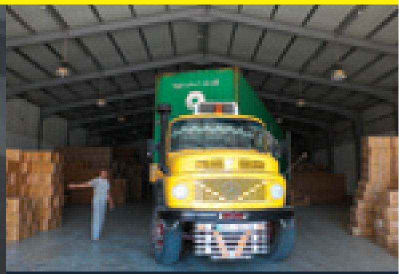
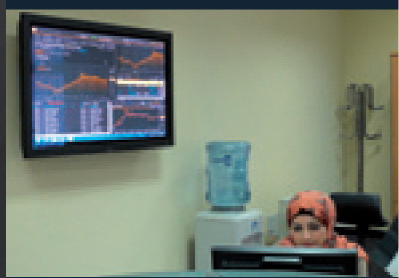
Legal Framework

Seven eligible sectors prioritised for investment

Investors prefer limited liability company structure

First law on sukuk issuances enacted in late 2012

Approval criteria for real estate and property transactions

Some restrictions on foreign ownership exist in certain sectors

A detailed insight

The kingdom's investor-friendly regulations

The government of Jordan has been working to achieve economic stability through encouraging investment, particularly foreign investment. Jordan's legal framework not only creates a secure environment for investors and encourages investment in specific sectors through various incentive and benefit schemes, but also provides a well-structured and easily implemented mechanism for establishing fully operational companies. With the persistent political turmoil in the region, Jordan has managed to maintain a stable political environment that has created a safe haven for investors.

INCENTIVES FOR INVESTORS: Any project established in the kingdom in any of the following "eligible sectors", namely, industry, agriculture, hotels, hospitals, sea and rail transport, leisure and recreation compounds, and convention and exhibition centres, shall be entitled to the exemptions set out in various investment-related laws. The Council of Ministers may add any other sector to the list. Projects falling within the eligible sectors are afforded exemptions from Custom 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 the exempted sectors additional exemptions, privileges and incentives (other than income tax-related exemptions or incentives) based on the location of the project, its nature, its contribution to the increase of the kingdom's exports or the employment of local work force, the exploitation of natural resources, or the development of the kingdom in general.

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. They also reaffirm the right of the foreign investor to freely repatriate in any foreign convertible currency its capital, profits and dividends. The Investment Laws also provide that the ownership of any project may not be appropriated except for requirements of public interest provided that a 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 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.

FREE ZONES: To incentivise investors, the government has designated free zones, the Aqaba Special Economic Zone and other development zones where operating businesses enjoy certain exemptions and benefits.

REGULATION OF FOREIGN OWNERSHIP: Prior to setting out the procedure for registering companies in the kingdom, it is important to highlight the restrictions currently present on foreign ownership. As a general principle, foreign ownership is accepted without restriction provided that each foreign owner invests a minimum of JD50,000 ($70,630) or equivalent in non-public companies. However, there are some restrictions on foreign ownership in certain sectors that can be divided into three bands:

- Companies/projects in which foreign ownership is completely prohibited; examples include passenger and freight road transportation, security and investigation, sports clubs and Customs clearance services;
- Companies/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 and certain road, rail and air transport support services; and
- Companies/projects in which foreign ownership is limited to a maximum of 49%; examples include

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

The Council of Ministers may permit higher percentages (as determined by the Council) in large 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.

TYPES OF COMPANIES: The Companies Law of 1997 gives the investor several types of companies through which he can make his investment. The most popular of these are limited liability companies (LLCs), private shareholding companies (PSCs) and public shareholding companies (PLCs). A foreign investor also has the option in certain circumstances to register an operating or a non-operating branch office. We set out below a summary of each of these types of companies.

LIMITED LIABILITY COMPANY: An LLC is the most basic Jordanian company structure that has the benefit of limited liability. All LLC owners are protected from personal liability for business debts and claims. Unlike LLCs in other jurisdictions, a Jordanian LLC is a pure corporation that does not have any flow through taxation for its "partners" and is in fact taxed in the same way other types of companies are taxed. Its benefits under Jordanian law arise from the fact that 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. Due to the strict rules in the Companies Law, the investor does not have much leeway in inserting special provisions into the Articles of Association and Memorandum of Association. Due to this "standard form" structure and low registered capital requirement of JD1 ($1.41) (assuming no foreign partners), the LLC is the most commonly used structure by local investors. The Investment Law requires a minimum amount of JD50,000 ($70,630) 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 ($1.41) 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.

The process for registering an LLC can be effected in as little as two days. The cost of registering an LLC, excluding attorney fees, comprises both registration fees and stamp duty. The registration fee is 0.2% of the registered capital with a minimum of JD250 ($353). Additionally, stamp duty shall be applicable at the rate of 0.3% of the registered capital as well.

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 some minimum requirements set 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 ($70,630) that 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 minimum investment requirements relating to foreign investors mentioned above in the LLC section apply for PSCs as well. It is contemplated that a PSC can list or trade its shares publicly, however, currently there is no mechanism put in place for publicly listing or trading its shares.


Projects in eligible sectors are offered incentives such as exemptions from Custom duties and sales taxes

The process for registering a PSC tends to be a little more complicated than that of an LLC and can be done within 1-2 weeks. The cost of registering a PSC, excluding attorney fees, comprises both registration fees and stamp duty. The registration fee is 0.2% of the registered capital with a minimum of JD1000 ($1413). Additionally, stamp duty shall be applicable at the rate of 0.3% of the registered capital.

PUBLIC SHAREHOLDING COMPANY: A PLC must be composed of a minimum of two founders who subscribe to 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 have passed following 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 ($706,300), with a nominal value of JD1 ($1.41) per share, and must be stated in dinar. The prescribed share capital of a PLC shall not be less than JD100,000 ($141,260) 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. The registration process of a PLC is relatively complicated when compared to an LLC 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. The cost of registering a PLC, excluding attorney fees, comprises registration fees and stamp duty. The registration fee is 0.2% of the registered capital with a minimum of JD5000 ($7063). Stamp duty shall be applicable at the rate of 0.3% of the registered capital.

OPERATING FOREIGN COMPANY: A foreign firm that is incorporated and has its headquarters outside 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 (the registration may be extended if other contracts are later awarded), or permanent, pursuant to a licence from the competent official authorities. The company registering a branch office must appoint a person resident in Jordan who need not be a Jordanian national, as a representative to carry out its business and accept service on its behalf. The cost of registering an operating foreign company, excluding attorney fees, comprises only registration fees amounting to JD5000 ($7063).

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, commonly referred to as a regional office (RO).

An RO may not conduct business in the kingdom. It can collect information generally concerning business possibilities in Jordan or for a particular project but cannot sign any contract or offer regarding such a project or opportunity. In return for such restriction, the RO enjoys several exemptions and 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 its office furniture free from Customs duties.

The RO must appoint a resident representative. At least half the employees in the RO must be Jordanian citizens. There are no official fees to register an RO.

JOINT VENTURES: Investors may enter into different contractual arrangements such as joint ventures (JVs) through which they make their investment. A JV is a contractual arrangement in which two or more parties agree to combine their resources to undertake a particular business activity.

Unlike a typical partnership, a JV is a finite relationship based on a single business transaction. In a JV, each party is responsible for the profits, losses and costs associated with the activity.

It is not necessary to establish a company to create a JV in the kingdom. JVs created by pure contractual relationships will not be regulated by the Companies Law; however, such JVs would still enjoy legal personality. That said, setting up a separate entity as part of the project or business activities is fairly common for JVs in Jordan.

Therefore, parties entering a JV in the kingdom must first decide whether they will incorporate a separate entity or not because such a decision dictates what law will govern the JV.

FURTHER REGISTRATIONS, LICENSING & PERMITS: The licences and permits required for a specific project/enterprise are highly dependent on the nature and type of project/enterprise and may vary accordingly. However, the most common are registration with either the Chamber of Industry/Commerce, environmental permit, vocational licence, construction and occupancy permits and registration with the Income and Sales Tax Department.

REGISTRATION WITH THE CHAMBER OF INDUSTRY/COMMERCE: Following the registration of any company with the Controller of Companies, other than ROs, the company should register with either the Chamber of Industry or Chamber of Commerce depending on the nature of activities. Such registration is required for the purpose of procuring the vocational licence and commencing its activities. The registration certificate is given for a one-year period and should be renewed on an annual basis.

ENVIRONMENTAL PERMIT: 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 of Environment for approval. The minister may also request that a company/entity prepare an EIA if deemed necessary for safeguarding the environment. Some of the projects listed in regulations as requiring an EIA include: crude-oil recycling projects; energy-generating projects; steel manufacturing projects; road and railway construction projects; waste-recycling projects; port and harbour construction projects; and covering sea water to create land for industrial or leisure purposes.

CONSTRUCTION & OCCUPANCY PERMITS: Companies performing any construction works require a construction permit prior to commencing such works. Such permits are procured from the relevant municipality depending on where the construction site is located. The construction permit is for the duration of the construction phase of the project.

After finalising the construction of the place of business and in order to be able to occupy the buildings and eventually enable the company to commence its activities through the vocational licence as indicated below, an occupancy permit should be obtained from the relevant municipality. The occupancy permit evidences that the works have been constructed according to the conditions of the construction permit. This permit is issued only once and is not renewed.

VOCATIONAL LICENCE: In order for any company to commence its activities, the firm should obtain a vocational licence from the relevant municipality depending on where the project/enterprise is located.

Such licence is required to ensure that the place of business (e.g. office, warehouse, factory, plant, etc.) is suitable for conducting its activities. This licence is for a one-year term and should be renewed annually.

REGISTRATION WITH THE INCOME & SALES TAX DEPARTMENT: There are two types of registrations that need to be made with the Income & Sales Tax Department. The first is an income tax registration that is applicable to all types of companies. Even if a particular company or project is exempt from income tax, such registration needs to be made. The second registration is a sales tax registration which should be made to all types of companies if:

- The company's sales exceed certain thresholds indicated in the applicable legislation; and
- The company imports goods/services, which are subject to sales tax irrespective of any thresholds.

FINANCING COMPANIES/PROJECTS: The government of Jordan enacted, late in 2012, the first Islamic Finance Sukuk Law (Sukuk Law), which addresses the issuance of sukuk of all forms. Sukuk are instruments of equal value representing common shares in the ownership of a project issued in the name of the holders in consideration of assets presented by such holders for the implementation of the project and receipt of revenue for a period to be determined in the prospectus in accordance with sharia law. The Sukuk Law contemplates the possibility of establishing a special purpose vehicle (SPV) which shall own the assets, benefits or rights financed by way of sukuk. The SPV shall own the project for the sole purpose of the issuance of sukuk and shall distribute the profits between different sukuk holders. Islamic sukuk should only be issued to finance projects that generate profits and which are independent from the issuer's other projects.

Earlier in 2014, the Special Purpose Vehicle Company Regulation (SPV Regulation) was enacted pursuant to the Sukuk Law. The SPV Regulation stipulates that SPVs established for the purpose of owning assets, benefits or rights financed by way of sukuk should be in a form of private shareholding companies and sets out the procedure for registering and reporting for such companies.

Such SPVs are, therefore, regulated by the SPV Regulation rather than the Companies Law; however, in the event the SPV Regulation fails to regulate a particular matter, the provisions of the Companies Law shall then apply in so far as they comply with Islamic sharia.

The Sukuk Law enables the issuer to provide sukuk in dinar or in other foreign currency pursuant to any of the following contracts: ijarah; mudaraba or muqarada; murabaha; musharaka; salam; istisna'a; sale of right to benefit; and any other contract approved by a special sharia commission established under the Sukuk Law (Central Sharia Supervisory Commission). In 2014 the Islamic Financing Sukuk Contracts Regulation (Sukuk Regulation) was enacted. The Sukuk Regulation defines each type of Islamic financing contract referred to in the Sukuk Law in more detail and sets out certain restrictions on the provisions of such contracts.

Sukuk are tradable on the Amman Stock Exchange or any other financial markets pursuant to the applicable laws, and can be traded outside the financial market pursuant to instructions to be issued by the Board of the Jordan Securities Commission and approved by the Central Sharia Supervisory Commission. The issuers shall provide an offering of the sukuk pursuant to an issuance prospectus.

The authorised share capital of a public shareholding company must not be less than $706,300

However, the procedures for the registration and implementation of the issuance prospectus are subject to the approval of the Board of the Jordan Securities Commission pursuant to instructions to be issued for that purpose.

Based on the Sukuk Law, sukuk bonds may only be issued, whether directly or through an SPV, by the following issuers: the government; public official institutions and public institutions upon the approval of the Council of Ministers; Islamic Banks; companies that provide Islamic financing services; and companies and institutions which acquire the approval of the Board of the Jordan Securities Commission.

The Sukuk Law granted the SPVs, which are created for the issuance of sukuk, exemptions from all fees including company and licensing registration fees; the payment of the share capital prior to registration; property tax applicable to sale of immovable property and land registration fees applicable on transfers or other disposals between the SPV and the party forming it; and all taxes and fees of registration of assets and benefits applicable when title to same is transferred or upon any other disposal transaction between the SPV and the party forming it. In addition, sukuk transactions are exempt from all taxes and fees including income tax, general sales tax and stamp duties.

However, since the mechanism or procedures for issuing, registering, subscribing, listing and trading sukuk and any other matters related thereto are to be regulated pursuant to instructions which to date have not been issued, it remains unclear how the Sukuk Law will be implemented.

REAL ESTATE INVESTMENT

Approvals for acquiring property in Jordan by foreign individuals and corporate entities: As a general rule, foreign individuals (i.e., non-Jordanian) and corporate persons can hold complete ownership of property in

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Foreign persons and corporates can acquire property provided certain approvals have been granted

Jordan. However, they will need to obtain certain approvals from the relevant authorities to complete the sale and transfer title to the property the foreign individual or corporate person intends to purchase.

The approvals needed to complete a sale transaction for a property in Jordan are:

A. Foreign Natural Persons: The law differentiates between Arab nationals, non-Arab nationals and individuals holding travelling documents or temporary passports.

i. Approvals for Arab Nationals: Arab nationals may acquire property within urban zones (i.e., areas within the boundaries of cities and towns) upon the approval of:

- The General Manager of the Lands and Survey Department, to acquire property that does not exceed two residential houses and one office space;
- The Minister of Finance, to acquire property that exceeds two residential houses and office space, provided that the area of the plot on which the property is constructed does not exceed 10,000 sq metres;
- The Minister of Finance, to acquire plots with an area that does not exceed 10,000 sq metres; or
- The Council of Ministers, to acquire plots with an area that exceeds 10,000 sq metres.

Arab nationals may acquire property outside urban zones if they intend to carry out agricultural or industrial activities, or if they intend to construct residential buildings, upon the approval of:

- The Minister of Finance, to acquire a plot with an area that does not exceed 50,000 sq metres; or
- The Council of Ministers, to acquire a plot with an area that exceeds 50,000 sq metres.

ii. Non-Arab Nationals: Non-Arab nationals may acquire property in Jordan, subject to the following requirements:

- Reciprocity: The main condition for non-Arab foreign nationals to acquire property in Jordan is "reciprocity". Under this requirement, a non-Arab foreign national is only allowed to acquire property in Jordan if Jordanians are also allowed to acquire property in the country that the buyer holds its nationality.

If the foreigner has more than one nationality, then for purposes of reciprocity, the laws of all countries that the foreigner holds its passports will be considered for the approval. Countries that currently have reciprocity with the kingdom include Belgium, Canada, Denmark, the UK and the US.

- Required approvals for non-Arab foreigners: Non-Arab foreigners may only acquire property within urban zones (i.e., areas within the boundaries of cities and towns) upon the approval of:
- The General Manager of the Lands and Survey Department, to acquire property that does not exceed two residential houses and one office space;
- The Minister of Finance, to acquire property that exceeds two residential houses and office space, provided that the area of the plot on which the property is constructed does not exceed 10,000 sq metres;
- The Minister of Finance, to acquire plots with an area that does not exceed 10,000 sq metres; or
- The Council of Ministers, to acquire plots with an area that exceeds 10,000 sq metres.

iii. Individual investors holding travel documents or temporary passports: Such individuals may only acquire property upon the approval of the Council of Ministers.

B. Corporate Persons: The law does not differentiate between Jordanian and foreign corporate entities for the purposes of acquiring property in Jordan.

Local and foreign corporate entities may acquire property in Jordan for business as follows:

i. Property in urban zones: A corporate entity may acquire property in urban zones upon the approval of:

- The Minister of Finance, for plots with an area that does not exceed 30,000 sq metres; or
- The Council of Ministers, for plots with an area that exceeds 30,000 sq metres.

ii. Property located outside urban zones: A corporate entity may acquire property outside urban zones upon the approval of:

- The Minister of Finance, for plots with an area that does not exceed 50,000 sq meters; or
- The Council of Ministers, for plots with an area that exceeds 50,000 sq metres.

HOLDING PERIOD & EXIT ROUTE: Foreign individuals and corporate entities must hold the acquired property for a minimum of three years for residential properties and for five years for other types of property.

However, investors may request to waive the minimum holding period for justified reasons. Such waiver will be granted to investors subject to the approval of the Minister of Finance.

LOCATION OF THE PROPERTY: The above rules are applicable to property in all locations inside Jordan (including property in Development Zones), but not to property within the Aqaba Special Economic Zone, which has a different set of rules and approval system.

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