COMMERCIAL LAWS OF JORDAN
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AN ASSESSMENT BY THE EBRD

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Basis of Assessment: This document draws on legal assessment work conducted by the Bank (see www.ebrd.com/law) in 2011-12. The selection of topics reflects the areas where the EBRD has developed relevant expertise through its Legal Transition Programme. It does not purport to cover all legal topics affecting commercial activities. The assessment is reflective of the situation at the time of its preparation and does not constitute legal advice. For further information please contact lt@ebrd.com.

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The legal system

Jordan is a constitutional monarchy. Its legal system is based on the Constitution, the Court Establishment Law of 1951, the Civil and Criminal codes, and - to certain extents - Islamic Sharia. Historically, the Jordanian legal system has been influenced by codes of law instituted by the Ottoman Empire which were based on French law. These were supplemented by British laws during the mandate period. Islamic law has also been influential, modifying in many ways the European models.

The Constitution divides the courts into three categories; civil, military, and religious. Civil courts are comprised of four levels of litigation. They adjudicate all civil and criminal cases which are not specifically reserved for other courts, including cases brought against the government.

Although martial law was lifted in 1991, certain crimes considered to touch on national security are still tried in State Security courts administered by the Jordanian military. Religious courts have jurisdiction over all family laws and personal status matters. A Shari'a court system exists to adjudicate disputes of this nature where they apply to Muslims. Religious tribunals handle similar cases involving Christians and the civil courts administer cases of other religious groups.

In principal, Jordan’s constitution guarantees the independence of the judiciary, clearly stating that judges are “subject to no authority but that of the law.” The king must approve the appointment and dismissal of judges, with the supervision of the Higher Judicial Council. The Ministry of Justice makes recommendations with regards to those decisions.¹

Executive authority is vested in the King and the council of ministers. The King signs and executes all laws. Ministerial decisions, court judgments, and the national currency are all issued in his name. The King appoints and dismisses judges, approves amendments to the constitution, declares war, and is the Chief Commander of the armed forces. The King further appoints the council of ministers, led by a prime minister, and may dismiss cabinet members at the prime minister’s request. The cabinet answers to the Chamber of Deputies on matters of general policy and can be forced to resign by a two-thirds vote of “no confidence”.

Legislative power rests in the bicameral National Assembly. The Jordanian Parliament consists of the Upper House and the Lower House. The Upper House has 60 Senators, all of whom are appointed by the King, while the Lower House has 120 elected members. Members of the Lower House are entitled to certain rights such as questioning the government on any public issue.²
Commercial legislation

Since the 1990s, Jordan has aimed to encourage foreign and local private investment through legal reforms. Investment Promotion Law No. 16 of 1995 and Law No. 13 of 2000 constitute the general regulatory framework for local and foreign investment. They provide for a number of incentives applicable to foreign direct investment in sectors such as industry, agriculture, tourism, hospitals, transportation, energy, and water. However, reform progress has been slow and many initiatives have stalled for years before being adopted, for no clear reasons. This is concerning, given the economic situation in Jordan and the need to move through reforms efficiently with the appropriate consultation process.

Over few past years, the government has acknowledged the need to encourage the role of the private sector in infrastructure projects. This requires improving the legal framework for public-private partnerships (PPPs). A new PPP law has been drafted and is awaiting parliamentary approval. A PPP advisory unit operates alongside the Executive Privatisation Commission and the Privatisation Council. Criticism has been directed at the existence of more than one advisory body for the initiation and implementation of PPPs as causing an overlapping in roles.

Special commercial courts were established in 2010 in order to enhance contract enforcement. Nevertheless, the 2012 Index of Economic Freedom refers to ‘influence peddling’ and lack of transparency as factors which undermine the fairness of dispute settlement in Jordan. Mediation is possible and is regulated under the Law of Mediation for the Settlement of Civil Disputes of 2003 as amended in 2006.

EBRD’s assessment of commercial laws and practice in Jordan, as well country visits conducted by team members have revealed a need for developing a number of initiatives, in particular:

- The adoption of a modern collateral law which will provide flexible rules for the taking of security over movable property
- The updating of the insolvency regime, providing for an efficient exit of non-performing businesses
- The strengthening of corporate governance framework for all types of companies (limited liability companies, joint stock companies, listed companies, etc).
- The development of a credit bureau which will compile and distribute credit information reporting (the current Central Bank registry is too limited).

Encouragingly, there appears to be on-going work on all these areas, supported by international technical assistance. The EBRD Legal Transition Team aims at establishing contact with all stakeholders to better understand how these reforms are shaping up and whether the Bank’s technical assistance could be additional and beneficial.
TABLE 1 - Snapshot of Jordan’s commercial laws

<table>
<thead>
<tr>
<th>FOCUS AREA</th>
<th>HIGHLIGHTS</th>
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<tbody>
<tr>
<td>Concessions and PPPs</td>
<td>The results of the EBRD Assessment of PPP law lead to conclude that the law on the books in Jordan is in “medium compliance” with internationally recognised standards, mainly because of the lack of any specific and modern PPP legislation that could consistently govern major PPP projects. Likewise, in evaluating the effectiveness of the law in practice, Jordan was found to be in “medium compliance” with international standards. This is mainly attributable to a lack of strong institutional framework and clear criteria for the allocation of PPP projects by governmental bodies and for the selection of the applicable legislation.</td>
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<td>Energy</td>
<td>Jordan has largely unbundled its electricity to separate transmission from generation, distribution and supply; it has created a relatively competent regulator. The energy framework does not allow for an accurate estimation of the procurement process. It allows for domestic preferences, and does not robustly monitor the post-tendering phase. The natural gas market does not comply in any respect with the acquis communautaire such as limited third party access, non-compensatory tariffs, ministry interference in retail tariff-setting, and lack of judicial review on the regulator's decisions. The energy framework governing corporate governance in Jordan should be revised to achieve greater compliance in law and practice with the OECD Principles.</td>
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<tr>
<td>Telecoms</td>
<td>Jordan has a relatively stable investment environment, with liberalised market access, and gradually improving competitive safeguards. However, there are very high charges to be paid to the regulator and the state through a complex scheme of licensing, revenue sharing and taxation. In practice, the regulator does not have the full independence expected by best practice. Nevertheless, the market remains the most liberalised in the region, and Jordan has been found to be in the lowest risk category.</td>
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<td>Public procurement</td>
<td>Jordan scored 63% (medium compliance) on the quality of its public procurement legal framework. This places Jordan in the lowest quartile compared to other countries in the EBRD region. The low score is because the framework does not allow for an accurate estimation of the procurement process. It allows for domestic preferences, and does not robustly monitor the post-tendering phase. Further, the law incorporates only minimal standards with regard to monitoring and contract management.</td>
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<td>Corporate governance</td>
<td>The EBRD’s 2011 assessment revealed that Jordanian corporate governance framework is in “low compliance” with the international standards. The law does not set an efficient interaction between the company and its stakeholders who stand outside the company’s decision making process. Equally, equitable treatment of shareholders needs to be promoted and basic shareholder rights enhanced. Shareholders attempting legal actions encounter tremendous difficulties to obtain redress for the violation of their rights. The legal framework governing corporate governance in Jordan should be revised to achieve greater compliance in law and practice with the OECD Principles.</td>
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<td>Insolvency</td>
<td>There is no single, unified insolvency law in Jordan. Instead insolvency-related legislation is found in two sources: the Commercial Code and the Companies Code. The insolvency law framework is liquidation-focused and offers limited opportunities for business reorganisation within an insolvency context. In particular there is no possibility of including secured creditors in a compromise or settlement procedure without their consent. Secured creditors rank behind taxes and amounts owed to employees in any liquidation of legal entities.</td>
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<tr>
<td>Judicial Capacity</td>
<td>The assessment of the judicial system in Jordan revealed low efficiency and lack of adequate resources in addition to lengthy procedures. Predictability is a matter of significant concern, although perceptions of and impartiality have improved in recent times. Improving judicial education and addressing lack of specialisation among judges ranks as one of the top priorities of future reforms and judicial capacity building efforts.</td>
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<tr>
<td>Secured transactions</td>
<td>The Jordanian legal framework allows for the creation of a wide range of security interests over a broad range of assets. The system recognises both possessory and non-possessory pledges over movable assets and rights as well as registered mortgage over real-estate. A new law was enacted in Jordan which became effective in February 2012 for Placing Moveable Property as Debt Security. However, the law is rather recent and there is still no relevant court or market practice to confirm its applicability in Jordanian business practice.</td>
</tr>
</tbody>
</table>

Source: EBRD legal assessments 2011-12 (for further details please see the focus analysis in the following sections).
The EBRD has developed and regularly updates a series of assessments of legal transition in its countries of operations, with a focus on selected areas relevant to investment activities. These relate to investment in infrastructure and energy (concessions and PPPs, energy regulation and energy efficiency, public procurement, and telecommunications) as well as to private-sector support (corporate governance, insolvency, judicial capacity and secured transactions).

Detailed results of these assessments are presented below starting with infrastructure and energy and going into private sector development topics.

The completed assessment tools can be found at www.ebrd.com/law.

**Infrastructure and Energy**

**Concessions and PPPs**

**In a nutshell...**

The results of the EBRD Assessment of PPP law lead to conclude that the law on the books in Jordan is in “medium compliance” with internationally recognised standards, mainly because of the lack of any specific and modern PPP legislation that could consistently govern major PPP projects.

Likewise, in evaluating the effectiveness of the law in practice, Jordan was found to be in “medium compliance” with international standards. This is mainly attributable to a lack of strong institutional framework and clear criteria for the allocation of PPP projects by governmental bodies and for the selection of the applicable legislation.

**Overview**

Jordan has a good track record of successful concession and public private partnerships (PPP) in key Infrastructure sectors. During the last two decades, the country engaged in major policy changes to face the fast increasing public demands in public services and improve the quality of products and services delivered to the Jordanian citizens.

By that time, the challenge for the Jordanian government was to drive the economy toward more liberalisation, openness to the international financial market and stronger role of the private sector. In this context, the recourse to private financing and private capital involvement in major ‘traditionally’ public sector was unavoidable to raise financing, in an environment of budget constraints and insufficiency, to reduce the debt burden of the public treasury.

With few available natural resources, comparing to other neighbouring Middle East countries, Jordan chose concessions and public private partnerships to attract private investment with the purpose of improving economy efficiency, increasing technical capacity and jobs creation.

In Jordan, the Privatisation Law No.25 of 2000 and the Regulation No.80 of 2008 Implementing the Privatisation Transaction are the main legal framework governing PPPs as they allow for all type of PPP in several sectors, other than mining, under various contractual structures including Build Operate Transfer (BOT), Build Transfer Operate (BTO), Build Owns and Operates (BOO), Build Owns Operates and Transfer (BOOT).

Considering the huge needs of infrastructure and the government’s will to invite private sector participation toward long term partnerships, the Executive Privatisation Commission (EPC), a governmental authority that was established pursuant to the Privatisation Law, has been assigned with the drafting of a new PPP law in addition to the implementation and development of the PPP programme pursuant to the Council of Ministers resolution dated 2006.

In accordance with to the Privatisation Law, EPC has become the actual successor of the Executive Privatisation Unit to perform and follow-up the privatisation programme in Jordan and assume the primary role in the privatisation programme in all sectors in addition to managing the Privatisation Proceeds Fund. In the course of the PPP programme launched in Jordan, EPC scope has been further expanded to become a centre for PPP expertise and knowledge, providing clear follow up PPP procedures. It also became the interlocutor of international organisations and various stakeholders in coordinating and facilitating PPP process.

The EBRD carried out an assessment aimed at evaluating the current PPP legal framework in Jordan and its effectiveness in practice. The EBRD’s
assessment focused particularly on the Privatisation Law No.25 of 2000 and the Regulation No.80 of 2008 Implementing Privatisation Transaction as it is the relevant legislation to govern PPP in Jordan absent any specific PPP law enacted and in force.

In this respect, the EBRD’s assessment has found the Jordan PPP/concession legislation in “Medium compliance” with internationally recognised best standards. In the same line, PPP/concession legal framework ranks as “medium” from an effectiveness standpoint.

The following sections discuss the findings of the assessment in more details:

**Quality of the legislation framework in Jordan**

On the books, Jordan’s legal framework was found to be in “medium compliance” with internationally accepted standards (60.7 per cent).

The assessment measured the quality of PPP legislation in Jordan and scores were given according to compliance with international benchmarks.

As highlighted above, article 4 of the Privatisation Law provides that restructuring and privatisation of public institutions or enterprises owned by the public sector can be achieved through various types of agreements such as BOT, BTO, BOO and BOOT.

The framework fares well with respect to the existence of sounds principles of transparency, equal treatment and proportionality expressly stated in the law. Furthermore, the assessment reveals positive features of the PPP framework which gives the contracting parties significant flexibility as regards to the negotiation of most terms of the project agreement. In the same line, the law provides that the private party can collect tariffs and fees for the use of the facility or its services.

Jordan has ratified the Washington Convention on the Settlement of Investment Disputes (ICSID) of 1965. The government has also ratified the New York Convention on recognition and enforcement of foreign awards of 1958.

Even though the “international arbitrability” of the project agreement is not specifically provided in the law, the EBRD’s assessment confirms that contracting parties may freely choose international arbitration as a dispute resolution mechanism.

A good PPP framework mandates the application of a fair and transparent tender selection process, with limited exceptions allowing direct negotiations and competitive rules for unsolicited proposals and the possibility to challenge illegal awards.

The Jordanian law does not provide for an adequate framework for the Contracting Authority to manage unsolicited proposals/private initiatives that ensures transparency, equal treatment and does not distort competition. The law does not provide for a procedures, set of rules and principles for awarding PPP project without a competitive process.

The allocation of risks between the public and private party shall be well ensured through the flexibility with which contracting parties could manage their respective rights and obligations in the project agreement.

As for applicable law, the legal framework does not entrust the contracting parties with the ability to choose the governing law of the project agreement for which the Jordanian law is mandatorily applicable.
PPP legal framework

As illustrated in Chart 1 above, while the legislative provisions covering settlement of disputes in PPP arrangements as well as the selection of the private party are regulated fairly extensively, areas such as project agreement and the security and support issues could benefit from further improvements in order to meet the requirements of a modern legal framework facilitating private sector participation.

Sounds country’s legal and regulatory frameworks are the prerequisites for the success of a PPP programme. The existence of a clear PPP law enhances the likelihood of attracting private capital and management skills for infrastructure projects as it will help avoiding any reliance on general laws not fitting with PPP projects particularities and specificities as well as discharging the contracting parties from uncertainties over the applicable legal framework. Clear legal frameworks for remedies and disputes resolution mechanism are crucial as it should provide for better insurance as to the impartiality, efficiency and enforceability of the entire system.

From a perspective of clear legal and regulatory framework, Jordan stands in the middle way. The Country does not have a single act of legislation dealing specifically with concessions or incorporating the legal framework for PPPs. Nevertheless, Jordan has a tough record of PPP projects governed by the Regulation for implementing Privatisation Transactions although these regulations do not address specifically and exclusively PPP, they allow for all types of public private partnerships in most sectors other than mining. In addition to the law, some sector-specific laws might permit the relevant authority to by-pass the Privatisation law and the regulation for implementing Privatisation Transactions.

Indeed, water sector projects could be governed by the Water Authority law No 18 of 1998, Electricity projects could be achieved under the Public Electricity Law No 64 of 2002, telecommunication projects under the law No 13 of 1995 as well as other sectors being subject to particular laws.

Jordan is expected to achieve the unity of its framework by explicitly excluding the application of the Privatisation Law and the Privatisation Regulation.
to public private partnerships within its new PPP law. Furthermore, PPP unique framework shall be full applicable to PPPs in all sectors through disregarding the applicability of any particular sector-specific law.

The virtues of specific PPP laws cannot be neglected when a country chose to engage in major partnerships projects especially in the field of infrastructure. PPP laws reflect the country’s high level commitment toward the development of a real PPP programme.

A specific PPP law enables to avoid speculation over the applicability and interpretation of the law when a multitude of sector-laws could applies to PPPs.

In addition, a sounds specific PPP law should be coupled with clear and comprehensive provisions overarching legislative guidance and practitioner guidelines on headline issues.

To foster the development of this model of PPP legal framework, Jordanian legislator is required to adopt the draft of the new PPP law that is pending for vote for more than two years.

Against all international standards of good governance of public private partnerships, the legal framework governing PPP projects in Jordan does neither entrust the Contracting Authority nor the lenders of the project with the right to “step-in” and take over project management in the event of default by the private party, whether directly or through a third party.

Moreover, the framework fails to set out the rule according to which the duration of the project agreement should depend on the length of time taken for the amortisation of the private party’s investment. Likewise, amortisation of the private party’s investments of extension seems to not be allowed under the existing framework.

The institutional framework of PPP in Jordan presents a significant advantage as number of specialist bodies (EPC and PPP committee) exist in Jordan with a strong role in the PPP process.

The Privatisation Council, that is a high level body chaired by the Prime Minister, is formed initially as part of the general privatisation drive. It has an advisory role and also approves proposals for PPP projects. However, it is worthwhile noting that there are no criteria, which specify how the projects are to be allocated to the EPC or the line ministry of the sector relevant to the project.

At this level, it is worthwhile noting that Jordan does not have any particular act allowing Private Finance Initiative (PFI). PFI is neither one of the PPP methods used for “the restructuring and privatisation of public institutions or enterprises owned by the public sector” as mentioned by article 4 of the Privatisation Law. However, PFI might fall under the above mentioned provisions, by use of an extensive interpretation of the projects that need an authorisation from the Council of Minister.

Definition and scope of the law

Regardless of the lack of any specific PPP law, Jordan legislation stands in line with most PPP laws all over the world in providing a definition to public private partnerships.

The Jordanian Regulation No.80 of 2008 implementing Privatisation Transaction defines public private partnership as a relatively long-term written agreement between the public and private sectors for the purpose of providing a service of a general nature or implementing a project or performing a certain task whereby project financing and allocation of risks arising therefrom shall be pursuant to the contract.

Concessions and other projects’ contractual structures have not been expressly defined in the Privatisation law. The mentioned law is rather limited to the enumeration of various contractual arrangements for PPPs.

Concession is neither defined in the Privatisation law nor in the regulation No.80 of 2008 for implementing Privatisation Transactions. The only reference to concession could be found in article 117 of the Jordanian constitution which defines it as “any privilege given to grant any right relating to an investment in mining, minerals and public facility must be ratified by a law.”

The Privatisation law makes a clear distinction between a PPP/concession agreement and a license as it contemplates the two mechanisms for granting the private sector the right to build a particular enterprise with a monopolistic and exclusive right to exploit it pursuant to a license or an agreement signed with the Government for this purpose.

Selection of the private party

In the assessment, the core area “selection of the private party” (as indicated in Chart 1 above) questioned the mandatory application of a fair and transparent tender selection process, with limited exceptions, allowing direct negotiations. Equally important is the accessibility of the rules and procedures governing the selection of the private party, awarding and further implementation of a PPP project. Sound PPP legislation should foresee a process that guarantees a competitive selection process, equal treatment of potential investors, the opportunity to challenge the rules and decisions of contracting authorities and competitive rules for unsolicited proposals.

Under the applicable PPP legal framework, the Contracting Authority has to select Private Parties through a competitive tender process. However, thelaw does not exclude the possibility to proceed
through direct negotiations without providing the circumstances under which such recourse is permitted. Based on the EBRD’s assessment, direct negotiation for the selection of the Private Party has never been tested in practice.

Jordan has not adopted any tendering procedures that have been designed specifically to be used for PPP financed projects.

The Jordanian legal framework does not include any special manual or recommendations specifically governing in detail the selection of the Private Party in PPP projects. The selection rules are the same applicable for privatisation with few specific provisions for PPP.

In accordance with article 11 of the Privatisation Regulation, a bid shall be tendered for selection of an investor in one phase, the steering committee may, in specific cases, recommend tendering the bid in two phases.10

Under the Privatisation Regulation, investors whose bids have been rejected are informed with the rejection decision of the EPC after the evaluation of the technical proposal in cooperation with the Steering Committee. However, the law does not clearly mandate the EPC to provide the disqualified bidder at the pre-selection phase with the reasons leading to such rejections.

However, the Steering Committee shall invite the preferred bidder for negotiation with a view to issue a decision to award the bid and sign the privatisation contracts. If negotiations do not result in the signing of the privatisation contract with the Preferred Bidder, it is permissible to terminate negotiations therewith provided the Bidder is notified of the reasons thereof, and the second Preferred Bidder shall be invited to negotiate in accordance with the set principles and conditions. Furthermore, there is no requirement that the public authority disclose in public the reasons for rejections. This could likely weaken the transparency and fairness of the selection process while the law expressly requires the compliance with the principles of transparency, openness and fair competition.11

Although it is not specifically stated in Privatisation law, there are no restrictions on foreign participation to PPP or Privatisation except in the restricted sectors detailed in the Regulation for the Promotion of Non-Jordanian Investments Number 54 of 2000. However, an exemption can be granted by the Council of Ministers upon the recommendation of the Ministry of Industry and Trade enabling non-Jordanian investors to own higher percentages in large development project which are of special importance such as in PPP projects.

Although sounds practices of international level are inclining to accept unsolicited bids, the Jordanian law does not allow the Contracting Authority to deal with any unsolicited proposal of PPP project. The Jordanian PPP legal framework remains silent as the manner to respond to unsolicited bids along with protecting transparency and awarding the proposal for the initiative if interesting.

The review system of the administration award presents another drawback of the Jordanian legal framework. Bidders who submit proposals pursuant to the provisions of the Privatisation Regulation may only object the outcome of the technical evaluation to the Steering committee within 5 days from the date of notification of the decision’s subject matter. However, in the event a bidder suffers loss or injury, it may seek relief from the courts and review the Contacting Authority’s actions or omission. However, the courts may only award compensation for actual damages, which do not include loss of profit or loss of business opportunity.

Project Agreement

The main area "project agreement" in Chart 1 reflects the degree of flexibility with respect to the content of the provisions of project agreements, which should allow a proper allocation of risks without unnecessary, unrealistic, non-bankable, or compulsory requirements or unnecessary interferences from the Contracting Authority.

In a public private partnership projects, the parties need to take into account a wide range of factors to allocate project risks effectively. Indeed, the UNICITRAL guide does not advise to have in place statutory provisions that limit unnecessarily the negotiators’ ability to achieve a balanced allocation of project risks, as appropriate to the needs of individual projects. Nevertheless, it may be useful for the domestic legislation to provide some general guidance to officials acting on behalf of domestic contracting authorities, for instance, by formulating advisory principles on risk allocation.12

In the same line with the UNICITRAL legislative guide, the Jordanian legal framework for public private partnerships offers some flexibility to the negotiation of most of the terms of the project agreement.

The law itself does not contain a model PPP agreement. Nevertheless, article 13(c) of the Privatisation Law provides that EPC in coordination with the Steering Committee shall provide the project investors with heads of terms that set out the rights and obligations of each party, (ii) the purpose of the partnership and a description of the tasks and/or services that will be undertaken and provided, (iii) the indicators that will be used to guarantee the quality of work and services, (iv) the financial obligations of each party, (v) the proposed financing for the implementation of the transaction, (vi) the allocation of risks under the transaction, (vii) tariffs payable by the ultimate beneficiary of the services, including tariff adjustment and collection, (viii) the requirements for transferring ownership of the
project to the government and (ix) any other provisions.

Against the requirement of bankability of the project and financial efficiency, the Jordanian PPP framework fails to set out the rule according to which the duration of the project agreement should depend on the project’s particularities including the appropriate return on the capital and the length of time required for the amortisation of the Private Party’s investment. Agreement upon the duration of the project is left to the outcome of the negotiations between the private party and the Contracting Authority. The law does neither provide that the renewal or extension of the project should be limited and depend on exceptional circumstances. Sounds international standards suggest that extension of the duration of the PPP project shall be exclusively restricted to some extraordinary situations as the Contracting Authority default, public interests or interruption of the project due to the occurrence of unforeseeable events totally beyond the parties’ expectations and capacities. The extension of the project’s duration is left to the parties’ free wills and outcome of their negotiations.

Alongside, the Jordanian PPP legal framework fails to identify the conditions for the exercise of either party’s right to terminate the project’s contract. Issues related to the termination of the project agreement are totally left to the parties’ free negotiation. While considering its significant effects, it shall be regarded as last resort alternative as it can threaten the public service continuity.

Moreover, the Jordanian PPP legal framework does not specifically address the issue of the private party’s compensation in all cases of early termination or for losses incurred as result of for termination on the grounds of public interest for losses incurred because of the Contracting Authority acts.

Security and support issues

Security arrangements are unavoidable for financing major PPP projects as in the infrastructure field where strong financial mobilization is required.

These arrangements are crucial where financing is structured under “project finance” modality. In most of the PPPs, the PPP is financed by feeble private party’s self-financing along with debts made available by lenders under a security arrangement according to which the private party gives to the lenders security over its rights under the project agreement.

The financing documents for privately financed infrastructure projects typically include both security over physical assets related to the project and security over intangible assets held by the private party.

The focal interest of this area (security and support issues) is to assess whether the Jordanian legal framework is capable of providing reliable security instruments to contractually secure the assets and cash-flow of the private party in favour of lenders, including “step in right” and the possibility to obtain governmental support to the project or the government’s guarantee of the Contracting Authority proper fulfilment of its contractual obligations as derived from the project’s agreement.

The Jordanian law does not prevent a Private Party from creating security interests over the project assets, rights and proceeds or several other valuable guarantees related to the project.

The Project Agreement may be assigned pursuant to an assignment agreement. The parties may enter into a direct agreement, allowing lenders/mortgagee’s step-in rights into the Project Agreement. However, the legal framework does not provide for the lenders’ right to “step-in” without initiating a new tender process.

The Step-in right clause has become widely used in major infrastructure projects as it is both beneficial to the Contracting Authority and the lenders of the Private Party.

In case of the Private Party’s default, the Contracting Authority must ensure the continuity of the public services delivered by the Private Party under its own responsibility. On the other hand, the lenders which principal security is the revenues and cash flow generated by the project shall try to the best of their capacities to avoid the risk of interruption or early termination of the project.

Future reforms of Jordan legislation should address the necessity to recognize the “Step-in right” clause in the Law to enable their enforceability in case of the private party’s default.

The Jordanian legal framework stands in the same line with the best international practices providing the parties to the project with flexibility in arranging the financing of the project.

The law stipulates that the heads of terms provided to the bidders should include the method of financing which is subject to negotiations. Although the law does not mandate to stipulate the financing mechanism in details within the contract, current practise of PPP in Jordan leads to conclude that lenders usually obtain standard protection.

The Privatisation Regulation provides for the possibility for the Private Party to obtain governmental support with respect to the project.

In accordance with article 5 of the law referred above, the steering committee shall prepare and submit to the Council progress reports on the Privatisation Transaction indicating a description of financial and other obligations of the government in connection with privatisation contracts if appropriate.
The Privatisation transaction studies shall include a description of the economic justifications for government support if so required. According to the Privatization Regulation, the Public Authority could provide financial or economic support for the implementation of PPP project. However, the law does not provide further details as to the forms of financial and economic support awarded in this context.

It shall be worthwhile mentioning that the law does not clearly state which public authorities may provide such support and which types of support can be provided.

**Settlement of disputes and applicable laws**

Disputes resolutions and applicable laws are one of the important features driving the decision of the investors, contractors and lenders to invest in PPP projects. Sounds PPP legislation should offer investors, local and foreigners, the guarantee that all disputes arising out of their PPP projects will be resolved fairly and efficiently.

In this context, the area of the assessment evaluates the possibility of obtaining a proper remedy for breach under the applicable law, through international arbitration and enforcement of arbitral awards.

Jordan has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the Washington Convention on Settlement of Investment Disputes (ICSID) as well as other conventions for the protection of foreign investments.

However, the existing legal framework does not make clear whether contracting parties are allowed to enter into a Project agreement that is subject to international arbitration but it never presented an issue in practice.

The contracting parties may freely choose a foreign law to govern side agreements to the project agreements, such as a direct agreement with the lenders to the project or a support and guarantee agreement in respect of the project agreement.

**Review of effectiveness of the PPP framework in practice**

An assessment of the effectiveness of the Jordanian PPP framework in practice shows that the country is “in medium effectiveness” with international best practice (64.3 per cent).

**Amman East Power Plant**

The Amman East Power Plant is the first independent Power Plant (IPP) in Jordan. This project is procured under a PPP with a total cost of USD300m. The 370 megawatt plant generates over 11 per cent of the Jordan’s 2012 generating capacity. These combined cycle natural gas turbine plants are seen by the Jordanian government as important in reducing its reliance on imported oil and achieving the sustainable energy balance.

This is mainly attributable to weak institutional framework and enforcement in practice despite the very successful PPP projects achieved in the last few years. Chart 2 below illustrates the effectiveness of PPP legislation in practice.
Chart 2 – How the PPP law is implemented in practice in Jordan

Policy Framework

PPP Law Enforcement

Institutional framework

International Standards

Jordan

Note: The extremity of each axis represents an ideal score, that is, a fully effective legal framework for PPPs.
Source: EBRD 2012 PPP Legal Indicator Survey (LIS).

In the same line with the results reflecting the quality of the PPP legislative framework in Chart 1, Chart 2 shows a medium level compliance with respect to PPP practice in Jordan. The results of the effectiveness assessment are further explained below:

Policy framework

A modern PPP law should be based on a clear PPP policy reflecting strong governmental commitments to engage in several PPP projects. A policy framework for PPPs is necessary to attract PPP investment and guide the government’s officials toward a better confidence to use PPPs. A policy framework helps to inform the stakeholders and users about the government policy and plans for infrastructure investments. It also allows the government’s officials to understand their role within the implementation of PPPs.

The existence of a clearly defined national policy framework for PPPs reflects the degree of the government’s commitment to support these projects. In Jordan, the law invested the EPC with a leading role in the PPP programme in 2006 to design the national policy for PPPs.

The Jordanian Ministry of Municipal affairs has prepared guidelines framework for PPP in infrastructure in 2008 and is currently working on updating such guideline. Jordan stands along with the best practice of sounds PPP awareness and sustainability by having a national long term program for PPP promotion and awareness carried out by the Council of Ministers which is the highest governmental body in the country. Such long term programme is mirrored in the government concerns to provide PPP training programmes to public servants and other PPP concerned people.

However, these positive features have not been able to remove several obstacles to implementation of PPP policy. In Jordan, a part of the society views the PPP law as going against the national interests of Jordan as it aims to dispose the vital public assets which should remain under the exclusive control of the State. Moreover, the same movement also believes that several sensitive non merchant sector as health and education shall remain under the State’s control.

Institutional framework

The core area evaluates the existence of a PPP institutional framework, along with how well the relevant institutions perform in practice and whether the different entities coordinate and interact, both with each other and with other market participants, in an efficient manner.
In Jordan, a number of specialist bodies exist with a strong role in the PPP process.

The Privatisation Council is a high level body chaired by the Prime Minister, set up initially as part of the general privatisation drive. It has an advisory role and also approves proposals for PPP projects. Its membership comprises the Minister of Finance, the Minister of Industry and trade, the Minister of Planning, the Minister of Justice, the Governor of the Central Bank, the Chairman of the EPC, the relevant minister to the project and four experienced specialists appointed by the Council of Ministers.

The PPP Committee was established in September 2008 pursuant to a Council of Ministers decision. Its stated role is to identify projects suitable for PPPs and to supervise feasibility studies. However, in practice it has had limited involvement in PPP projects to date.

The EPC is a public body with financial and administrative independence, but reporting directly to the Prime Minister. It does not sit within any particular ministry and has an independent budget approved by the Privatisation Council and by the Council of Ministers.

The EPC played a major role in projects that have been procured through PPPs but in some cases, the EPC has taken a more minor role, for example on the Queen Alia International Airport (QAIA) project, where the Ministry of Transport took the lead.

There are no criteria, which specify how the projects are to be allocated to the EPC or the line ministry. In the event the Council of Ministers issues a decision and selects EPC to lead the project, then the recommendation of the Privatisation Council is necessary for the development and granting of all PPP projects made pursuant to Privatisation Law and Privatisation Regulation. However, if the Council of Ministers selects the relevant line ministries to lead the project, then the recommendation of the Privatisation Council and the EPC are not required.

The institutional framework for delivering PPP projects in Jordan is in transition. The Draft PPP Law prepared by EPC creates new organisations: PPP Commission and the PPP Council to replace the commissions that are currently responsible for PPP. However, the government has not yet endorsed any particular institutional framework.

PPP law enforcement

This core area analyses the effective statistical implementation of PPP projects and whether such projects have been awarded and implemented in compliance with the law.

In Jordan, a number of large PPPs were successfully signed over the past five years. Examples include the Queen Alia International Airport project, Assamra Water Treatment Plant, Amman East Power Plant, Medical and Industrial Hazardous Waste Treatment Plant. However, Jordan has attempted to engage in a number of PPPs which were later withdrawn mainly due to limited project preparation.

Like in Egypt, several projects have been implemented based on sector-specific laws. PPP projects in Jordan are implemented either through EPC or directly through other ministries. The EPC was involved in two major projects which consist of the expansion of Queen Alia International Airport and Assamra Water Treatment Plant both under BOT agreement.

Medical and Industrial Hazardous Waste Treatment Plant

The Medical and Industrial Hazardous Waste Treatment Plant is a waste treatment project structured under a Build Owns Operates and Transfer (BOOT) contract for 30 years with total cost of 29 million Euros. This waste treatment plant include an incineration plant with a 15,000 tons/year capacity, a physico-chemical treatment plant with a 2,000 tons/year capacity, a solidification plant with a 4,400 tons/year capacity, a pre-treatment plant for oily waste with a 10,700 tons/year capacity, a Class I landfill for slag and residues with a 17,000 tons/year capacity.

Jordan holds one of the best records of successful PPP projects in SEMED countries and several other projects are currently in procurement process. The enactment of the new PPP law in Jordan will likely enhance the country’s potential to undertake more successful public private partnership projects in the future.

Over the last few years, public private partnerships emerged as an efficient tool to promote major projects in infrastructure, energy, healthcare, transportation, water, technology sectors and projects of public interest.

Assamra Water Treatment Plant

As-Samra Wastewater Treatment Plant (WWTP) is the largest wastewater treatment facility in Jordan. The facility was built under a build, operate and transfer (BOT) agreement. Construction of the As-Samra WWTP was undertaken during a period of five years from 2003 to August 2008, at a cost of USD169m.

With a peak flow of 840,000 cubic metres each day, the facility treats an average flow of 267,000 cubic metres of wastewater on a daily basis, serving a population of about 2.2 million living in the Greater Amman and Zarqa areas.

Alongside the privatization movement undertaken over the previous decades in Jordan, PPPs have been used for long term financing of programmes that
would, otherwise, engage much resources if financed by the State budget.

Today, the relatively underdeveloped environment of PPPs presents a significant challenge as to the success of future leading projects. Areas for improvement include the enactment of a PPP law that defines public private partnerships and related concepts to distinguish it from other methods of delivering public projects, the implementation of an efficient PPP policy fully supported by a strong governmental commitment, building the capacity of PPP institution and strengthening the Jordanian capital market.

A modern and efficient legal framework for PPPs will likely improve the project bankability to make it more attractive to private capitals and lending.

Review of effectiveness of the PPP framework in practice

The assessment of the effectiveness of the PPP framework in practice shows that the country is in “medium effectiveness” when compared to international best practice (52%). Chart 3 below illustrates the effectiveness of PPP legislation in practice.

Chart 3 above reflects the quality of PPP practice in Jordan.

The results of the effectiveness assessment are further explained below.
Energy

In a nutshell...

Jordan has largely unbundled its electricity to separate transmission from generation, distribution and supply; it has created a relatively competent regulator. However, some gaps remain with respect to compliance with the acquis communautaire (“acquis”) such as limited third party access, non-compensatory tariffs, ministry interference in retail tariff-setting, and lack of judicial review on the regulator's decisions.

With respect to the natural gas market, the latter does not comply in any respect with the acquis because gas is used exclusively for generation, and there is so little domestic production.

Electricity

Institutional Framework

The electricity sector in Jordan has undergone a process of restructuring and privatization since 1999, when the National Electric Power Company (NEPCO), the legal successor to the Jordan Electricity Authority, was divested of its generating and distribution assets. The Council of Ministers Resolution stipulated that transmission, power purchase and sale, and power exchange with other countries should remain in the Government’s hands. In 2004, the Ministry of Energy and Mineral Resources (MEMR) issued an Energy Strategy, which was updated in 2007, for the period 2007-2020. That Strategy called for a gradual decrease in the contribution of foreign sources in the primary energy mix and an increase in local sources from 4% in 2007 to 25% in 2015 and 39% in 2020. These numbers are updated periodically and in MEMR’s 2011 Annual Report, it aimed at increasing the use of local resources from 4% in 2011 to 16% by 2016.

Policy Making

Under the Temporary General Electricity Law of 2003 (Electricity Law) MEMR is responsible for formulating general policy and submitting such policies to the Council of Ministers for approval. MEMR’s tasks include concluding agreements with other countries concerning electrical interconnections, taking measures to ensure supplemental sources of generation in the event of shortfalls, requesting the bulk supply licensee to supply fuel for generating companies set for privatization and for independent power producers (IPPs), to promote renewable energy, and to make recommendations to the Council of Ministers as to whether the Jordanian electricity market has developed to the point where a competitive electricity market, based on bilateral trading arrangements, should be introduced.

The Electricity Law also provides that, in order to facilitate the initial privatizations of generating and distribution companies in which the Government holds all or a majority of the shares, and to encourage investment in IPPs, the Council of Ministers, upon MEMR’s recommendation, may issue a decree specifying the terms and conditions for such privatization contracts and identifying the first four IPP agreements, two of which are to be thermal power plants and two of which are to use renewable energy. The terms and conditions, which are to remain in effect for a transitional period, must include the principles for determining the tariffs, incentives, standards of performance, the allocation of revenues between a distribution licensee’s supply and distribution businesses, earnings that the licensee is entitled to retain, any applicable subsidies, penalties for non-performance, and circumstances under which the transitional period may be terminated. The decree is to be binding upon the regulatory Commission and all third parties and the terms and conditions of the privatization or IPP contracts are to form part of their licenses. The MEMR’s decrees are not subject to court review.

Regulation

The Electricity Sector Regulatory Commission (ERC) was established in 2001 with authority to determine electricity tariffs, subscription fees, service fees, disbursements, royalties and connection charges to the transmission and distribution system. It also issues licenses for generation (including from renewable resources), transmission, supply, distribution, and system operation, and monitors compliance with license conditions. Under the Electricity Law, ERC also has a continuing obligation to monitor the electricity sector with regard to progression of the single buyer model to a competitive electricity market model and must prepare an annual report for MEMR on potential competition in the sector. ERC also has authority to resolve disputes between licensees and consumers, and disputes between licensees.

The ERC’s jurisdiction is exclusively related to electricity and does not include regulation of the natural gas sector or any other utility sector such as water or sewerage; nor does it currently have authority to regulate demand side management (DSM) or energy efficiency, even though the Electricity Law mandates that ERC has the power to ensure that electricity service to consumers is provided in “an efficient and economic manner that accords with the developments in electricity technology…” (Article 7(B)(2)). ERC also has authority to participate in “determining the technical
standards related to the electrical appliances and electrical installations ...” (Article 7(B)(4)). The Electricity Law also provides that ERC should “render expert advice on any issue that is related to the sector in a way that fulfills the Commission’s purposes and objectives.” (Article 7(B)(6)). In the past, there was a department for energy savings within ERC but it was abolished in 2001 when a cabinet was appointed. It appears therefore that ERC could advise on DSM and EE when asked to do so by MEMR.

Under the Electricity Law, ERC has legal status, and financial and administrative independence. The five Commissioners are appointed by the Council of Ministers upon the Prime Minister’s recommendation and a Commissioner can only be removed if he or she: (i) is convicted of a crime or misdemeanor; (ii) is declared bankrupt; (iii) violates one of the conflict of interest prohibitions; or (iv) no longer meets the Jordanian citizenship or full competency prerequisites. Commissioners are required to have professional qualifications and experience, are precluded from having a financial interest in any licensee or being engaged in any activity relating to a licensee’s operations (as are spouses or relatives in the first and second degree), in line with international best practice. Their terms are four years (except for the first appointments, which are staggered) and can be renewed once. ERC has a support staff of approximately 100 employees, divided into five departments: (i) Studies and Economic Research (which includes tariffs); (ii) Technical Affairs (which includes monitoring); (iii) Finance and Supply; (iv) Administrative Affairs (which includes public information); and (v) Legal Affairs (which includes licensing and contracts). Most of the supporting staff is university educated.

Under the Electricity Law, ERC derives its financial independence from earning its own funds through license fees and administrative fees (in an emergency allocations can be made from the general budget); its annual budget is approved by the Council of Ministers. Accountability is ensured through annual audits in accordance with international accounting standards and an annual report submitted to the Council of Ministers through MEMR. Salaries for Commissioners are established by the Council of Ministers in accordance with the salary scale generally applicable to senior and are much higher than civil service salaries. Supporting staff are paid civil service salaries. Due process is provided through the publication of non-confidential decisions and public access to such decisions, in accordance with procedures determined by the Council of Ministers. But there is no right to appeal ERC’s decisions to the courts and all decisions are final.

ERC has published a regulation that lays out the conditions for issuing, amending and revoking licenses. The terms and conditions of the licenses issued to licensees, including those issued to NEPCO for transmission and for system operations, are published on ERC’s website.

Under the Electricity Law, ERC is authorized to impose penalties on licensees for non-compliance with the Electricity Law, the terms of their licenses or any ERC regulation.

Market Framework

Single Buyer

Jordan’s electricity market is currently based on a “single buyer” system, with the National Electric Power Company (NEPCO) being responsible for buying all power generated by the country’s electric generating companies (both State-owned and privately-owned). The only exception to the “single buyer” system is for renewable energy (RE) production facilities which can sell power directly to distribution licensees, as well as to the Bulk Supply Licensee, up to a cap based on prior consumption. (See discussion under Renewable Energy below). Consumers using solar energy for hot water heating or other uses can use net metering to sell excess power to the distribution licensee, also subject to a cap.

The Electricity Law anticipates that at some point in the future, conditions may change and Jordan may be able to move to a competitive market model with bilateral contracts between generators and consumers. The Electricity Law lists four preconditions for such move: (1) the existence of a sufficiently large number of potential competitors such that market power abuse can be managed; (2) the existence of the necessary metering and information technology (IT) infrastructure; (3) the financial viability of the sector; and (4) a positive assessment of the impact of competition on consumer prices. A move to a competitive electricity market may not affect the economic benefits which generation and distribution licensees have been given under their licenses or their ability to continue financing their activities.

A Market Assessment performed in 2009 on behalf of ERC concluded that Jordan’s electricity market did not meet the criteria for moving to a competitive bilateral contracts market model because at that time: (1) in excess of 75% of the market was covered by PPAs with conditions that constrain efficiencies (e.g. availability payments are made even when generators do not generate); (2) the single buyer supplied the fuel to the generators; (3) one generating company generated over 70% of the electricity consumed and its market powers was reinforced by its ownership links with distribution companies; (4) ERC had very limited powers with regard to competition policy; and (5) cross-subsidies would distort competition, making it almost impossible for new entrants to compete; (6) a
substantial investment would need to be made in IT hardware; and (7) tariffs might increase as current tariffs were possibly below market levels and in competitive markets, prices tend to move to the level of new entrants’ costs.

Some of the barriers identified in the 2009 Report have been reduced, but others have increased. The barriers that have been reduced are: (i) cross subsidies, which the ERC has said are in the process of being eliminated; (ii) the market dominance of one generating company, which now supplies 53% of the electricity consumed, because of the entry of new IPPs into the generation sector (and this percentage will continue to decrease as other IPPs and new units of the existing IPPs come on line); and (iii) tariff levels, which have been increased by ERC. However, on the minus side of the ledger, the percentage of the market covered by long-term PPAs that are protected by the Electricity Law has increased, making it difficult to create a competitive market.

The Transmission Grid

NEPCO, the sole transmission licensee, is responsible for construction, operation and maintenance of the electric transmission system, as well as for long-term load forecasting and securing sufficient capacity to meet expected demand. It is required by its license to prepare a 10-year plan for the network to be filed with ERC. NEPCO also holds a license for system operations and is the System Operator. A Grid Code governs system operations. The terms of NEPCO’s transmission license prohibit it from owning, directly or indirectly, any generation facilities or from buying and selling electricity.

Regional Interconnections

Jordan is connected to the Egyptian electricity network through a 13 km 400 kV submarine cable across the Gulf of Aqaba which has maximum capacity of 550 MW. In 2011 NEPCO imported 1457 GWh from Egypt and exported 4,2 GWh to Egypt. Jordan is also interconnected to Syria through a 58 km single circuit 400 kV overhead transmission line with a maximum capacity of 1000 MW. In 2011, Jordan imported 280.5 GWh from Syria and exported 75.7 GWh to Border Trabeel. Jordan is one of a group of regionally interconnected networks and a member of the MEDRING project which aims to create a Pan-Arab electricity interconnection with Europe. The fourth country in the existing interconnection, in addition to Jordan, Egypt and Syria, is Lebanon. The MEDRING project would connect Jordan, Syria, Egypt, < Libya, Tunisia and Morocco through an existing submarine cable between Morocco and Spain, once the connection between Libya and Tunisia is operational.

Operational Environment

Unbundling

Transmission has been unbundled from generation, distribution and supply. The Electricity Law prohibits NEPCO from owning, controlling or operating generation. However, distribution has not been unbundled from generation or supply. The Electricity Law does not prohibit distribution companies from having a share interest in generating companies. The Social Security Company is a shareholder in KEC, which owns IDECO, a distribution company, and the Social Security Company also owns 9% shares of the shares in CEGCO, which is the largest generating company in Jordan.

Network Access

Article 33.A.2 of the Electricity Law provides that the transmission licensee is to provide “non-discriminatory access to users of the transmission system in accordance with such terms and conditions as may be specified in its license.” However, there are no bilateral contracts between generators and consumers, and all power (other than power from producers using RE resources which can be sold to distribution companies) is sold to NEPCO as the Single Buyer. The law providing for the sale of RE to distribution companies and allowing for net metering of solar power produced by consumers is very new, having only been enacted this year, so the non-discriminatory access provision has not been tested.

Tariffs

Under the Electricity Law, ERC establishes tariffs and the tariff methodology for transmission, distribution, generation (except for the privatized generators or IPPs) and supply; however, in practice, MEMR has to approve any tariff increase to consumers and ERC cannot implement tariff increases without Ministry authorization. ERC prepares the tariff studies and submits them to MEMR. The law provides the applicable standard for tariff setting and specifies that that ERC should ensure that “prices charged by a licensee are sufficient to finance its activities and allow it to earn a reasonable return on its investments.” (Article 7(A)(6))

Electricity tariffs for consumers are shown in Appendix C. While cross-subsidies between customer classes have been largely eliminated, the Government of Jordan (GoJ) still subsidizes end-user tariffs for the population but is now investigating different mechanisms to direct the subsidies to low-income households. Under the current block tariff system, all consumers, regardless of income level, benefit from the low tariff for the first consumption block.

However, tariffs do not recover the cost of power production. NEPCO is required to provide the fuel
used by the IPPs at the price negotiated in the IPP contracts, and as a result of the interruption of natural gas from Egypt, it has had to substitute much more expensive diesel and heavy fuel oil for the natural gas. In its Annual Report for 2011, NEPCO reported that the purchase cost of electric power was twice the cost of the selling price, and that it did not meet certain loan covenants in 2011 which stipulate that debt-to-equity ratios should not exceed 1.25:1 and current assets to current liabilities ratio should not be less than 1:1. This situation was only exacerbated in 2012 with even more frequent gas pipeline interruptions, which has become a concern not only to NEPCO’s lenders but also to the IPPs which depend on payments from NEPCO for their power sales.

**Gaps in Comparison with the Acquis**

Jordan has largely unbundled its electricity to separate transmission from generation, distribution and supply; it has created a competent, effective, well-functioning and—in most respects—an independent electricity regulator; and it has taken some initial steps towards open access. A number of gaps, however, remain. They include:

- A “Single Buyer” market model;
- Bundling of distribution and supply;
- Limited Third Part Access;
- Non-compensatory tariffs;
- Ministry interference in retail tariff-setting;
- Lack of judicial review processes of ERC’s decisions; and
- Indirect ownership of generation by one of the distribution companies (although very limited).

The ERC takes seriously its obligation to advise the Minister regarding whether conditions are right for moving from the single buyer model to a bilateral contracts market model. In the past, it has hired international experts to assist it in its analysis and continues to monitor market developments. Given the steps already taken to allow for the direct sale of power plants using RE resources to distribution companies, the unbundling of the sector, the decision taken to privatize all generation, and the regional integration taking place, it is entirely credible that Jordan will open its market in the relatively near future.
Natural Gas Market

As of 2011, the contribution of domestic resources to the total energy mix was still only 4%. The upheavals in Egypt, which supplied natural gas for 80% of the electric generation in Jordan, led to sabotage of the Arab Gas Pipeline in Egypt and cut that supply by two-thirds in 2011. As a result, Jordan was required to import much more expensive heavy fuel oil and diesel by tanker through the Gulf of Aqaba; however, there is insufficient storage capacity in the port of Aqaba to hedge against price hikes. In addition, the privately-owned oil refinery at the port owns the fuel trucks that transport the refined products to market are working at capacity and GoJ officials believe that when the new IPPs come on line, there will be insufficient capacity upstream to supply them with heavy fuel oil and diesel, making LNG imports even more critical.

Forced to take drastic action, the GoJ initiated a study with Qatar to build a liquefied natural gas (LNG) receiving terminal at the Jordanian port of Aqaba. Negotiations with Qatar have dragged on and MEMR is now considering leasing a floating barge-mounted regasification terminal. The capacity of the port of Aqaba is being expanded by the Aqaba Development Corporation to accept LNG tankers. A pipeline from the port would need to be constructed to tie-in to the existing pipeline from Egypt.

If no agreement can be reached with Qatar on the price of imported LNG, MEMR will launch an international tender for LNG imports and hopes to begin importing LNG in 2014. One source of natural gas could be Israel, which has discovered enormous quantities of natural gas in the Mediterranean and is building LNG liquefaction terminals. All Jordanian officials cautioned that any direct imports from Israel would have negative political consequences; however, contracts with international traders would not identify the source of the LNG. It is anticipated that LNG imports will begin in the second half of 2014. Contracts for the purchase of LNG, unlike for conventional gas, are only for five year terms.

Institutional and Market Framework

The gas sector in Jordan is relatively undeveloped. Gas is used exclusively for power generation and not for heating or for industrial processes. There is no published legal framework governing the gas sector and no independent gas regulator. MEMR is responsible for regulating gas and negotiating the agreements on import of natural gas; ERC has no responsibility for gas.

There is no gas distribution system and only one 370-km gas pipeline, which was built under a Build-Own-Operate-Transfer (BOOT) scheme by the Jordanian Egyptian FAJR Company (Al Fajr Pipeline). The 25-year concession to the Al Fajr Pipeline was granted by a decree issued by the Cabinet of Ministers and there is no publicly available information about the terms and conditions in the concession agreement. The transportation tariff is confidential and is not published. The Al Fajr Pipeline connects to the Arab Gas Pipeline in Egypt and all of the shares in the Al Fajr Company are now held by the Egyptian Fajr for Natural Gas Company.

Market Framework

Because of the acts of sabotage in Egypt that have interrupted supply to Jordan over the last year, the Fajr Pipeline has significant excess capacity. Imports were 806 million cubic meters in 2011, a 65% drop from 2010. From speaking to Government officials, it appears the Al Fajr Pipeline has no legal obligation to carry gas other than Egyptian gas and the concession does not expire until 2018, which would preclude using the pipeline to transport re-gasified LNG if Jordan constructs an LNG terminal in the Gulf of Aqaba and is able to negotiate an LNG import agreement with Qatar; however, these officials believe the company has a financial incentive to do transport the re-gasified LNG because the pipeline is losing revenues due to the reduction in gas coming from Egypt. The Government therefore expects that it will be able to reach an agreement with the pipeline owners to transport gas from sources other than Egypt. If Jordan is able to develop its own gas resources or is able to import gas from multiple sources, development of a gas distribution system and an independent gas regulator would be established; however this is not likely to happen before 2020.13

Gaps in Comparison with the Acquis

The gas sector does not comply in any respect with the acquis communautaire because gas is used exclusively for generation, and there is
so little domestic production. If significant gas reserves are developed and Jordan initiates construction of a gas distribution system to supply gas to consumers, the GoJ has said it will undertake development of a gas regulatory framework.

Renewable Energy

Background
Currently less than 1% of Jordan’s energy comes from renewable resources. Jordan’s National Energy Strategy for 2007-2020 calls for 7% of the energy mix to come from renewable energy sources by 2015, increasing to 10% by 2020. In the generation sector, about 60% of RE generation is anticipated to come from wind energy and 40% from solar energy. In 2011, according to NEPCO’s Annual Report, hydropower represented 0.0038% of GWh generated. With very little water, Jordan has almost no additional hydropower potential. The Jordan Biogas Company, which generates electricity from methane extracted from municipal waste in Amman, produced 0.0005% of electricity generated in 2011, while wind produced even less.

Institutional Framework
The MEMR created new departments for Renewable energy (RE) and energy efficiency (EE) within the Ministry in 2011 and a new Renewable Energy Law and Energy Efficiency Law (2012 RE and EE Law) was passed earlier this year. The law contains a number of incentives (such as compulsory purchase of electricity from renewable resources, exemptions from customs duties20 and sales tax, one-stop licensing/permitting shop, etc) and created a RE and EE Fund, which has only been partially funded. A Director of the Fund was appointed in early October. ERC has issued Feed-In Tariffs (FITs) (called “reference prices”) for 2012 for different types of RE technology (wind, solar, solar PV, biomass and biogas)21 for purchase by either NEPCO or Retail Supply Licensees; if the RE facility is “fully Jordanian [in] origin,” an additional 15% is payable, unless the capacity of the plant is 500 MW, in which case the 15% adder is at the discretion of the ERC. The 2012 reference prices are attached in Appendix D. It is not clear, however, whether those prices change annually or remain in effect for the term of the contract. Nor is it clear what the term of the contract is. Such issues would need clarification to obtain bank financing for wind power developments.

The 2012 RE and EE Law also provides that the MEMR, in cooperation with specialized technical bodies, is to identify a list of sites for potential RE projects and may issue tenders for development of such sites. Potential developers are allowed to propose their own sites and the MEMR has to issue a decision within six months of receiving such proposal. NEPCO and the distribution licensees are obligated to accept the energy generated by RE resources. Last year, the MEMR issued an RFP for RE projects and got over 60 expressions of interest. It pre-qualified 34 companies and executed 29 MOUs with potential investors this past June. Concentrated Solar Power (CSP) and wind power developers have 24 months to complete their feasibility studies, while photovoltaic (PV) developers have six months. The MEMR created a wind atlas which contains “indicative” information for use by developers but it is missing critical information on wind speed and wind direction.

Gaps in Comparison with the Acquis
Jordan has made great steps towards development of RE resources. It has a RE Law, it provides for FITs for electricity generated from RE, it has created a fund for jump-starting RE projects, it has issued an RFP for RE projects, and it has provided other financial incentives for RE; however, it still falls short of compliance with the acquis communautaire. In particular:

- Jordan does not have a National Renewable Energy Action Plan; and
- Neither the RE and EE Law nor ERC’s Directives provide for a specific contract period for the RE project, nor is it clear whether the price is guaranteed for a set term, although these issues may be addressed in the RFPs.

Energy Efficiency

Background
A number of initiatives have been undertaken in the past few years by both MENR and donors to reduce energy intensity, both in the power sector and in industry. Bank lending for
EE improvements has not been successful thus far, in part because of reluctance on the part of banks to make loans for EE, and in part because of the restrictions on commercial lending practices imposed on local banks by the Central Bank of Jordan. A pilot program for a line of credit co-financed by the French export credit agency failed to attract borrowers because interest rates were only 1% lower than commercial rates. Lack of awareness in industry is another barrier. A building code mandates the use of insulation, EE materials, and thermal windows, but the standards are not enforced by the municipalities which approve the plans for new housing. Finally, Government policy on energy efficiency has not been consistent, in part because of the numerous cabinet changes that have taken place over the past few years (four in 2012 so far).

There are, however, a number of positive developments, in particular in the electricity sector. Smart grids for the distributions systems are being planned to improve operating efficiencies, cut costs and reduce distribution losses (even though technical and commercial losses in Jordan average 10-12%, of which non-technical losses are only 2-3%, which is much lower than in other emerging markets). An RFP issued earlier this year by the U.S. Trade Development Agency for a feasibility study for the JEPCO distribution system received 17 responses. The study will assess the most appropriate technologies to achieve a 5% penetration within the first three years of implementation.

A new tariff methodology will be introduced as part of the study, to pass energy savings costs to consumers and allow for greater efficiencies in billing, collections and service quality. Tariffs generally are still too low to motivate energy savings. In 2005, the GoJ increased the price of all commodities, except electricity. As a result, many consumers switched from fuel oil and diesel (which increased by 400%) for heating to electricity, because electricity tariffs were lower.

**Market and institutional framework**

Even though the RE and EE Law contains definitions of “Energy Efficiency” and “Energy Efficiency Systems,” there are almost no references to promoting EE in the law, other than the reference to the RE and EE Fund. There is no mention of energy savings companies (ESCOs), demand side management or energy performance contracting; however both USAID and the European Commission have proposed programs to raise the profile of EE, including creating a new department within ERC for EE. As discussed above, ERC has no explicit authority to regulate or promote EE and policy-making with regard to EE resides with the MEMR. The Ministry has a Department for Energy Savings and, in its annual report for 2011, discusses a number of EE accomplishments including: (i) an EE public awareness campaign; (ii) exemption of EE equipment from customs duties; (iii) drafting of a Regulation to support improvement of EE programs in different sectors; (iv) establishment of a RE and EE Fund; (v) cooperation with a number of international institutions in the preparation of a national EE plan, work on application of the site map for EE, development of EE proposals and energy savings in buildings; (vi) plans to support EE lighting; (vii) encouraging households to use solar water heaters; (viii) improved building codes; and (ix) implementing energy savings measures such as reduced lighting in government buildings and on streets to mitigate the cost impact of increased generation costs resulting from the cut-off of Egyptian gas.

The By-Law referenced in the 2011 Annual Report was issued by MEMR in November 201223 and makes energy audits by large commercial and industrial installations using in excess of 50 toe of energy compulsory within three years. It also provides incentives to consumers using less than 50 toe to perform energy audits and requires energy audits for public buildings. MEMR is currently drafting Instructions that will contain the details on how the By-Law will be implemented. In addition, MEMR is required to develop a National Energy Efficiency Plan in cooperation with stakeholders. Starting from 1 April 2013, no occupancy permit may be issued by municipalities to owners/developers of buildings unless a solar water heating system is used for offices, apartments and detached houses of more than 100, 150 and 250 m2 respectively.

**Gaps in Comparison with the Acquis**

While the issuance of the EE By-Law represents a significant step in the promotion of EE, Jordan’s EE policy still falls short in
some respects of the new EU Energy Efficiency Directive, which was promulgated by the European Commission at the end of 2012. The major deficiencies are that:

- The RE and EE Law did not contain any specifics on demand side management, ESCOs or energy performance contracting; and
- ERC lacks the authority to promote EE in the electricity sector.
Telecommunications

In a nutshell...

Jordan has a relatively stable investment environment, with liberalised market access, and gradually improving competitive safeguards. However, there are very high charges to be paid to the regulator and the state through a complex scheme of licensing, revenue sharing and taxation. In practice, the regulator does not have the full independence expected by best practice. Nevertheless, the market remains the most liberalised in the region, and Jordan has been found to be in the lowest risk category.

Legislative framework

The Telecommunications Law was introduced in 1995 and amended in 2002. While it has facilitated the development and liberalisation of the sector in Jordan, it is less detailed than the legislation of many other countries. Nonetheless, the regulatory regime adopted by national regulator, Telecommunications Regulatory Authority ("TRC"), provides a commitment to implementing best practice for the sector in Jordan.

In essence, major components of the framework governing the Jordanian telecommunications sector are often included in regulations and decisions adopted by TRC, based on the general powers provided to TRC in the law. In addition, key initiatives of the 2007 Government policy for the telecommunications sector have been implemented directly by TRC, without the need for revisions to the law. For example, TRC implemented the 2007 policy's requirement for public consultations by consulting more broadly on key issues, without needing to amend legislation. Similarly, some changes in the constitution in 2011 that affect the sector have been implemented without the need to amend the telecommunications law.

Areas of alignment of the Jordanian legal and regulatory framework with best practice include the interconnection and access regime, tariffs, market analysis procedures, dispute resolution, numbering and rights of way over private property (but not over public property). TRC has advised that amendments are being developed to the primary Law that are expected to more closely align the law with EU framework requirements with respect to a range of issues including:

- making TRC more independent, improving general governance and authority
- market convergence of telecommunications with internet and media
- improving TRC’s enforcement powers (and possibly restore some of TRC’s former independence)
- adoption of General Authorisation regime (TRC is currently studying this issue under an EC twinning project)
- expanded definition of “access”, which would give TRC more authority to regulate different forms of access.
- clarification regarding the status of TRC decisions during appeals to court.
- authority for TRC to impose fines that are “proportionate to the situation”, so that fines are more meaningful.
- consumer protection and personal data protection (perhaps by way of separate laws)
- improved procedures for type approval of equipment
- obligations of telecommunications operators during events involving national security and emergencies.

The sector regulator TRC is a financially and administratively independent authority answerable to the Minister of ICT. In practice, the regulator does not have the full independence expected by best practice because the Minister may recommend to the Council of Ministers a dismissal of members of the board of directors of TRC; the budget of TRC is intensively reviewed or challenged by various government bodies and parliament. Also, TRC recently became subject to civil service bylaws governing staffing and purchasing instead of administering these areas directly based on its own bylaw. Separately, amendments to the constitution in 2011 resulted in q loss of recognition for “independent authorities”.

TRC is studying the possibility of moving from an individual licensing regime to General Authorisation regime involving a simple authorisation/ notification regime for most services except those requiring scarce resources. Although the telecom law provides good support for interconnection and access and in practice TRC requires that wholesale prices be based on cost, the law does not require that prices for interconnection (or any other services) include a reasonable return on capital. TRC has concluded consultation on interconnection pricing and is now using a modern costing model.

The telecom law does not specifically address market analysis, however TRC derives authority to conduct market analysis from licence conditions that require licensees to abide by TRC instructions, and the Government 2007 policy, which states that an analysis should be completed to impose ex-ante regulation, though it must not impose a burden. TRC
issued Instructions on competition safeguards in 2006 which provides for a market analysis process generally aligned with best practice and TRC has already conducted several market reviews accompanied by extensive consultations.

TRC is responsible for undertaking the prosecution of offences and rendering of penalties. The board may set and impose fines directly for violations of licence conditions or TRC decisions, without resort to other state bodies. The individual licences state the level of fines that may be imposed. The effect of TRC’s decisions is sometimes suspended by courts during appeal. Operators sometimes file appeals from TRC decisions to the High Court, even when that Court does not have jurisdiction, followed by or contemporaneous with an appeal to civil court, resulting in delays.

MoICT has responsibility to facilitate cooperation that enables TRC to prepare the National Plan for Frequency Allocation and National Register of Frequency Assignments. TRC has formed the Consultative Committee for Frequencies, a joint committee chaired by TRC, which the TRC board must consult in preparing the National Plan for Frequency Allocation. The telecom law does not specifically guarantee open, objective, transparent, non-discriminatory and proportionate procedures for granting of rights of use for spectrum, such as use of open tender auctions. However, the regulations do allow for service licensing to be carried out using these principles.

The Board of TRC adopted universal service regulations in 2006 that are relatively closely aligned with EU provisions. TRC is considering whether to include broadband within the requirements for universal service. However, implementation of TRC’s universal service regulations has not yet been applied. A decision has been made to establish a universal service fund, but the necessary by-law has not been passed. Consumer protection provisions are included as license conditions rather than in the law, and generally conform with best practice. The Board of TRC is authorised to adopt the numbering plan and assign numbers on the basis of objectivity, transparency and impartiality. Number resources are free.

Regulation of appropriation and rights of way is divided into two areas; rights over private property and rights over public property. Law 13/1995 gives TRC a strong role over private rights of way, authorising TRC to approve such rights and select an expert to set fair compensation (or either party may ask that a court determine compensation). For rights of way over public property, TRC plays a more limited role, coordinating with the licence holder to obtain agreement with Ministry of Public Works, municipalities or other relevant public institution.

TRC has implemented an equipment type approval regime in Jordan and technical standards used for equipment type approval are generally aligned with best practice, relying on ETSI standards. However, implementations procedures are not aligned with best practice, and TRC intends to revise these soon. Legislation does not address the role of telecommunications operators in national security and emergency situations in a substantive way, though amendments are expected to provide guidance and procedures for requirements of telecommunications operators during events involving national security and emergencies.
Chart 3—Comparison of the legal framework for telecommunications in Jordan with international practice

**Jordan: Legal framework**

Key: Extremities of the chart = International best practice

Note: The diagram shows the quality of the legal framework as benchmarked against international standards (European Union). The extremity of each axis represents an ideal score of 100 per cent, that is, full compliance with international standards. The fuller the “web”, the closer the overall telecommunications legal framework of the country approximates these standards.

Source: EBRD 2012 Electronic Communications Comparative Assessment.
Market framework

The liberalisation of the telecommunications and internet markets was announced in 2003. This ended a duopoly in the mobile market that had existed since 1999 and paved the way for new entrants into the fixed and internet markets from the end of 2004. A service neutral integrated licensing regime, involving two classes of licences, has been introduced to facilitate market entry and competition.

In the early stages of the liberalisation, competition in voice telephony started by the introduction of prepaid calling cards. At the wholesale level, mobile and VoIP operators were able to negotiate their incoming and outgoing international traffic directly. At the access level, in addition the legacy copper infrastructure owned by the incumbent, five fixed wireless access operators were licensed in 2007 and 2008. Also there are some fibre-to-the-home operators but their network deployments are currently limited to areas in the capital city, Amman.

The first mobile licence was granted in 1994 to the private company Fastlink, which was acquired in 2003 by the Kuwaiti Zain group. This licence was extended in 2006 for further 15 years. Jordan Telecom, the fixed incumbent operator, acquired the second mobile licence in May 1999, with this mobile subsidiary becoming Orange Mobile upon acquisition by the France Telecom Group of a controlling interest in the Jordan Telecom Group in 2007. Umniah, the third mobile operator, was licensed in 2004 and it was acquired by Bahraini Batelco group in June 2006.

3G services were introduced to the market by Orange mobile in 2010, followed by Zain in 2011. Umniah has now acquired a 3G licence in with service launch expected in 2012. Mobile broadband penetration is already growing rapidly since Zain launched its services, the mobile broadband market doubled during the last 9 months in 2011 reaching 5.0 per 100 population by the end of the year.

Fixed broadband growth appears to be slowing now that competitive pricing has made mobile broadband more attractive. There are three types of fixed access networks; the legacy copper network owned by Orange, five national fixed broadband wireless access networks plus fibre networks in limited areas of the capital city Amman. At the wholesale level, Orange has been offering bitstream access to several alternative services providers since 2007. On the international connectivity side, Orange owns a landing station in Aqaba and provides international capacity to other operators. Some operators are connected to submarine cables in the neighbouring countries through terrestrial extensions.

The process of privatisation of Jordan Telecom, the fixed incumbent operator began in 2000 when the government sold 40% of its stake to France Telecom and 8% to the social security investment unit. Most of the remaining government stake was sold progressively in 2002, 2006 and 2012. Approximately 3% of the incumbent is sold through a fund for the Army and Security Forces, with the remainder held privately by France Telecom or other funds.

In December 2011, there were 424,288 fixed subscriber lines (6.8 per 100 population) and 7.48m active mobile subscriptions (120 per 100 population). Fixed broadband has achieved 296,611 fixed subscriptions (4.7 per 100 population) and 312,209 mobile data subscriptions (5 per 100 population).

Sector organisation and governance

The Ministry of Information and Communications Technology (MoICT) is responsible for preparing sector policy, preparing draft sector laws in coordination with TRC and representing TRC before the Council of Ministers (COM) among other responsibilities. Recently a comprehensive review was made to the law in order to merge the TRC and the Audio Visual Commission (AVC) into a single entity. The Audio-Visual law refers to content matters only, and the convergence of regulation will better meet the needs of a converged market with, for example, the introduction of general authorisations, better competitive safeguards and spectrum trading.

The TRC was established in 1995 as an independent body answerable to the prime minister. However, since 2011 the TRC has become answerable to the minister of ICT. Its mandates cover telecommunications, information technology and postal sectors. Among the mandates of TRC is the responsibility for managing radio spectrum (including the broadcasting spectrum).

MoICT is mainly responsible for preparing the general policies and strategies for the sector and to monitor their implementation. In addition to this, MoICT embarked in 2003 in building a National Broadband Network (NBN). This includes connecting 3,300 public schools, 100 knowledge stations, 17 public community colleges and 12 learning resource centres. The scope of the NBN network was modified later to include the medical and governmental entities in Jordan. Around 1,500 points of presence were implemented before the project was stopped in 2008, with no more public funding available. MoICT is currently investigating different options to complete and maintain the NBN network by public and private partnership. The current estimated cost for completing the network is around Euro 80m.

TRC is managed and supervised by a board of commissioners composed of five full-time members appointed by a resolution of the Council of Ministers, upon nomination by the prime minister based on the recommendation of the ICT minister. TRC decisions and regulations are issued and approved by the
board of commissioners after public consultation with stakeholders. Normally all consultations, submissions and comments are made publicly available on TRC’s website. Stakeholders can submit a request for TRC to review any of its decisions or they can appeal these decisions in front of the High Court of Justice (administrative court) but there is no specialised court in the ICT matters in Jordan. TRC has the role of dispute resolution between operators and between consumers and operators. The results of these disputes are published on the TRC website.

Jordan has been a member of World Trade Organisation since 2000, committing it to liberalisation. It is also a signatory to other regional and bilateral agreements including membership of the Arab regulators network –AREGNET, Arab spectrum management group –ASMG, Euro-Mediterranean regulators group – EMERG).

### Regulatory conditions for wired networks

The major wired networks (copper and fibre) belong to the fixed incumbent operator, now owned by Orange. There are also significant fibre networks owned by the other mobile operators connecting their sites, some alternative fibre access operators plus the national electric power company (NEPCO) which has its own fibre backbone. The fixed incumbent operator (Orange) offers several wholesale services to other operators, including wholesale broadband access since 2007. The prices of these services are regulated by TRC based on modern cost modelling. Infrastructure sharing is mandated by TRC regulation. In practice, infrastructure sharing works in new cases (as a cost reduction exercise) but more intervention is required when there is unequal bargaining power between involved parties (e.g. between a new entrant and a larger operator).

According to the operators, the process for obtaining public rights of way in Jordan is reasonable in time and cost. If required, TRC may coordinate with other governmental entities to facilitate obtaining public rights of way. There are two types of licenses – “individual” and “class”. An individual license is granted for those networks or services which require the use of scarce resources (specifically; spectrum, numbering and public rights of way). A class licenses is granted for other types of service. However, the use of some categories of scarce resources (e.g. spectrum for VSAT and fixed Wifi service, dialling codes for carrier selection and pre-selection) are exempted from the individual licence requirement. As a part of a Jordanian–European twining project, the TRC is studying the alignment of the existing licensing regime with a more liberalised general authorisation scheme based on the EU framework.

Carrier selection and pre-selection has been mandated since 2006, but implementation was postponed. The outcome of a TRC market review published recently, stipulated that Orange provide carrier selection/ pre-selection wholesale access for all types of fixed calls. TRC is conducting public consultations on number portability, with decision expected in mid-2012.

Orange still dominates the fixed broadband market. A market review by TRC concluded that local loop unbundling should be mandated on Orange in the wholesale market for access to fixed physical network infrastructure. Cost-related access prices are planned for introduction in 2012.

### Information society safeguards

In Jordan there is a legal framework for electronic documents and signatures and for the protection of personal data (though not a specific law on data protection – such protection is provided by Constitution and the telecommunications law). Electronic signatures are already used within the business community but not yet for consumers or government services.

National information technology centre (NICT) is the only domain name registrar in Jordan for the “.jo” domain.

### Summary and outlook

Jordan has a relatively stable investment environment, with liberalised market access, and gradually improving competitive safeguards. However, there are very high charges to be paid to the regulator and the state through a complex scheme of licensing, revenue sharing and taxation.

The government has already initiated a national broadband network, but with only one third completed, the MoICT has been trying to attract private investors to complete the network and operate it commercially. Cisco, HP, Huawei and Alcatel Lucent have already submitted bids, but in July 2012 the government launched a new tender24, expecting to establishing a consortium of companies to complete the project, including mobile operators and internet service providers.

The market is the most liberalised in the region. Competition is allowed in all sectors of the market and investors are building new, mostly local infrastructures. Fixed wireless investment has provided much of this competition at retail level, but growth appears to have stalled in competition with mobile and copper-based broadband offerings.

Wholesale services are now offered by Orange which should bring more competition, especially outside the urban areas. The quality of broadband services will improve through the recent enhancement of international access capacity. Competition within the mobile market is intense, resulting in much reduced prices. This has led to the highest penetration in the region (120 per 100 population). The launch of competing 3G networks by the existing operators
offers a new revenue growth path centred on mobile broadband, content and applications. The sector regulator has made significant new spectrum available for commercial mobile and fixed services, roughly quadrupling the current capacity released onto the market. This demonstrates a positive approach to investment in growth, especially in broadband services nationally. Chart 4 – Comparison of the overall legal/regulatory risk for telecommunications in Jordan with international practice

Chart 4 - Comparison of the legal and regulatory framework for telecommunications in Jordan with international practice

**Jordan: overall legal/ regulatory risk**

Jordan’s overall legal/regulatory risk scored 70 (100 is the lowest). Jordan has thus been found to be in low risk category.25

Key: Extremities of the chart = International best practice

Note: The diagram shows the combined quality of the legal and regulatory frameworks when benchmarked against international standards and best practice. The extremity of each axis represents an ideal score of 100 per cent, that is, full compliance with international standards. The fuller the “web”, the closer the overall telecommunications regulatory framework of the country approximates these standards.

Source: EBRD 2012 Electronic Communications Comparative Assessment.

Detailed information on the EBRD 2012 Electronic Communications Comparative Assessment
Public procurement

In a nutshell...

Jordan scored 63% (medium compliance) on the quality of its public procurement legal framework. This places Jordan in the lowest quartile compared to other countries in the EBRD region. This low score is because the Public Procurement Law ("PPL") does not allow for an accurate estimation of the procurement process. It allows for domestic preferences, and does not robustly monitor the post-tendering phase. Further, the law incorporates only minimal standards with regard to monitoring and contract management.

Overview

In EBRD’s 2012 assessment of the quality of the public procurement legal framework (law on the books) Jordan scored medium compliance as compared to other countries in the EBRD region.

Public procurement in Jordan is regulated by Procurement Regulation No. 32 of 1993 and the instructions Regulating Tendering Procedures and Participating Conditions No. 1 of 2008 (the PPL). Jordan is not a signatory to the Agreement on Government Procurement of the World Trade Organisation (WTO). However, the country is an observer of the Agreement on Government Procurement, and is currently negotiating accession to the WTO. Although Jordanian PPL is based on the principles of fair competition, with express provisions in the PPL stating that the principle of competition shall be observed, the PPL does allow for domestic preferences. The price preference is calculated according to the preferential differential prices decided by the Cabinet of Ministers. Consequently, this introduces an element of discrimination into the public procurement process and hinders the achievement of fairer competition. Although, in general, the review revealed that the PPL is stable, it does allow, without specifying reasons, the cancellation of the public procurement process provided that the contractor was not notified of the purchase order and the award decision.

Public works and services are governed by the Regulation of Government Works No. 71 of 1986. The review highlighted that certain contracting entities have in place specific regulations for the purpose of regulating their procurement exercises. Such contracting entities would only refer to the PPL if there was a legislative void in the specific regulation being applied.

The review highlighted several strengths regarding the legislative framework. For example, the PPL is based on sound principles that aim to promote competition, equal opportunity, accountability, and stability of the legal framework. In addition, the PPL aims promote accountability through the harmonising of rules undertaken by its regulatory institutions. Moreover, the eligibility rules promote fair competition encouraging participation from micro, small and medium sized enterprises.

However, the review also unearthed numerous weaknesses regarding the legislative framework. For example, effecting the economy of the process the PPL does not allow for an accurate estimation of the duration of any of the procurement phases. In addition, as the PPL allows for domestic preferences this impacts the aim of securing fair competition. Moreover, as there is no dedicated national regulatory agencies or independent national review and remedies mechanism this results in low levels of enforceability achieved. Furthermore, as the PPL does not robustly monitor the post-tendering phase of the procurement process, incorporating only minimal standards with regard to monitoring, contract management, payments, and completion dates, and does not provide sufficient enforcement instruments for private sector suppliers this impacts accountability and economy.

With respect to practice, Jordan scored 78.6% (high compliance) for the general quality of local public procurement practice. This is further detailed below.
Charter 5 presents the implementation gaps for the quality of Jordanian laws and local procurement practice against the Core Principles benchmark indicators. The assessment revealed some inconsistencies and opportunities for improvement between the legislative framework and local procurement practice. The assessment highlighted a performance gap (29%) regarding transparency. In most cases, the law in practice achieved higher scores than the law on the books. Accordingly, the identified gaps between the law and practice concerning accountability, enforceability, flexibility, stability, uniformity, proportionality, efficiency, economy, and transparency indicators reflect that contracting entities have developed internal rules to supplement the PPL regarding the specificity of their activity, and contracting entities have tried to develop standards that are better aligned with international practice in the aim of encouraging inward investment.

**Legislative framework**

Although the review highlighted that the Jordanian PPL regulates the three phases of the public procurement process: pre-tendering, tendering, and post-tendering, the PPL does not cover the post-tendering phase as robustly as the pre-tendering and tendering phases. For example, the PPL incorporates only minimal standards with regard to monitoring, contract management, payments, and completion dates. In the case of underperformance or late completion by a contractor, the contracting entity can impose penalties, seek damages, terminate the contract, or perform the contract at the expense of the contractor.

The PPL is applicable to all of the public entities whose budget is listed in the General Budget. The General Budget describes the detailed approach of the government of Jordan from the fiscal aspect or the estimate of revenues and expenditure for an upcoming fiscal year. The General Budget department proposes the allocation required for the...
implementation of the general policy through examining all programs and projects for which allocations are requested in order to verify their feasibility, the public entities that do not have specific regulations for public procurement, and any other public entity that the Cabinet of Ministers decides to apply the provisions of the PPL.

At present, implementing, supervising, and accounting for public works and services are not regulated under the PPL, but governed by the Regulation of Government Works No. 71 of 1986. In addition, there is no law that governs concessions. In Jordan, the legal basis for granting a concession is Article 114 of the Constitution. Granting a concession is sector dependent, and will be guided by the respective laws regulating the sector in question. For example, in some sectors such as aviation, Article 18 of the Aviation Law No. 41 of 2007 published on page 3735 of the Official Gazette No. 4828 dated 31/5/2007 the relevant authority may publish the procurement notice. In other sectors such as mining, Article 42 of the Regulating Natural Resources Affairs No. 12 of 1968 published on page 229 of the Official Gazette No. 2076 dated 15/2/1968 the relevant authority may grant a mining right pursuant to its own discretion subject to the eligibility of the applicant. Public Private Partnerships (PPP) and privatisation projects.

Privatisation projects explicitly refer to projects such as Build Operate Transfer (BOT), Build Own Operate Transfer (BOOT) and Build Own Operate (BOO) etc. and are mainly regulated by the Privatisation Law No. 25 of 2000.

The Jordanian PPL provides to a certain extent for a decentralized public procurement function. Such a decentralized function depends on the estimated purchase or the intended purpose of the procurement. The PPL provides for the creation of three committees which include: Centralized Tendering Committee (CTC) - the general body responsible for executing the duties and powers stipulated in the PPL; the Local Tendering Committee (LTC) - responsible for purchasing the supplies required by the public entity in which it is created, provided that the value of such supplies does not exceed twenty thousand Jordanian Dinars; and, the Special Tendering Committee (STC) - created by the Cabinet of Ministers pursuant to the recommendation of the relevant minister and the Finance Minister to purchase supplies for a specific project of a considerable size, or for a project that is being financed by the government, or foreign committee. Nevertheless, a representative of the PPD shall always be a member of the LTC and the STC. In addition, the AB monitors the public procurement process, regardless of the committee carrying out the process.

Jordanian PPL on average scored medium compliance against the EBRD Core Principles benchmark. This is further demonstrated in Chart 6.

Chart 6 - Quality of public procurement legal framework in Jordan
Note: The chart shows the score for the extensiveness of the national public procurement laws. The scores have been calculated on the basis of a questionnaire on legislation that is developed from the EBRD Core Principles for an Efficient Public Procurement Framework. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each Core Principles benchmark indicator. The bigger the “web” the higher the quality of legislation.
Source: EBRD 2012 Public Procurement Assessment

Chart 6 presents the results for the quality of the public procurement legal framework. The PPL scored above 75% (high compliance) for the competition, uniformity and stability indicators, and above 60% (medium compliance) for the accountability, integrity, economy, transparency, and efficiency indicators. In addition, scoring below 50% (low compliance) were the enforceability, flexibility and proportionality indicators. Although benefiting from good accountability procedures, the PPL does not provide sufficient enforcement instruments for private sector suppliers. Moreover, the assessment also highlighted that the PPL was inflexible as it scored very low compliance with the EBRD benchmark. Such a low score can be traced to a couple of factors. First, tenderers cannot make adjustments to their bids during the procurement process. Secondly, although there are not many, there is a lack of flexibility in terms of the timescales specified For example, the deadline for the submission of offers cannot be extended, unless more than one tenderer has requested and extension and the relevant personnel was convinced of the seriousness of such a request, or if the relevant personnel deemed such an extenuation necessary.

Institutional framework on the books

The Jordanian public procurement institutional framework is not complicated, and includes a number of institutions involved in public procurement regulation. With the exception of committees, the members of Jordanian regulatory institutions are independent, but all perform their duties to support the public procurement function. The committees are ad hoc institutions with their members appointed on a part-time basis, performing their duties in parallel with the duties of the institutions they represent. These include:

Public Procurement Department

The Public Procurement Department (the PPD) is the main public procurement regulatory office responsible for the harmonisation of rules, purchasing and managing the procured supplies, and monitoring the compliance of contracting entities. In addition, the PPD is responsible for reviewing challenges related to public procurement. The PPD is also responsible for conducting the relevant studies related to improving the public procurement process. The PPD is the authority entitled to execute supply agreements between Jordan and any other international authority. The PPD takes instructions and reports to the Ministry of Finance (MoF).

Tendering Committee

The Tendering Committee (TC) is either formed in the PPD, in which case it is called the Central Tendering Committee, or in the contracting entity itself in which case it is referred to as the Local Tendering Committee. In both cases, the TC is responsible for, inter alia, appraising need, publishing notices, reviewing tenders, awarding contracts, and examining complaints. In some instances there is a specific TC that is created by the Cabinet of Ministers pursuant to the recommendation of the MoF. The Specific Tendering Committee is responsible for the purchase of supplies for specific projects, or for a project that is being financed by the government or a foreign committee.

The Receiving Committee

The Receiving Committee (RC) is the committee which takes delivery of supplies and it is either formed in the PPD or the contracting entity itself. The RC ensures the conformity of the supplies with the required specifications, and the preparation of reports of receipt in which it clarifies whether the supplies were accepted or rejected.

General Budget Department

The General Budget Department (GBD) is responsible for approving the purchase of supplies that exceed the value of ten thousand Jordanian Dinars. The GBD reports to the MoF.

Audit Bureau

The Audit Bureau (AB), which reports to the Lower House. The Jordanian Parliament consists of the Upper House and the Lower House. The Upper House has 60 Senators, all of whom are appointed by the King, while the Lower House has 120 elected members. Members of the Lower House are entitled to certain rights such as questioning the government on any public issue. Accordingly, reports submitted by the AB may constitute basis for questioning the government for certain expenditures, is the central independent authority responsible for reviewing the accounts of each public entity. While the AB is represented on tender committees by auditors who observe the process, its role is not clear with regards to public procurement. However, the AB undertakes its public procurement function as part of its general audit review.

In the review the Jordanian public procurement institutional framework scored medium compliance.
Chart 7 - Quality of public procurement legal and institutional framework in Jordan

Note: The chart shows the assessment scores for four key institutional factors of the public procurement system: uniformity, stability, flexibility in application, and enforcement indicators. Total scores are presented as a percentage, with 100 per cent (quarter of the pie chart) representing the maximum score for each benchmarked area. A regulatory gap (a difference between the scores for quality of law “on the books” and the assessment benchmark which illustrates a scope for improvement in each assessed area) is marked in light blue, light orange, light red and light grey respectively.

Source: EBRD 2011 Public Procurement Assessment

Chart 7 presents the assessment results for the quality of the Jordanian public procurement regulatory and institutional framework, benchmarked against EBRD Core Principles for institutional and enforcement measures. On average the institutional framework scored medium compliance (62.5) against the EBRD Core Principles benchmark. Whereas, the indicators for uniformity (70%) and stability (77.5%) scored high and very high compliance, the flexibility (55%) and enforceability (47.5%) indicators scored low and very low compliance respectively. The legislative gap in the enforceability indicator is because the PPL does not provide sufficient enforcement instruments, for example monitoring and contract management, for private sector suppliers. Whereas the legislative gap in the flexibility indicator is because tenderers are only allowed to amend their offer prior to the lapse of the deadline determined for the submission of the tender.

Legal framework as implemented in practice

The local practice survey revealed that Jordanian PPL is clear, comprehensive, and promotes fair competition. In several instances, the PPL is supplemented by internal procurement rules and instructions that are followed by procurement officers. These internal rules and instructions are enacted in compliance with the law and provide procurement officers with specific guidelines regarding the public procurement process. For example, such internal instructions set specific timelines for the procurement process and enables procurement officers to understand their duties.
These procurement rules and instructions are updated regularly, but are not publicly available to tenderers. In addition the survey revealed that the PPL does not apply to all contracting entities, as some contracting entities have their own entity specific procurement regulations. For example, the procurement of supplies and works for Jordan Enterprise Development Corporation (JEDCO) is governed by the Regulations for Procuring Works and Supplies for JEDCO No. 131 of 2009. However, these regulations refer to the PPL in instances that are not covered pursuant to the provisions found therein. The decision to update these specific regulations is Government led and is undertaken every 5 to 7 years. Regardless of the applicable law, internal roles in the procurement process are clearly allocated.

The local practice survey revealed that contracting entities applying the PPL provide training for their public procurement officers regarding their roles, rights, and obligations in the public procurement processes. This is in line with the duties of the PPD under the PPL, whereby it is responsible for cooperating with contracting entities to conduct professional development workshops and seminars for procurement officers. However, the survey also revealed that contracting entities applying specific regulations do not provide regular training to public procurement officers. Moreover, the survey revealed that contracting entities have in place a code of ethics which is strictly observed by procurement staff.

On average Jordan scored 78.6% (high compliance) for the general quality of local public procurement practice.

Chart 8 - Quality of local procurement practice in Jordan

Chart 7: Jordan - Quality of local procurement practice

Note: The chart shows the score for the quality (effectiveness) of local public procurement practice in Jordan. The scores have been calculated on the basis of questionnaires on practice, developed from the EBRD Core Principles for an Efficient Public Procurement Framework and answered by local contracting entities. Total scores are presented as a percentage, with 100 per cent representing the optimal score for each Core Principles benchmark indicator.

Source: EBRD 2011 Public Procurement Assessment

Chart 10 presents the scores for the quality of local public procurement practice. The survey revealed that local procurement practice scored between 76% and 100% (high to very high compliance) with the Core Principles benchmark, except for the transparency and proportionality indicators which scored below 76% (medium compliance), and the integrity indicator which scored below 59% (low compliance). The score for the integrity indicator could be explained by the fact that communication between contracting entities and tenderers is rigid since contracting entities currently do not utilize electronic means of communication.

Institutional framework in practice

With the exception of committees, the members of Jordanian regulatory institutions are independent, but perform their duties to support the public procurement function. The committees are ad hoc institutions with their members appointed on a part-time basis, performing their duties in parallel with the duties of the institutions they represent.

Public Procurement Department

The PPD is the primary regulatory office for procurement functions. It is responsible for formulating and executing the public policy for
procurement and purchasing, and maintaining and managing procured supplies. In cases where the contracting entity has its own procurement regulations in place, the PPD's role is supplementary. In such cases the contracting entity will request the involvement of the PPD.

General Budget Department

The GBD is approached by the TC responsible for the purchase if the value of the supplies exceeds ten thousand Jordanian Dinars. The GBD appraises and approves or disapproves the purchase. Contracting entities with specific regulations for procurement are not required to approach the GBD. However, such entities may not purchase any supplies nor enter into any contracts for the extension of service, unless a financial provision by the contracting entity was made.

Administrative Department

The Administrative Department (AD) or any department under a different name with an equivalent function is a department within a contracting entity which does not apply the PPL, but rather applies their own specific regulations for procurement. The AD forms a unit of the organizational structure of the contracting entity itself and is the functional equivalent of the PPD. The AD is mainly responsible for putting in place the necessary plans to manage the procured supplies, providing the contracting entity with the supplies it requires, publishing tenders and keeping records, conducting studies to develop the management of procured supplies, and providing supplier management consultancy services to other departments.

Tendering Committee

The TC is either formed in the PPD or in the contracting entity, and is responsible for appraising and reviewing the tenders, awarding the contracts, examining complaints.

Receiving Committee

The RC is the committee which takes delivery of the supplies and it is either formed in the PPD or the contracting entity and is responsible for preparing a report of receipt in which it clarifies if the supplies were accepted or rejected. Such reports are used to evidence the receipt or rejection of the procured supplies.

Audit Bureau

Reporting to the Lower House, the AB is the central independent authority responsible for reviewing the accounts of each contracting entity. While the AB is represented on the TC by auditors who observe the process, its role is not clearly illustrated with regards to public procurement. However, the AB undertakes its public procurement function as part of its general audit review.

Eligibility rules

General eligibility rules provided by law and fixed in the tender documents are adhered to by the contracting entities. In practice, if any of the grounds for exclusion were observed. The grounds for exclusion are described in section (d) Part I then the TC may eliminate the bidder from the process. If there were no grounds for exclusion then the qualification to perform the contract is determined solely on the basis of the qualification criteria stated in the tender documents. Moreover, financial information is routinely requested to assess a tenderer capacity to perform. In practice, the tender evaluation aims to identify the most economically advantageous responsive tender.

Efficiency of the procurement process regulatory framework in practice

Jordanian PPL does not prescribe specific deadlines for completion of the procurement process. The survey revealed that the typical length of the process to sign a public contract for goods with a value greater than 250,000 Euros and public contract for works with a value greater than 500,000 Euros is 2 months. Moreover, the survey revealed that public contracts are generally completed on schedule confirming the efficiency of the public procurement process in practice during the post-tendering phase.

Contracting entities comply with the PPL and conduct the public procurement process impartially, predictably and with integrity. Public procurement plans in practice are prepared in sufficient detail to ensure the project definition, adequate selection methods, completion schedules and accurate cost estimate are undertaken. Contracting entities have in place procedures for planning the procurement of recurrent contracts through inventory control, and the forecasting of future purchase needs. The survey revealed that contracting entities use for the purpose of simplifying, standardizing and enhancing the efficiency of the public procurement process standard tender documents for goods, works, and services contracts.

Contract administration is mandatory for public contracts. Contracting entities hold records on their contract administration, and establish appropriate procedures to monitor the delivery of goods and services to verify quantity, quality and timeliness. During the tendering phase negotiation between the contacting entity and the bidder concerning the terms and conditions of the contract documents is not allowed. Moreover, during the post tendering phase any modifications or waiver of the terms and conditions of a signed contract must be submitted to a review and approval procedure.
Priorities for reform

The survey highlighted several opportunities for reform. For example, to increase the levels of accountability, integrity and transparency achieved all procurement activity should be conducted electronically promoting speed of the procedure and cost of participation. In addition, to achieve integrity and efficiency contracting entities should provide procurement officers with recognised training leading to professional qualifications promoting simplicity and certainty. Moreover, to increase enforceability dedicated national regulatory agencies implementing independent review and remedies mechanisms should be created which in turn will aid certainty.

Detailed assessment of public procurement processes in Jordanian legislation and practice
PRIVATE SECTOR DEVELOPMENT

Corporate governance

In a nutshell...
The EBRD’s 2011 assessment revealed that Jordanian corporate governance framework is in “low compliance” with the international standards.
The law does not set an efficient interaction between the company and its stakeholders who stand outside the company’s decision making process. Equally, equitable treatment of shareholders needs to be promoted and basic shareholder rights enhanced. Shareholders attempting legal actions encounter tremendous difficulties to obtain redress for the violation of their rights.
The legal framework governing corporate governance in Jordan should be revised to achieve greater compliance in law and practice with the OECD Principles.

Overview

The Jordanian corporate governance framework shows strengths and weaknesses despite the major legal and institutional reform undertaken over the last decade. In Jordan, some discrepancies exist between the law on the books and practices of the companies.

The 2002 amendment to the Jordan Companies Law26 introduced the private shareholding company as a new legal form for commercial companies allowing for greater flexibility in the management practices. This type of company is now the most widely used in Jordan.

In the same year, the Securities Law27 restructured the Amman Financial Market (established in 1978) into three governmental bodies: the Amman Stock Exchange (ASE); the Securities Depository Centre (SDC); and the Jordan Securities Commission (JSC).

The Securities Depository Centre oversees the registration and safekeeping of securities, the transfer of ownership and the clearance and settlement of securities transaction.

The Jordan Securities Commission is the market regulator in Jordan in charge for the securities markets.

The Amman Stock Exchange is the only stock exchange in Jordan. In accordance with latest data made available by the Federation of Euro-Asian Stock Exchanges (FEAS)28 and the ASE29, 243 Jordanian companies are listed on ASE, with a market capitalization of USD 25,697 million in July 2013 and an annual trading value of shares estimated to USD 1,979 million in 2012.

In 2003, the Companies Control Department (CCD) has been established as administratively and financially autonomous body under the supervisory of the Ministry of Industry. The CCD plays an essential role in enforcing basic corporate governance provisions of the Companies Law. It has wide information and recourse rights. The Controller, who is a representative of the CCD, is present at general shareholder meetings, and can dissolve a company’s board or revoke its registration.

In 2010, the CCD issued the “Corporate Governance Code for Shareholding Companies Listed on the Amman Stock Exchange”30. In 2012, a new “Jordanian Corporate Governance Code for Private Shareholding Companies, Limited Liability Companies, Non Listed Public Shareholding Companies” was issued31. Both codes refer to the OECD Principles of Corporate Governance32 and are to be implemented under the so-called “comply-or-explain” approach pursuant to which, companies are required to comply with the code and, in case of divergence, explain the reasons for non-compliance. However, because both codes are voluntary and not linked to any statutory provision, their implementation is quite low.

Specialized commercial courts do not exist in Jordan. The lack of judge specialization and special procedures to deal with commercial matters have made judicial proceeding more time consuming and unsuitable for proper dispute resolution. Arbitration is available as a mean of resolution of commercial disputes in Jordan in accordance with the arbitration law No. 31 of 2001. Arbitral awards are binding and enforceable.

Legislative and Institutional framework

The principal acts governing corporate governance in Jordan are the Companies Law33 and the Securities Law34. The Companies Law details the rules governing the companies’ formation, the rights of shareholders, the role of stakeholders and the rules of disclosure and transparency. The Securities Law regulates the capital market and provides the framework and supervision of ASE, SDC and market intermediaries.

Corporate governance of banks is detailed in Bank Directors Handbook of Corporate Governance issued in 2004 by the Central Bank of Jordan (CBJ). In 2007, the CBJ also enacted the Corporate
Governance Code which requires banks to use it as a model for their own codes

Public Shareholding Companies (PSC) are the dominant legal form for large and listed companies. Private Shareholding Companies (PrSCs) have been created in 2002, as an alternative type of joint stock company.

The Jordan Securities Commission is the market regulator in Jordan. It can issue instructions on matters of its competence (e.g., on companies’ disclosure, accounting and auditing standards, issuance and registration of securities). According to the Companies Law and the Directives of Disclosures, Auditing, and Accounting Standards of 2004, all entities subject to JSC’s supervision are required to apply International Financial Reporting Standards (IFRS).

In 2011, the EBRD undertook an assessment of the quality of the corporate governance legal framework and found Jordan in “low compliance” with the OECD Principles.

Chart 11: Quality of corporate governance framework in Jordan

Source: EBRD Corporate Governance Assessment 2012. Note: the extremity of each axis represents an ideal score, that is, legislation fully in line with the OECD Principles of Corporate Governance; the fuller the ‘web’, the better the quality of the legislative framework.

As shown in Chart 11, above, the national legal framework is weak especially on the “role of stakeholders” and “equitable treatment of shareholders”. This essentially derives from the fact that stakeholders have no access to relevant information and minority and foreign shareholders do not enjoy equal treatment and might find it difficult to obtain redress for violation of their rights. Further, shareholders do not have automatic pre-emptive rights on newly issued shares, while the decision of some fundamental issues – as the disposal of significant assets – are left to the board and do not require shareholders’ approval.

The results of the corporate governance assessment are further detailed in the following sections corresponding to six OECD Corporate Governance Principles:

Ensuring the basis of an effective corporate governance framework

A corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulates the division of responsibilities among different supervisory, regulatory and enforcement authorities. The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets. The legal and regulatory requirements that affect corporate governance practices should be consistent with the rule of law, transparent and enforceable.
In Jordan, the law making process is not entirely transparent. On-going consultation between regulatory authorities, the public and corporations regarding the development of corporate governance laws and the decision making process are not publicly available. The failure to publicly explain the decision making process used in the development of corporate governance laws prevent market participants to understand the rationales behind the corporate governance requirements. Further, there is no requirement to subject new legislation to Regulatory Impact Analysis so to understand the effect of the new regulations being developed.

The OECD Principles recommend that supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfil their duties in a professional and objective manner and their rulings should be timely, transparent and fully explained.

In Jordan, regulatory agencies are not obliged to provide explanation for their decisions. Furthermore courts’ ruling are not always available to the public. The establishment of specialized commercial court will be a step forward to an efficient system of commercial dispute resolution. The establishment of these courts would result of a better confidence in the means of remedies available for investments. Moreover, courts’ ruling should be made sufficiently available to the public, as we believe that transparent ruling will serve to discipline market participants and promote accountability.

Shareholders rights
A sound corporate governance framework should protect shareholders’ rights. Basic shareholders’ rights include the right to secure methods of ownership registration, convey or transfer shares, obtain relevant information on the corporation on a timely and regular basis, participate and vote in general shareholder meetings, elect members of the board, and share in the profits of the corporation.

In Jordan, the law entrusts shareholders with the right of ownership registration. The registration records are maintained at the companies’ level, but the responsibility for keeping shareholder records of Public Shareholding Companies rests with the SDC. This ensures shareholders an “independent” ownership registration system

Listed shares are freely transferrable except for the founders’ shares which cannot be transferred for a period of 2 years following the registration of the company. Because board members must be shareholders, shares required for board eligibility cannot be disposed for the time when the shareholder is member of the board and for a period of 6 months thereafter. Foreigners cannot own more than 50% of the capital of companies working in certain sectors. Shareholders have the right to obtain information from the company’s register. However, the law does not provide any sanction in case information are not provided by the company in due time.

In line with good international practices, the Jordanian law grants shareholders the right to participate at the general shareholders’ meeting, appoint members of the board and share the company’s profits.

The financial statements of Limited Liability Companies, Public Shareholding Companies and Private Shareholding Companies are required to be audit by an external auditor appointed by the general meeting of shareholders. The audit report should be included with the financial statement to the annual report for shareholders’ approval.

However, the Jordanian law does not vest the shareholders’ meeting with the power to request additional information regarding the auditor’s report.

The OECD Principles recommend shareholders to have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as amendments to the statutes, or articles of incorporation or similar governing documents of the company; the authorisation of additional shares; and extraordinary transactions that result in the sale of the company.

In Jordan, fundamental company’s decisions such as the modification of the company’s bylaws, approval of mergers, change in capital, dismiss directors, liquidation are taken by the Extraordinary General Meeting (EGM) with a majority of 75% of those presents. However, significant transactions of less than 100% of the company’s assets do not require the approval of the shareholders general meeting.

A major weakness in Jordanian law is the lack of preemptive rights for newly issued shares, which is a mechanism to protect shareholders from dilution.

The OECD Principles also suggest that shareholders should have the opportunity to participate effectively and vote at the general shareholders’ meetings and should be informed of the rules, including voting procedures that govern the general shareholders’ meeting. Shareholders should be provided with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting.

In Jordan, the minimum notice period for the company’s general meeting is 14 days which might not be sufficient to ensure an appropriate informed participation by shareholders. The law requires the notification to be sent to shareholders by regular mail. In addition the general shareholders’ meeting’s date must be published in two local newspapers.
A detailed summary of the annual report and the annual accounts are published within 30 days of the Company General Assembly.

Shareholders representing at least 25% of the subscribed shares of a Public Shareholding Company can request an extraordinary general meeting. The Companies Control Department at the Ministry of Industry may, upon the request of shareholders representing at least 15% of the subscribed shares of a Public Shareholding Company, request an extraordinary shareholders meeting. This threshold is relatively high compared to other SEMED countries as Egypt (10%) and Tunisia (5%).

Shareholders can vote by proxies. Power of attorney given to any third party (other than shareholder) must be notarized. Voting by post is not allowed.

Shareholders representing 10% of the total shares represented at the meeting can request to have an additional item placed on the general meeting’s agenda. While on one hand this provision can allow minority to ask the general shareholders’ meeting to vote on specific issues, we think that this authority should be granted well before the meeting so to allow all shareholders’ to understand what are the issues being discussed at the meeting and, in case, be able to express their voting.

Practitioners have highlighted how controversial items are often hidden in the agenda as “other issues”. This practice seems to cause abuses as important issues are submitted to decision by the general shareholders’ meeting without being clearly identified in the agenda published on newspapers and sent to shareholders.

The law does not expressly grant shareholder the right to submit questions in advance of a shareholders’ meeting.

Against the OECD Principles, which recommend that disclosure of capital structures and arrangements that enable certain shareholders to obtain degree of control disproportionate to their equity ownership, Jordanian law does not require shareholders to disclose shareholder agreements.

The equitable treatment of shareholders

The OECD Principle requires that the corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

In Jordan, shareholders have the right to start a legal action in case of breach of their rights granted by law and have the right to request to court to allow them to examine non-published corporate information. Furthermore, shareholders holding at least 15% of the capital can request the Companies Control Department at the Ministry of Industry to audit the company. The CCD is vested with large investigative powers and can remove directors and bring a case before a court if breaches are found. However, legal actions are generally cumbersome with heavy burden of proof especially when against the board, as board duties and responsibilities are not precisely defined in the law. In addition, courts are not specialized and quite slow when ruling on commercial matters.

The Companies’ law prohibits related party transactions and includes in the definition directors, the general manager or any other employees, and the company, including indirect participation, such as controlling and controlled companies, but excluding family members. Transactions between affiliated firms, controlled by the same family are frequent.

Companies complying with the IFRS are required to disclose related party transactions in line with IAS 24.40

Even though not provided in the law, the board approval is usually required for related parties’ transaction in practice.

The Companies Law transposes the principle “one share-one vote” There are no different classes of shares and all shares of companies incorporated in Jordan, including Public Shareholding, are the same and provides for equivalent rights.

Furthermore, the Jordanian law mandates that general shareholders’ meeting must be held in Jordan. These meeting can take place outside the company’s headquarter.

The role of stakeholders

The corporate governance framework should recognise the rights of stakeholders and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises. The rights of stakeholders that are established by law or through mutual agreements are to be respected. Where stakeholders’ interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

The Jordanian law falls short of providing clear provisions on safety at work for employees, protection of suppliers and creditors as stakeholders, and protection of the environment. The law does not seem to incorporate effective and easily workable remedies for violation of the rights of employees, suppliers, creditors and environmental issues as well.

The OECD Principles recommend that the corporate governance framework should permit performance-enhancing mechanisms for stakeholders to develop and that stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about
illegal or unethical practices to the board and their
rights should not be compromised for doing this.

In Jordan, the law permits employee stock ownership
plans or other profit sharing mechanism. However,
employee representation at the board and creditors
involvement in the decision making process in the
context of insolvency proceeding are not required.
Employees and other shareholders that file
complaints regarding unethical or illegal practices by
corporate officers are not protected under the law.
Companies are not required to disclose key issues
relevant to employees and stakeholders, such as
management-employee relations and relations with
creditors, suppliers and local communities, that may
materially affect the performance of the company.

Disclosure and transparency

The V OECD Principles recommend the corporate
governance framework to ensure that timely and
accurate disclosure is made on all material matters
regarding the corporation, including the financial
situation, performance, ownership, and governance
of the company. Timely and accurate disclosure
allows all potential investors and market participants
to review publicly available information based on
which investment decisions are made. Disclosure
should include, but not be limited to, material
information on the financial and operating results of
the company, company objectives, major share
ownership and voting rights, members of the board
and key executives, and their remuneration, material
foreseeable risk factors, material issues regarding
employees and other stakeholders, governance
structures and policies.

In Jordan, financial and non-financial disclosure has
improved over the last few years but they are still
struggling to meet the best international standards.

Financial Disclosure

Jordanian accounting and auditing system is
relatively consistent with international standards.
Shareholding companies are required by law to
prepare an annual report including audited financial
statements and quarterly financial reports for listed
companies. Copies of the audited financial
statements must be sent to the Companies Control
Department at the Ministry of Industry at least 21
days prior to the date set for the meeting of the
GSM. Holding companies must prepare at the end
of each fiscal year consolidated financial statements,
in accordance with the internationally recognized
accounting and auditing principles. Pursuant to the
Jordanian law, the board of directors must state in
the annual report that financial statements are its
responsibility.

Public Shareholding Companies are required to
inform JSC and publicly announce the occurrence of
any events that could affect the company’s
profitability, financial status, or share price. In
practice, material facts disclosure is limited to a
narrow set of major events.

Non-financial disclosure

Jordanian companies must publish their annual
accounts and detailed summary of the annual report
within 30 days of the AGM. Jordanian banks should
publish a corporate governance report.

Audited annual accounts include directors’
discussion of activities and plans for the following
year, balance sheet, profit and loss account, cash
flow statement, and notes. The annual report
contains a management discussion and analysis
section.

Companies must place for inspection at
headquarters 3 days prior to the General Assembly, a
report containing director compensation and benefit,
a list of company donations and their recipients, the
names of directors, number of shares held and
duration of their mandate. The board of director is
liable for the accuracy of the information disclosed.
Among the major shortcomings found in this section,
it is worth noting that the lack of requirement to
make available for inspection by shareholders any
report of an independent evaluation expert prepared
in connection with a shareholders’ meeting and the
minutes of each shareholder meeting. The law does
not grant third parties the right to be provided with
annual report upon request. The annual reports of
listed companies are published on the web.

With regard to material issues related to employees
and other stakeholders, the Jordanian law does not
require the company to disclose information which
can materially affect the performance of the
company such as the management-employee
relations and relations with creditors’ suppliers and
local communities. Exception is made for listed
companies which are required to disclose employees
and environmental policies in their annual reports.

Under the JSC Directives of Disclosure and Auditing
and Accounting Standards of 2004, listed companies
are required to include the board of directors’ report
in their annual report. The board of directors’ report
shall contain many elements such as a description of
the company’s main activities, with their respective
geographical locations, size of capital investment,
the names of the company’s larger shareholders and
the number of shares owned by each of them where
such constitutes (5 per cent) or more in comparisons
with the previous year.

The responsibility of the board

The VI OECD Principle requires the corporate
governance framework to ensure the strategic
guidance of the company, the effective monitoring of
management by the board, and the board’s
accountability to the company and the shareholders.
Board members should act on a fully informed basis,
in good faith, with due diligence and care, and in the best interest of the company and the shareholders

Public Shareholding Companies are administered under one-tier system with the board of directors comprising up to 13 members who must all be shareholders of the company. Each company can select its own specific requirement as regards to the number of shares for board’s eligibility.

This shares’ ownership requirement is against best practices of corporate governance which plead for the appointment of independent directors based on their technical and professional expertise.

In accordance with the corporate governance of banks in Jordan, the Board should have at least three independent, non-executives, Directors. Pursuant to this code, “an ‘independent’ Director (whether natural person or representing legal entity) is one whose directorship constitutes his only connection to the Bank, and whose judgement is therefore unlikely to be influenced by external considerations”. Furthermore, the removal of directors from the board requires the majority of 75% of the share capital present at the meeting which prevent establishing a better accountability for wrongful acts.

Future reforms should consider removing the share ownership requirement in order to encourage independent technical and professional expertise on boards.

Boards of Jordanian companies are controlled by dominating families in contrast with sound principle of distinction between ownership and boards’ membership.

According to OECD Principles, the board should treat all shareholders equally and fairly. In Jordan, the board is legally required to act in the best interest of the company and its shareholders, according to a very general duty of care obligation provided under the Jordanian Civil Code. The Jordanian law provides for shareholders to bring actions in the name of the company against the board. In discharging their duties, board members have personal liability for breaches of the law, the company’s bylaws, company default, negligence, for disclosing insider information, for position abuse and fraud while they are in office. In particular, executives who sign the annual report and prospectus are personally liable for the correctness of information herein included. However, the General Meeting can discharge the board from accountability for some actions such as the Violation of Company By-laws.

This discharge cannot be granted before the presentation of the Company annual accounts and auditors’ report to the Assembly.

Moreover, the discharge of responsibility shall only include issues which the General Assembly was able to verify.

Future reforms should consider defining more precisely the fiduciary duties of directors. The notion of a business judgment rule could be introduced to protect board members from being held liable for good faith business decisions. The annual shareholders meeting of shareholders should not be able to discharge the board from liability.

According to the OECD Principles, the board should fulfil certain key functions, including (1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance and overseeing major capital expenditures, acquisitions and divestitures; (2) Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning; (3) Reviewing key executive and board remunerations, and ensuring a formal and transparent board nomination process; (4) Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related-party transactions; (5) Ensuring the integrity of the corporation’s accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law; (6) Monitoring the effectiveness of the governance practices under which it operates and making changes as needed; (7) Overseeing the process of disclosure and communications.

Under Jordanian law, the responsibilities of the board include the functions indicated above, however, the law does not provide for formal and transparent nomination process for board members and boards do not have responsibility for monitoring corporate governance practices.

The board should be able to exercise objective judgment on corporate affairs. Boards of listed companies and of other public interest companies (e.g., banks) should be required to include a sufficient number of independent non-executive board members capable of exercising independent judgement on those issues potential for conflict of interest (e.g., validation of financial reporting, external auditors’ nomination and remuneration, review of the internal control system). Moreover, board members should devote sufficient time to their responsibilities. Instead, Except in corporate governance code, the Jordanian law does not contain any definition or reference to board independence. The board of most companies lacks independence from controlling shareholders and from management. Directors can hold up to three board
directorships as natural person and three board
directorships as representative of a legal entity with a
maximum of five boards in total.\textsuperscript{50}

A legal entity can be a member of the board. In event
of its election it shall name a natural person to
represent it in the Board of Directors within ten days
of the date of its election.

Listed companies are required to have an audit
committee which must be made of at least three
non-executive members of the board. The audit
committee is not uncommon for unlisted companies
in Jordan. The board is not required by law to have
other committees for dealing with executive, board
remuneration and board nominations and corporate
governance to oversee compliance with company
governance standards. Future reforms must address
the concept of “independent directors” in the law.

**Highlights of corporate governance in practise**

A review of the corporate governance framework
should be challenged by an assessment of its
effectiveness in practice. Charts 12 and 13 below
illustrate the results of an assessment of the
effectiveness of corporate governance rules (i.e., how
corporate governance rules work in practice), based
on a case study dealing with related party
transactions. The effectiveness of corporate
governance legislation was assessed by the EBRD in
2011-12.

**Chart 12- How corporate governance framework works in practice in Jordan**

Source: EBRD

Note: The chart reflects disclosure, redress and the institutional environment in Jordan. Disclosure refers to a minority
shareholder’s ability to obtain information about their company. Redress refers to the remedies available to minority shareholders whose
rights have been breached. Institutional environment refers to the capacity of a country’s legal framework to effectively implement and
enforce corporate governance legislation. Costs refer to the estimated expenses a minority shareholder must pay to take legal action.

A general reform priority for Jordan is to improve
effective implementation and enforcement of its
existing legislation.

The case study investigated both the position of a
minority shareholder seeking to access corporate
information in order to understand if a related party
transaction had been entered into by the company,
and how to obtain compensation in cases where
damage was suffered. Effectiveness of legislation
was then measured according to four principal
variables: complexity, speed, enforceability and
institutional environment (See Chart 12 above).

The survey revealed few actions available to minority
shareholders to obtain disclosure and redress but
procedures were seen as complex. When considering
enforceability, the procedure can be difficult and
cumbersome. The cost of legal action is considered
as high in a very time consuming procedure. These
negative characteristics could be dissuasive and
prevent shareholders to obtain a proper redress in
case of violation of their rights.
Insolvency

In a nutshell...

There is no single, unified insolvency law in Jordan. Instead insolvency-related legislation is found in two sources: the Commercial Code and the Companies Code. The insolvency law framework is liquidation-focused and offers limited opportunities for business reorganisation within an insolvency context. In particular there is no possibility of including secured creditors in a compromise or settlement procedure without their consent. Secured creditors rank behind taxes and amounts owed to employees in any liquidation of legal entities.

Introduction and overview

This section provides an overview of the insolvency framework and proceedings in Jordan.

Unlike other EBRD countries of operations, Jordan has no specific insolvency law. Insolvency provisions are found in Book V of the Commercial Code No. 12 of 1966, which governs pre-bankruptcy proceedings and bankruptcy proceedings and the Companies' Code51, which contains additional provisions regarding the liquidation of incorporated entities. Book V of the Commercial Code applies to the bankruptcy of traders (defined as persons carrying out commercial activities for a professional purpose) and companies whose corporate purpose is to perform commercial activities52. The Commercial Code defines bankruptcy as failure by a trader to pay its commercial debts or when a trader upholds financial confidence in its business through fraudulent means. Nevertheless, the provisions contained within the Commercial Code, as drafted, are more appropriate for the insolvency of individual or sole traders, rather than corporates.

The Commercial Code provides for two possible ‘in court’ settlement mechanisms: (i) the pre-bankruptcy compromise procedure, which can be requested by a trader who has not been declared bankrupt, and (ii) the post-bankruptcy compromise procedure, referred to as “simple reconciliation”, which is available to a trader who has been declared bankrupt. Further details on both compromise procedures are set out below.

The Jordanian Companies’ Code contains additional provisions regarding the winding up of companies incorporated under the form of partnerships, limited liability companies, private shareholding companies or public shareholding companies. These set out the rules governing forced (or insolvent) liquidations and voluntary (solvent) liquidations.

There is no personal insolvency regime in Jordan. Nevertheless the Jordanian Civil Code defines the insolvency of individuals as the situation where a debtor’s due debts exceed his possessions.

The EBRD review focuses upon the relevant sections of the Commercial Code and the Companies’ Code applicable to businesses.

Settlement mechanisms

As mentioned above, the Commercial Code sets out certain rules governing the Court-led procedures of pre-bankruptcy compromise and post-bankruptcy compromise

Pre-bankruptcy compromise procedure

The pre-bankruptcy compromise procedure enables a trader at risk of bankruptcy to propose a compromise to its creditors through a special process referred as “reconciliation”.

The purpose of reconciliation is to help debtors to reorganise their business in order to continue as a going concern. A trader’s failure to reach a compromise with its creditors automatically results in a declaration of bankruptcy by the Court.

A trader proposing reconciliation must first submit a petition to the Court of First Instance having jurisdiction in the district of its main office prior to being in a state of cessation of payments or within 10 days of any cessation of payments to invite its creditors to enter into a settlement. In order for the Court to grant its request, the trader cannot be previously found liable of a criminal charge of fraud, negligent bankruptcy or failed to perform its assignments under a previous pre-bankruptcy reorganisation.

The Court then accepts or rejects the debtor’s request for reconciliation. In the event of rejection, the court may on its own initiative declare the debtor bankrupt. If the Court accepts the request for reconciliation, it invites the creditors to appear for a hearing on the reconciliation plan. Any court decision is final and is not subject to appeal.

Acceptance of the reconciliation request by the Court results in a moratorium during the period between the petition’s submission date and the date of the court’s decision confirming the reconciliation plan. Creditors, including secured creditors, are prohibited from pursuing any legal action to execute an instrument or obtaining any privileges, pledges, mortgage or any kind of security against the debtor assets until the issuance of the final judgment of the Court “res judicata”. However, tax charges due to the State treasury are exempt from the moratorium.54

During the Pre-bankruptcy proceedings, the trader runs its business under the supervision and control
of a delegated authority and the appointed judge. Any grants, gifts and guarantees given by the debtor during the proceedings are invalid and some operations (such as giving a pledge or mortgage) require the exclusive prior approval of the appointed judge, who must be persuaded that such operations provide clear benefits to the debtor.56

The reconciliation plan requires the approval of a majority of creditors voting representing three quarters of the unsecured debt. Secured creditors may only vote if they waive their right to enforce their security. However, the plan must then be confirmed by the Court. In practice, secured creditors are unlikely to give up their rights to enforce their security to vote on the reconciliation plan.

Pre-bankruptcy proceedings are Court-driven and widely publicised, factors which may further impede the prospect of economic survival of a business.

**Post-bankruptcy compromise procedure**

The post-bankruptcy compromise procedure (or “simple reconciliation” procedure) is intended to allow the bankrupt debtor to avoid the consequences of bankruptcy other than the suspension of any political rights.

This procedure allows creditors to reach an agreement over the distribution of the assets of the bankrupt trader in satisfaction of its liabilities. As for the pre-bankruptcy compromise procedure, a majority of creditors holding the two third of the confirmed debts of the debtor must vote in favour of any reconciliation agreement and secured creditors may only participate in such vote to the extent that they renounce their security rights. The agreement is binding on all unsecured creditors if certified by the Court58. However, the agreement is not binding vis-à-vis the secured creditors who did not waive their security rights.

**Bankruptcy (liquidation)**

Under Jordanian law, bankruptcy allows for the liquidation of the debtor’s assets in satisfaction of creditor claims.

As highlighted above, the Jordanian Commercial Code governs bankruptcy if two conditions are met: (i) the debtor is a ‘trader’ (a broad definition encompassing natural and legal persons carrying out a commercial activity), and (ii) the debtor has stopped paying its commercial debts or has used fraudulent means to uphold financial confidence in its business57.

In Jordan, bankruptcy proceedings can be initiated by the trader or by one or more creditors. A trader is legally obliged to commence bankruptcy proceedings within 20 days effective from the date on which it suspended payments. Failure by the debtor to file in time may result in a criminal charge58.

Bankruptcy proceedings can also be opened by the Court on its own initiative59. Bankruptcy proceedings fall within the jurisdiction of the Court of First Instance in the main district where the trader’s headquarter is located. Such Court helpfully also has jurisdiction over any disputes arising from bankruptcy proceedings60. All court decisions are subject to appeal, however an appeal by the bankrupt debtor will not stay the execution of the bankruptcy judgment61.

Following the declaration of bankruptcy, the Court can take whatever preventive measures that it deems necessary to protect creditors’ rights, considering the particular circumstances of each case, upon the request of the public prosecutor or upon its own initiative.62

The Court judgment declaring bankruptcy must specify the date on which the trader suspended paying its due debts63 and is required to be made public, within five days, by posting in the Court lobby, the stock exchange and at the trader’s place of business; it should also be registered in the Commercial Register, notified to the public prosecutor and published in a local newspaper.64

A declaration of bankruptcy has severe consequences for bankrupt debtor. It carries a heavy stigma – the bankrupt is considered as a wrongdoer rather than a business experiencing economic difficulties and distress. Bankrupt individuals are deprived of their political and professional rights upon the declaration of bankruptcy and lose the ability to manage their business and any assets acquired during the bankruptcy period.

Pursuant to the Commercial Code, any donations or gifts, excluding trivial gifts, payment of debts not due, payment of due cash payments other than cash, and security and guarantee created over the debtor’s assets to secure previous debts, in each case following the date of suspension of payments as determined by the court or within the twenty days preceding this date are deemed to be void against the creditors.65. However, claims for voiding such actions must be brought within 18 months from the date of the declaration of bankruptcy.66

The bankrupt trader owning real estate shall have the bankruptcy judgment registered within the real estate department, and properties shall be mortgaged to the benefit of creditors, subject to any existing secured rights.67

The judgment of bankruptcy results in the appointment of one or more receivers charged with the task of administration of the bankrupt’s assets. The receiver plays a significant role as an officer of the court. He is responsible for keeping the trader’s books and the financial statements of the bankrupt trader.
The remuneration and expenditure of the receiver is decided by the appointed judge, who can also retain two observers from the creditors.

Upon bankruptcy, the assets of the bankrupt trader are placed under seal, excluding personal belongings, perishable substances (or items which values are to be reduced significantly) or assets considered necessary to carry on the business. The receiver must then perform a complete inventory of the business under the supervision of the appointed judge. The receiver can also attempt to reach a settlement with creditors if possible.

The receiver must verify the evidence of debts provided by creditors with the assistance of observers (appointed from amongst the creditors) before preparing the final list of debts for publication in the newspapers. The evidence of debts shall be provided by the creditors within eight days from bankruptcy judgment. The Commercial Code provides for the following ways out of bankruptcy proceedings:

- Post-bankruptcy compromise or simple reconciliation
- The union of creditors
- Reconciliation through the sale of debtor assets
- Termination of bankruptcy proceedings

If creditors fail to reach a post-bankruptcy compromise or settlement, they will be deemed to form a union and shall notify the appointed judge of their decision to maintain or replace the receivers. The receivers shall sell the debtor’s assets and distribute the money deriving from the sale to creditors in proportion to their debts. Upon the creditors’ approval, the Court may allow the debtor some provisions from profits or dividends in order to support his family.

Reconciliation through the sale of the debtor’s assets is another option that is governed by the same conditions as simple reconciliation as regards to the form of the procedure and the rules and procedures of the union of creditors as regards the distribution of assets. Any surplus from the disposal of the debtor’s assets is returned to the debtor.

Closing bankruptcy is another way out of bankruptcy case if, during the proceedings, the Court deems that the debtor’s assets are insufficient to cover all the debts. A bankrupt trader that is an individual can only reclaim his political rights ten years after the bankruptcy judgment.

**Liquidation of legal entities under the Jordanian law**

In addition to the above, rules and proceedings for forced liquidation under the Commercial Code apply to partnerships, limited liability companies, private shareholding companies or public shareholding companies that become bankrupt. Various types of companies such as banks, insurance companies and civil companies are governed by separate regulations.

**Forced/Involuntary liquidation**

Involuntary liquidation of Jordanian companies is usually decided by the Controller, within the Companies Control Department, based on specific circumstances and subject to satisfaction of several conditions.

The Controller may initiate the liquidation process of an LLC and a PLC by petitioning the Court where these entities suffer losses exceeding 75% of their registered capital share and fail to rectify the situation.

**Priority of claims for settling company’s outstanding debts**

Provisions with respect to priority payments are found in the Companies Law only and therefore only apply to legal entities. With regard to the priority order for settling outstanding debts of the trader, the liquidator is required to satisfy company debts in accordance with the following order of priority:

- Liquidation expenses, including remuneration of the liquidator
- Amounts due to the Company employees.
- Amounts due to the Public Treasury and the municipalities.
- Rents due to the owner of any real estate leased to the Company.
- Other amounts due in accordance with the order of their priority in accordance with the Laws in force.

It is not clear in the legislation whether the above claims are capped in any way as to time or amount. Accordingly, sums due to Public Treasury and employees, workers and other persons in employment constitute priority debts that rank ahead of secured creditors and may significantly reduce returns to secured creditors in a liquidation scenario.
Judicial capacity

In a nutshell...

The assessment of the judicial system in Jordan revealed low efficiency and lack of adequate resources in addition to lengthy procedures. Predictability is a matter of significant concern, although perceptions of and impartiality have improved in recent times. Improving judicial education and addressing lack of specialisation among judges ranks as one of the top priorities of future reforms and judicial capacity building efforts.

Background

The Jordanian judicial system is divided into three categories, namely civil, religious and special courts, in accordance with article 99 of the Constitution.

The civil courts cover civil and criminal matters and have jurisdiction over all persons in all matters, including cases brought against the government. The civil courts include Magistrates Courts, Courts of First Instance, Courts of Appeal, High Administrative Courts and the Court of Cassation (Supreme Court). The Jordanian civil legal system has its foundations in the Code Napoléon.

The religious courts include shari’a (Islamic law) courts and the tribunals of other religious communities, principally those of the Christian minority. Religious courts have primary and appellate levels and deal only with matters involving personal law such as marriage, divorce, inheritance and child custody. Shari’a courts also have jurisdiction over matters pertaining to Islamic waqfs (religious endowments). In cases involving parties of different religions, regular courts have jurisdiction.¹⁶

Speed of Justice

Court proceedings in Jordan are typically very protracted. Whilst the average time between filling a law suit and the commencement of trial proceedings is generally reasonable, it can take a year until a final and enforceable judgment is obtained. In Jordanian courts, hearings on pleading are often repeatedly adjourned for periods of at least 2 weeks, as the civil procedure rules afford parties substantial latitude to seek adjournments without good reason. A common problem is that adjournments are sought in connection with experts and witnesses who fail to appear before the court on the scheduled dates. It has been estimated that in a typical case, the number of adjournments can exceed ten. Another factor contributing to the slow pace of justice is the large volume of cases coming before the courts, and judges’ significant workload.

Mechanisms need to be found which can effectively limit the ability of parties to seek adjournments, and to create better incentives for witnesses to attend court as required, for example by introducing stronger contempt of court provisions.

In recent years, the establishment of a Case Management Department at the courts has helped to decrease the typical length of time for a matter to be dealt with. It has assisted the courts by ensuring the completeness of the evidence files submitted by litigating parties prior to the transfer of the court case file to the judge. The Case Management Department is also responsible for preparing an official court record for matters agreed upon between the litigating parties and issues of disputes, which also significantly assist the judge when examining the case.

At the same time, physical improvements and re-engineering of workflow have considerably improved efforts in court registries and in major notary-public offices.

Impartiality and transparency

One major concern about the Jordanian judicial system is the low level of transparency and the lack of an effective disciplinary system for alleged judicial misconduct. Jordanian law does not regulate the conduct of judges. The introduction of specific legislation governing Judges’ discipline is strongly believed to be crucial for the development of a reliable judicial system in Jordan.

A similar problem exists in relation to court clerks and other officials, who are widely believed to receive irregular payments. The extent of the problem cannot be verified, however the absence of clear professional standards no doubt fosters concerns about such officials’ conduct. It is important that standards be set, publicised and policed, and that any allegations of improper conduct be fully investigated. Finally, the process of allocating cases to judges should become more transparent, as here too concerns exist about fairness and impartiality. Any departure from the principle of random allocation should be based on objective criteria, such as specialised knowledge required for particular types of cases. Furthermore, the allocation system should be publicised and explained to court-users.

Judicial education and lack of specialisation

The Judicial Institute of Jordan (JIJ) is the governmental body in charge of the judicial training of aspiring judges. The JIJ was created pursuant to the Law N.3 of 1988 and subject to the regulation relating to the Judicial Institute of Jordan N.68 of 2001 and subsequent amendments. As part of the development plan of the Jordanian Ministry of Justice, a new regulation on JIJ was enacted in 2010.
to reorganize the institute and improve the quality of the training provided to judges.

The JIJ provides two-year preparatory course for aspiring judges as well as continuing education for judges and other judicial personnel.

Nevertheless, building the capacity of JIJ remains a real challenge for the Jordanian judicial education system, and strengthening the system of initial and on-going judicial training is one of the priorities of future reforms of the judicial system as a whole.

Among the areas which have been identified as requiring more urgent attention are fundamental substantive commercial law areas, as well as electronic transaction law, competition law, securities law, telecommunication law and intellectual property law. In addition, judges would benefit from further training on procedural provisions (in particular, dealing more robustly with applications for adjournments), and developing enhanced analytical skills and statutory interpretation.

Another recommended measure in the area of judicial training would be to establish a minimum mandatory component of continuing education. Aside from judicial skills and substantive commercial law, English proficiency would be very welcome; many consider that this has become essential to enable judges to understand documents and evidence made in English in local and cross border litigation, which is becoming much more common. In this regard, partnerships with foreign judicial bodies from developed foreign systems are recommended.

In addition, court management is in need of more training in managerial, financial and administrative skills to ensure a better administration and management of courts.

Implementation and enforcement of court decisions

Under the Jordanian enforcement system, each court has its own enforcement department that is located in each city’s court of first instance. This department is responsible for the enforcement of decisions that have been issued in its jurisdiction. Decisions taken by the Enforcement Department are transmitted to police officers for execution, which can take several forms in accordance with the Enforcement Department order.

Enforcement of court decision is another problematic area the judicial system in Jordan. The enforcement of a court’s decision is typically slow. There are several dimensions to the problem. One is that there appears to be insufficient management and oversight of enforcement cases. Another is a sheer lack of resources. Caseloads are large, and more employees in the execution departments in each relevant court appear to be needed to improve turnover rates.

Finally, the enforcement of a court’s decisions against governments and municipal bodies is particularly difficult and time-consuming. Legislative and procedural solutions need to be found to streamline the enforcement process and ensure speedy compliance of state bodies with court orders.

Predictability and access to decisions

Lack of predictability and inconsistencies among court decisions is an evident feature of the Jordanian judicial system, as in many countries. Ambiguity and contradiction in judicial precedents has created instability for litigating parties.

It is believed that the huge load put on the Court of Cassation, the highest jurisdiction within the Jordanian judicial system, adversely affects its ability to develop a unifying case law which ultimately results in the issuance of contradicting precedents in some instance by the same panel. The lower courts experience the same difficulties in developing a consistent jurisprudence which raises the degree of unpredictability. To some degree, lack of searchable access to judicial decisions contributes to the problem.

However, it is worth mentioning that Adalah Center for Legal Information, a non-governmental centre established in 1996, has made a considerable effort in assembling and publishing court decisions on its website. Moreover, the Ministry of Justice has established a database system which aims to enable the public as well as lawyers to seek information about the outcome of their pending cases. In practice, the use of this database has proven difficult as the IT system regularly crashes. Moreover, the tools and applications used for research are not well adapted for public need.

Strong commitment is needed from judicial bodies and regulators to develop a court policy for the promotion and monitoring of predictability in court decisions and processes.

Adequacy of court resources

The Jordanian judicial system has limited material and human resources, which affect its ability to operate efficiently.

Jordanian courts require improved premises, equipment, technology and internal libraries and/or learning resources, but most importantly computerized programmes that provide the latest judicial precedents. On the human side, courts require more qualified and specialized judges, administrators, clerks, process servers and experts including qualified translators.

Allocating more resources from the state budget for higher judicial salaries would provide a greater incentive to attract and retain well qualified individuals to the bench. Specialized judges, panels or courts dealing with banking, insurance,
telecommunications and commercial matters could significantly enhance the quality of dispute resolution and promote expertise within the judicial system.

Finally, consideration should be given to developing an appeals filter to limit the large volume of cases clogging the upper levels of the court system. Such a filter could set a modest threshold, such as reasonable prospects of success, that an appeal would have to satisfy (prima facie) in order to be accepted. In addition, appeal courts should have the power to disregard cases which are prima facie inadmissible or without any substantive merit. This would increase efficiency, reduce costs and inconvenience to the public, and reduce caseload.
Secured transactions

In a nutshell...
The Jordanian legal framework allows for the creation of a wide range of security interests over a broad range of assets. The system recognises both possessory and non-possessory pledges over movable assets and rights as well as registered mortgage over real-estate. A new law was enacted in Jordan which became effective in February 2012 for Placing Moveable Property as Debt Security. However, the law is rather recent and there is still no relevant court or market practice to confirm its applicability in Jordanian business practice.

Background
The principal sources of secured transactions legislation in Jordan can be found in the Jordanian Civil Code, The Law Concerning The Mortgage Of Movable Properties In Security To Debts, No. 1 for the Year 2012, The Commercial Law, No. 12, for the Year 1966 and The Law Of Execution No. 25 for the Year 2007. Jordanian legal framework allows for creation of wide range of security interests over broad range of assets. The system recognises both possessory and non-possessory pledges over movable assets and rights as well as registered mortgage over real-estate. Possessory pledge over tangible assets is governed by the Commercial Law and the non-possessory effect is achieved by a legally questionable process of lending the pledged property back to the borrower. On the other hand, non-possessory security is governed by several pieces of legislation and the registration requirements differ depending on the type of the pledge, borrower and asset. A non-possessory security can be established over all movable assets of the borrower in a type of a fond de commerce pledge in accordance to the Law concerning the Mortgage of Movable Properties as Security for Debts. In addition, it is possible to register a non-possessory pledge over certain types of registered movable assets (e.g. motor vehicles, sea vessels, aircrafts, shares, intellectual property, etc.) in special registries and according to the rules established by laws specifically governing those types of assets.

This multiplicity of legal sources creates interplay of rules regulating secured transactions which makes system complex. Jordan is lacking a uniform modern legal system of taking non-possessory security over any type of movable property and efficient centralised registration system of such rights.

Security over movable assets
Registered pledge over movable property belonging to an enterprise - (Fond de Commerce)
A new law was enacted in Jordan which became effective in February 2012 for Placing Moveable Property as Debt Security (Law No. (1) for 2012). The law covers the pledge of all types of movable properties, goods, banknotes, and registered movable property (vehicles, airplanes, trains, vessels, patent of inventions, trademarks, industrial design and models, company stocks and shares, and all other movable properties subject, in terms of ownership, to registration in application of any law in force).

In order for the pledge to be valid a certified pledge agreement (indebtedness deed signed by the creditor and the debtor-pledgor and certified by the General Controller of Companies or the Controller of the Commercial Register depending on the pledgor) has to be registered in in the register of pledge (the special record kept by the Controller for each company / trader). Multiply pledges over the property of the same borrower are allowed and the priority is achieved on registration. However, regardless of the time of registration, in case of multiple pledges based on different grounds, the creditors holding possessory pledge or having pledge over registered movable property registered in specialised registers will have priority over creditors with this type of pledge.

The law basically creates a type of fond de commerce security and is far from the modern type of secured transactions law because it does not respond well to the market needs and realities of business. It contains legal solutions which limit the possibility of its usage to certain types of borrowers and does not allow for wide contractual freedom of the parties when setting their deals. For example, it is impossible to take pledge over partial parts of the borrower’s property and the third party cannot extend security in favour for someone else. Furthermore, by being basically a fond de commerce type of a pledge law it exclusively limits the ability to pledge property only for companies and traders (natural person registered at the Commercial Register in accordance with the terms of the Trade Law and the regulations issued thereunder) which leaves general public out of the scope of the law.

On the other hand, in contrast to the some SEMED fond de commerce laws it does not limit the type of property that can be pledged. It allows pledging future debt with the indication of maximum amount. In addition the pledgor is free to use the pledged property and the third party cannot extend security in favour for someone else. Furthermore, by being basically a fond de commerce type of a pledge law it exclusively limits the ability to pledge property only for companies and traders (natural person registered at the Commercial Register in accordance with the terms of the Trade Law and the regulations issued thereunder) which leaves general public out of the scope of the law.
persons having the power to manage the company are personally liable to all third parties dealing in good faith with the company and who are under the impression that the company’s properties are not subjected to any security.

In the event that the debt is repaid, a document certifying the partial or total payment of the debt must be recorded in the Register. The document certifying the payment must be signed by the creditor and the pledgor in front of the Controller or his authorized person.

Enforcement of the movable pledge is governed by the general Law on Execution and is conducted by the Department of Execution. It is facilitated by the fact that the indebtedness deed is considered a type of official documents with power of proof of existence of debt in front of courts, the execution authority and other official authorities without need to invoke any other supportive evidences. According to Execution Act, the debtor can object to the amount of the debt and in such case the matter is referred to the court. If the creditor proves that his claim is valid, the debtor is sanctioned with a fine equal to one fifth of the disputed amount and is obliged to pay the expenses, legal interest and attorney fees incurred by the creditor. Such fine should discourage the debtors to object to a valid claim.

The law is rather new and there is still no relevant court or market practice to confirm its applicability in Jordanian business practice.

Non-possessory pledge over registered movable property

Non-possessory mortgage over registered movable property can be established over assets for which a formal registration mechanism does exist (e.g. motor vehicles, shares, certain IP rights, etc.). Such mortgage will only become valid after registration with the relevant governmental agency depending on the type of the mortgaged property.

Upon registration, the creditor has a right against the mortgaged property to satisfy his debt, with priority over ordinary and subsequent creditors. This extends to tracing the proceeds of the sale into whomever hands they come. Creditors with a security mortgage rank by priority of registration. Security mortgages must be duly registered to effectively create a security interest in favour of a lender. The registration is achieved by an official notation by the registrar on the relevant title deed showing that the property is encumbered. There is no requirement for the deposit of the original title deed with the mortgagee.

Pledge (assignment) of receivables and bank accounts

According to the Civil Code the pledge over receivables can be created only by delivering the deed evidencing the receivable to the pledge creditor (assignment). The pledge is effective against the receivable debtor only if notified thereto through a public notary. Unregistered pledge is considered effective towards third parties if the pledge creditor is in possession of the deed evidencing the debt and if the debtor has been notified. The same technique is used to pledge a bank account.

According to the Civil Code, the pledge creditor is entitled to set off the secured debt with the periodic payments from the pledged receivable if the two claims are of the same kind, otherwise it needs to go through a regular enforcement and sale procedure.

Possessory pledge over movable property lent back to the pledger

A possessory pledge over movable property is governed by the Commercial Law and is commonly used to create security over certain types of moveable assets (e.g. equipment and machinery) for which no formal special registration mechanism exists to perfect such security. In order for a possessory pledge to be completed and binding, possession must be transferred from the pledgor to the pledgee or an impartial third party (known as the Adel). To be valid against third parties, a possessory pledge must be in writing, on a fixed date, and must specify the secured debt and the pledged property transferred to the pledgee or the Adel. The effectiveness of the possessory pledge towards third parties is subject to the pledged property being in the hands of the pledgee or the Adel.

In order to allow the pledgor to use the pledged assets to operate its business during the term of the pledge, a possessory pledge agreement usually includes provisions authorising the Adel to lend back the pledged assets to the mortgagor on a type of trust (i’arah) basis. The pledgee and the Adel usually take precautionary steps such as placing a notice on the assets or facility housing the assets stating that the assets are pledged to the lender. During the term of the pledge and i’arah, the pledgor is not permitted to deal with the pledged property in any way. Despite the prohibition, the law does not void the sale of the pledged property by the pledgor, yet the pledgee is entitled to pursue the proceeds of the sale rather than the actual property. The pledgee is also prohibited from dealing with the property, including by sale, except in the event of possessing a power of attorney to sell.

This practice of circumventing the provisions of law indicates a strong need for a reform that would establish a modern secured transactions system based on the centralised registration of security interests established over any type of movable property and rights, individual or as a changing pool of assets.
Security over immovable assets

The Civil Code provides that mortgage can be created over any immovable property that can be disposed of. The property must exist at the moment of creating the mortgage. The court may annul the security agreement in case the immovable property is not sufficiently defined (identified). There seem to be no direct restrictions in the law as regards to the property that can be subject to mortgage. Nevertheless, based on the Enforcement Law, the state-owned properties as well as the properties owned by the Islamic trusts (“waqf”) cannot be subject to enforcement.

A mortgage is valid only if registered in the Land Registry. Art. 1346 of the Civil Code provides that the effect of the mortgage shall be limited to the sum specified in the mortgage deed and recorded in the Land Registry, unless the law or the agreement provides otherwise. The lease of the mortgaged property is effective against the mortgage creditor only if dated before the mortgage and subsequent leases of the property are effective against the mortgage creditor only if expressly stipulated in the mortgage agreement. The mortgagor can dispose of the mortgaged immovable property without affecting the rights of the mortgage creditor.

The enforcement of the mortgage is regulated by the law on execution. The law requires that any attachment to the immovable property should be registered in the Land Registry. In case the attached property is not registered in the Land Registry, such property may be attached and sold within the enforcement procedure, provided that the party holding an enforcement write asks the registration of the concerned immovable property with the Land Registry on its name for the purposes of sale. Immovable assets are sold through public auction upon the request of any relevant party. The department of enforcement takes control over the immovable assets for the sale purposes. The debtor can object to the amount of the debt sought to be enforced and in such case the matter is referred to the court. However, in case the creditor proves that the claim is valid, the debtor is sanctioned with a fine equal to one fifth of the disputed debt and is obliged to pay the expenses, legal interest and attorney fees incurred by the creditor. The executor notifies the enforcement procedures taken to the debtor, the mortgage creditor that started the procedure and other creditors of the debts which have been secured prior to the date of the attachment of the enforcing mortgage.

The mortgage terminates by the sale of the immovable property in accordance with the enforcement law and by payment of the price to the mortgage creditors in accordance with their ranking, or deposit of the price. In case the mortgage was terminated due to the termination of the secured obligation, but then such termination was declare void, the mortgage will revives again without affecting the rights acquired bona fide by others between the moment of termination of the right and its reversion.

Syndicated lending

Under Jordanian law, security interests cannot in principle be taken by an agent on behalf of one or more creditors. They must be taken in the names of each of the creditors if every creditor requires property right protection. Otherwise creditors are exposed to the contractual liability of the security agent which would be the only beneficiary of the security and protection it brings.

Practitioners have, however, developed a mechanism (described as a “parallel debt”) to address this issue in civil law projects. Under this mechanism, the borrower is asked to sign, when entering into the financing, a document whereby it covenants to pay to an institution, acting as security agent for the benefit of the lenders, a sum equal to any amount outstanding under the finance documents. It is the obligations of the borrower under this covenant which are secured by the local security package. However, there is no known court practice that would support such transaction.
than the assumed heat rate, they pocket the savings in fuel or do better than the assumed heat rate, pocket the savings in fuel

The PPP Committee was established in September 2008 pursuant to a Council of Ministers decision with a role to identify projects suitable for PPPs and to supervise feasibility studies.

Private Finance Initiative (PFI) is a scheme whereby a private party undertakes the financing and the construction of an infrastructure project on behalf of the contracting authority, which in turn provides the service or the product to end-consumers. Source: EBRD, Assessment of the Quality of the PPP legislation and of the effectiveness of its implementation, Jordan, 2001.

A licence is an authorisation to operate by a public authority.

Article 11 of the Regulation No. 80/2008 for Implementing Privatization Transactions Issued in pursuance of Article (20) of The Privatization Law Number (25) of 2000.


13 In accordance with UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, “the main purpose of such a direct agreement is to allow the lenders to avert termination by the contracting authority when the concessionaire is in breach by substituting a concessionaire that will continue to perform under the project agreement in place of the concessionaire in breach.”

14 Article 5 of the Regulation No. 80/2008 for Implementing Privatization Transactions Issued in pursuance of Article (20) of The Privatization Law Number (25) of 2000.

15 The role of the Privatization Council is provided in article 7 of the Privatization Law.

16 The role of the Privatization Council is provided in article 10 of the Privatisation Law.


18 The Report (at 25) assumes that long-term PPA’s eliminate potential efficiency gains obtained in moving to competitive markets, first because availability payments give generators incentives to spend excessively on maintenance to achieve higher levels of availability, with NEPCO then having to bear additional costs through additional availability payments; secondly, because under a “toll” arrangements, generators cannot try to source fuel more cheaply; and third, because merit dispatch will be based on incremental costs from the contracts, so generators have less incentive to compete with other generators to stay in merit. These arguments are not entirely persuasive. First, in a country with a deficit in generation and time-of-use tariffs, excess availability and overpayments by NEPCO should not be a problem; second, a single buyer is much more likely to be able to negotiate a better price for fuel for the whole system, than is a single generator buying only for its own plant, based on the larger volume being purchased. Finally, while the energy payment is based on an assumed heat rate, each plant still has an incentive to achieve or do better than their target heat rate, because if they do better than the assumed heat rate, they pocket the savings in fuel costs. The improved efficiency also has the added benefit of reducing CO2 emissions.

19 A study on distributing gas in Amman was performed in 2005 but the GoJ decided that it could not take the risk of having consumers of gas interrupted.

20 The Ministry of Finance is required to issue a list of the customs duties that will be exempted but has not yet done so.

21 The definition of “Renewable Energy Sources” in the RE and EE Law includes geothermal energy and hydropower energy but ERC has not issued reference prices for these two sources of RE. It is possible that it did not do so because the likelihood of hydropower development is remote (although in other countries hydropower has been developed on irrigation canals) and, as mentioned elsewhere, geothermal power is not as promising as solar and wind.

22 There was an EE Department within ERC until 1995, when it was abolished by a new Minister.

23 By-law No. 73 for year 2012 Organizing Procedures and Measures to Save Energy and Improve Efficiency, issued 14 Nov. 2012

24 See http://www.ase.com.jo/


28 Law No. 22 of 1997, lastly amended in 2002


30 Law No. 23 of 1997, lastly amended by the law No. 76 of 2002


33 IFRS are issued by the International Accounting Standards Board and available at http://www.ifrs.org/IFRSs/Pages/IFRS.aspx

34 The company can select its own requirement as regards the number of shares within its bylaws.

35 Article 2 Regulation governing investments of non-Jordanians 54 of 2000. These include including wholesale trade and retailing, distribution of goods and services, engineering, construction, advertising, commercial agencies, restaurants, as well as certain road, rail and air transport support services.

36 Let’s take the example of a 10% shareholder owning 10 shares out of 100 shares issued. If the company issue 100 new shares, then the owner of the 10 shares is suddenly only a five per cent owner. This is called dilution, and it is often used as a mechanism to violate the rights of minority shareholders.


38 See article 140 of the Company Law CL No. 22 of 1997

39 See article 148 of the Company Law CL No. 22 of 1997
44 See article 6 (H) of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.
45 See article 4 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.
46 See article 132 of the Companies Law No. 22 of 1997
47 See article 133 of the Companies Law No. 22 of 1997
48 See article 175 of the Companies Law No. 22 of 1997
49 Article 841 of the Jordanian Civil Code.
50 See article 146 of the Companies Law No. 22 of 1997
51 The Companies Code governs Public Shareholding Companies (PSC) that are the dominant legal form for large and listed companies. Private Shareholding Companies (PrSCs) which has been created by the 2002 Companies law amendments and Limited Liabilities Companies (LLC).
52 Article 9 of the Commercial Code.
53 The petition shall indicate the terms of the compromise offer including the proposed average of settlement which shall not be less than 30% of the principal debt for one year, 50% of the principal debt for a term of eighteen months, and 75% of the principal debt for a term of three years maturity.
54 Article 290 of the Commercial Code.
55 Article 297 of the Commercial Code.
56 Article 395 of the Commercial Code.
57 Article 316 of the Commercial Code.
58 Article 318 of the Commercial Code.
59 Article 320 of the Commercial Code.
60 Article 317 of the Commercial Code.
61 Article 324 of the Commercial Code.
62 Article 320 of the Commercial Code.
63 Article 322 of the Commercial Code.
64 Article 323 of the Commercial Code.
65 Article 333 of the Commercial Code.
66 Article 337 of the Commercial Code.
67 Article 332 of the Commercial Code.
68 Article 338 of the Commercial Code.
69 Article 339 of the Commercial Code.
70 Article 254 of the Commercial Code.
71 Articles 375 and 376 of the Commercial Code.
72 Creditors who fail to comply with this time limit are offered an extra 15 days from the date of publishing of a notice within the newspapers to present their evidence of debts. This deadline shall be extended for creditors who are residents outside Jordan without exceeding 60 days.
73 Article 409 of the Commercial Code.
74 Article 466 of the Commercial Code.
75 In 2003, the Companies Control Department (CCD) was created as an administrative body under the supervisory of the Ministry of Industry. The CCD has two main functions: registration of various types of companies in Jordan and imposing control over the companies. Within the CCD, the Controller has wide information and recourse rights on the company and he is present at general shareholder meetings (GMs).
76 http://www.kinghussein.gov.jo/government.html
77 http://www.adaleh.info/home.asp?pageID=1