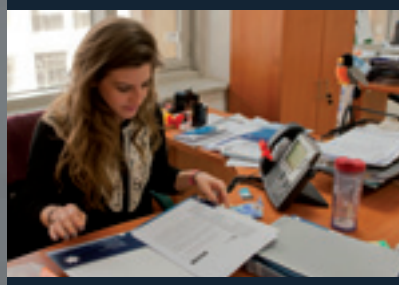
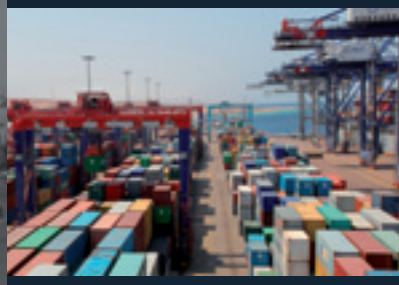
Legal Framework

Exemptions and incentives offered to foreign investors
Registration requirements for various company models
Free zones established to give corporations benefits
Imposing strict regulations to protect the environment





A number of structures exist for international investors

Encouraging foreign investors

Various incentives help foreign companies operate within the kingdom

TYPES OF COMPANIES: The Companies Law of 1997 gives the investor several types of companies through which it can make its investment. The most popular are: limited liability companies (LLC), private shareholding companies (PSC) and public shareholding companies (PLC). A foreign investor may also have the option to register an operating or non-operating branch office. Below are summaries of each type of company.

LIMITED LIABILITY COMPANY: An LLC is the most basic company structure that has the benefit of limited liability. LLC owners are protected from personal liability for business debts and claims. Unlike other jurisdictions, an LLC in Jordan is a pure corporation that does not have any flow through taxation for its "partners" and is taxed the same way other companies are taxed. Its benefits under Jordanian law arise from the fact that it is mainly governed by the rules set out in the Companies Law that are usually reflected in standard application form and recommended Articles of Association and Memorandum of Association.

The strict rules in the Companies Law mean that the investor does not have much leeway to insert special provisions into the Articles of Association and Memorandum of Association. Due to this "standard form" structure and low registered capital requirement of JD1 ($1.40), the LLC is the most commonly used structure by local investors. The Investment Law requires a minimum of JD50,000 ($70,260) per foreign investor. An LLC cannot list or trade its shares publicly.

An LLC must be composed of at least two shareholders (approval can be sought for a sole shareholder LLC). The nominal value of each share is JD1 ($1.40) and only one class of shares is possible. The paid up capital of an LLC upon registration must be at least 50% of its total share capital, and the remaining 50% must be paid within two years of registration. However, the foreign investor must pay a minimum of JD50,000 ($70,260) upon the registration of the LLC. The LLC may be managed by a single managing director or a board of directors of between two and seven members.

An LLC is created by filing a simple fill-in-the-blank application together with relatively simple Articles of Association and Memorandum of Association with the Controller of Companies at the Ministry of Industry and Trade. The registration documents must be signed in front of the controller or a licensed lawyer. Once preliminary approval is obtained, the partners have to provide evidence of payment of the paid-up capital after which the controller issues the registration certificate.

The LLC would not be able to start actual operations until the partners hold their first general assembly meeting approving the establishment expenses, electing the first director or board of directors and appointing the accounts' auditor and, if a board of directors is elected, the directors electing their chairman and vice-chairman and designating the authorised signatories. The whole process can be completed quite quickly, in as little as two days if done efficiently.

PRIVATE SHAREHOLDING COMPANY: A PSC combines the limited liability feature of the LLC together with the added flexibility of being able to structure the company in any manner that the investor wishes, subject to the minimum requirements set out in the Companies Law such as different classes of shares. The added flexibility, however, comes at the price of a higher entry barrier. The minimum prescribed share capital of a PSC shall not be less than JD50,000 ($70,260) and must be fully paid upon registration. A PSC, pursuant to its Memorandum of Association, may issue various types and classes of shares that differ in their nominal value, voting rights, profit and loss distribution among shareholders, and other ways.

The PSC is managed by a board of directors and the number of the members of the board should be specified in the Articles of Association and Memorandum of Association. At least 75% shareholder approval is needed for special decisions to, among other things, merge, dissolve, sell all the assets or change the share capital. The minimum investment requirements for foreign investors in LLCs also apply to PSC investors.

The PSC is formed by filing a simple application letter accompanied by specifically tailored Articles of Association and Memorandum of Association. The controller scrutinises these to ensure clarity and that no violations of law exist. After the controller's approval is obtained, the process becomes identical to that specified for LLCs except that the board of directors would also need to appoint a secretary of the board.

PUBLIC SHAREHOLDING COMPANY: A PLC must be composed of at least two founders who subscribe for shares that can be listed on a stock exchange (approval can be sought for establishing a PLC by one founder). The founders cannot dispose of their shares until two years after the registration of the PLC. Shareholders' liabilities are limited to their shareholding in the PLC. The authorised share capital of the PLC must not be less than JD500,000 ($702,600) of shares with a nominal value of JD1 ($1.40) and must be stated in JD. The subscribed share capital of a PLC shall not be less than JD100,000 ($140,000) or 20% of the authorised capital, whichever is greater, that must be fully paid upon registration. The remaining authorised capital must be fully subscribed within three years of registration. A PLC may issue the unsubscribed shares at prices above or below the nominal value. Members of the board of directors for a PLC must be shareholders therein.

A PLC's registration process is relatively complicated when compared to an LLC and a PSC, and requires the assistance of a lawyer and a licensed financial intermediary as well as registration and prospectus filing requirements with the Jordanian Securities Commission.

OPERATING FOREIGN COMPANY: A foreign company that is incorporated and has its headquarters outside of Jordan can operate in the kingdom only after registering as an operating foreign company with the controller. Commonly referred to as a branch office, its registration will be either temporary, for the duration of a contract that the company was awarded (which may be extended at a future date), or permanent, pursuant to a licence from the competent official authorities. The company registering a branch office must appoint a resident in Jordan (although not necessarily a citizen) as a representative to carry out its business and accept service on its behalf.

The branch office is registered by applying with the controller and providing various supporting documents such as the company's registration certificate, articles of association (or equivalent), list of directors and financial statements, all of which need to be notarised and legalised at the Jordanian consulate in the country of issuance. The approval of the relevant licensor or a copy of the contract with the local counterpart must also be submitted. All documents must be translated into Arabic before filing. Due to the notarisation, legalisation and translation requirements, the registration process is relatively lengthy and could take a few weeks.

NON-OPERATING FOREIGN COMPANY: A foreign company that does not intend to conduct business within Jordan, but wants to use it as a base for its business in the region can register with the controller as a non-operating foreign company, also known as a regional office. A regional office may not conduct business in Jordan, but can collect information generally concerning business possibilities in Jordan or for a particular project. It cannot sign any contract or offer regarding such a project or opportunity. In return for such restriction, the regional office enjoys several advantages such as the exemption from local taxes, except sales tax, its non-Jordanian employees are exempted from income and social services taxes and it can import office furniture free from Customs duties. A regional office must also appoint a resident representative and at least half of its employees must be Jordanian citizens.

Companies can be exempt from import fees or income taxes if they meet criteria set by the government

The process of registering a regional office is very similar to that of a branch office. All documents must be translated into Arabic before filing. Due to the notarisation, legalisation and translation requirements, the registration process could take a few weeks.

FOREIGN INVESTMENT RESTRICTIONS: The 2003 Investment Law regulates the issue of foreign investment restrictions in Jordanian companies and projects.

The general rule is that foreign ownership is allowed without restriction, subject to a minimum investment per investor of the equivalent of JD50,000 ($70,260) in non-public companies. However, there are exceptions depending on the economic sectors in which the relevant Jordanian company or project operates. These exceptions are divided into the following categories:

i. Companies or projects in which foreign ownership is completely prohibited; examples are passenger and freight transport, investigation and security, sports clubs and Customs clearance services;
ii. Companies or projects in which foreign ownership is limited to a maximum of 50%; examples include wholesale trade and retailing, distribution of goods and services, engineering services, construction contracting, advertising services, commercial agencies, restaurants, as well as certain road, rail and air transport support services; and
iii. Companies or projects in which foreign ownership is limited to a maximum of 49%; some examples

Oman SOUTH AFRICA *Peru* Ghana THAILAND Brunei *Kuwait*
Lebanon BAHRAIN *Jordan* Pakistan Indonesia MALAYSIA
ABU DHABI NIGERIA Egypt Dubai *The Bahamas* *Gabon*
Algeria *Mongolia* London *Tunisia* QATAR *SAUDI ARABIA*
SENEGAL Gabon *Turkey* MOROCCO Yemen The Philippines

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include scheduled passenger air transportation and aircraft charter (wet lease) services.

The Council of Ministers may permit a higher percentage (as determined by the council) in big development projects that enjoy special importance.

There is no distinction between foreign nationalities (whether GCC, Arab or otherwise). Moreover, the restrictions involve only the direct owner and do not look through to the ultimate or beneficial owner unless the direct owner is clearly a shell company.

COMPANY REGISTRATION FEES: Fees related to registering a business are defined by the model:

- The cost of registering an LLC, excluding attorney fees, is 0.2% and 0.3% of the registered capital as registration fees and stamp duties, respectively.
- The cost of registering a PSC, excluding attorney fees, is 0.2% and 0.3% of the authorised capital as registration fees and stamp duties, respectively.
- The fees to register a PLC, excluding attorney fees, are 0.2% and 0.3% of the authorised capital as registration fees and stamp duties, respectively. Additional fees are payable with respect to registration with the Jordanian Securities Commission, listing on the Amman Stock Exchange and registration of shares with the Securities Depository Centre fees.
- The fee to register a branch office is JD5000 ($7026).
- There are no official fees to register a regional office.

STAMP DUTIES: Stamp duties are payable on any agreement to which a Jordanian citizen is party or if it involves an asset located or registered in Jordan. Stamp duties are generally payable at the rate of 0.3% to 0.6% of the value thereof and will not be accepted as evidence in any legal proceedings in Jordan unless so stamped.

INCOME TAXES: Income taxes are levied at rates ranging between 7% and 14% for individuals, depending on their tax bracket, and 14% to 30% for legal persons, depending on the kind of activity that generates the income. Lower tax rates apply in special economic zones, development zones and free zones.

A withholding tax of 7% applies on all taxable income payable by Jordanian resident to non-residents. The withholding tax must be withheld by the payer and forwarded to the income and sales tax department.

SALES TAX: Unless specifically exempted, goods and services sold in Jordan or imported into Jordan are subject to a 16% sales tax. Lower rates may apply in certain circumstances. Special sales tax rates, which are higher (sometimes substantially) than the normal rate, are also levied on certain goods such as vehicles. The sales tax is payable by the importer of a service or good, in the case of importation, or by the buyer in the case of an in-Jordan sale of a good or service.

INVESTMENT PROMOTION: Any project established in any of the following eligible sectors shall be entitled to the exemptions set out in various investment related laws, namely: industry, agriculture, hotels, hospitals, sea and rail transport, leisure and recreation compounds, and convention and exhibition centres. The Council of Ministers may add sectors to the list.

Projects falling within the eligible sectors are afforded exemptions from Customs duties, sales taxes, import fees and all other fees on initial capital assets, spare parts for up to 15% of the value of the assets and fixed assets required for the expansion of any existing exempt project are also exempt if certain conditions are met.

The Council of Ministers may grant any project falling within these sectors additional exemptions, privileges and incentives (other than income-tax-related exemptions or incentives) based on the geographic location of the project, its nature, its contribution to exports or the employment of local workforce, the use of natural resources, or to the kingdom's general development.

The investment laws provide that foreign investments may be in cash, in-kind, material or moral rights of a financial value, including trademarks and patents. The investment laws also reaffirm the right of an investor to freely repatriate its capital, profits and dividends in any foreign convertible currency. Further, the investment laws provide that the ownership of any project may not be appropriated except for requirements of public interest and provided that fair compensation is paid to the investor in a convertible currency.

BILATERAL INVESTMENT TREATIES: Jordan has entered into several bilateral investment treaties such as the Treaty Concerning the Encouragement and Reciprocal Protection of Investment signed on July 2, 1997 between the US and Jordan and the Euro-Mediterranean Agreement establishing an association between the European Communities and their member states and Jordan, which entered into force in 2002. Such treaties aim to promote investment and grant further incentives for foreign investment.

FREE ZONES: The Free Zones Law grants projects and activities conducted within the designated free zones various exemptions and benefits. These include total exemption of profits from income tax in respect to products exported from Jordan, zero sales tax on imports into the free zone, exemption on goods imported into or exported out of a free zone to destinations other than the domestic market from Customs duties and import fees and all other payable taxes and fees with the exception of certain service fees.

AQABA SPECIAL ECONOMIC ZONE: The Aqaba Special Economic Zone Law provides businesses registered within the zone with the following listed tax exemptions and further benefits:

i. The zone shall be deemed a territory outside the perimeters of Jordanian Customs territory and shall not be subject to Customs legislation except as otherwise stipulated under the law;
ii. Goods manufactured in the zone that have been transported into other parts of Jordan shall be treated as domestic products;
iii. An income tax rate of 5%;
iv. No import duties into the zone;
v. The following sources of income shall be exempt from income tax:
   - Profits generated from capital;
   - Profits generated from the sale and purchase of land real estate, shares and bonds;
   - Income generated from agricultural, gardening and afforestation investment in land;

- Income generated from investments in poultry, cattle, fish or the breeding of bees;
- Income generated from the products manufactured by manual labour; and
- Income generated from a concession or agreement granted by the government, which has been exempted under the terms of the concession or agreement.

DEVELOPMENT ZONES: In 2008 the government saw the need to develop and encourage investments in certain areas rather than merely encouraging investment in specific sectors. Therefore, development zones were created by the Development Zones Law, which aimed at reducing the disparities between governorates and achieving economic growth by promoting investments and creating job opportunities. The Development Zones Corporation was created as a one-stop shop to regulate and monitor development zones in Jordan. Currently, the country's development zones are the King Hussein Bin Talal Development Area, Ma'an Development Area and Irbid Development Area.

Projects operating in Development Zones benefit from a reduced income tax rate of 5%, zero sales tax and no Customs duties on imports except for those products that enter the Customs territory and do not qualify as having a Jordanian origin. Projects in development zones can be fully owned by non-Jordanians.

FOREIGN CURRENCY REGULATIONS: The Central Bank of Jordan is entrusted with the regulation of the banking and foreign exchange systems. It is allowed by law to regulate the transfer of local and foreign currency in and out of Jordan. The Jordanian dinar has been pegged against the dollar for several years. Accordingly, the price of other currencies fluctuates against the JD in line with their fluctuation against the dollar.

Other than its continued control of the exchange rate, the central bank does not have any restrictions on the exchange or transfer of the JD or foreign currencies in and out of Jordan. Local or foreign individuals and entities are allowed to open accounts inside and outside Jordan in any currency and are able to transfer any amount of foreign or local currency into and out of Jordan, subject to certain money laundering regulations.

RESIDENCY & WORK PERMITS: In order for a non-Jordanian to reside in Jordan for any period of time, he or she must acquire a residency permit or a visa.

Residency permits are issued for a renewable one-year period. For a foreign individual to be eligible to apply for a residency permit, he or she must have an employment agreement with a Jordanian individual or a Jordanian registered company.

A foreign individual must obtain a work permit to be entitled to work in Jordan. The Ministry of Labour issues work permits for a duration of one year. According to the Labour Law of 1996, a foreign individual must possess characteristics not available in Jordanian individuals to qualify for a work permit.

In addition to the work permit, any individual applying for a residency permit must undergo a medical evaluation and visit the police station responsible for the area where he or she resides to complete paperwork pertaining to the municipality and provide fingerprints.

Jordanian citizens, companies and commissions are prohibited from employing a foreign national unless such an individual has acquired a residency permit. However, experts and consultants that are employed for technical and operational matters are excluded from this provision provided that the period of their employment does not exceed three months.

Jordanian employers are usually responsible for obtaining work permits for their foreign employees. On the other hand, it is the foreign individual's responsibility to obtain the residency permit.

Another way to enter and reside in Jordan is with a tourist or transit visa. Such visas may be issued for one or three months and are renewable for a maximum period of six months, subject to Jordanian regulations. Once the timeframe of the visa has expired, the individual must leave the country. To avoid any doubt, please note that the whole period of stay in Jordan using a tourist visa cannot exceed six months. Tourist visas do not allow the foreign individual to work in Jordan.

COMPETITION LAW: The 2004 Competition Law was enacted with the intention of establishing market rules and free pricing and applies to all production, commerce and services in Jordan as well as to economic activities outside the country that have a direct effect in Jordan. A competition directorate at the Ministry of Industry and Trade is charged with ensuring proper implementation of the law and investigating violations.

ANTI-COMPETITIVE PRACTICES: Practices by two or more entities contravening the Competition Law and made with the intention of preventing fair competition shall be prohibited. Such practices include:

- Fixing the prices or quantities of products;
- Sharing the market on the basis of geographical regions;
- Setting barriers to hinder the entry of new enter prises, effectively eliminating potential entrants from the market;
- Collusion in bids by over- or underbidding with the intention of preventing competition in any way.

An activity may be exempt from these restrictions with the approval of the Minister of Industry and Trade if it is thought that such activity may ultimately lead to positive results and a common benefit that may not have been achieved without the exemption.

An enterprise with a dominant position in the local market shall also be subject to the above-mentioned provisions, and shall also be prohibited from discriminating against or preventing consumers from dealing with any competing enterprise. Any attempt to monopolise the resources necessary for a competing enterprise with the intention of manipulating market prices shall also be prohibited.

The resale of a product below its natural price (called dumping) shall be prohibited if the action is intended to limit competition. Any violation of this provision will be punishable with a fine of not less than JD200 ($281.04), and not more than JD20,000 ($28,104). The provision shall not, however, apply to perishable goods, or to sales with the intention of liquidating a business or with the intention of restocking at lower prices.

ECONOMIC CONCENTRATION: Any activity resulting in the full or partial transfer of ownership, interest, property, rights, shares or obligations from one enterprise to another shall be considered an economic concentration operation.

If the economic concentration operation would consequently result in the enterprise holding a dominant position in the local market (40% or more of the total transactions in the local market) then the enterprise must first receive an approval from the minister of industry and trade. This may be accomplished by submitting a petition to the directorate using the form adopted by the Ministry of Industry and Trade accompanied by certain supporting information listed in the law or otherwise requested by the directorate such as information or documents relating to the economic concentration agreement or the parties involved. The directorate shall then publish in two daily newspapers an announcement regarding the petition at the expense of the applicant. The minister of industry and trade may then approve the operation so long as it does not negatively impact any competition or if the suggested positive economic benefits outweigh the negative impact on competition. The minister of industry and trade must issue his approval within 100 days from the date of notification that the application is complete. The minister may also allow the operation to continue provided that the enterprise agrees to meet the conditions specified by the minister. The minister may withdraw the approval if it becomes apparent that the basic information initially offered by the enterprise was false, or if the conditions set by the minister were breached. If conditions are breached, the enterprise may be required to pay a fine of not less than JD1000 ($1405) and not more than JD50,000 ($70,260).

ENVIRONMENTAL LAW: The Protection of Environment Law of 2006 addresses various environmental concerns including noise pollution, coastal pollution, waste management and air pollution, and touches on the obligations of corporate bodies in relation to their potential effect on the environment.

The Ministry of Environment ensures compliance with environmental regulations and standards. The minister of environment has the power to issue warnings to entities engaging in activities that negatively impact the environment, and to request that they rectify the relevant violation. Non-compliance may result in referral to the courts. The minister may also order the closure of any such entity.

COASTAL & MARINE PROTECTION: The Protection of the Environmental Law prohibits dumping of any pollution or harmful substances into the coastal environment, within the boundaries of areas specified by the minister, in Jordan's regional waters and on the shore areas. Penalties will be imposed in the form of fines and imprisonment on persons who harvest, trade, remove or damage coral reef and seashells.

WASTE & HAZARDOUS SUBSTANCES: Importing hazardous waste into Jordan is strictly prohibited. Persons or entities found in violation of such provisions are liable to return any such waste to their country of origin, at the party's own expense, and may be subjected to a fine or imprisonment. The maximum prison sentence is 15 years and fines start at JD20,000 ($28,104).

Approval at the ministerial level is required for a company to obtain 40% or more of market share

Moreover, the environmental law prohibits dumping of any environmentally damaging substances into the water resources, whether liquid, gaseous, radioactive or thermal in nature. Storage of such substances in places other than those designated by the minister is also prohibited. Penalties are imposed on persons in violation of these provisions. The maximum penalty for any such violation is a fine of JD50,000 ($70,260) and a prison sentence of two years.

OBLIGATIONS OF CORPORATES: Corporate bodies engaging in activities that negatively impact the environment are obliged to prepare an environmental impact assessment (EIA) for each project they intended to establish and submit it to the ministry for approval. The minister may also request that a company or entity prepare an EIA if deemed necessary for safeguarding the environment. Some of the projects listed in regulations as requiring an EIA include: (a) crude oil recycling projects; (b) energy generation projects; (c) steel manufacturing projects; (d) road and railway construction projects; (e) waste recycling projects; (f) port and harbour construction projects; and (g) covering sea water to create land for industrial or leisure purposes.

The environmental law also mandates that owners of factories, vehicles, workshops or other entities engaging in activities that have a negative impact on the environment install adequate equipment to prevent or minimize the emissions, or adopt necessary procedures to minimize or prevent the emission of pollutants. Persons or entities in violation of such provisions that fail to rectify the violation within the time period specified by the Minister, may be referred to court. The court has the discretion to impose a maximum prison sentence of one month and a fine of up to JD1000 ($1405).

OBG would like to thank *Ali Sharif Zu'bi Advocates and Legal Consultants* for their contribution to THE REPORT Jordan 2012

Khaled Asfour, Managing Partner, Ali Sharif Zu'bi

Resolving lender issues

Khaled Asfour, Managing Partner, Ali Sharif Zu'bi Advocates and Legal Consultants, on new laws protecting lenders

As a lawyer practising in Jordan and involved in project finance transactions, I often advise on structuring security packages to protect lenders' interests. Lenders are also interested in understanding what happens when the business they are financing faces insolvency risks. The laws governing these issues in Jordan have been problematic and have delayed, or even prevented, financing decisions by lenders. Two pieces of legislation, one enacted and the other pending before parliament, are meant to ameliorate the situation.

The most problematic of security interests to be obtained is security over moveable assets (those that do not have a title registry), such as office equipment, machinery and inventory. According to the civil code, a creditor can get security over assets that cannot be registered through a possessive mortgage, which involves transfer of asset possession to the creditor or a third-party trustee, called the adel. To allow the borrower to continue using the assets, the adel is allowed to "lend" the assets to the borrower. To address the impossibility of handing possession to a large number of assets that are often too large to be handled, an "adel appointment agreement" is made to confirm the assets have been given to the adel and back to the borrower.

This creates many problems for lenders. First, there is no central registry to record such security interest, and hence the lender is not protected against bona fide asset purchasers who buy the assets from the borrower thinking they are unencumbered. Second, it is difficult for the lenders to find a trustworthy person to be the adel. Traditionally, banks have appointed employees, facing problems when the employee leaves the bank without a replacement. Third, the security cannot cover "undefined", "floating" or future assets such as inventory and bank accounts, since Jordanian law requires that a mortgage be placed over a defined asset that is in existence at the time of creation of the mortgage.

The Law for Placing Moveable Assets as Security for Debt was recently enacted and will take effect once implementing regulations are issued. This law has created a central registry, kept with the Controller of Companies, for securities over moveable assets, and allows the placement of a security interest over all the moveable assets of the borrower. This addresses, under the previous legal framework, the inability to have security over bank accounts, inventory and future assets. Yet, the law has several shortcomings. First, it is meant to work in conjunction with existing laws and states that mortgages placed pursuant to the civil code or any other law would have priority over a security interest registered under the law. Second, it applies to assets that have a clear and reliable security structure such as assets that can be registered (other than land). Third, it requires the asset owner to place signs at the entrance of his facilities indicating that the assets are subject to the security interest, which is burdensome and defeats the purpose of a registry. Finally, it does not resolve the purchaser and adel problems, which could have been solved by eliminating the adel and allowing a fixed mortgage over moveables to be in the same registry.

Another set of problems for lenders are Jordan's insolvency laws. The two main bodies of legislation that deal with these sorts of issues are the Commercial Code, which handles bankruptcy, and the Companies Law, which works on involuntary liquidation due to insolvency. These laws provide for two distinct procedures to be followed in the case of insolvency and they can run concurrently (a bankruptcy court runs one procedure and a liquidator runs the other). Each has different rules of priority, time periods and suspect periods. There are other laws that affect priorities. For example, the civil code has one set of rules and the labour law has another, and they can differ from rules in the Commercial Code and the Companies Law.

Fortunately, Jordan's government has drafted an insolvency law and considers it a priority as parliament is expected to discuss it shortly. We are all hoping for an expedient enactment of this law and that it will be comprehensive enough to resolve the inconsistencies of the other legislation that touches on the subject.