

Legal Framework

New Investment Law set to provide economic fillip
A rundown of the revised incentives being offered
Development zones help widen spread of investment
Tax reform aims to simplify system and broaden base





All investment-related legislation is now unified under one umbrella

Laws of attraction

Enactment of new laws to enhance the investment and economic environment

The government of Jordan's continuous efforts to enhance, support and incentivise investments have been boosted recently by the enactment of Investment Law No. 30 of 2014 (the New Investment Law), which sets out a legal framework that accommodates investors' requirements and promises to provide an economic fillip.

SMOOTHING THE PATH: The New Investment Law is aimed at improving the investment environment in Jordan and overcoming issues previously faced by investors. It introduces new concepts and grants incentives to value-added investments that employ Jordanians and use domestically sourced raw materials.

Such incentives include certain tax benefits that are granted to more sectors than were included in past investment legislation. These sectors will in turn participate in enhancing economic growth, and reducing poverty and unemployment.

Prior to the enactment of the New Investment Law, investment in Jordan was regulated not only by various legislation but also by various authorities. The government aimed to create an adequate piece of legislation to regulate all investments and have one entity be the point of reference for all investment-related matters so as to improve performance standards, avoid duplication and intercession in roles and authorities, limit bureaucracy and increase transparency.

UNIFYING LEGISLATION: With the enactment of the New Investment Law, all investment-related legislation is now unified under one umbrella. It repealed several other pieces of legislation, namely the Promotion of Investment Law No. 16 of 1995; the Promotion of Investment Law No. 67 of 2003; the Investment Law No. 68 of 2003; the Law on the Development of the Investment Environment and Economic Activities No. 71 of 2003; the Development Zones and Free Zones Law No. 2

of 2008; and certain provisions relating to promotion of exports and launching exhibitions included in the Law of Development of Economic Projects No. 33 of 2008 and the Law of Industry and Trade No. 18 of 1998 ("Investment Laws").

Therefore, the New Investment Law is intended to regulate investment generally, whether in the development zones and free zones or elsewhere in Jordan. The only exclusion to the scope of the New Investment Law relates to Aqaba Special Economic Zone (ASEZ), which is regulated by ASEZ Law No. 32 of 2000, and the regulations and instructions issued thereunder.

INVESTMENT COMMISSION: Furthermore, and to enhance the efficiency of its implementation, the New Investment Law established the Investment Commission. The Investment Commission was mandated with the full authority to exclusively deal with and regulate investments in Jordan, except for investments in ASEZ, where such authority is still vested in the ASEZ Authority.

The New Investment Law also introduces the concept of a fully operational investment window. The window is intended to create a one-stop shop for investors, facilitates licensing procedures and eliminates some of the bureaucratic hurdles investors have encountered in the past.

A new licensing guideline was also prepared which includes the requirements, procedures and time frames for issuance of permits and licences in the following sectors: industry, hotels, leisure and recreation cities, cow and poultry farms, hospitals and specialised medical centres.

PERMITTING TIME FRAMES: The introduction of such guidelines is aimed at increasing transparency and ensuring permitting is effected within the specified time frames. If no time frame is expressly set out in the guidelines, the Investment Commission should issue its decision regarding

the relevant permit within 30 business days of receiving all requirements for its issuance.

INCENTIVES: Contrary to applications under the Investment Laws, the New Investment Law grants projects some automatic incentives irrespective of their size or location, so as to ensure equality among all projects, and to incentivise investments in small and medium-sized enterprises, which contribute more than 80% of the kingdom's GDP.

There were concerns relating to the incentives scheme and procedures under the Investment Laws, including the fact that the incentives committee had to review every specific case separately, which required significant control measures and was found to be cumbersome.

The Investment Incentives Regulation No. 33 of 2015 was issued pursuant to the New Investment Law. Pursuant to this regulation, several schedules were issued, namely: (i) a schedule listing production inputs required for exercising economic-industrial activities that will be exempt from Customs duties and sales tax; (ii) three schedules which list production inputs, production requirements and fixed assets, the dual-use production requirements and fixed assets required for exercising economic-industrial or vocational activities that are exempt from Customs duties and are subject to sales tax at the rate of zero if they are imported or locally purchased; and (iii) a schedule that includes a list of services that are exempt from sales tax, such as legal, engineering and auditing consultancy services and information technology services.

Another schedule was issued pursuant to the Investment Incentives Regulation listing certain goods that are required for the following economic activities, and which will be exempt from Customs duties and will benefit from sales tax at the rate of zero if such goods are imported or locally purchased, namely:



The New Investment Law grants projects some incentives irrespective of their size or location

- Agriculture and livestock;
- Hospitals and specialised medical centres;
- Hotels and tourist facilities;
- Entertainment and tourist recreation cities;
- Communication centres;
- Scientific research centres and scientific laboratories;
- Artistic and media production;
- Conference and exhibition centres;
- Transport, distribution and/or extraction of water, gas and oil derivatives using pipelines;
- Air transport, sea transport and railways.

The investor is now obliged to settle sales tax on production inputs and services that are purchased locally or imported, and included in the lists of inputs and services exempt from sales tax, provided that the investor shall be reimbursed within a period of three years of effecting such payment if certain conditions are met. In the event of failure by the Income and Sales Tax Department to reimburse the investor within 30 days of the written application for reimbursement, the Income and Sales Tax Department shall be obliged to pay interest of 9% on the outstanding amount.

The Council of Ministers may grant additional incentives or exemptions to any economic activities, including small and medium-sized activities or activities in a certain geographic location.

Although income tax incentives ceased to be granted pursuant to the Investment Laws, the New Investment Law grants certain economic-industrial activities, craftsmanship activities and the 10 economic activities set out above that are exercised in less-developed areas in Jordan a reduction in income tax of not less than 30%.

It is expected that the areas which will benefit from such an incentive, the size of the reduction percentage, the requirements for benefitting from the incentive and the time period during



Goods needed for certain activities are exempt from Customs duties



Aqaba Special Economic Zone Law No. 32 of 2007 affords businesses various exemptions and benefits

which such an incentive will be granted will all be set out in a regulation that will be issued pursuant to the New Investment Law.

The New Investment Law provides that foreign investments may be in cash or in kind, or rights having a financial value including the following:

- Funds transferred by investors to Jordan;
- Imported in-kind assets;
- Moral rights;
- Profits, revenues and reserves that are realised from investment of foreign capital in economic activities that are used to increase the capital or invested in another economic activity, revenues of liquidation of the investment, or selling or disposing of the economic activity or the investor's share or stocks in such activity; and
- The share in the economic activity that is realised from capitalisation or exchange of debts due to the investor.

The New Investment Law also reaffirms the right of the foreign investor to freely repatriate in any foreign convertible currency its capital, profits and dividends. It confirms that non-Jordanian investors shall be treated in the same way Jordanian investors are treated.

Additionally, the New Investment Law provides 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.

The Regulation for the Promotion of Non-Jordanian Investments No. 54 of 2000 (Regulation 54) enables full non-Jordanian ownership in some sectors, and restricts non-Jordanian ownership in other sectors to 49% or 50%. However, the regulation grants the Council of Ministers the authority to permit any non-Jordanian investor to own or participate in higher percentages with respect

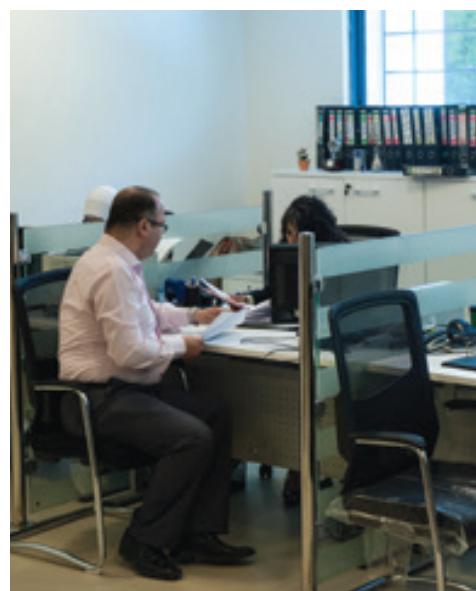
to large development projects that enjoy special importance. Nonetheless, there are a number of sectors – such as transport of passengers and goods on roads – where non-Jordanian participation is totally restricted. The regulation also sets the minimum shareholding of any non-Jordanian in any project at JD50,000 (\$70,400).

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 Community and its member states and Jordan, which entered into force in 2002. Such treaties aim to promote investment and grant further incentives.

DISPUTE RESOLUTION: Finally, the New Investment Law introduces a dispute resolution clause, which is in many respects similar to the clause that used to exist under the repealed Promotion Investment Law No. 16 of 1995. The addition refers to settlement of disputes amicably, and in the case of failure to achieve such amicable settlement during a period of six months, the dispute shall be referred to Jordanian courts, arbitration pursuant to Jordanian law, or alternative dispute resolution means if the parties agree to do so.

FREE ZONES & DEVELOPMENT ZONES: In 2008 the government saw the need to develop and encourage investments in certain geographical areas, rather than just in specific sectors. Development zones were created by the Development Zones Law No. 2 of 2008 (DZL), which aimed to reduce the disparities between governorates.

The Development Zones Corporation was created pursuant to the DZL as a one-stop shop to regulate development zones in a streamlined, efficient manner. There are currently six development zones, including King Hussein Bin Talal Development Area and Irbid Development Area.



Foreign investors are treated in the same way as Jordanian investors

The New Investment Law repealed the DZL but maintained most of the incentives granted to projects operating in such zones pursuant to the repealed DZL. Therefore, the New Investment Law preserves the rights acquired by investors in such zones and promotes new investments in governates and remote areas.

Projects operating in development zones still benefit from a reduced income tax rate of 5%, with the exception of the following, which shall be subject to normal income tax rates:

- Banks;
- Telecommunications companies that have individual licences;
- Financial brokerage companies, and financial companies including companies that exercise exchange activities, financing or financial leasing business, and consultation, financial and tax audit companies;
- Transport companies (sea transport, railways and road freight transport);
- Insurance and reinsurance companies;
- Basic mining and extraction industries;
- Generation and distribution of electricity; and
- Transport and/or distribution and/or extraction of water, gas and oil derivatives using pipelines.

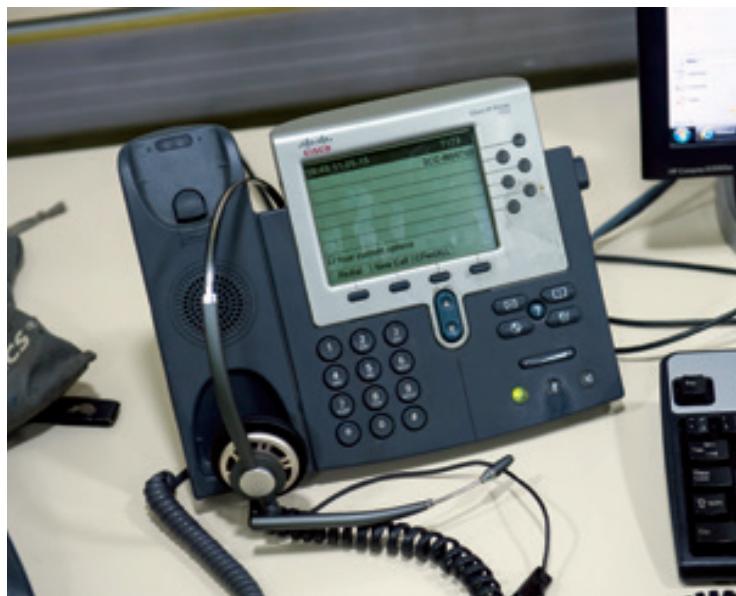
It is not clear why certain sectors, such as generation and distribution of electricity, were excluded from the income tax benefit that was granted to such projects pursuant to the DZL.

Projects operating in the development zones benefit from a sales tax at the rate of zero, and no Customs duties on imports except for products that enter the Customs territory and do not qualify as being of Jordanian origin. Projects in development areas and free zones can be fully owned by non-Jordanians, irrespective of the sector.

The exemptions applicable to free zone companies pursuant to the New Investment Law are



The new law preserves investors' rights in development zones



Telecoms firms with individual licences are subject to normal income tax rates even in development zones

mainly the same as those previously enjoyed by free zone companies under the repealed DZL.

These include total exemption of profits from income tax for products exported outside Jordan; exemption of goods imported into a free zone or exported out of a free zone to other than the domestic market from Customs duties, import fees, and all other payable taxes and fees, with the exception of certain service fees; exemption from the licensing fees, buildings and lands taxes, and revenues of paving, organisation and improvement revenues concerning the buildings and constructions established in the free zone; and exemption from income tax on salaries and allowances of non-Jordanian employees working in the projects executed in the free zone.

ASEZ: ASEZ Law No. 32 of 2007 affords businesses registered within ASEZ various exemptions and benefits, including:

- i. ASEZ 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 ASEZ that have been transported into other parts of Jordan shall be treated as domestic products;
- iii. A reduced income tax rate of 5%;
- iv. No import duties into ASEZ; and
- 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 from agricultural, gardening and afforestation investment in land;
 - Income generated from investments in poultry, cattle, fish or the breeding of bees;
 - Income generated from products manufactured by manual labour; and



Registering a limited liability company is easier than doing the same for a private shareholding company

- Income generated from a concession or agreement granted by the government, which has been exempted under the terms of the concession or agreement.

INCOME TAX LAW OF 2014: The government's attempts to overhaul the main fiscal and investment-related legislation also resulted in the introduction of Income Tax Law No. 34 of 2014 (Income Tax Law of 2014).

The government saw the need to simplify procedures, improve tax equity, increase the tax base and reduce tax evasion. The Income Tax Law of 2014 came into effect on January 1, 2015.

One of the main reasons to invest in Jordan is the relatively low taxation. Although the new Income Tax Law of 2014 increased the applicable income tax rates, such rates remain low compared to those in other countries. With the exception of industries that are taxed at 14%, banks at 35%, and telecommunications companies, mining companies, insurance companies, financial brokerage companies and financial companies, lease financing companies, which are all taxed at 24%, all other sectors are now taxed at 20%.

Types of Companies through which foreign investments can be made: Several types of companies may be established under the Companies Law of 1997 and through which the investor can make its investment. The most popular are limited liability companies (LLCs), private shareholding companies (PSCs) and public shareholding companies, commonly referred to as 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.

LLCS: 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 as other types of companies.

The benefits of LLCs under Jordanian law arise from the fact that they are mainly governed by a set of rules set out in the Companies Law that are usually reflected in the standard form and the 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 (\$70,400) 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.

An LLC can be registered 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 (\$352). Stamp duty shall be applicable at the rate of 0.3% of the registered capital.

PSCS: A PSC combines the limited liability feature of an LLC with the added flexibility of being able to structure the company in any manner the investor



The kingdom's new tax law came into effect on January 1, 2015

wishes, subject to some minimum requirements set out in the Companies Law. However, the flexibility comes at the price of a higher entry barrier. The minimum prescribed share capital of a PSC shall not be less than JD50,000 (\$70,400), which must be fully paid upon registration.

Pursuant to its memorandum of association, a PSC may issue various types of shares that differ in their nominal value, voting rights, profit and loss distribution among shareholders, and in other ways. The minimum investment requirements relating to foreign investors mentioned in the LLC section also apply for PSCs. It is contemplated that a PSC can list or trade its shares publicly, but currently there is no mechanism in place for publicly listing or trading its shares.

The process for registering a PSC tends to be more complicated than that for an LLC, and can be done within one to two 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 (\$1407). Additionally, stamp duty shall be applicable at the rate of 0.3% of the registered capital as well.

PLCS: 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 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 (\$704,000) shares with JD1 (\$1.41) nominal value, and must be stated in JD. The prescribed share capital of a PLC shall not be less than JD100,000 (\$141,000) 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-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 for a PLC is relatively 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 minimum of JD5000 (\$7036). Additionally, stamp duty shall be applicable at the rate of 0.3% of the registered capital as well.

OPERATING FOREIGN COMPANY: A foreign company that is incorporated and has its headquarters outside Jordan can operate in Jordan



Foreign firms wanting to use Jordan as a base for business in the area can register as a regional office

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 (\$7036).

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 area can register with the controller as a non-operating foreign company, commonly referred to as a regional office.

A regional office may not conduct business in Jordan. It can collect information generally concerning business possibilities in Jordan or for a particular project, but it cannot sign any contract or offer regarding such a project or opportunity. In return for this 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 its office furniture free from Customs duties.

The regional office must also appoint a resident representative. At least half of the employees in the regional office must be Jordanian citizens. There are no fees to register a regional office.

JOINT VENTURES: Investors may enter into various different contractual arrangements, such as joint ventures, through which they make their



The Investment Commission regulates all investments outside the Aqaba Special Economic Zone

investments. A joint venture 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 joint venture is a finite relationship based on a single business transaction. Within a joint venture, each party is responsible for the profits, losses and costs associated with the activity.

In Jordan, it is not necessary to establish a company to create a joint venture. Even though joint ventures created by pure contractual relationships will not be regulated by the Companies Law, such joint ventures would still enjoy legal personality. That said, setting up a separate entity as part of the project or business activities is fairly common for joint ventures.

Therefore, parties entering a joint venture in Jordan must first decide whether they will incorporate a separate entity or not, as such a decision dictates what law will govern the joint venture.

FURTHER REGISTRATIONS, LICENSING & PERMITS: The licences and permits required for a specific project/enterprise are highly dependent on its nature and type, 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 regional offices, 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 a 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.

The projects that are listed in regulations as requiring an EIA include (a) crude oil recycling projects; (b) energy generating projects; (c) steel manufacturing projects; (d) road and railway construction projects; (e) waste recycling projects; (f) port and harbour construction projects; and (g) reclaiming land from the sea for industrial or leisure purposes.

CONSTRUCTION & OCCUPANCY PERMITS: Companies require a construction permit prior to commencing any construction works. Such permit is procured from the relevant municipality depending on where the construction site is located. The 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.

VOCATIONAL LICENCE: In order for any company to commence activities, it 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, which need to be made with the Income and 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, then such registration nevertheless 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 that are subject to sales tax irrespective of thresholds.

OBG would like to thank Zu'bi Advocates and Legal Consultants for its contribution to THE REPORT Jordan 2015