees will amount to 1,000 Jordanian dinars.

There is no distinction between royalties on extraction payable by foreign and local investors.

- 19** What restrictions, fees or taxes exist on the export of natural resources?

The Mining and Quarries Fees Regulation specifies the fees applicable for exporting manufactured and non-manufactured mined raw material and there are other fees for local consumed applicable mined raw materials. The said fees vary depending on the type of mineral mined and is payable on every ton mined or part thereof.

The competent authorities may not allow export of mineral resources that are specified under the Mining and Quarries Fees Regulation without a certificate issued by MEMR/EMRC

evidencing that the applicable fees have been paid on the quantity to be exported.

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#### Legal issues of general application

**20** What government approvals are required for typical project finance transactions? What fees and other charges apply?

No specific approvals are necessary. If the project involves an agreement with the government then such an agreement would need to be approved by the Council of Ministers and, if such an agreement involves a concession over a public asset, then also by Parliament.

If the project seeks certain tax exemptions, then approval of the Council of Ministers or the Jordan Investment Board, or both, as the case may be, will be required.

No specific fees apply.

**21** Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

A document need not be notarised or be in a specific language in order to be valid and enforceable in Jordan. However, security documents would need to be notarised in order to get a date certain that would establish priority. If notarised outside Jordan, the document would then need to be legalised by the Jordanian embassy in the country where the notarisation occurs and then further legalised by the Jordanian Ministry of Foreign Affairs and Ministry of Justice in Jordan. If the document is to be notarised in Jordan or filed with a Jordanian government department, then it must be in Arabic or accompanied by a notarised Arabic translation.

See the answer to question 2 for information on the security documents that are required to be filed or registered.

With respect to the project documents, land lease agreements should be filed with the relevant municipality or the land registration department, or both. Construction contracts should be registered with the Jordanian Construction Contractors Association by each contractor. If the contractors are non-Jordanian, the Council of Ministers' approval of the appointment of the contractors should also be obtained prior to the implementation of the construction and failure to obtain such approval could render the construction contract void.

**22** How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

Any judgment obtained in the courts of a foreign jurisdiction in respect of the transaction documents, as well as any arbitral award, will be enforceable in the courts of Jordan without retrial or re-examination of the merits of the case except in the following circumstances:

- (i) if the court that gave the said judgment had no jurisdiction;
- (ii) if the judgment-debtor had not carried his or her business within the jurisdiction of the court that gave the judgment or if he or she was not residing within its jurisdiction and did not voluntarily appear before the court and did not submit to its jurisdiction;
- (iii) if the judgment-debtor was not served with a notice to attend by the court that gave the judgment and did not appear before the court although he or she was residing or carrying his or her business within its jurisdiction;
- (iv) if the judgment has been obtained by fraud (as determined by the Jordanian court);
- (v) if the judgment-debtor established to the satisfaction of the court that the judgment has not yet become final;

- (vi) if the judgment was given on a cause of action that would not be entertained by Jordanian courts because either it is contradictory to public order or to public morality; or
- (vii) the laws of the jurisdiction of the court (or tribunal) that passed the judgment (or award) do not recognise and enforce judgments (or awards) of Jordanian courts (or tribunals).

By agreeing in the transaction documents to the jurisdiction of the English and New York courts, it is our opinion that the circumstances set out in (i) and (ii) will not apply.

Jordan is a member of the ICSID Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention).

**23** Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

Whenever the government is party to a project agreement, Jordanian law is the most prevalent. Otherwise, New York or English law have also been used.

Financing agreements are usually effected in Jordanian, New York or English law, which is governed depending on the nationality of the lenders. Security documents involving security over assets located in Jordan would have to be governed by Jordanian law. Certain provisions of Jordanian law are also considered a matter of public policy and therefore apply notwithstanding any agreement (eg, in relation to tort liability and liability of contractors).

**24** Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

Yes. However, a waiver by the government or any of its instruments of immunity from execution against assets located in Jordan would be invalid.

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#### Environmental, health and safety laws

**25** What laws or regulations apply to typical project sectors? What regulatory bodies administer those laws?

The applicable environmental law in Jordan is the Environment Protection Law No. 52 of 2006, which came into force on 16 October 2006 and it replaced the Provisional Environment Protection Law 2003. This law repealed its predecessor, the Environmental Law No. 12 of 1995. The Ministry of Environment is the authority that administers the Environment Protection Law and the regulations and instructions issued thereunder.

One regulation and nine instructions were issued pursuant to the Environment Protection Law No. 52 of 2006:

- the Regulation of Environmental Supervision and Inspection No. 65 of 2009;
- Instructions on the Control of the Use, Import and Re-export of the Materials Distressing the Ozone Layer and the Systems and Equipment of 2013;
- Instructions on the Selection of Sites for Developmental Activities of 2012;
- Instructions on Environmental Auditing of 2010;
- Instructions on the Categorisation of Different Facilities According to its Dangerousness to the Environment of 2010;
- Instructions on the Organisation of the Storage, Transport and Treatment of Organic Fertiliser and Trading with Same of 2009;
- Instructions on Biological Safety of Living Organisms of 2009;
- Instructions on Granting Prior Approval of Licensing or Renewal of Licence for Environmental Organisations of 2008; and
- Instructions on Sandblasting of 2007.



Seven regulations were issued pursuant to the Provisional Environment Protection Law 2003, all of which are still in force under the Environment Protection Law No. 52 2006 and these are:

- the Regulation of Management and Transport of and dealing with Dangerous and Hazardous materials No. 24 of 2005;
- the Regulation of Management of Solid Waste No. 27 of 2005;
- the Regulation of Protection of the Environment from Pollution in Emergency Circumstances No. 26 of 2005;
- the Regulation of Protection of the Soil No. 25 of 2005;
- the Regulation of Protection of the Air No. 28 of 2005;
- the Regulation of Assessment of Environmental Impact No. 37 of 2005; and
- the Regulation of Nature Reserves and National Parks No. 29 of 2005.

Three relevant instructions were also issued pursuant to the provisional law 2003:

- Instructions on the Management of and Dealing with Dangerous Waste 2003;
- Instructions on the Management of and Dealing with Consumed Oils 2003; and
- Instructions on the Limitation of and Safeguarding from Noise 2003.

There are other laws that incorporate provisions regulating certain environmental aspects as well, such as the Standards and Specifications Law No. 22 of 2000, the Water Authority Law, and the Criminal Code and the regulations and instructions issued pursuant thereto.

With respect to health and safety, chapter 9 of the Labour Law No. 8 of 1996 deals with safety and occupational health and the Ministry of Labour is the authority that administers occupational health and safety matters. The Ministry of Health could also be involved in health related issues.

The following regulations, instructions and resolutions dealing with occupational health were issued pursuant to the Labour Law:

- the Regulation for the Protection and Safety with respect to Industrial Machines No. 43 of 1998;
- the Regulation for the Formation of the Occupational Safety and Health Supervising Committees No. 7 of 1998;
- the Preventive and Curative Health Care Regulation No. 42 of 1998;
- the Instructions on the Periodical Medical Test for Employees at Establishments 1999;
- the Instructions on the Preliminary Medical Test for Employees at Establishments 1999;
- the Instructions for the Protection of Employees from the Hazards of the Work Environment 1998;
- the Resolution Relating to the Methods and Tools of Medical Assistance for Work in the Establishments 1997 issued pursuant to article 87 of the Labour Law;
- the Resolution on the Adoption of A Medical Reference 2002 issued pursuant to article 2 of the Labour Law;
- the Resolution issued by the Minister of Labour specifying the Times in which Putting Women to Work is Prohibited 2010 issued by the Minister of Labour pursuant to article 69 of the Labour Law; and
- the Resolution Pertaining to Dangerous Works or Works that are Detrimental to Juveniles 2011 issued by the Minister of Labour pursuant to article 74 of the Labour Law.

## Project companies

- 26** What are the principal business structures of project companies? What are the principal sources of financing available to project companies?

Project companies tend to be one of three types: limited liability company, private shareholding company and public shareholding company. For major projects, a private shareholding company is the most prevalent.

The following is a summary of each.

### Limited liability company

A limited liability company (LLC) is the most basic Jordanian company structure. It is mainly governed by a set of rules set out in the Companies Law that are usually reflected in standard form application form and recommended articles of association and memorandum of association. The standard form articles of association and memorandum of association cannot be amended in any major way. An LLC cannot list or trade its shares publicly. Only one class of shares is possible. The minimum capital of 1 Jordanian dinar is required in Jordan and at least 50 per cent of it must be paid at registration with the remaining 50 per cent within two years of registration. The LLC may be managed either by a single managing director or by a board of directors consisting of two to seven members.

### Private shareholding company

A private shareholding company (PSC) can be structured in any manner that the investor wishes. It can have different classes of shares that differ in their nominal value, voting rights and otherwise. The minimum subscribed share capital is 50,000 Jordanian dinars. A PSC, pursuant to its memorandum of association, may issue various types and classes of shares. It is managed by a board of directors.

### Public shareholding company

A public shareholding company (PLC) should list its shares on the Amman Stock Exchange. However, a public shareholding company may not submit an application for listing all of its subscribed shares on the second market except after the passage of, at least, one year from the date of obtaining the right to commence its business. The founders cannot dispose of their shares until two years have passed following registration. The minimum authorised capital is 500,000 Jordanian dinar shares of 1 Jordanian dinar each. The subscribed capital must be at least 100,000 Jordanian dinars or 20 per cent of the authorised capital and must be fully paid upon registration. The remaining authorised capital must be fully subscribed within three years of registration. Registration is complicated and requires the preparation of an approved prospectus.

Financing is usually made through equity or loans from banks. Taping the capital markets is almost non-existent for project finance.

## Public-private partnership legislation

- 27** Has PPP enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

Jordan does not have a single piece of legislation dealing specifically with concessions or incorporating the legal framework for PPP. However, Regulation No. 80 of 2008 for Implementing Privatisation Transactions (PR) issued in pursuance of the Privatisation Law No. (25) 2000 (PL) (PL and PR shall collectively be referred to here as the Law) and although they do not deal specifically and exclusively with PPP, they allow all types of PPP in most sectors other than mining.

However, and in addition to the Law, some sectors have sector-specific laws, which allow the relevant authority in such sectors to by-pass PL and PR when implementing PPP in its sector. For example, the Water Authority Law No. 18 of 1988, the Law of Electricity and Minerals Regulatory Commission No. 64 of 2002 and the Telecommunications Law No. 13 of 1995 deal with PPP with respect to the water, electricity and telecommunication sectors, respectively. As for mining, there is no single legislation or group of legislations that deals with concessions or PPP relating to the same other than the general principle for concessions stipulated under article 117 of the Jordanian Constitution.

Additionally, and as indicated above the Law for the Regulation of Natural Resource Affairs No. 12 of 1968 grants MEMR/EMRC the power to grant the private sector with mining licences. The Mining Regulation No. 131 of 1966 sets out the general framework for granting such licences that allows MEMR/EMRC to grant the licence without the need to go through the procedure set out in the Law. Therefore, it is not clear how the Law interrelates with sector-specific laws creating issues on whether or not the Law applies.

#### PPP – limitations

**28** What, if any, are the practical and legal limitations on PPP transactions?

There are currently social and political obstacles to implementing PPP. Some social and political pressures claim the following:

- the agreements made pursuant to PL and PR alone are unconstitutional as such agreements were not ratified by a separate law pursuant to article 117 of the Constitution;

- PPP and the Law in its entirety are not for the benefit of Jordan. Jordan through PPP or the privatisation regime is selling vital assets that should remain under the direct control of the state; and
- the government should be directly in control of certain sectors including education and health.

In light of the above, there is significant pressure on the government from the public that the educational and health sectors of Jordan should be under the direct control of the state. Therefore, even though the laws do not specifically restrict ownership of such sectors by the private sector, the government is not awarding any PPP or other forms of privatisation in such sectors.

#### PPP – transactions

**29** What have been the most significant PPP transactions completed to date in your jurisdiction?

The most significant PPP transactions completed to date are:

- the Samra Waste Water Treatment Plant – the first major PPP transaction, which won an award for project finance transaction of the year in the Middle East;
- the renovation and expansion of Queen Alia Airport in Amman;
- the Disi water conveyance project; and
- various independent power producer (IPP) projects.



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