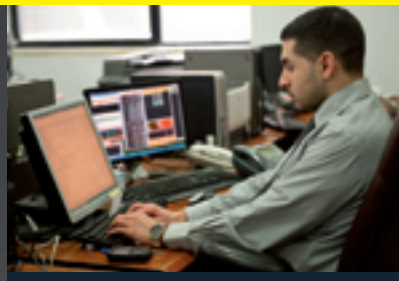
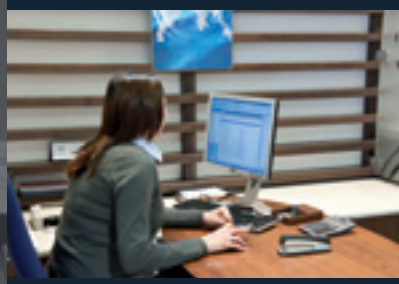
Legal Framework

Incentives and exemptions on offer in various sectors
Development zones stimulate growth and employment
The different types of companies that can be established
Security interests for project financing explained





Projects in specified sectors qualify for exemptions and incentives

By the book

A rundown of the regulations governing investment in the kingdom

The government of Jordan has been working to achieve economic stability through encouraging investment, particularly foreign investment. The kingdom'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. Despite persistent political turmoil in the region, Jordan has managed to maintain a stable political environment, creating a safe haven for investors.

INCENTIVES FOR INVESTORS: Any project established in the kingdom in any of the "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 Customs duties, sales taxes, import fees and all other fees on initial capital assets, and spare parts for up to 15% of the value of the assets. Fixed assets required for the expansion of an exempt project are also exempt if certain conditions are met.

The Council of Ministers may grant any project falling within the eligible 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, employment of local workers, 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. Additionally, the Investment Laws provide that the ownership of any project may not be appropriated except for requirements of public interest, 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 with the US, and the Euro-Mediterranean Agreement establishing an association between the European Communities and their member states and Jordan, which came into force in 2002. Such treaties aim to promote investment and grant further incentives.

FREE ZONES: The Free Zones Law grants projects and activities conducted within designated free zones various exemptions and benefits. These include total exemption of profits from income tax in respect of products exported outside of Jordan, sales tax of imports into the zone at the rate of zero, and exemption of goods imported into a free zone or exported out of a free zone to destinations outside the domestic market from Customs duties, 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 affords businesses registered within the zone exemptions and benefits including:

- 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;
- Goods manufactured in the zone that have been transported into other parts of Jordan shall be treated as domestic products;
- An income tax rate of 5%;
- No import duties into the zone; and
- 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 in the kingdom, rather than merely attracting investments in certain sectors. Therefore, development zones were created by the Development Zones Law, which aimed to reduce the disparities between governorates and achieve economic growth by promoting investments and creating job opportunities. The Development Zones Corporation was created as a one-stop shop to regulate and monitor the development zones. There are several development zones; the King Hussein Bin Talal Development Area, Ma'an Development Area and Irbid Development Area are examples.

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 areas can be fully owned by non-Jordanians.

REGULATION OF FOREIGN OWNERSHIP: Prior to setting out the procedure for registering companies in Jordan, it is important to highlight the restrictions that are 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 ($70,325) or the equivalent in non-public companies. However, there are 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 services, 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-scale 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 it can make its investment. The most popular of these are: limited liability companies (LLC), private shareholding companies (PSC) and public shareholding companies (PLC). A foreign investor also has the option in certain circumstances to register an operating or a non-operating branch office. Below is a summary of each of these types of companies.

LIMITED LIABILITY COMPANY: An LLC is the most basic Jordanian company structure to have the benefit of limited liability. All LLC owners are protected from personal liability for business debts and claims.

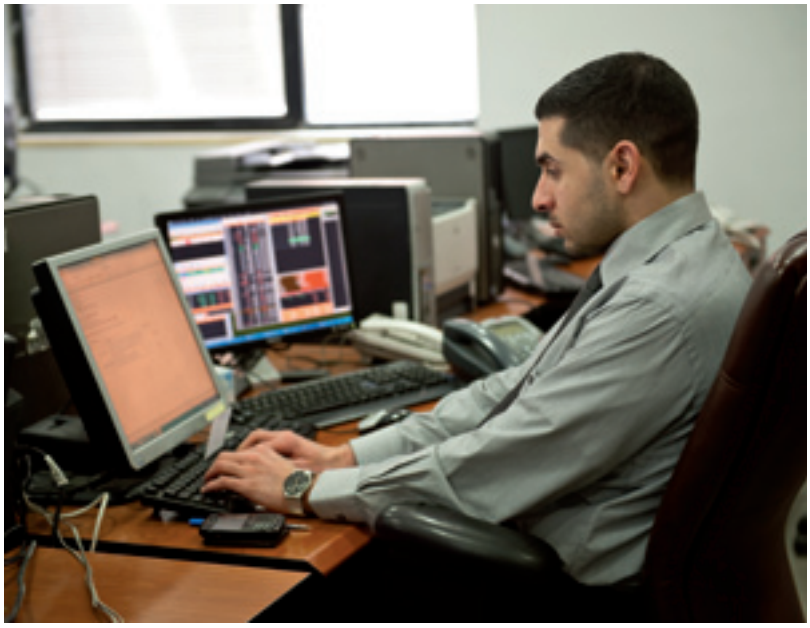
Unlike LLCs in other jurisdictions, a Jordanian LLC is a pure corporation that does not have any flow through taxation for its "partners" and is in fact taxed in the same way other types of companies are taxed. Its benefits under Jordanian law arise from the fact that it is mainly governed by rules set out in the Companies Law that are usually reflected in standard 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 structure most commonly used by local investors. The Investment Law requires a minimum amount of JD50,000 ($70,325) 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 if done efficiently. The cost, excluding attorney fees, comprises both registration fees and stamp duty. The registration fee is 0.2% of the registered capital with a maximum of JD250 ($352). 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 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 ($70,325), 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 minimum investment requirements relating to foreign investors mentioned in the LLC section above also apply for PSCs. It is expected that a PSC will be able to list or trade its shares publicly, however, currently there is no mechanism put in place for publicly listing or trading its shares.



Companies must register with either the Chamber of Industry or the Chamber of Commerce

The process for registering a PSC tends to be more complicated than that for an LLC, and can be completed within two weeks if carried out efficiently. The cost of registering a PSC, excluding attorney fees, comprises registration fees and stamp duty. The registration fee is 0.2% of the registered capital with a maximum of JD1000 ($1407). 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 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) shares with JD1 ($1.40) nominal value, and must be stated in dinar. The prescribed share capital of a PLC shall not be less than JD100,000 ($140,00) or 20% of the authorised capital, whichever is greater, and 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 for 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 complicated compared to that for 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 both registration fees and stamp duty. The registration fee is 0.2% of the registered capital, with a maximum of JD5000 ($7026). Stamp duty shall be applicable at the rate of 0.3% of the registered capital as well.

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 awarded later), 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 ($7026).

NON-OPERATING FOREIGN COMPANY: A foreign company that does not intend to conduct business in 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 Jordan. 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, exemption from income and social services taxes for its non-Jordanian employees, and duty-free import of its office furniture. The RO must also 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.

FURTHER REGISTRATIONS, LICENSING & PERMITS: The licences and permits required 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 & 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 the Chamber of Commerce, depending on the nature of its 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 intend to establish and submit it to the Ministry of Environment for approval. The ministry may also request that a company/entity prepare an EIA if it is deemed necessary for safeguarding the environment. Some of the projects listed in the regulations as requiring an EIA include those involving crude oil recycling, energy generation, steel manufacturing, road and railway construction, waste recycling, port and harbour construction, and the reclamation of land from the sea for industrial or leisure purposes.

CONSTRUCTION & OCCUPANCY PERMITS: Companies require a construction permit prior to commencing any construction works. This is 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: Any company planning to commence activities should obtain a vocational licence from the relevant municipality, depending on where the project/enterprise is located. Such a licence is required to ensure that the place of business (for example, the 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 nevertheless needs to be made. The second 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 that are subject to sales tax irrespective of any thresholds.

FINANCING COMPANIES/PROJECTS: One of the key elements of establishing companies or projects is securing financing. Other than conventional financing, Islamic financing is increasingly popular. The government is attempting to tend to the needs of different investors and as such enacted, late in 2012, the first Islamic Finance Sukuk Law (Sukuk Law) covering Islamic bonds.

ISLAMIC FINANCING: The Sukuk Law addresses the issuance of sukuks of all forms. A sukuks is an instrument 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) that shall own the assets, benefits or rights financed by sukuks. The SPV shall own the project for the sole purpose of sukuk issuance and shall distribute the profits between different sukuk holders. Islamic sukuk should only be issued to finance projects that generate profits and are independent from the issuer's other projects.

The Sukuk Law enables the issuer to provide sukuks in Jordanian 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 the a special sharia commission established under the Sukuk Law (Central Sharia Supervisory Commission).

Sukuks 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 sukuks pursuant to an issuance prospectus. 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.

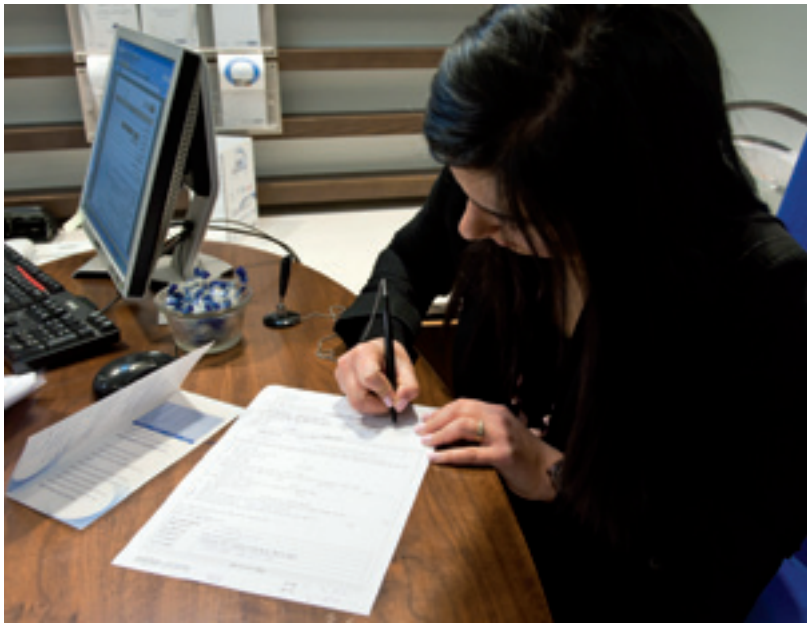
Based on the Sukuk Law, Islamic bonds may only be issued, whether directly or through an SPV, by the following issuers: the government, public official institutions and public institutions upon the approval of the Council of Ministers, Islamic Banks, companies that provide Islamic financing services,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

The Sukuk Law granted the SPVs, which are created for the issuance of sukuks, 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 immoveable 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 duty.

However, as the law has only been recently enacted, it is unclear how it will be implemented as there are no implementing regulations or bylaws in place, especially that the mechanism or procedures for issuing, registering, subscribing, listing and trading sukuks and any other matters related thereto shall be regulated pursuant to instructions to be issued by the Board of the Jordan Securities Commission or upon its approval.

SECURITY INTERESTS FOR FINANCING: Any investor wishing to finance its project needs to be aware of what types of security interests financial institutions look for when considering whether to provide financing on a project finance basis.

Lenders in the kingdom can obtain standard project finance securities, including the entry into direct agreements with the government and the investor with respect to all project agreements. This will ensure that lenders will have the necessary step-in rights in case of default on the part of the investor. Lenders can also obtain any of the following securities: Pledges over shares; mortgages over non-registrable moveable assets; mortgages over non-moveable assets; mortgages over registrable moveable assets; assignments of contracts and receivables; and security over bank accounts.



Lenders can obtain standard project finance securities to ensure they have the necessary step-in rights

Pursuant to the Law for Placing Moveable Assets as Security for Debt, which came into effect in January 2012, it is also possible to get a "floating charge" over all assets of the investor. Implementing regulations are still to be issued, thus there is currently no mechanism for perfecting a floating charge. For any security interest to be valid and effective under Jordanian law, the following criteria must be satisfied:

- The debt secured by the security interest must be clearly identified and must have a specified amount. Accordingly, a security interest to secure all of the debts of a debtor is invalid;
- The asset subject matter of the security interest must be clearly identified (except in the case of a floating charge);
- A security interest over an asset that had a registry (such as lands and cars) will not be effective unless registered with the relevant department; and
- The security interest must have a "date certain" – a date that cannot be contested by other creditors so that the priority of different security interests is easily ascertained. A date certain is usually obtained through notarisation or some other type of registration or recordation with a government department.

DESCRIPTION OF SECURITY INTERESTS

Pledges over Shares: A pledge over the shares of a Jordanian company is effected through the execution of a pledge agreement, which is notarised for date certain purposes. The agreement is then registered with:

- In the case of shares in LLCs and PSCs, in the relevant company's file at the Ministry of Industry and Trade, as well as with the company.
- In the case of shares in PLCs, with the Securities Depository Centre (SDC). The SDC has a standard form that must be filled in and filed.

Any filing with a governmental entity (including the SDC) would need to be in Arabic. Accordingly, the pledge agreement would have to be in the Arabic language.

Mortgages over Moveable Assets: There is no central registry for moveable assets in Jordan. Mortgages over such property is effected through a possessive mortgage. As the name implies, a possessive mortgage would require that possession of the relevant asset be handed over to the mortgagee until the debt is paid/repaid. It is also possible to hand over possession to an independent third party called the Adel.

Mortgages over Registrable Assets (including real estate): Assets that have a registry, such as real estate and vehicles, are usually mortgaged through execution of a mortgage deed in standard form and filing the same with the relevant registration department.

Assignments of Contracts & Receivables: An assignment is valid in Jordan only if approved by all three parties, the assignor, the assignee and the counterparty. Based on this, assignments of contracts (including receivables) are effected through the execution of an assignment agreement that provides for the issuance of a notice of assignment to, and for the receipt of consent to the assignment from, the counterparty. The notice and/or the consent would need to be notarised for date certain purposes.

Security over Bank Accounts: It is a requirement of Jordanian law that the asset being secured is known. Therefore, it would not be possible to obtain a pledge over a moving balance bank account. The only way to get around that is to have an assignment of the account. This is in addition to a floating charge once implementing regulations are issued.

ENFORCEMENT OF SECURITY INTERESTS

Pledges and Mortgages: Enforcement of a pledge or mortgage over an asset can be done in two ways:

(a) Summary Procedures. A summary procedure through application to the court's execution office. The owner of the asset can object to the application within a few days. If it does not object, the asset can be sold by public auction to satisfy the debt. The owner of the asset can, however, object by contesting the existence of the debt, in which case the execution office would stop the enforcement procedures and the pledgee would have to file a full lawsuit to enforce the pledge (and as such the procedures in paragraph (b) would have to be started). If the owner of the asset loses such a lawsuit, it would then be subjected to considerable fines payable to the government. In practice, the owner of the pledged/mortgaged asset always contests the existence of the debt and therefore a lawsuit would have to filed in any case, or;

(b) Lawsuit. A full lawsuit before the Court of First Instance in Jordan. Due to the nature of civil procedures in Jordanian courts, the case would take at least two years to go through the various stages of appeal to reach a final enforceable judgment.

Enforcement of Assignments: An assignment is effective from the time that the consent of all three parties is obtained to the assignment. Accordingly, there are no particular formalities that need to be followed in order to enforce the assignment, except as may be set out in the underlying assignment agreement itself.

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