



# OECD Investment Policy Reviews

## JORDAN





# **OECD Investment Policy Reviews: Jordan 2013**

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## Foreword

**O**n 24th November 2013 Jordan became the 46th country to adhere to the OECD Declaration on International Investment and Multinational Enterprises. This adherence bears witness to the determination that Jordan holds towards strengthening the liberalisation of investment, increasing its integration into the world economy and promoting responsible business conduct.

In adhering to the Declaration, Jordan commits to grant national treatment to foreign investors and to promote responsible business conduct. In return, the other adhering countries to the Declaration guarantee that Jordanian investors will receive a fair treatment abroad and encourage their multinational enterprises operating in Jordan to contribute to economic, social and environmental progress. According to the OECD Guidelines for Multinational Enterprises, which is an integral part of the Declaration, Jordan will set up a National Contact Point with the task of promoting the Guidelines, encouraging dialogue at the national level and having a mediation role. As an adhering country, Jordan will participate in the work of the OECD Investment Committee.

This publication is based on the report presented to the OECD Investment Committee for the review of Jordan's application for adherence to the OECD Declaration. This review took place in March 2013 at OECD headquarters in the presence of the Jordanian delegation conducted by Ms Maha Ali, Secretary-General of the Ministry of Industry and Trade. It should be noted that the analysis presented in this report is based on the legal framework in place on the date of publication.

The report was prepared by Marie-Estelle Rey, with contributions from Cristina Tébar Less, H el ene Fran ois, Fernando Mistura and Dambudzo Muzenda in the Investment Division, under the supervision of Pierre Poret of the OECD Directorate for Financial and Enterprise Affairs, in close collaboration with the Jordanian authorities, the OECD Investment Committee and other members of the OECD Secretariat. The review received financial support from the governments of Jordan and Japan.



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## Abbreviations and acronyms

<b>ACC</b>	Anti-Corruption Commission
<b>ADR</b>	Alternative dispute resolution
<b>AFD</b>	Agence française de développement – French Development Agency
<b>AFED</b>	Arab Forum for Environment and Development
<b>ASE</b>	Amman Stock Exchange
<b>ASEZ</b>	Aqaba Special Economic Zone
<b>BIT</b>	Bilateral investment treaty
<b>BOT</b>	Build-operate-transfer
<b>CBJ</b>	Central Bank of Jordan
<b>CDM</b>	Clean development mechanism
<b>CSP</b>	Concentrated solar power
<b>CSR</b>	Corporate social responsibility
<b>DFZC</b>	Development and Free Zones Commission
<b>DTT</b>	Double taxation treaty
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>EDCO</b>	Electricity Distribution Company
<b>EIA</b>	Environmental impact assessment
<b>EIB</b>	European Investment Bank
<b>EIU</b>	Economic Intelligence Unit
<b>EPC</b>	Executive Privatization Commission
<b>ERC</b>	Electricity Regulatory Commission
<b>ESG</b>	Environmental, Social and Corporate Governance
<b>EU</b>	European Union
<b>FDI</b>	Foreign direct investment
<b>FET</b>	Fair and equitable treatment
<b>FTA</b>	Free trade agreement
<b>GAFTA</b>	Greater Arab Free Trade Agreement
<b>GATS</b>	General Agreement on Trade in Services
<b>GCC</b>	Gulf Cooperation Council
<b>GDP</b>	Gross domestic product
<b>GHG</b>	Green house gases
<b>GSD</b>	General Security Directorate

<b>ICSID</b>	International Centre for Settlement of Investment Disputes
<b>ICT</b>	Information and communication technologies
<b>IFC</b>	International Finance Corporation
<b>IFRS</b>	International Financial Reporting Standards
<b>ILO</b>	International Labour Office/Organization
<b>IMF</b>	International Monetary Fund
<b>IP</b>	Intellectual property
<b>IPA</b>	Investment promotion agency
<b>IPP</b>	Independent power producers
<b>IsDB</b>	Islamic Development Bank
<b>ISDS</b>	Investor-State dispute settlement
<b>JAEA</b>	Jordan Atomic Energy Agency
<b>JCC</b>	Jordan Chamber of Commerce
<b>JCI</b>	Jordan Chamber of Industry
<b>JD</b>	Jordanian Dinar
<b>JEDCO</b>	Jordan Enterprise Development Corporation
<b>JIB</b>	Jordan Investment Board
<b>JICA</b>	Japan International Cooperation Agency
<b>JISM</b>	Jordan Institute of Standard and Metrology
<b>JLGC</b>	Jordan Loan Guarantee Corporation
<b>JSC</b>	Jordan Securities Commission
<b>JUSFTA</b>	Jordan-United States Free Trade Agreement
<b>LAS</b>	League of Arab States
<b>MENA</b>	Middle East and North Africa
<b>MFN</b>	Most-favoured nation
<b>MIT</b>	Ministry of Industry and Trade
<b>MNE</b>	Multinational enterprise
<b>MoE</b>	Ministry of Environment
<b>MoEMR</b>	Ministry of Energy and Mineral Resources
<b>MoPIC</b>	Ministry of Planning and International Cooperation
<b>MoWI</b>	Ministry of Water and Irrigation
<b>NAFES</b>	National Fund for Enterprises Support
<b>NCHR</b>	National Centre for Human Rights
<b>NCP</b>	National Contact Point
<b>NEPCO</b>	National Electric Power Company
<b>NERC</b>	National Energy Research Council
<b>NES</b>	National Employment Strategy
<b>NGO</b>	Non-governmental organisation
<b>NSCP</b>	National Society for Consumer Protection
<b>NT</b>	National treatment
<b>ODA</b>	Official development aid

<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OIC</b>	Organisation of the Islamic Conference
<b>OSS</b>	One-stop shop
<b>PFI</b>	Policy Framework for Investment
<b>PPP</b>	Public-private partnership/Purchasing power parity
<b>QIZ</b>	Qualifying Industrial Zone
<b>SABEQ</b>	Sustainable Achievement of Business Expansion and Quality
<b>SEZ</b>	Special Economic Zone
<b>SME</b>	Small and medium-sized enterprises
<b>REEEF</b>	Renewable Energy and Energy Efficiency Fund
<b>RBC</b>	Responsible business conduct
<b>R&amp;D</b>	Research and development
<b>SABEQ</b>	Sustainable Achievement of Business Expansion and Quality
<b>TRIPS</b>	Agreement on Trade-Related Aspects of Intellectual Property Rights
<b>UNCAC</b>	United Nations Convention against Corruption
<b>UNCITRAL</b>	United Nations Commission on International Trade Law
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNDP</b>	United Nations Development Programme
<b>UNEP</b>	United Nations Environment Programme
<b>UNFCCC</b>	United Nations Framework Convention on Climate Change
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>USD</b>	United States Dollar
<b>VAT</b>	Value added tax
<b>WAJ</b>	Water Authority of Jordan
<b>WEF</b>	World Economic Forum
<b>WIPO</b>	World Intellectual Property Organization
<b>WTO</b>	World Trade Organization



## Executive summary

**J**ordan's economy has benefitted from key reforms since the 1990s, helping to attain macroeconomic stability and improve human development indicators. The GDP per capita (PPP) reached USD 5 900 in 2011, positioning Jordan as an upper middle income country. However, structural reforms are still needed, as the country remains highly dependent on foreign aid and remittances. The current **regional unrest**, in particular the deteriorating situation in Syria and the remaining instability in Iraq, and the slow recovery of the global economy strongly affect economic activities.

**Jordan has performed relatively well in attracting foreign direct investment.** FDI inflows grew from an average of 0.2% of GDP in the early 1990s to 10% of GDP during 2000-11. The regional instability and the economic slowdown in the Gulf States have nevertheless considerably affected investment inflows. Prospects remain uncertain.

**The legal investment regime** is rather complex, with a corpus of laws and regulations not all easily accessible, some being temporary and overlapping. The **investment incentives regime** is intricate with different overlapping schemes, zones and preferential areas, and raises questions about effectiveness. While domestic and foreign investors can benefit from a wide range of incentives established by laws and regulations, the 2009 Income Tax Law has eliminated income tax exemptions for investment outside the preferential economic zones. The **investment promotion agency**, Jordan Investment Board (JIB), was created in 1995. It has established a one-stop shop to facilitate company registration but does not have yet full authority to issue approvals. JIB recognises it has to overcome obstacles such as shortage in human resources and lack of coherent strategic vision.

**Jordan maintains a number of restrictions on foreign investment.** They apply in sectors such as telecommunications, transport, but also wholesale trade and retail, and construction, which are rather unusual among OECD countries and adherents to the OECD Declaration on International Investment. This report describes the exceptions under the OECD National Treatment instrument. Jordan's overall scoring under the OECD FDI Regulatory Restrictiveness Index is significantly higher than the average for adhering countries.

**The authorities recognise that the investment framework needs to be clarified, unified and improved**, and have announced the revision of the investment law and the restructuring of the investment institutional framework.

**Jordan's policy framework for investment** suffers from obstacles such as inefficient bureaucracy, complex administrative procedures and inconsistent enforcement of regulations. Jordan is not well positioned in international business climate rankings. Land ownership for foreigners is subject to approval and registration of property is a lengthy process. Jordan has undertaken regulatory reforms to protect intellectual property rights, but further efforts are needed to ensure better legal enforcement and institutional co-ordination. In order to improve contract enforcement, the government is envisaging reforms, including establishing dedicated commercial courts, restructuring the judicial apparatus and enhancing human resources.

**The country is an active signatory of bilateral investment treaties** with 53 agreements signed. The analysis of selected BITs, including the model BIT, reveals that the treaty practice is rather traditional. Jordan is a member of the International Centre for the Settlement of Investment Disputes and the vast majority of signed BITs provides for access to international arbitration. The 2001 Arbitration Law and the 2006 Mediation Law reflect Jordan's willingness to promote alternative dispute resolution mechanisms.

**Jordan's trade policy** is geared towards integration into the world economy. Jordan acceded to the World Trade Organisation in 2000 and ratified a free trade agreement with the United States in 2001 and an association agreement with the European Union in 2002. It also established export platforms providing incentives for foreign investment.

**Anti-corruption policies** are pursued by Jordan which ratified the United Nations Convention against Corruption in 2005. The Anti-Corruption Commission Law was enacted in 2006 and amended in 2012. Hence, Jordan has made progress in setting up a legal and institutional framework. However, it still needs to develop rules and regulations to properly implement legislative provisions and strengthen accountability of the Judiciary.

**Competition policies** lack implementation. Jordan is the first Arab country to have adopted a Competition Law in 2004. Nevertheless, the institutions in charge suffer from lack of adequate resources, and weaknesses in the legislation enforcement are reported.

**Jordan adheres to the OECD Guidelines for Multinational Enterprises and establishes a National Contact Point (NCP)**. With a view to promoting the *OECD Guidelines* and their observance by companies, Jordan will establish its NCP within JIB. The NCP will have an advisory body, comprising representatives of commerce and industry chambers, the business community and civil society.



**Policies for promoting responsible business conduct (RBC)** are still scarce. The concept is relatively new, the level of awareness is low and there is no comprehensive national policy. The government, enterprises and NGOs are, however, progressively taking initiatives to incorporate RBC into their practices. The authorities developed a Corporate Governance Code based on the OECD Principles of Corporate Governance. They ratified human rights conventions, but further steps are needed to guarantee respect for human rights by enterprises. The legal and institutional framework for employment and labour relations has been reinforced, notably through the 2011-20 National Employment Strategy. Challenges remain in relation to freedom of association, forced labour and social dialogue. Environmental impact assessments are mandatory for companies with activities that bear on environment, though awareness on green business conduct is limited.

**Jordan is facing environmental challenges.** The energy mix has heavily focused on oil, thereby exposing the country to fluctuations in global oil prices and raising a burden on the environment and the public purse. Jordan is one of the world's most water-poor countries, while confronted to population growth and refugees influx. There are **significant opportunities in terms of mobilising private investment, including foreign, in support of green growth**. The National Energy Strategy plans to increase by 2020 the share of renewable energy sources in the energy mix to 10% and to reduce the energy consumption by 20% through energy efficiency measures. A Law on Renewable Energies and Energy Efficiency was adopted in 2010 and incentives are provided. Despite promising initiatives, gaps remain to increase investment in green sectors, such as green building market and clean technology hubs. The phasing out of fossil fuel subsidies and a feed-in tariff could help stimulate investment in renewable energy. A closer monitoring of government programmes could also ensure better results.



## Introduction and assessment

### Jordan's economic development and the role of FDI

With a GDP per capita (PPP) of USD 5 900 in 2011, Jordan is an upper middle-income country. Key economic reforms launched in the 1990s enabled Jordan to achieve important economic and social development objectives. Privatisation, budget and financial sector reforms, and international economic integration (accession to the WTO in 2000 and ratification of a free trade agreement with the United States in 2001 and an association agreement with the European Union in 2002) have helped Jordan to reach a level of macroeconomic stability. Moreover, human development indicators have improved over time and real GDP growth averaged 6% from 2000 to 2011.

However, structural economic reforms still need to address the persistently high unemployment rate (13%), especially among the young and graduates (more than 30%), the large share of population still living just above the poverty line, and fiscal and external vulnerability. Jordan remains dependent on foreign aid and remittances which counter-balance external pressures from rising oil and food imports. In addition, the current regional unrest and the adverse global economic environment risk diluting the economic developments achieved by Jordan over the last decade and pose a threat to social and economic stability in the country in the short to medium term. The impact of the global economic downturn and regional turmoil has already substantially stalled Jordan's growth prospects, as the GDP growth rate dropped to 2.6% in 2011 compared to 5% in 2009. Political concessions and the recent review of the Constitution have not fully met the expectations of all categories of the population and reaching political, social and economic consensus in a period of pre-legislative elections remains challenging.

### **Foreign direct investment in Jordan**

FDI in Jordan began flowing to the country significantly in the late 1990s following economic reforms that sought to open up the economy and promote increased participation by the private sector. FDI inflows grew from an average of 0.2% of GDP in the early 1990s to 5.4% between 1997 and 2000 and to 10% of GDP from 2000 to 2011. Compared to other oil-importing countries from the Middle East and North Africa (MENA) region, Jordan has performed relatively

well in attracting FDI, benefiting strongly from its links with Gulf countries. Jordan's major investors include Saudi Arabia, Kuwait, the United States and the United Arab Emirates. Financial intermediation, extraction industries such as phosphate and potash, chemicals, post and telecommunication, electricity and real estate attract the most FDI. Moreover, preferential US market access given to Jordanian exports under the Qualifying Industrial Zones led to a significant increase of FDI in the garment industry.

Since the mid-2000s, FDI has contributed to easing rising pressure on Jordan's current account deficits. However, regional unrest and the economic slowdown in the Gulf States since the global economic crisis have considerably affected international investment flows to Jordan. FDI inflows were halved in 2011 as compared to 2008 – amounting USD 1 470 million in 2011. The consequences of further drops in FDI inflows can be of significant concern for Jordan's economic activity and macroeconomic stability. The prospects for recovery are still not clear despite an initial strengthening of some export markets, such as Iraq, and an early indication of a recovery in FDI inflows in 2012. The domestic, regional and international situation, such as the deteriorating situation in Syria, the remaining instability in Iraq and the slow recovery of the global economy, will continue to affect near-term economic activity in Jordan and in the region. Jordan's relative political stability might lead to an increase in its share in FDI flowing to the region.

The Central Bank of Jordan, in co-ordination with different government agencies such as the Department of Statistics, the Jordan investment Board (JIB) and the Jordan Securities Commission (JSC), is working on improving FDI statistics' timeliness and reliability in order to assist informed policy making. The authorities have indicated their interest in engaging in a dialogue with the Investment Committee Working Group on International Investment Statistics (WGIIS) with a view to sharing experience, building capacities and aligning data further with the OECD BMD4 (Benchmark Definition of FDI).

### **Foreign investor participation in privatisation programmes**

Privatisation has been a major driver in attracting foreign investors into Jordan. A programme for restructuring and privatising state-owned enterprises was launched in the mid-1990s. The 2000 Privatisation Law defined methods and procedures and established the Executive Privatization Commission (EPC). Since 2000, EPC has successfully completed more than 70 transactions yielding considerable proceeds and leading to sizeable investments. The completed transactions which include over nine major projects involved partial and total restructuring of the relevant sectors. They covered an array of vital sectors such as mining, civil aviation, telecommunications and electricity. Up to end 2008, total privatisation proceeds amounted to over USD 2.2 billion.

Given that the privatisation process is largely complete, it is expected that the number and size of future privatisation projects will diminish. The government tends to now favour public-private partnership (PPP) projects. It has prepared a draft PPP Law, which has not yet been adopted, and is reorienting the EPC mandate to focus on PPPs. It has announced in January 2013 the establishment of a Privatisation Evaluation Committee to examine privatisation activity since 1989.

## **Jordan's investment regime and the OECD National Treatment instrument**

The National Treatment instrument is a voluntary undertaking by countries adhering to the OECD Declaration on International Investment and Multinational Enterprises to accord to foreign-controlled enterprises on their territories treatment no less favourable than that accorded in like situations to domestic enterprises engaged in similar activities. Adhering countries commit themselves to make their list of exceptions to the National Treatment instrument available and to review it periodically with a view to improving the effectiveness of international economic co-operation among adhering countries.

Jordan's legal investment regime is governed by a series of laws and regulations: the interim Investment Law No. 68 of 2003, which contains general provisions for treatment and protection of investment and describes procedures to benefit from incentives and obtain licences; the provisions on sectors, incentives and exemptions of the Investment Promotion Law No. 16 of 1995; Regulation No. 54 of 2000 which lists some sectors that are restricted to foreign investment; and the interim Law No. 67 of 2003 which deals with the organisation of the Jordan Investment Board.

Consequently, Jordan presents a rather complex legal investment regime, with a corpus of laws not all easily accessible, some being temporary and overlapping. The regime suffers from deficiencies in terms of legal coherence, transparency and predictability for investors and does not help governmental efforts to enhance investors' confidence. The authorities are aware that the legal and institutional investment framework needs to be clarified, unified and improved. They have announced a revision of the legal regime for investment, clarifying investment incentives and reorganising the institutional framework. In the past years, several draft proposals were prepared but not adopted. According to the authorities, a new draft law could be enacted in early 2013 when a new Parliament will be convened after the January legislative elections.

The Jordanian authorities are encouraged to design the new law so that it reaffirms commitments to non-discrimination, transparency and investor

protection in line with international and OECD high standards; streamlines FDI restrictions currently found in separate regulations and provides for their critical review; and clarifies responsibilities of the authorities for the many tax and other investment incentives, with a mandate to simplify the system, periodically assess its net benefit, and publicly report.

Non-Jordanian investors benefit from the same treatment as Jordanian investors, subject to exceptions. For registration purposes, non-Jordanian investments must have at least 50 000 Jordanian Dinars of capital (equivalent to about USD 70 000). Statutory restrictions apply in a large number of sectors and their scope and application in practice are not always clear. The 2000 Regulation classifies sectors in three groups: the sectors in which foreign investment is totally prohibited, the sectors in which a maximum 50% foreign ownership is authorised and the sectors where a maximum 49% foreign ownership is allowed. In certain areas, such as telecommunications and transport, restrictions on foreign ownership are not uncommon in countries adhering to the Declaration. Restrictions are unusual in other areas such as wholesale trade and retail, and construction.

These exceptions under the instrument on National Treatment of the OECD Declaration are listed in Annex A of the present report. In addition, pursuant to the instrument, some measures having a bearing on FDI are notified for purposes of transparency – they are also listed in Annex A. Jordan imposes the obligation to have Jordanian personnel in the governance bodies of corporations operating in a number of services, such as business, banking, health, education, real estate and travel services. There are public monopolies in the following sectors: electricity, postal services, railways and water. Jordan does not apply any regulatory discrimination against foreign investors based on public order and essential security considerations.

Given the number of restricted sectors, Jordan's overall scoring under the OECD's FDI Regulatory Restrictiveness Index is high and well above the average for adhering countries. As Jordan is currently revising its investment law, it is invited to consider lifting some restrictions on foreign investment in sectors that are usually open in other countries, when alternative, non-discriminatory measures make it possible to meet the legitimate public policy objectives. The Jordanian authorities are also invited to work with the Investment Committee in order to share experience and present the new proposed investment law for advice.

## Jordan's policy framework for investment

### **Investment policy**

Despite structural reforms aimed at liberalising its trade and investment regime and fostering private-sector led growth, Jordan does not rank very well

in international business climate rankings. Inefficient bureaucracy, complex administrative procedures imposed by several governmental bodies, inconsistent enforcement of regulations, and relatively limited qualification of public agents are generally considered as obstacles by investors. Jordan launched a regulatory *guillotine* project and e-governance initiatives, but the pace of implementation is slow.

As regards property rights, land ownership for foreigners is allowed in Jordan provided ownership is related to a business activity, except in the free zones where land can only be leased. It is subject to authorisation by the relevant Jordanian authorities. The registration of property is a lengthy process. In spite of efforts to modernise the registration system and the preparation of a unified Cadastre Law, the business sector has called for a more sustainable land management system. In the area of intellectual property rights, Jordan has made several regulatory reforms to comply with its international commitments, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) and the Jordan-US FTA. Reforms and commitment to intellectual property protection also respond to external demands, notably from major foreign companies investing in the pharmaceutical and IT (information and technology) sectors. However, further efforts are still needed to ensure better enforcement of the legislation and to co-ordinate the activities of institutions dealing with intellectual property rights. The creation of a dedicated agency, awareness-building initiatives, and enforcement measures could help foster intellectual property rights protection.

In order to address the shortcomings of the existing judicial structure and to improve the efficiency of enforcing contracts, Jordan is currently envisaging several measures, including establishing dedicated commercial courts. Such courts could provide a more suitable framework for settling commercial litigation and improve the management of the commercial caseload. Reforms for restructuring the judicial apparatus and for enhancing human resources have also been announced. An arbitration law and a mediation law were enacted respectively in 2001 and 2006, reflecting Jordan's willingness to promote alternative dispute resolution mechanisms as a useful means for investors to settle disputes. Private sector representatives, such as the Jordan Chamber of Commerce, are also promoting these tools, although the mediation law remains available only for civil matters and it remains to be determined to what degree investors make use of such dispute resolution means in practice.

The country is an active signatory of bilateral investment treaties (BITs) with 53 agreements signed. Compared to other countries, Jordan started relatively recently to negotiate BITs and has a high rate of ratified treaties. Some BITs have been negotiated or signed concomitantly with free trade

agreements (United States, Canada and Singapore), unlike recent practice to include investment provisions in FTAs. At the regional level, Jordan also signed investment-related agreements, in particular the 1980 Arab League Unified Agreement for Investment. The analysis of selected BITs, including the Jordanian model BIT, reveals that Jordan treaty practice is rather traditional, compared with recent innovations in international investment law aiming at detailing and clarifying concepts and procedures. In addition to provisions related to expropriation in BITs, Jordan's legislation (Constitution, Investment Law and Land Acquisition Law) covers the issue, thus offering a guarantee for investors which tend to perceive expropriation as a major risk. It would be worth, however, considering including in the Investment Law all the criteria for a lawful expropriation and in the Land Acquisition Law more precise definitions and processes, while offering a clear balance between the legitimate rights of the State to regulate in the public interest and of the investors to protect their property rights. Both Laws could also be better harmonised to ensure predictable interpretation in case of a dispute.

Dispute settlement provisions are also an important issue for investors. Jordan is a member of the International Centre for the Settlement of Investment Disputes (ICSID) and the vast majority of signed BITs provides for access to international arbitration. The 2003 Investment Law is less detailed than the 1995 Law in terms of investment dispute resolution as it only refers to the application of Arab and international agreements containing related provisions. Jordan has been a respondent State in five known investment disputes, all submitted to ICSID.

The Jordanian authorities have indicated that they adhere to the instrument on Conflicting Requirements, by which adhering countries shall co-operate so as to avoid or minimise the imposition of conflicting requirements on multinational enterprises.

### **Investment promotion**

The Jordan Investment Board (JIB) was created in 1995 and re-organised in 2003. Its goal is to promote and facilitate investment in Jordan. JIB is managed by a Board of Directors, composed of government officials and private sector representatives in equal measure. JIB has two main pillars: investment promotion, and investor affairs and services. The latter includes a one-stop shop and departments on after-care and policy advocacy created in 2010 and hence too early to assess their impact. The one-stop shop aims at facilitating company registration and project licensing while not having the full authority to issue the approvals. In order to be more effective and attract investment, JIB recognises it has to overcome obstacles such as shortage in human resources, changes in government strategic vision and lack of empowerment of the one-stop shop.



Domestic and foreign investors can benefit from a wide range of incentives, but the regime established by existing laws and regulations is rather intricate with different overlapping schemes and zones. The incentives provided by the 1995 Investment Promotion Law offer different levels of tax exemptions according to defined zones of investment (classification by districts and governorates). Additional sets of incentives are provided in the various preferential economic zones (industrial estates, development areas, free zones, Aqaba Special Economic Zone (ASEZ) which has free-zone status and its own investment regime, and Qualifying Industrial Zones (QIZ) which offer specific incentives for exports to the United States). In addition, the Council of Ministers has the authority to provide any additional benefits and incentives to an investment project. The Income Tax Law of 2009 has eliminated income tax exemptions for investment outside the preferential economic zones. The 2003 interim Investment Law outlines procedures for applying for incentives and establishes the Investment Incentives Committee within JIB to review applications submitted by investors.

In light of the different schemes and the recent elimination of income tax exemptions, the incentive regime raises questions about transparency, predictability, and effectiveness. Jordan is invited to thoroughly assess the impact of its incentive regime, in parallel to the revision of the investment law, as incentives can impose a heavy financial burden on the government at a time of severe budgetary constraints.

The authorities accept the commitments under the instrument on International Investment Incentives and Disincentives, by which adhering countries recognise the need to give due weight to the interest of other adhering countries affected by laws and practices in this field and endeavour to make measures as transparent as possible. To assist in meeting these commitments, Jordan is invited to use the OECD Checklist for Foreign Direct Investment Incentive Policies which is based on good practices in adhering countries in this area, as well as the OECD Principles to enhance the transparency and governance of tax incentives for investment in developing countries. Both instruments encourage to promote the management and administration of incentives in a transparent and consistent manner and to set up a mechanism to assess incentives through costs-benefits analysis. The Jordanian authorities are also invited to engage with the Committee of Fiscal Affairs to conduct analyses of tax policy for investment; in particular, the OECD Tax and Development Programme can provide assistance in comprehensive analysis of tax incentives for investment.

### **Trade policy**

Policies relating to trade in goods and services can support more and better quality investment by expanding opportunities to reap scale economies

and by facilitating integration into global supply chains, boosting productivity and rates of return on investment. Jordan's foreign trade policy is oriented towards economic openness and integration into the world economy. During the past decade, the country has committed to trade liberalisation reforms and has advanced its trade diplomacy by actively participating in WTO negotiations and by engaging in bilateral trade relations with its main trading partners. Beside accession to the WTO in 2000, it concluded an Association Agreement with the European Union and an FTA with the United States, and established export platforms providing incentives for foreign investment.

During the last decade, trade has grown substantially in nominal and real terms, though this growth started to decrease slightly in 2009, reflecting the global economic slowdown and the fragile political situation in the region. Jordan has been incurring significant current account deficits since the mid-2000s as a consequence of rising commodity prices and following the recent negative impact of the regional turmoil. FDI restrictions in certain service sectors (transport, distribution, financial and business services) may also be affecting trade in services and the competitiveness of the manufacturing sector.

### **Anti-corruption**

Anti-corruption policies are critical for the confidence and decisions of all investors and for reaping the development benefits of investment. Jordan was one of the first Arab countries to ratify the United Nations Convention against Corruption (UNCAC) in 2005. The Anti-Corruption Commission Law was then drafted and enacted in 2006. The Jordan Anti-Corruption Commission (ACC), which started operations in 2008, developed a National Anti-Corruption Strategy for 2008-2012 to combat corruption and pursue perpetrators. The Law was amended in 2012 to expand the Commission's scope and provide provisions for protecting witnesses and whistleblowers.

Hence, Jordan has made progress in setting up a legal and institutional framework to combat corruption. Fighting corruption is presented as a priority in the political agenda. However, the Parliament suspended early 2012 some high-profile investigations and the demonstrations that have taken place in Jordan since early 2011 convey public discontent with corruption levels in the government. Efforts to improve legislation are notable, in particular the 2012 amendments to the Anti-Corruption Commission Law, but Jordan still needs to develop rules and regulations to properly implement and enforce legislative provisions and strengthen accountability of the judiciary. The institutions in place lack co-ordination and adequate resources and the independence of the Anti-Corruption Commission is still questioned.

The OECD Secretariat is co-operating with Jordan through its regional initiatives and partnerships, including the MENA-OECD Initiative on Governance and Investment for Development, to help the country address these concerns. The ACC and various non-government representatives are involved in the Strengthening Integrity in Business in Arab Countries (SIBAC) initiative led by the MENA-OECD Investment Programme. Jordan may wish to co-operate with the OECD Working Group on Bribery and consider the standards of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The authorities are also invited to consider undertaking an Integrity Scan, a self-assessment exercise supported by the OECD based on a tool covering all relevant OECD anti-corruption and other integrity instruments.

### **Competition policy**

Competition policy favours innovation and contributes to conditions conducive to new investment. Sound competition policy also helps to transmit the wider benefits of investment to society. Jordan is the first Arab country in the Middle East to have adopted national legislation on competition. In 2002, Jordan enacted the provisional Anti-Trust Law which was replaced in 2004 by the Competition Law. It regulates anti-competitive practices, abuse of dominant positions and mergers and acquisitions. The provisions of the Competition Law apply to all production, commerce and service activities, as well as any economic activities occurring outside Jordan that have an effect within the Kingdom. Three authorities deal with competition matters: the Competition Directorate, the Competition Affairs Committee and the judiciary.

Hence, Jordan has set up a legal regime on competition and an institutional framework to deal with policy and enforcement issues. However, the institutions dealing with competition matters appear to suffer from lack of adequate resources and support, and some weaknesses in enforcement of the legislation are reported. The Jordanian authorities are invited to engage with the OECD Competition Committee and its secretariat to remedy remaining problems and strengthen legislative enforcement in line with OECD best practices.

### **Infrastructure development**

Sound infrastructure development policies ensure scarce resources are channelled to the most promising projects and address bottlenecks limiting private investment.

Jordan has relatively well-developed infrastructure. Access rates are virtually 100% for transport, electricity, water supply, sanitation facilities and

mobile telephone subscriptions. While access to the Internet is not as advanced as in other sectors, the rate is actually above the Arab regional average. The quality of its air transport infrastructure, electricity supply and roads is particularly good by international standards, but there is room for improvement. For instance, while infrastructure systems are in place, the provision of steady and continuous supply is often a problem, particularly for water. Also, while Jordan boasts a world-class airport in Queen Alia International Airport, its railways lag behind in terms of the quality and length of the network.

Jordan has developed some experience in working with the private sector through a number of projects. Moving forward, it will be important to encourage investment in small-scale projects, which would also allow the domestic private sector to play more of a role in Jordan's infrastructure. Providing a legal framework for PPPs is also a priority. To that end, a draft PPP law has been prepared and is awaiting approval by the Parliament. It is also important to integrate infrastructure strategies with general environmental policies as there is significant scope to green Jordan's infrastructure sectors.

### **Financial sector development**

Effective financial sector policies facilitate enterprises and entrepreneurs to realise their investment ideas within a stable environment.

Jordan has a well-developed financial sector relative to its regional peers and other middle-income countries. Reforms implemented in the late 1990s and early 2000s with the support of the IMF and World Bank have successfully increased the size and depth of Jordan's financial system, notably in comparison to other MENA countries. Jordan has also enhanced its financial regulatory and supervisory framework, but significant challenges remain to develop the financial sector further.

Access to finance remains an important obstacle for conducting business in Jordan and the situation has deteriorated since 2005 with a contraction in the level of domestic credit as a share of GDP. There is a need to improve the credit information system. The government has begun to address these issues with the approval in 2011 of a temporary credit information law that enables the setting up of a private credit bureau in Jordan. The authorities also reported that a new insolvency and bankruptcy law that enhances the protection of creditors and investors' rights has been prepared and that they are working on adopting a comprehensive secured transactions law and developing a collateral registry system to facilitate the extension of loans to SMEs. Further efforts also need to be undertaken to develop Jordan's capital markets. The private debt securities market is incipient as a consequence of a limited public bond market and the lack of a diversified investor base. Non-

bank financial institutions in Jordan are still at an early stage of development and have yet to contribute more significantly to deepening Jordan's capital markets.

## **Jordan's adherence to the OECD Guidelines for Multinational Enterprises**

The *Guidelines*, which form part of the Declaration on International Investment and Multinational Enterprises, are recommendations collectively addressed by adhering governments to multinational enterprises that operate in and from their territories in all major areas of business ethics with a view to promote responsible business conduct.

### **Establishment of a National Contact Point**

With a view to promoting the *Guidelines* and their observance by companies, Jordan will establish its National Contact Point (NCP) within the Jordan Investment Board (JIB). The NCP will have an advisory body, comprising representatives of commerce and industry chambers, the business community and civil society. The government indicated that it will make available the necessary human resources to ensure the NCP's proper functioning. It will also provide the necessary budget so that the NCP can effectively fulfil its responsibilities, such as undertaking promotional activities, handling enquiries and contributing to resolving issues related to the implementation of the *Guidelines*. The Jordanian NCP will disseminate the *Guidelines* through its website in English and Arabic. Furthermore, it will raise awareness of the *Guidelines* among public entities, the business community, commerce and industry chambers and non-governmental organisations (NGOs).

The Jordanian authorities have indicated they will look forward to working with other NCPs after adherence to ensure that the future Jordanian NCP is fully effective, transparent, accessible and accountable.

### **General policies for promoting responsible business conduct**

The concept of responsible business conduct (RBC) is relatively new in Jordan and the level of awareness is low. There is no comprehensive national policy on the issue. Some Jordanian companies pursue philanthropic activities that are not directly related to RBC and the approach to corporate social responsibility is fragmented. However, the government, enterprises and NGOs are progressively taking initiatives to incorporate this concept into their practices.

The Jordanian authorities are considering the opportunity to adhere to the OECD Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

### ***Jordan's policies in major areas of corporate responsibility***

#### ***Disclosure***

In Jordan, the Companies Law requires companies to elect an auditor to monitor the company operations and audit its accounts. The auditor's report must ascertain whether the company maintains organised accounts, registers and documents and whether its financial statements are prepared in accordance with internationally recognised accounting and auditing principles. However, the authorities recognised that efforts should be made to ensure better compliance with international accounting standards. Thus, unregulated companies are not legally bound to follow any particular accounting standard, and there is no obligation for non-listed companies to disclose financial statements. Recognising the need to improve transparency and accountability of Jordanian enterprises, Jordanian authorities have developed a new Corporate Governance Code. Private shareholding companies, limited liability companies and non-listed public shareholding companies are now required to comply with the Code on a basis of the "comply or explain" principle. The Corporate Governance Code for Shareholding Companies listed on the Amman Stock Exchange, issued in 2008 by the Jordan Securities Commission (JSC), and the Corporate Governance Code for Banks (2007) also contain specific transparency and disclosure rules. These Codes were developed based on the OECD Principles of Corporate Governance. However, there is no direct reference to the disclosure of non-financial information related to social and environmental performance. Consequently, such companies publish the related information only on a voluntary basis.

#### ***Human rights***

Jordan has ratified six major United Nations conventions dealing with human rights, with reservations in two cases. The National Centre for Human Rights (NCHR), established in 2006, should verify that human rights are being observed in the Kingdom, propose legislation related to the Centre's objectives, organise training courses, issue statements, conduct studies and research, organise outreach activities, and establish a database of information related to human rights. NCHR has international and national credibility but suffers from ineffective co-ordination and lack of resources. Stakeholders mentioned that there is a need to update human rights laws because they do not comply with international agreements. International NGOs regularly

report on human rights abuses in Jordan and note in particular that some migrant domestic workers continue to be exploited and abused (examples of these abuses include unpaid salaries and poor working conditions). In Jordan, there is a perception that respect of human rights is not a specific issue for companies to deal with. To abide by the *OECD Guidelines*, the government is aware that it will need to further take steps to guarantee respect for human rights by enterprises and to encourage them to play a role and adopt policies in this area.

### ***Employment and industrial relations***

Jordan has ratified the eight fundamental ILO labour conventions, except the one on freedom of association and protection of the right to organise. The 1996 Labour Code governs all labour affairs and has had several amendments, including giving more weight to social dialogue. Established in 1954, the General Federation of Jordan Trade Unions includes all 17 trade unions in Jordan. Despite the unprecedented number of strikes in 2011 calling *inter alia* for higher salaries, the Jordanian government has been recognised as making efforts to address the issue of employment. The legal and institutional framework has been reinforced, an ambitious national strategy (the National Employment Strategy for 2011-20) has been launched, and programmes supported by international organisations have had a significant effect but several challenges remain. The application of the law is still uncertain and does not provide for full implementation of the international conventions, there are legal restrictions on freedom of association, inspectors still note abuses in QIZs, suspicion of forced labour exists, and social dialogue is insufficient. According to the ILO, “the impact of investment policies on employment remains uncertain. Trade liberalisation has led to an increased dependence on migrant workers in export zones, in turn decreasing real wages of unskilled labour.” (ILO, 2012).

### ***Environment***

In the mid-2000s, Jordan developed a legal and institutional framework to protect the environment (see next section). As regards the recommendations of the *Guidelines*, it should be noted that the Environmental Protection Law (2006) made environmental impact assessments (EIAs) mandatory for any companies with activities that bear on the environment. The Development Zones Commission (DFZC) has also made a Strategic Environmental Assessment an obligatory requirement for each new free zone and implemented a conducive process for starting new businesses which includes environmental clearance. The government is monitoring the activities of firms through its Royal Department for Environmental Protection that inspects industrial facilities to check their abidance by environmental regulations. The

government is also implementing a number of initiatives to encourage companies to adopt energy efficiency practices, water conservation and low-carbon buildings among other environmentally-friendly practices. In general, however, there is limited awareness in Jordan on green business conduct and initiatives to encourage enterprises to promote it (for example, disclosure of corporate environmental information on GHG emissions and water use). More needs to be done to mainstream green growth into economic development action plans and to promote corporate environmental performance.

### ***Combating bribery, bribe solicitation and extortion***

Jordan has set up a legal and institutional framework to combat corruption (see above) but it should continue its efforts to update its legislation with a view to criminalising corruption in the private sector and more generally to strengthening the judiciary's ability to apply legislation and enforce sanctions. The use of *wasta* (commissions) to advance business interests is still widespread. Political will and announcements of reforms have not yet born fruit and companies have not yet developed integrity systems and due diligence processes.

### ***Consumer interests***

Consumer protection is rather neglected in Jordan. There is no consumer protection law, unlike several other countries in the region. Few provisions on the issue can be found in existing legislation. No governmental agency dedicated to consumer protection has been set up, although the Quality and Market Control Directorate of the Ministry of Industry can receive complaints from consumers and initiate investigations. In 2001, the National Society for Consumer Protection (NSCP) was set up as an NGO and contributed to the preparation of a draft law which has not been enacted. The Economic Dialogue Committee Report of May 2011 recommends enhancing consumer protection tools and accelerating the approval of the Consumer Protection Law. The media is slowly starting to build consumer awareness, which up to now has been rather low and limited. Civil society shows limited interest and engagement in the area and the business sector seems indifferent. From the government side, more would need to be done to enact and enforce a consumer protection law, create an independent governmental body, support consumer protection associations, explore the links between competition and consumer protection issues and build consumer awareness. Companies are also encouraged to take into account the consumer protection dimension in their business conduct.



## Investment framework in support of green growth

Jordan is facing a number of challenges related to the environment and its current development path. Since 2011, Jordan's supply of gas from Egypt has been compromised by repeated attacks on the gas pipeline between the two countries, creating an energy deficit that the government is struggling to close. Historically, Jordan's energy mix has been heavily focused on oil, thereby exposing the Kingdom to fluctuations in world oil prices and raising a burden on the environment and the public purse. Both the supply crisis and the dominance of fossil fuels impose a heavy burden on government finances and lead to adverse effects on the environment. Moreover, Jordan is one of the world's most water poor countries and loses 3.1% of its GDP a year as a result of air pollution, poor water quality and waste. Demographic factors pose additional challenges. Population growth and the influx of refugees from neighbouring countries are straining resources such as water and need to be addressed fairly urgently. Despite the challenges, there are significant opportunities for Jordan in terms of renewable energy, particularly wind and solar. Energy efficiency is another promising industry and could save Jordan 20% of its energy usage over 12 years if implemented effectively. There is potential for a strong green building market in Jordan, especially in the context of a burgeoning residential and industrial construction market. Clean technology hubs could also grow in development zones around the country with the right incentives and government support. Moreover, in light of the high levels of greenhouse gas emissions from transport, there is scope to introduce low-carbon transport solutions such as light rail, in order to address Jordan's environmental degradation.

The government is responding to the challenges and opportunities by promoting alternative energy sources, particularly oil shale, nuclear power and natural gas but there are many environmental and social factors to consider before moving forward with the development of these energy sources. A greater focus on boosting clean energy could help meet Jordan's international commitments, such as the Kyoto Protocol, but also create jobs and provide a stable supply of power. To that end, the government introduced a National Energy Strategy (2007-20) to increase the share of renewable energy sources in Jordan's energy mix to 7% by 2015 and 10% by 2020. The Strategy also aims to reduce 20% of Jordan's energy consumption through energy efficiency measures by 2020. Moreover, a Law on Renewable Energies and Energy Efficiency was adopted in 2010 to boost the development of the clean energy sector. The Law encourages project proposals from foreign and domestic private companies to develop renewable energy in Jordan. In the water sector, a strategy covering the 2008-22 period was developed focusing on increasing wastewater usage, decreasing groundwater abstraction and managing water demand.

Various incentives have been put in place to promote the government's policy objectives, such as a Renewable Energy and Energy Efficiency Fund to help fund projects, and sales tax and customs duty exemptions on solar heaters. Despite the promising initiatives, some gaps remain and need to be addressed to increase investment in green sectors. Fossil fuel subsidies must be phased out to encourage renewable energy to compete. A feed-in tariff could help stimulate investment in renewable energy and closer monitoring of government programmes could ensure better results. Also, more needs to be done to bring commercial banks and other financial institutions on board, as they have up to now been slow in funding green projects. By providing strong support to green industries, Jordan can accelerate economic growth and position itself as a leader in the region. Some government initiatives have planted the seeds for prioritising the environment but a more concerted effort is needed if Jordan is to realise the full benefits of investment in sustainable growth.

The Jordanian authorities have expressed their interest to adhere to the OECD Declaration on Green Growth.

## Chapter 1

### **The role of foreign direct investment in Jordan's economic development**

*Jordan's economy has benefitted from key reforms since the 1990s, helping to attain macroeconomic stability and improve human development indicators. However, the country remains highly dependent on foreign aid and remittances and the current regional unrest strongly affects economic activities.*

*Jordan has performed relatively well in attracting foreign direct investment. FDI inflows reached 10% of GDP during 2000-11. The regional instability and the economic slowdown in the Gulf States have nevertheless considerably affected investment inflows which were halved in 2011 compared to 2008. Prospects for recovery are still uncertain.*

*The privatisation process has been a major driver in attracting foreign investors, but is now largely completed. A law on public-private partnerships (PPPs) is being prepared in order to set up a new legal and institutional framework.*

## Overview of Jordan economy<sup>1</sup>

Jordan is the fourth largest economy among oil-importing countries in the MENA region, with a GDP based on PPP per capita of USD 5 900 in 2011. It has a population of about 6.5 million people, 35% of which are under 14 years old. Palestinian refugees represent 27% of the population, Iraq refugees account for another 8%, and the influx of Syrian refugees is continuously increasing. The country is highly dependent on fuel and food imports as it is limited on natural resources and water. Jordan benefits from close economic and political ties to neighbouring oil-rich countries and the United States. The Gulf States are the largest providers of energy to the Kingdom and represent, together with the United States, Jordan's main exports markets. Foreign assistance from the United States and the Gulf countries, and remittances from Jordanians working in these countries are also an important source of national income.

Over the last two decades, Jordan has undertaken key economic reforms that have enabled it to achieve important socio-economic developments in the 2000s. Real GDP growth averaged 6% from 2000 to 2011, albeit having slowed considerably in recent years due to the global economic slowdown and recent events in the region. Jordan's exports increased from 42% of GDP in 2000 to around 58% of GDP in 2008 but have declined since then as a consequence of the economic slowdown of its main trading partners. The debt burden has considerably diminished as the debt level was reduced from 100% of GDP in 2000 to about 65% in 2011. Jordan also achieved significant improvements on the Human Development Index, performing above the average of middle-income countries.

Reforms were implemented as a response to the severe macroeconomic crisis the country went through in 1989<sup>2</sup> and the disruptive effects that the 1991 Gulf war had in its economy. Economic policies came under an IMF-supported programme (1989-2004) that sought to stabilise the economy and introduce an export-oriented private sector. These objectives were translated into economic reforms that reduced public debt levels through privatisation and budget reforms, strengthened financial sector infrastructure and credit policies, and opened the country to foreign trade and investment. In the late 1990s and early 2000s, Jordan entered into a number of international and regional free-trade agreements, including an Association Agreement with the European Union, besides acceding to the WTO in 2000 and establishing export

platforms providing incentives for foreign investment incentives. The Jordan-United States Free Trade Agreement entered into force end 2001 was the first US FTA signed with an Arab country and played a significant role in strengthening economic relations between the two countries (Chapter 3).

While Jordan has been successful in achieving macroeconomic stability and opening its economy, significant social and economic challenges remain. Structural economic reforms continue to be needed to address persistently high unemployment and remaining poverty in addition to Jordan's fiscal and external vulnerability. Jordan remains highly dependent on foreign aid and remittances to counter-balance external pressures arising from rising oil and food imports. Furthermore, the current regional unrest and the adverse external economic environment risk diluting the economic developments achieved by Jordan over the last decade and pose a threat to social and economic stability in the country in the short to medium term.

The impact of the global economic downturn and regional unrest has already substantially stalled Jordan's growth prospects. Jordan's GDP grew by 2.3% in 2010 and 2.6% in 2011, significantly dropping below the 5% GDP growth seen in 2009. IMF estimates reach 2.8% in 2012 and 3.25% in 2013. Inflation, although still under control, has increased since 2004 mostly due to rising oil and food prices eroding purchasing power. In such a context, the government's commitment to undertake further fiscal consolidation, to maintain macroeconomic stability and to undertake structural reforms to raise Jordan's productivity and expand economic opportunities, remains important (IMF, 2012). In this regard, Jordan has prepared an action plan presented at the G8 Finance Ministers Meeting under the G8 Deauville Partnership framework, which incorporates programmes to enhance private sector participation in strategic projects and to improve income generation while lowering the budget deficit (Jordan, 2011).

On the political front, His Majesty King Abdullah II has taken measures to address rising social pressures for greater accountability and political participation in a context of regional turmoil and tougher socio-economic conditions arising from the economic slowdown in Jordan's main trading partners. Over the last decade, measures introduced to reform the political environment addressed issues such as human rights, the role of civil society and the right of association and expression. Turmoil in the region in 2011 has pushed even further the need to advance with political reforms that address structural issues of governance and political organisation in the country. The King established a Royal Committee on Constitutional Review to enhance political participation and better define the powers of the executive, legislative and judicial bodies. The review also intended to strengthen the independence and integrity of the judiciary, as well as improve the rights and freedoms of Jordanian citizens. As a result, several amendments to the Constitution were

made. New election and political party laws are also being prepared in an attempt to move towards a multi-party political system. Legislative elections are planned early 2013. On the social front, the government reversed its previous effort to control expenditures and increased fuel subsidies and civil servants' wages with a view to appease social unrest.

Nonetheless, political concessions given under the constitutional review have not fully met the expectations and the challenge of reaching political consensus remains. Protesters and the opposition acknowledge these measures, but the population is still showing dissatisfaction and concerns, with continued public manifestations. Political tensions with the opposition parties are also rising as the criticism of government corruption escalates. From beginning of 2011 to end 2012, there have been four government changes with new Prime Ministers continually struggling to appease the opposition and advance with reforms while maintaining support from the ruling elites. Tougher economic conditions have worsened living and employment conditions in the country.

Jordan's unemployment rate increased to 13% in 2011, the second highest among MENA oil-importing countries. Unemployment is a persistent problem in the country. Despite Jordan's economic progress over the last decade, the unemployment rate has only modestly declined, averaging 14% during 2000-11. The most affected populations are the young and graduates, of which 31% were unemployed in 2011 (IMF, 2012). Female unemployment is also very high and contrasts to their relatively higher level of education compared to males. Besides the high unemployment rate, labour force participation is among the lowest in the world. A large share of the population is still at just above the poverty line and this demands higher public attention with the worsening of living conditions. Income inequality remains large and has only slightly improved over the last decade despite strong economic growth (World Bank, 2009).

Jordan's relatively delicate fiscal position remains a constraint to further economic development as it limits government capacity to finance important infrastructure projects that could boost growth and employment. As an importer of more than 90% of its energy sources and the majority of grains consumed in the country, Jordan has been substantially affected by rising commodity prices since the mid-2000s and gas supply disruptions from Egypt since the revolution. Jordan's increase in fuel and food subsidies in 2011 in response to rising social demands has added significant pressures to its fiscal position. Energy subsidies to maintain domestic prices stable went up from around 1% of GDP in 2010 to 6% of GDP in 2011. As the subsidy does not specifically target the most vulnerable, it also benefits the rich and makes the cost of reducing fuel prices for the poor extremely high (IMF, 2012a). These

developments have left little fiscal policy space and will require a continuous commitment to fiscal consolidation.

The government's efforts to contain expenditure in the 2000s have only partially offset the decline in revenues since the mid-2000s. Jordan's overall fiscal deficit excluding external grants reached an historic peak since the early 1990s at 12% of GDP in 2011. The tightening in external grants since the mid-2000s has had significant adverse effects on Jordan's fiscal balance. Fortunately a positive rebound in grants in 2011, notably from Saudi Arabia, helped fund the costs of fuel subsidies and bring the overall fiscal deficit to 6% of GDP. Over the past decade, deficits have been largely financed with domestic debt, drawing on high liquidity levels within domestic banks. In turn, external debt has declined significantly during the period to about 22% of GDP in 2011, contributing to bring the net debt level down to about 65% of GDP in 2011 from above 100% of GDP in 2000. While this has reduced the debt service burden throughout the decade, the cost of financing deficits has increased in recent years as premiums have risen with the current regional unrest and economic challenges. As such, fiscal reform remains important to maintain investors' confidence and provide room for private sector credit and investment growth.

The adverse external environment in recent years has diluted significant achievements made by Jordan over the last two decades in implementing structural reforms that have opened the country to trade and investment and improved its competitiveness. These reforms had allowed Jordan to move to a positive current account situation in the late 1990s. Since 2005 however, Jordan has again incurred increasing current account deficits as a consequence of rising commodity prices, diminishing external grants, and declining tourism arrivals since the regional turmoil broke out. In 2011, the current account deficit excluding grants reached 16.5% of GDP and 9.5% of GDP when grants are taken into account. During the 2000-2010 period, grants reduced current account deficits by 50% on average. Despite this, Jordan's exports, notably of phosphates and potash, have continued to increase since the late 2000s although offset by imports. Besides Saudi Arabia and Iraq, emerging markets, notably China and India, are increasingly absorbing Jordan's exports.

Jordan's significant dependence on foreign aid, remittances and foreign direct investment to finance its current account imbalances renders the country highly vulnerable to sudden changes in capital flows. The instable regional situation, with the current conflict in Syria escalating, continues to pose significant threats to Jordan's economy. Sustaining its relatively large foreign reserves to withstand an eventual short-term capital outflow is essential to support its pegged exchange rate and maintain its economic stability. So far FDI flows have largely financed current account deficits, but its

decline in recent years and the uncertain prospects of economic recovery in the near future in the region adds to external pressures.

The Jordanian authorities are aware of the need to advance with structural reforms that will enhance Jordan's business environment and competitiveness to keep attracting FDI in export-oriented manufacturing production and services. This remains essential for macroeconomic stability and growth. Structural reforms can play a significant role in alleviating fiscal limitations while enabling investment in much needed sectors, such as energy, transport and water. Structural reforms should also enable the development of high-value added industries and services that can absorb the population with a higher educational level. The new PPP Law, prepared in 2010 but not yet enacted by Parliament, is an important step in this direction as it introduces a regulatory environment in line with international best practices. Efforts to upgrade Jordan's infrastructure and its connection with regional markets are vital for its development and for increasing regional competitiveness (Jordan, 2011; Chapter 3). This will invariably require private sector participation, including by foreign investors.

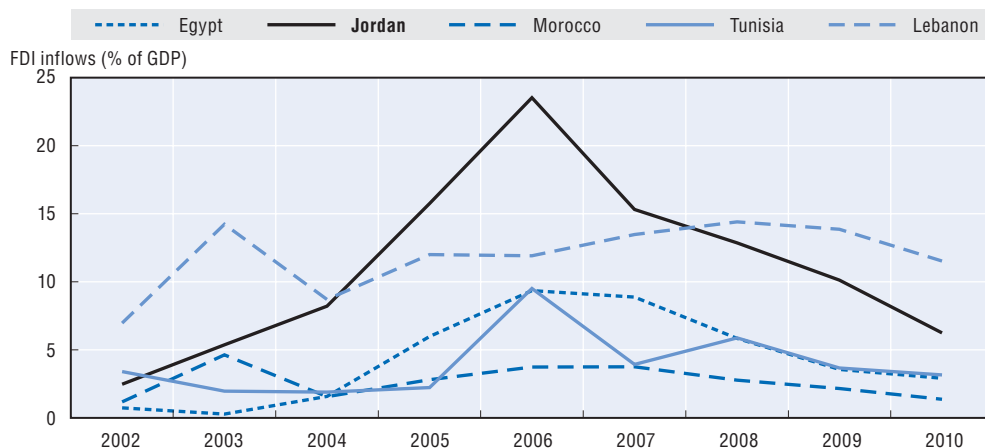
## The role of FDI in Jordan's development

### **FDI trends**

Foreign direct investment (FDI) in Jordan began flowing to the country more intensively in the late 1990s following economic reforms that sought to open up the economy and promote increased participation by the private sector. The initial economic integration seen at the regional and global level contributed to accelerate economic growth and to attract a few foreign investors particularly interested in some of the benefits brought by international agreements signed by Jordan in the late 1990s and early 2000s. From 1997 to 2000, FDI inflows per year averaged USD 435 million or 5.4% of GDP increasing from an average of USD 9 million or 0.2% of GDP seen in the early 1990s. From 2001 to 2010, FDI inflows averaged USD 1.7 billion or roughly 10% of GDP. In comparison to selected oil-importing MENA countries, Jordan has performed relatively well in attracting FDI during the 2000s, benefiting strongly from its links with GCC countries (Figure 1.1).

Since the early 2000s, a series of events have sustained FDI inflows into Jordan. The privatisation programme undertaken by Jordan has been one significant driver of FDI inflows during the period. Jordan has also benefited from Arab investments that began returning to the more stable countries in the region since reforms to promote private sector development were implemented. Foreign investors were also attracted to Jordan by the need for investment associated with the strong inflow of Iraqi refugees in the aftermath of the war in Iraq, notably in the real estate sector, and the recovery



Figure 1.1. **FDI inflows into selected MENA oil-importing countries (% of GDP)**

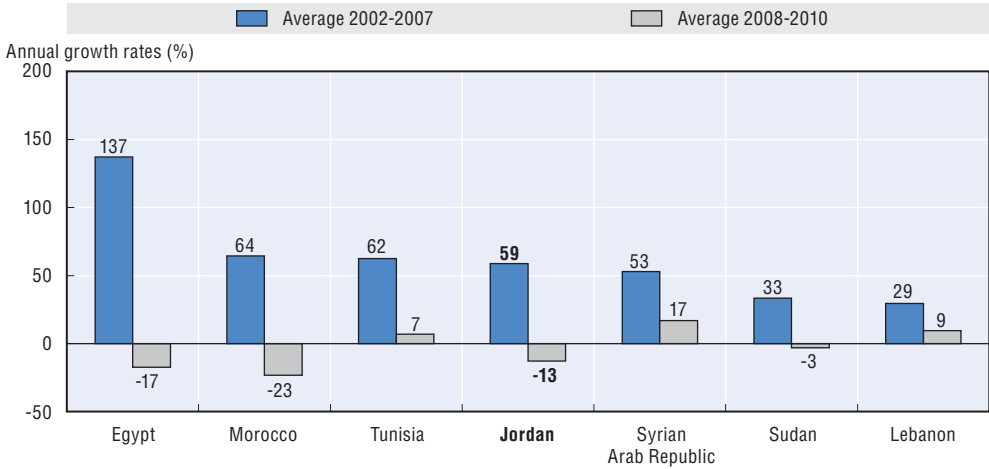
Source: IMF.

of Iraq as a destination for Jordan's exports. Jordan's accession to the WTO in 2000 and the entering into force of the Free Trade Agreement with the United States in 2001 and the Association Agreement with the European Union in 2002, have contributed to attracting some foreign investors in manufacturing interested in some of the market access benefits provided under these agreements.

Despite the relatively greater importance of FDI inflows, given the size of Jordan's economy, FDI inflows into Jordan during the pre-crisis period have grown at a slightly lower rate than Tunisia and Morocco and significantly lower than Egypt (Figure 1.2). The impact of the crisis is also evident across the selected MENA oil-importing countries, and particularly prominent in Morocco, Egypt and Jordan.

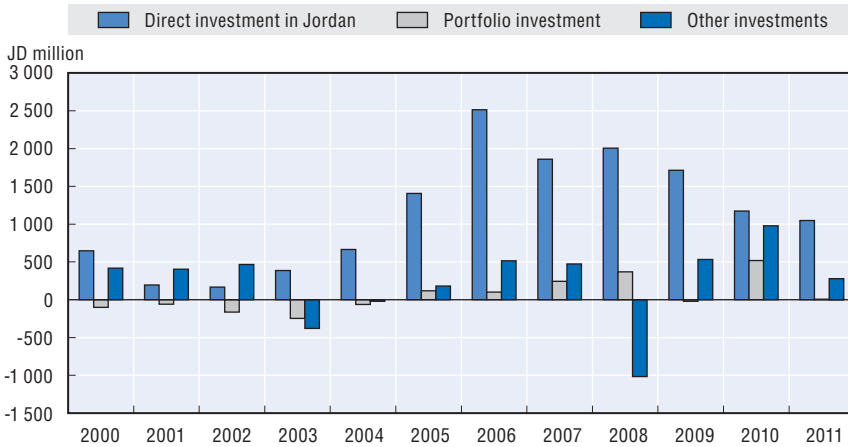
The regional unrest and the economic slowdown in the Gulf States since the global economic crisis have also considerably affected international investment flows to Jordan. As seen in Figure 1.3, FDI inflows were halved (JD 1 043 million – USD 1 470 million) in 2011 as compared to inflows in 2008 (JD 2 006 million – USD 2 830 million). Apart from a successful first Eurobond issue in 2010 by the Jordanian government, portfolio investments have been affected by the crisis and the regional turmoil. While in 2010 the foreign-currency denominated bond issue boosted portfolio investment inflows, in 2009 and 2011 the level of portfolio investment was practically inexistent. In 2011, it amounted to a mere JD 8 million in 2011. Total international investment inflows of Jordan amounted to JD 1 244 million in 2011, of which 84% in the form of FDI, 0.6% in the form of portfolio investment and 15% in other types of investment (JD 193 million).

Figure 1.2. **FDI inflows into selected MENA oil-importing countries (annual growth rates)**



Source: IMF.

Figure 1.3. **International investment flows in Jordan by type, 2000-2011**



Source: Central Bank of Jordan, *Monthly Statistical Bulletin*.

The prospects for recovery are still not clear despite an initial strengthening of some export markets (e.g. Iraq) and early indications of recovery in FDI inflows. The domestic, regional and international situation, such as the deteriorating situation in Syria, the remaining instability in Iraq and the slow recovery of the global economy, will continue to affect near-term economic activity in Jordan and in the region. The consequences of such a drop in FDI inflows can be of significant concern for economic activity and

macroeconomic stability. Since the mid-2000s, FDI has contributed to ease rising external pressures on Jordan's current account deficits as mentioned in the previous section. But compared to other countries in the region, Jordan might benefit from its relative political stability to increase its share in FDI flowing to the region.

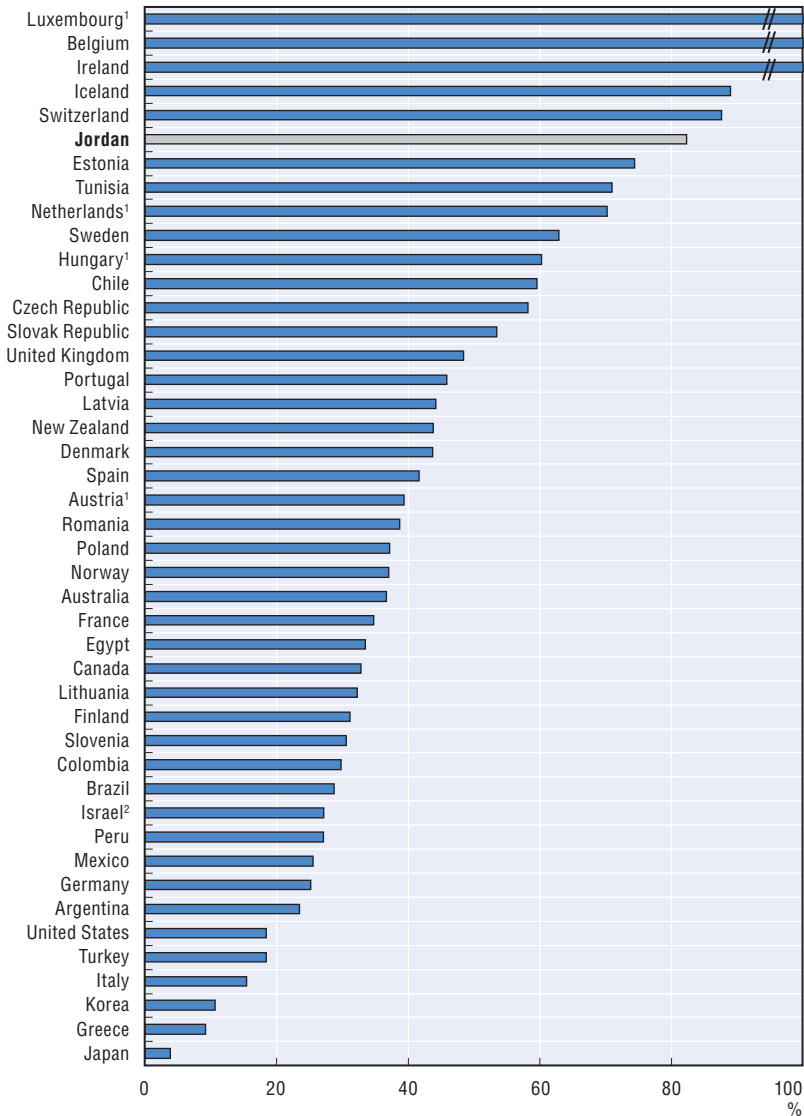
Jordan remains largely a recipient of FDI. As of end 2011, FDI inward stocks stood at JD 16.6 billion, representing 82% of its GDP, and outward FDI stocks stood at JD 360 million. Among adherents to the OECD Declaration, Jordan ranks in the 6th position (Figure 1.4).<sup>3</sup> In comparison to the Agadir countries (in reference to the FTA between Egypt, Jordan, Morocco and Tunisia), Jordan has the highest level of FDI stocks as a share of GDP. FDI inward stocks in Jordan have significantly accumulated during the 2000s as a consequence of economic integration and privatisations as previously mentioned. These economic reforms have contributed to increase Jordan's competitiveness in attracting FDI *vis-à-vis* other selected MENA oil-importing countries, enabling Jordan to capture a larger share of FDI flowing to those countries during the decade. While Jordan held only 7% of total GDP of the Agadir countries in 2010, it responded to 13% of total FDI stocks in these countries. Jordan's share of total FDI flowing to the four countries went up from a yearly average of 6% during the 1990s to 16% during the 2000s. Alternatively, Jordan has recorded the lowest rate of return on inward FDI among other selected MENA oil-importing countries (Figure 1.5).

Major investors in Jordan at the end of 2009 were Saudi Arabia (18%), Kuwait (16%), the United States (8%) and the United Arab Emirates (8%) (Figure 1.6). The Gulf States, and particularly Saudi Arabia, are extremely important partners to Jordan as they account for the largest share of trade, remittance and tourism besides FDI. Investments from GCC countries reflect their large foreign currency liquidity accumulated in the 2000s and the development of business links in the region.

Jordan's ties with OECD investors remain limited. OECD countries' stocks of FDI in Jordan in 2010 amounted to 8% of total inward FDI stocks in Jordan, up from 0.2% in 2005 (Figure 1.7).<sup>4</sup> This growth has been supported by significant increase in OECD countries' FDI outflows to Jordan in 2010, which reached USD 400 million as compared to an average of USD 80 million in 2007-09. Nevertheless, Jordan continues to present the lowest participation of OECD countries' FDI stocks in the total FDI stocks of major countries of the region (Figure 1.7). The country is host to only 3% of the total outward FDI stocks of OECD countries in MENA oil-importing countries. Egypt and Morocco are respectively host to 58% and 31%.

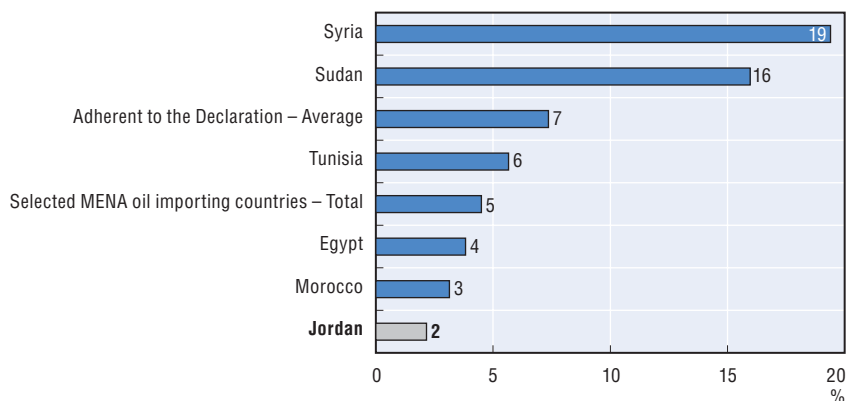
The largest share of the inward FDI stock of Jordan at the end 2009 was in financial intermediation (excluding pension and insurance) accounting for

**Figure 1.4. FDI inward stocks of Adherents to the OECD Declaration on International Investment and Multinational Enterprises and Jordan – 2011 or latest available year – as a percentage of GDP**



1. Excluding SPEs.  
 2. The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.  
 Source: OECD International Direct Investment Database and IMF.

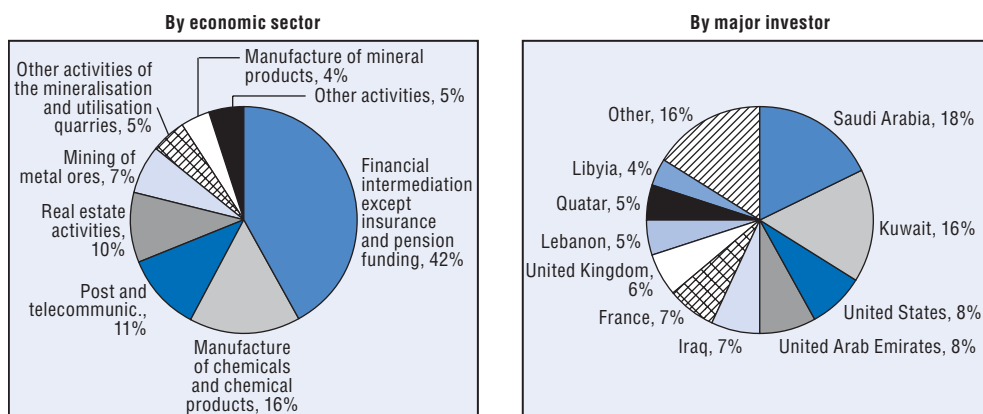
Figure 1.5. Rate of return on inward FDI, average 2008-2010 (%)



Note: The rate of return on inward FDI is defined as the ratio of direct investment income on equity to the inward direct investment stock.

Source: OECD and IMF.

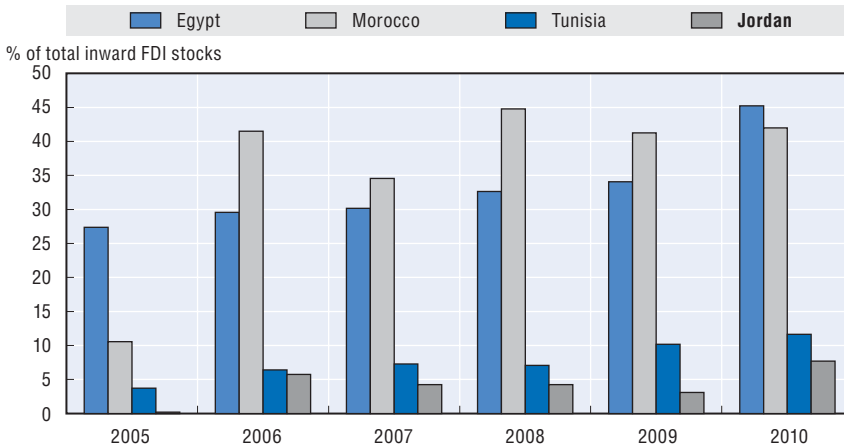
Figure 1.6. FDI inward stocks of Jordan



Source: Central Bank of Jordan.

42% of its total stocks, of which 39% was held by Saudi Arabia (Figure 1.6). The second most important sector attracting FDI is chemicals and chemical products (16%, of which 53% was held by the United States) followed by post and telecommunication (11%, of which 62% was held by France) and real estate (10%, of which 33% by Iraq). A significant share of FDI in manufacturing, other than chemicals, is in the garment industry driven by the preferential US market access given to Jordanian exports under the Qualifying Industrial Zones (Chapter 3). Foreign investment represents 94% of total investment in the sector, and roughly one in five firms are wholly-owned by Jordanians (Abugattas-Majluf, 2012).

Figure 1.7. **Share of OECD countries' stocks of FDI in selected MENA countries (% of total FDI stocks)**



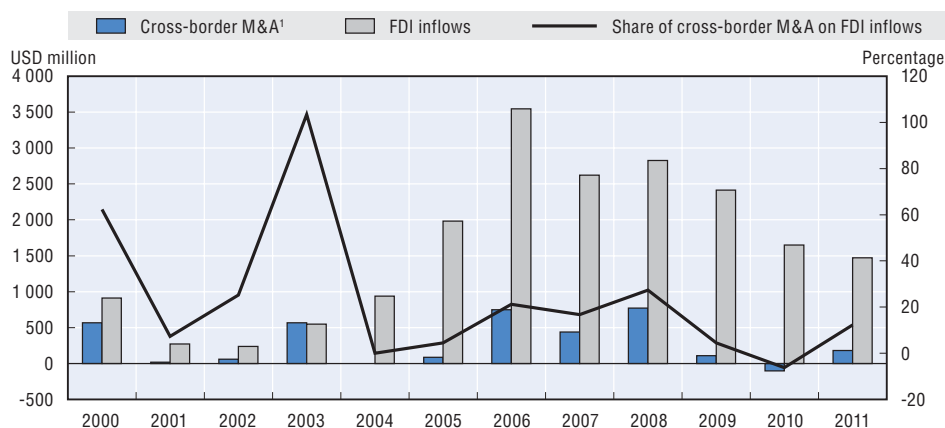
Notes: Data of OECD countries' FDI stocks is based on outward FDI stocks in these countries reported by OECD countries and available at the OECD database. These figures might differ from what is reported by Egypt, Morocco, Tunisia and Jordan as inward FDI stocks from OECD countries.

Source: OECD International Direct Investment Database and IMF.

Greenfield investments in Jordan have been mainly directed to the real estate and mining sectors, following the trend of FDI inflows into other countries in the region. Around 70% of real estate FDI has been from GCC countries (World Bank, 2011).

As mentioned earlier, privatisation has been a major driver in attracting foreign investors into Jordan. FDI flowing into privatisation has amounted to over USD 1 billion since 2000, involving 66 privatised public entities (Abugattas-Majluf, 2012). The privatisation of Jordan Telecom, for instance, was largely responsible for the high FDI inflow level in 2000, reaching 10% of GDP. Throughout the decade, privatisations attracted several regional players and greatly contributed to peaks in FDI inflows. In 2006, FDI inflows reached an historic high level of JD 2.5 billion or roughly 23% of GDP, following among others the privatisation of Jordan Phosphate Mines Company and the increase in the foreign participation in Jordan Telecom (see next section).

Although no official data is available on the preferred entry mode of foreign investors, cross-border acquisitions seem to have played a significant role in FDI inflows into Jordan during the early 2000s (Figure 1.8). Data on cross-border acquisitions illustrates that they have corresponded to roughly 30% of FDI inflows on average from 2000 to 2008 but have since declined considerably with the regional unrest and the global economic slowdown.

Figure 1.8. **Cross-border M&A and FDI inflows into Jordan, 2000-2011**

Note: Unctad's cross-border M&A sales are calculated on a net basis as follows: sales of companies in the host economy to foreign TNCs (-) sales of foreign affiliates in the host economy. The data cover only those deals that involved an acquisition of an equity stake of more than 10%. Data refer to the net sales by the region/economy of the immediate acquired company.

Source: Unctad cross-border M&A database and IMF database.

### Box 1.1. Measuring foreign direct investment

Foreign direct investment (FDI) statistics included in this report are derived from several sources, including official statistics of Jordan, namely the Central Bank of Jordan (CBJ) and the Department of Statistics (DoS) from the Ministry of Planning and International Co-operation. The Central Bank is responsible for compiling and disseminating FDI statistics as part of the balance of payment statistics and DoS provides the raw data of FDI surveys based on a questionnaire designed by CBJ.

All OECD countries have made efforts over the past decade or so to align their national statistics with the recommendations of the OECD Benchmark Definition of Foreign Direct Investment (BMD) to provide more reliable, more comprehensive and internationally comparable FDI statistics for policy making and for other purposes. OECD and IMF define FDI as a category of investment that reflects the objective of establishing a lasting interest by a resident enterprise in one economy (direct investor) in an enterprise (direct investment enterprise) that is resident in an economy other than that of the direct investor. The lasting interest implies the existence of a long-term relationship between the direct investor and the direct investment enterprise and a significant degree of influence on the management of the enterprise. The numerical threshold of ownership of 10% of the voting power determines the existence of a direct investment relationship between the direct investor and the direct investment enterprise. The population of enterprises to be included in the statistics is determined according to the Framework of Direct Investment Relationship (FDIR). The statistical unit is the enterprise (as opposed to local enterprise group) resident within an economic territory.

**Box 1.1. Measuring foreign direct investment (cont.)**

OECD recommends that FDI statistics be compiled and disseminated for inward/outward FDI positions (stocks of equity and intercompany debt) as well as for financial flows (of equity, reinvestment of earnings, and intercompany debt) and income flows (for dividends, reinvested earnings and interest on intercompany debt). Data should be based on the methodology referred to as the “directional principle” and be provided for subcomponents by partner country and by industry (according to International Standard Industry Classification (ISIC). Market value should be applied by using recommended proxies for unlisted companies. For data dissemination, OECD recommends standard presentation distinguishing transactions and positions of resident Special Purpose Entities (SPEs) and proposes a list of supplemental presentations.

Data collection in OECD countries is based primarily on annual (and quarterly) enterprise surveys complemented by other sources such as the International Transactions System (ITRS), administrative sources, press, etc. Data collection is subject to special legislations in all OECD countries which is a necessary element for the safeguard of data confidentiality and to ensure the collection of reliable and complete information from reporting enterprises. The existence of legislation also enables to achieve a good response rate while sanctions are included for non-response.

The Central Bank of Jordan, in co-ordination with the Department of Statistics, is working on improving FDI statistics' timeliness and reliability in order to assist informed policy making. The authorities are encouraged to engage in a dialogue with the Working Group on International Investment Statistics (WGIIS), a subsidiary body of the Investment Committee and responsible for OECD's FDI statistics and the methodology, with a view to sharing experience, building capacities and aligning data further with the OECD BMD4.

## Foreign investor participation in privatisation programmes

Jordan elaborated a national privatisation strategy<sup>5</sup> in the mid-1990s which launched a comprehensive state-owned enterprises restructuring and privatisation programme. End 1996, an Executive Privatization Unit was established within the Prime Ministry to recommend public enterprises candidate for restructuring or privatisation and to define privatisation procedures and options. Then, the Privatisation Law No. 25 was issued in 2000 providing the legal and institutional framework for privatisation. The Law defines objectives, methods and procedures, principles, institutions and utilisation of privatisation proceeds.



The Law established the Privatization Council, the primary decision and policy maker on privatisation. The Council is chaired by the Prime Minister and comprises the Ministers of Finance, Industry and Trade, Planning and International Cooperation, and Justice, the Governor of the Central Bank, the EPC Chairman, the concerned Minister when discussing an issue related to his/her Ministry or an institution affiliated therewith, four specialised experts appointed by the Council of Ministers, on recommendation by the Prime Minister, for two years renewable for one further term. The Council:

- formulates the general policies on privatisation;
- identifies the candidate enterprises for privatisation;
- approves restructuring and privatisation transactions;
- retains qualified consulting firms to conduct studies on restructuring and privatisation of enterprises; and
- recommends to the Cabinet the legal measures necessary to establish regulatory bodies for privatised sectors.

The Executive Privatization Commission (EPC) was also created by virtue of the 2000 Privatization Law. It is a financially and administratively independent institution responsible for implementing the privatisation programme and the transactions. Pursuant to the Law, EPC has been entrusted with:

- carrying out studies on restructuring and privatisation transactions in co-ordination with the concerned bodies, and making recommendations to the Privatization Council;
- following upon the execution of restructuring and privatisation transactions after the consent of the Council of Ministers on the Council's resolutions has been obtained; and,
- any other responsibilities related to restructuring and privatisation transactions assigned to it by the Privatization Council or by the Council of Ministers.

The EPC is now also responsible for managing public-private partnerships (PPPs) and for implementing the PPP programme launched in June 2008 to mobilise private investments. A draft PPP law clarifying its role has been prepared.

The Jordanian government has adopted various methods of privatisation:<sup>6</sup>

- Total or partial transfer of ownership of public enterprises to the private sector, which may include, for example selling shares listed on the Amman Stock Exchange, public offering and direct sale to investors or technical (strategic) partners.

- Concession agreements, through which the government grants the private sector the right to provide a service according to specific terms, as is the case with the privatised Public Transport Corporation.
- Lease contracts, through which the government remains the sole owner of the public enterprise, but at the same time the private sector operates it for its own benefit for a certain fee, as is the case with the Aqaba Railway.
- Management contracts, where the ownership of the public enterprise remains with government and the management of these enterprises shall be handled by the private sector according to specific management contracts as is the case with the management contract for the provision of water and wastewater services in the Capital Governorate.
- Agreements in which the private sector builds the enterprise, operates it for a specific period then transfers it to the public sector at the end of the specified period (BOT).
- Any other method endorsed by the relevant authorities based on the conditions and specificity of each project.

In implementing privatisation transactions by the government, the following shall be observed: compliance with the principles of transparency, openness and fair competition; and evaluation of assets and liabilities of the institution or enterprise in question by more than one method, according to recognised principles of accounting practices.<sup>7</sup>

Priority has been given to the privatisation of public corporations and projects that can be operated on a commercial basis. The government has wished to continue providing basic services such as education, healthcare, social services, security and environment conservation – although the private sector is allowed to provide the same services, and focused its privatisation priorities towards the following sectors: energy, transport (public transport, railways, air transport, including airports and ports corporations), post and telecommunications, water, television and radio.

Since 2000, EPC has successfully completed 71 transactions yielding considerable proceeds coupled with sizeable investments associated with privatisation. The completed transactions which include over nine major projects involved partial and total restructuring of relevant sectors. Such transactions covered an array of vital sectors such as mining, civil aviation,<sup>8</sup> telecommunications and electricity. By 2008, the majority of Jordan's energy sector had been privatised (US Department of State, 2011).<sup>9</sup> Furthermore, the restructuring and privatisation of such sectors have laid the foundation for an environment conducive to private investments through more regulated institutional and legal frameworks.<sup>10</sup>

Up to the end of 2008, total privatisation proceeds amount to over USD 2.2 billion (WTO, 2009). According to the Privatization Law, the privatisation proceeds shall be deposited in the Privatization Proceeds Fund and be utilised for the following purposes:

- settlement and purchase of government debts incurred by the privatised public companies or enterprises;
- investments in financial assets;
- financing economic activities and new investments in infrastructure sectors with feasible economic and social returns and which will assist in achieving sustainable development;
- re-qualifying and training of employees working at institutions and organisations undergoing a restructuring or privatisation process and settlement of their ensuing financial rights; and
- subscription with the Social Security Corporation.<sup>11</sup>

Given that the privatisation process is largely complete, it is expected that the number and size of future privatisation projects will diminish. The government will now favour public-private partnerships (PPP) projects rather than pure privatisation deals. The government accordingly prepared a PPP Law in 2010 – which however has not been adopted yet – and is reorienting the EPC mandate to focus on partnerships (Chapter 3 and Box 3.9).

In January 2013, the government has announced the establishment of a Privatisation Evaluation Committee to examine privatisation activities since 1989. The aim is to investigate possible cases of corruption and mismanagement in privatisation processes. The Committee will include representatives of the Jordanian government and international organisations (IFC, IsDB and EBRD). Its tasks – to be performed within six months – include “examining the legal, financial and administrative aspects of the process, the fairness of share pricing, the performance of entities since they were privatised, the effectiveness of public awareness programmes, and the use of privatisation proceeds” (EIU, February 2013).

## Notes

1. This section draws on data from the IMF database.
2. Jordan was negatively affected by the economic downturn of oil exporting countries in the region in the mid-1980s. The fall in exports revenues, as well as a reduction in foreign aid and remittances from those countries led to large budget deficits been financed by increase external debt. Central government debt went above 126% of GDP and GDP per capita growth declined roughly 17% in 1989. Inflation reached 26% that year.

3. This comparison may be biased due to different methodologies used for compiling FDI statistics.
4. Data of OECD countries' FDI stocks is based on outward FDI stocks in these countries reported by OECD countries and available at the OECD database. These figures might differ from what is reported by Egypt, Morocco, Tunisia and Jordan as inward FDI stocks from OECD countries. Therefore, such comparison must be interpreted with caution. Nevertheless, it allows for a preliminary comparison of the participation of OECD FDI in these countries total stocks of FDI.
5. [www.epc.gov.jo](http://www.epc.gov.jo).
6. Article 4 of the Privatization Law.
7. Article 5 of the Privatization Law.
8. The ten-year privatisation process of Royal Jordanian terminated in 2008. During that period, the role of the Jordan Civil Aviation Regulatory Commission evolved with separation between regulation and aviation management and the management of Amman's Queen Alia International Airport was fully privatised (US Department of State, 2011).
9. The privatisation of the energy sector included two distribution companies (Electricity Distribution Company (EDCO) and the Irbid District Electricity Company (IDECO)) and a generation company (Central Electricity Generating Company (CEGCO)). The privatisation of a second generation company, Samra Power Plant (SEPGCO), remains in progress. The Amman East Power Plant was built and is owned and operated by AES Jordan PSC, a consortium of AES Oasis (a subsidiary of U.S.-based AES Corporation) and Japan-based Mitsui and Co. AES Jordan PSC will operate the plant on a build-own-operate (BOO) basis for 25 years (US Department of State, 2011).
10. [www.epc.gov.jo/EPC/Home/Mandatetasks/tabid/81/Default.aspx](http://www.epc.gov.jo/EPC/Home/Mandatetasks/tabid/81/Default.aspx).
11. Article 13 of the Privatization Law.

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## Chapter 2

### **Jordan's investment regime and the National Treatment instrument**

*Jordan's legal investment regime is governed by a series of laws and regulations, not all easily accessible, some being temporary and overlapping. It suffers from deficiencies in terms of legal coherence, transparency and predictability for investors. The authorities are aware that it needs to be clarified, unified and improved, and have announced the revision of the investment law and the restructuring of the investment institutional framework.*

*Jordan applies restrictions on foreign investment under the OECD National Treatment instrument. Limitations on foreign ownership concern sectors such as telecommunications and transport, but also wholesale trade and retail, and construction, which are more unusual among OECD countries and adherents to the OECD Declaration on International Investment. In addition, some measures having a bearing on FDI are notified for purposes of transparency. Jordan's overall scoring under the OECD's FDI Regulatory Restrictiveness Index is high and significantly above the average for adhering countries.*

This chapter examines Jordan's investment regime in light of the National Treatment instrument, the first element of the OECD Declaration on International Investment and Multinational Enterprises (Box 2.1). Chapter 3 looks at various aspects of Jordanian broader investment policy framework using the OECD Policy Framework for Investment. Jordan's framework regarding responsible business conduct as covered by the *Guidelines for Multinational Enterprises*, an integral part of the Declaration, is analysed in Chapter 4.

**Box 2.1. The Declaration on International Investment and Multinational Enterprises**

Adopted in 1976, the Declaration is a policy commitment by adhering governments to provide an open and transparent environment for international investment and to encourage the positive contribution multinational enterprises can make to economic and social progress.

The Declaration consists of four elements (each underpinned by a Decision by the OECD Council on follow-up procedures):

- **National Treatment instrument:** A voluntary undertaking by adhering countries to accord to foreign-controlled enterprises on their territories treatment no less favourable than that accorded in like situations to domestic enterprises.
- **The *Guidelines for Multinational Enterprises*:** Recommendations on responsible business conduct addressed by governments to multinational enterprises operating in or from adhering countries. The *Guidelines* were updated in 2011.
- **The instrument on conflicting requirements:** Adhering countries agree to co-operate so as to avoid or minimise the imposition of conflicting requirements on multinational enterprises.
- **The instrument on international investment incentives and disincentives:** Adhering countries recognise the need to give due weight to the interest of other adhering countries affected by laws and practices in this field; they need to strengthen international co-operation in this area and endeavour to make measures as transparent as possible.

**Box 2.1. The Declaration on International Investment and Multinational Enterprises (cont.)**

All 34 OECD member countries have adhered to the Declaration, as have ten non-member countries: Argentina (22 April 1997), Brazil (14 November 1997), Colombia (8 December 2011), Egypt (11 July 2007), Latvia (9 January 2004), Lithuania (20 September 2001), Morocco (23 November 2009), Peru (25 July 2008), Romania (20 April 2005) and Tunisia (23 May 2012).

“National treatment” is the commitment by a country adhering to the Declaration on International Investment and Multinational Enterprises to treat enterprises operating on its territory, but controlled by the nationals of another country, no less favourably than domestic enterprises in like circumstances. The National Treatment instrument consists of two elements: a declaration of principle, which forms part of the Declaration, and a procedural OECD Council Decision which obliges adhering countries to notify their exceptions to national treatment and establishes follow-up procedures in the OECD to deal with such exceptions. The decision comprises an annex which lists exceptions to national treatment, as notified by each adhering country and accepted by the OECD Council. The exceptions are periodically examined by the Investment Committee. To ensure transparency, countries adhering to the Declaration also undertake to report any measures that, while not representing exceptions to national treatment, have an impact on it. The lists of these exceptions and measures are published and regularly updated.<sup>1</sup>

National treatment has become a well-established principle among adhering countries. Exceptions are typically limited to certain sectors, such as mining, transport, fisheries, broadcasting and telecommunications. Exceptions are reduced in scope or eliminated among adherents to the Declaration as a result of unilateral measures by the countries themselves, or as a result of peer reviews.

The aim of this chapter is to analyse and assess the main features of the Jordanian legislation relating to foreign direct investment (FDI) and to present the exceptions to the OECD National Treatment instrument notified by Jordan.

## **Main features of Jordan's investment regime**

### **Overview of FDI legislation**

Jordan presents a rather complex and confusing legal investment regime, with different applicable laws and regulations related to investment, not all easily accessible. This jeopardises both transparency and predictability which are required to foster investors' confidence. The authorities are aware that the legal and institutional investment framework needs to be clarified, unified

and improved and have announced several times over the past years a revision of the investment legal regime.

The legal investment regime of Jordan is governed by:

- the interim Investment Law No. 68 of 2003, which contains general provisions for treating and protecting investment and describes procedures to benefit from incentives and obtain licences;
- the provisions on sectors, incentives and exemptions of the Investment Promotion Law No. 16 of 1995 (the remaining provisions were repealed by the 2003 Law);
- Regulation No. 54 of 2000 which lists the sectors that are restricted to foreign investment;
- The interim Law No. 67 of 2003 which deals with the organisation of the Jordan Investment Board.

Jordan issued its first investment law in 1987, then amended it in 1992 and replaced it by the Investment Promotion Law No. 16 of 1995<sup>2</sup> which covered the legal and institutional dimensions of the investment framework. The 1995 Law was subsequently complemented by several regulations, including Regulation No. 54 of 2000 regulating Non-Jordanian Investments, which sets the conditions for ownership and participation of foreign investors in a range of sectors and activities; and Regulation No. 2 of 1996 of the Investment Areas and Sectors issued pursuant to Article 4 of the Investment Promotion law which defines the geographical development areas and sectors which enjoy tax exemptions.

In 2003, three interim investment-related laws were issued: the Investment Promotion Law No. 67, the Investment Law No. 68, and the Law for Investment Climate and Enterprise Development No. 71. These laws have not been enacted by the Parliament and are temporary laws,<sup>3</sup> but, according to the Jordanian authorities, the laws No. 67 and 68 still apply. As for the Law No.71, which created the Jordan Authority for Economic Development (JAED), it has never been implemented as the establishment of JAED was cancelled.

The Investment Promotion Law No. 67 is not translated into English and therefore could not be consulted for the purpose of this review. According to the authorities, the legal and administrative framework of the Jordan Investment Board (JIB) is organised by virtue of this Law which in particular regulates JIB's internal functioning. The Investment Law No. 68 contains provisions regulating the legal regime for investment and repeals the 1995 Investment Promotion Law, except for its "provisions relating to sectors, incentives and exemptions" which remain in force (Article 27.A of 2003 Law).

The co-existence of the 2003 temporary laws, the 1995 Law and related regulations has created loopholes and led to a certain degree of legal and



institutional confusion. The investment regime suffers from deficiencies in terms of legal coherence, transparency and predictability for investors. Subsequently, the overlap of provisions and the resulting lack of clarity jeopardise governmental efforts to enhance investors' confidence.

The situation is acknowledged by the Jordanian authorities themselves. The Executive Development Program 2011-2013 of the Ministry of Planning and International Cooperation mentioned that "it is necessary to activate the application of a set of investment legislations based on the evolution of a clear and transparent investment vision to enhance investor's confidence" and therefore to achieve "stability in the legislative environment". According to JIB sources, "actual implementation of the two temporary laws No. 67 and 68 since 2003 led to a conviction that these laws contribute to administrative and institutional disconcert and hence to a certain level of confusion in the investment climate in Jordan. Temporary laws of 2003 have established various government institutions with overlapping authorities and responsibilities. Other governmental bodies operated in the field of investment promotion and service without a legislative mandate. This increased the legal and institutional confusion."<sup>4</sup> During a meeting with His Majesty King Abdullah II in February 2012 on foreign investment attraction, the Minister of Industry and Trade underlined "the lack of a unified law" and recognised the need to change the legislation governing investment and procedures.<sup>5, 6</sup>

Accordingly, the government decided to review its legal investment framework. It has announced the enactment of new investment legislation clarifying the investment incentive regime and reorganising the institutional framework, and several draft proposals were prepared but not adopted. A new draft law was prepared in early 2012.

The government announced in March 2012 the preparation of institutional reforms for investment promotion, under a new legal investment regime. A new Higher Investment Council (HIC) should be established, as a merger of the Jordan Investment Board (JIB), the Free Zones Development Commission and other investment-related institutions. A new draft law has been prepared to reorganise the institutional framework of the investment-related agencies but also deals with investment incentives. In June 2012, a national newspaper (Al-Rai ) published key content of the draft law in Arabic. The new institution would report directly to the Prime Minister's Office, and not to the Ministry of Industry and Trade as is currently the case for JIB. The HIC should have ten members drawn equally from the public and private sectors. According the authorities, the draft law is under consideration by different government agencies for feedback and comments.

The Jordanian authorities are encouraged to design the new law so that it reaffirms commitments to non-discrimination, transparency and investor

protection in line with international and OECD high standards; streamlines FDI restrictions currently found in separate regulations and provides for their critical review; and clarifies responsibilities of the authorities for the many tax and other investment incentives, with a mandate to simplify the system, periodically assess its net benefit, and publicly report.

### **Main provisions of the investment legal regime**

As regards investment incentives, since 2003, the 1995 Investment Promotion Law has only applied to incentives, as all other provisions have been repealed and replaced by the 2003 Investment Law. The 1995 Law mentions the sectors and zones benefitting from exemptions and defines the kind and level of incentives: partial exemptions of income and social services taxes (according to the different development areas where the investment occurs) and exemptions of fees and taxes for imported fixed assets and spare parts (under certain conditions) (Articles 3, 4, 6-10). The 2003 temporary Investment Law also partially deals with incentives and replicates some provisions of the 1995 Law. It establishes the Investment Incentives Committee at the Jordan Investment Board and describes the procedures for an investor to benefit from an exemption. Both laws give the Council of Ministers the possibility to grant additional incentives to projects that contribute to the development of the country (respectively Articles 3 and 5 of the 1995 and 2003 Laws). At the same time, the 2009 Income Tax Law, effective as of 1 January 2010, cancels income tax incentives. Article 67 of the Law mentions that “no provisions provided for in any other legislation related to wholly or partially tax exemptions will be applicable”, except for the provisions of listed laws that mainly refers to social issues, concession agreements, development zones and the Aqaba Special Economic Zone. Therefore, foreign investors – not investing in economic zones – can no longer benefit from income tax incentives as provided for in the 1995 Law.

The 2003 Law regulates treatment of foreign investors (national treatment), includes provisions on investment protection (expropriation and transfer of funds), contains investor's obligations in terms of disclosure of information, provides for free management of personnel, establishes the Investment Incentives Committee, and specifies application procedures to enjoy benefits and exemptions and obtain licences. Compared to the 1995 Law, the 2003 Law does not contain specific provisions on dispute settlement; it only refers to other Arab and international agreements which contain protection and dispute settlement provisions.

The 2000 Regulation lists the sectors and activities in which foreign investors are restricted (49% and 50% ownership, prohibition, minimum capital thresholds, etc.). It has not been changed following the issuance of the 2003 Investment Law.

### **Transparency, accountability and predictability of Jordan's investment regime**

When laws and regulations are accessible to the public and to economic operators, it provides a guarantee of transparency for investors. Constraints on access to legislation, lack of clear and concise information and government discretion in disclosing or withholding information constitute obstacles to investors. In Jordan, information on the investment regime is rather scattered and not easily accessible.

The *Official Gazette*, which publishes all legal texts, is not accessible online. It can be consulted in the National Library upon request and free-of-charge. Draft laws are not accessible to the public. A pilot project, called the regulatory guillotine, was launched in 2011 with the support of USAID. One of the objectives of the process is to create a national registry of all laws and regulations to be made available to the public.<sup>7</sup> This initiative would be a welcome improvement in transparency and the rule of law in Jordan.

With respect to accessibility of investment regulations and laws, investors can find on the website of the Jordan Investment Board the 1995 Investment Law, but not the 2003 Investment Law. JIB indicates that hard copies of regulations and laws are available in the buildings of JIB and other investments institutions.

The administrative decisions issued by JIB's Board of Directors are usually kept within the Treasury. There are no restrictions of any kind which prevent the publication of these decisions and they should be available upon request given that they were taken among the members of the Board unanimously.

In terms of predictability, the fact that the government has announced since 2006 the revision of the legal regime for investment and prepared several draft laws that were never adopted sends a negative message to investors.

A National Association for Investor Protection was established in 2002. The Association contributes to raising awareness on the importance of investment and related issues such as competitiveness and anti-monopoly regulations. It is also mandated to inform investors on how to deal with regulations governing their activities, protect their interests and represent them before public and private sector institutions and the judiciary. Although this is a valuable initiative, it is unclear to what extent it has materialised.

### **Principle of non-discrimination of FDI**

According to Article 12 A 2 of the 2003 Investment Law, non-Jordanian investors benefit from the same treatment as Jordanian investors, except in sectors where ownership is limited as stipulated in the 2000 Regulation. Subsequently, for clarity purposes, the Law defines foreign capital.<sup>8</sup>

National treatment and most-favoured-nation treatment are also granted in bilateral investment treaties ratified by Jordan (Table 3.2). The FTAs signed by Jordan provide for NT and MFN treatment though they cover only trade in services and do not apply to investment.

Regulation No. 54 of 2000 Regulating Non-Jordanian Investments lists restrictions on foreign investment. Non-Jordanians can own up to 100% of any project, except for specified activities and sectors where foreign equity is either not allowed or may not exceed either 49% or 50% (see below). Investors may benefit from higher equity percentages in the listed sectors provided the project is of special development importance and upon approval of the Council of Ministers, after recommendation of the Higher Council for Investment Promotion (Article 8).

Investors have notification and reporting obligations. They must notify the Investment Incentives Committee in JIB in writing of the date of commencement of work and actual production, maintain regular books and appoint a licensed auditor for auditing, maintain a register of fixed assets that benefit from exemptions, and supply any required information, data or documents. Authorised personnel of the Committee shall be allowed to enter the investment site to check accuracy of data (Article 14 of the 2003 Investment Law).

### ***Transfer of capital***

The Law guarantees to foreign investors the free transfer of funds without delay and in a convertible foreign currency. The covered funds are the transferred capital, returns and profits, proceeds of liquidation or sale, and staff salaries and remunerations (Articles 18 and 19 of the 2003 Investment Law). The majority of BITs signed by Jordan contain a clause covering free transfer of the investment and its income.

The Jordanian Dinar (JD) is fully convertible for all commercial and capital transactions and has been pegged to the US Dollar (approximately 1 JD to USD 1.41) since 1995. Non-residents are allowed to open bank accounts in foreign currencies. These accounts are exempted from transfer-related commission fees charged by the Central Bank of Jordan. CBJ prior approval is not required for transfers of funds, including investment-related transfers, but stricter measures are now in place to monitor wire transfers in accordance with Jordan's fight against illicit cash flows (US Department of State, 2011).

## **Exceptions to the National Treatment instrument notified by Jordan**

Jordan's exceptions to national treatment notified under the National Treatment instrument of the OECD Declaration are based on the 1995 and 2003 Investment Laws, Regulation No. 54 of 2000 on Regulating Non-Jordanian

Investments and other legal sources. The review also took into account other instruments, in particular the positive lists established under Jordan's Schedule of Specific Commitments on Services within the General Agreement on Trade in Services (GATS) in World Trade Organization (WTO).

The 1995 Law lists the sectors which enjoy exemptions and facilities (industry, agriculture, hotels, hospitals, maritime transport and railways, and any sectors to be decided by the Council of Ministers). The 2000 Regulation lists the sectors and activities in which foreign investors face restrictions.

### **Horizontal measures**

For registration purposes, non-Jordanian investments must have at least 50 000 Jordanian Dinars of capital (equivalent to about USD 70 000), except when participating in public shareholding companies.<sup>9</sup>

**Access to land.** Land ownership by non-Jordanian nationals and companies is allowed for business purposes, except in the free zones where land can only be leased. For non-Jordanian legal persons, land ownership must be related to the approved business activities and is subject to authorisation of the Minister of Finance, the Department of Lands and Survey or the Royal Cabinet, depending on the size and location of the property. Lease of land by non-Jordanian legal persons for more than three years is subject to Cabinet approval, and so is lease of land in certain areas and outside zoning boundaries. Authorisation for purchase or lease of state-owned lands is restricted to Jordanian nationals.<sup>10</sup> All legal entities are prohibited from engaging in real estate trading. Foreign natural persons may own land (one residence for personal use) within zoning boundaries, subject to reciprocity by the country of origin of the applicant and on condition that the land area does not exceed 10 dunums (10 000 square metres). The reciprocity requirement does not apply to nationals of Arab countries (Chapter 3). Investments by foreign natural persons fall outside the scope of the OECD National Treatment instrument.

### **Sectoral measures**

The 1995 Investment Law, while offering exemptions and facilities to any investment projects in industry, agriculture, hotels, hospitals and maritime transport and railways (Article 3), states that non-Jordanian investors may invest through ownership, partnership or shareholding in accordance with the provisions of a regulation to be issued (Article 24.a) which indicates the sectors in which foreign investors can invest, the maximum ownership percentage and the minimum foreign capital required. This regulation was issued in 2000 (Regulation No. 54 of 2000 on Regulating Non-Jordanian Investments). The

2003 Interim Investment Law reiterates that provision (Article 12 A), but no new regulation was issued pursuant to this subsequent investment law.

The 2000 Regulation classifies sectors in three groups: the sectors in which foreign investment is totally prohibited, the sectors in which a maximum 50% foreign ownership is authorised and the sectors where a maximum 49% foreign ownership is allowed.

Foreign investment is prohibited in:

- passenger and freight road transport services (including taxi, bus and truck services);
- quarries for natural sand and stones (dimension, aggregates and construction stones) used for construction purposes;
- security and investigation services;
- sports clubs (including organisation of sports events services and excluding health fitness clubs services);
- clearance services;<sup>11, 12</sup>
- geology-related sciences; scientific and technical consulting services related to prospecting, surveying, exploration, exploitation and map making;
- real estate services;
- pension consultancy; and
- dental services.

Foreign ownership is limited to a maximum of 50% of the capital of any project in the following activities:

- Commercial activities:
  - ❖ purchase of goods for purposes of leasing or renting (excluding financial leasing services);
  - ❖ purchase of goods and other movable tangibles for purpose of selling with profits;
  - ❖ wholesale trade (except for firearms and pharmaceuticals where foreign investment is not allowed) and retailing (except for pharmaceuticals where foreign investment is not allowed); and franchising (a Jordanian juridical entity is required for franchising in meal services (with full restaurant services or in self-serving facilities or beverage serving services for consumption on premises) except when these services are operated in hotels and motels);<sup>13</sup>
  - ❖ import and export;
  - ❖ distribution of goods and services;<sup>14</sup> and
  - ❖ supply services excluding food catering not conducted by restaurants, cafes and cafeterias.

- Services:
  - ❖ professional services: engineering services including architectural services, construction services, technical testing services for construction purposes;
  - ❖ maintenance and repair services of land transport and of audiovisual equipment;
  - ❖ photographic services (excluding military portraits and aerial photography of the Jordanian territory, where foreign investment is not allowed) and audio-visual services (motion picture and video-tape distribution services);
  - ❖ placement and supply services of personnel;
  - ❖ brokerage (excluding financial brokerage) and money exchange services (excluding those provided through banks or financial companies);
  - ❖ advertising services;
  - ❖ commercial and insurance agents;
  - ❖ restaurants, cafes and cafeterias excluding those that are provided within hotels, motels, and on board of ships and trains;
  - ❖ tourism and travel-related services: meal services (excepted when operated in hotels, ships or trains), travel agencies and tour operator services (service provider must be a Jordanian specialised (i.e. licensed) tourist firm);
  - ❖ convention services;
  - ❖ Research and Development services on natural sciences (excluding geology-related sciences where foreign investment is not allowed);
  - ❖ leasing or rental services without operator relating to ships, machinery and equipment (excluding agricultural machinery and equipment and engines and turbines);
  - ❖ printing and publishing (ownership of periodical publications is restricted to Jordanian natural persons or juridical entities wholly owned by Jordanians);
  - ❖ related scientific and technical consulting services (in addition cabinet authorisation is required), excluding prospecting, surveying, exploration, exploitation and map making, where foreign investment is not allowed;
  - ❖ refuse disposal services: collection and treatment of solid waste services, excluding collection and treatment of hazardous waste (50% limitation and any other limitations on legal form provided by the Jordanian law, establishment and provision of services subject to Cabinet authorisation and to an agreement with the Jordanian government, the number of service providers may be restricted);
  - ❖ services incidental to agriculture and manufacturing;
  - ❖ advisory and consultancy services incidental to animal husbandry.

- Transport services and transport auxiliary services:
  - ❖ maritime transport and auxiliary services, except for maintenance and repair of vessels, shipping agents, maritime freight services and food supply catering where access is restricted to Jordanian national or legal entities;
  - ❖ air transport auxiliary services, except for freight forwarding services, packing and crating services, and freight inspection services where access is restricted to Jordanian national or legal entities; and excluding engine overhaul, airports duty-free shops, simulators training and computer reservation systems;
  - ❖ rail transport auxiliary services, excluding passenger and freight transportation, pushing and towing services, supporting services for rail transport such as rail passenger terminal services);
  - ❖ road transport auxiliary services (excluding passenger and freight road transport which are prohibited to foreign investors);
  - ❖ road transport services (including specialised tourist transportation services and supporting services of road transport);
  - ❖ clearance services linked to the listed transport services.<sup>15</sup>

Foreign ownership is limited to a maximum of 49% in:

- Scheduled and non-scheduled passenger, freight and mail air transport services; and
- Rental services of aircraft with operator.<sup>16</sup>

The equity-level requirements can be raised by the Council of Ministers upon recommendation of the Higher Council for Investment Promotion for “big development projects that enjoy special importance” (Article 8, Regulation No. 54 of 2000).

According to Article 5 of the 2000 Regulation, non-Jordanian ownership or participation in any of the sectors or activities not listed in the Regulation, or the ones that are excluded there from, shall not be restricted unless another legislation restricts such ownership or participation.

**Mining sector.** In the mining sector, mining rights are granted for up to 30 years and are renewable. Permits are granted by the Natural Resources Authority (NRA) for discoveries of minerals in commercial quantities, giving priority mining rights for two years. Article 117 of Jordan’s Constitution mentions that “any concession granting a right for the exploitation of mines, minerals or public utilities shall be sanctioned by law”. There is no discrimination in treatment between nationals and foreigners in this sector. The sector is regulated by Law No. 12 of Natural Resources 1968 and its amendments.



**Transport services/Maritime services.** Service fees for pilotage, berthing and docking are 10% less for Jordanian ships. Jordanian ships are exempt from any port dues when anchoring in Jordanian territorial waters. Jordanian ships enjoy preferential treatment in terms of bunker fees at the Aqaba Port. Other port services are open to international maritime transport suppliers on non-discriminatory terms.

**Financial services.** Establishment of a commercial presence or conduct of new activities is open to public shareholding companies constituted in Jordan, and to branches and subsidiaries of foreign banks, unless otherwise provided for in specific legislation and regulations.

For life insurance services, including health insurance services and excluding pension fund management where foreign investment is not allowed; non-life insurance services (including accident insurance); and reinsurance and retrocession, access is open to public shareholding companies constituted in Jordan and to branches of foreign insurance and reinsurance companies.

For agency services, access is restricted to Jordanian natural persons, Jordanian general partnerships with a maximum of 50% foreign equity, and limited liability companies with Jordanians as majority on the board of directors. Insurance agents or directors of agencies must be Jordanian nationals.

Access to settlement and clearing services for financial assets including securities, derivative products and other negotiable instruments is restricted to the Securities Depository Center and Amman Stock Exchange and the Central Bank of Jordan for all other financial instruments.

### ***Approval procedures***

The Investment Incentives Committee in JIB formed under the 2003 Investment Law reviews the application submitted by investors to benefit from exemptions. The Committee, composed of six members, meets at least once a month and issues its decisions by a majority vote. The Committee has 30 days to take a decision on an application submitted by the investor. Rejection should be motivated. The investor is entitled to appeal the Committee's decision to the Minister. The Minister's decision is also subject to appeal with the Higher Court of Justice (Articles 7 to 11).

Sectoral licences are granted according to relevant legislation by an official body designated for each project. The issuance of a sectoral licence shall not exceed one month. As with an application for incentives, the decision to reject a sectoral licence should be motivated and subject to appeal

to the Higher Court of Justice (Articles 21 and 22). General licences can also be granted.

### **Government procurement**

A large body of legislation governs the public procurement regime in Jordan. Public procurement is regulated and managed by the General Supplies Department of the Ministry of Finance (Supply Act No. 32 of 1993).

There is a legal requirement to publicise competitive bidding, which is usually done through the Internet, but according to several sources (Global Integrity, 2009 and Trust Law, 2012), not all major public procurements are effectively publicised.

Unsuccessful bidders may challenge the procurement decision through the courts. Bidders who violate the procurement regulations (and who are convicted by a court ruling) by engaging in corrupt practices to influence the procurement decision will be prohibited from bidding in the future, but observers report that there are very few examples of this. Furthermore, the US Department of State 2009 reports that influence peddling and lack of transparency in government procurement exists.<sup>17</sup>

In terms of government purchasing, a 10% price preference is granted to domestic providers. Government purchasing is subject to limitations set out in Jordan's schedule of specific commitments within the WTO.

An action plan for reforms was prepared in 2010 to establish a central regulatory body, review the legal framework and establish an independent complaint review mechanism. The government drafted a new Procurement By-Law in 2011 (WTO, 2009; World Bank, 2012) that has been submitted to the Parliament.

Jordan is one of the WTO developing members negotiating accession to the Plurilateral Agreement on Government Procurement. The application was submitted in July 2000. The G8 countries at their meeting in May 2012 encouraged "Jordan's initiative to join the WTO Government Procurement Agreement, which saves money and increases accountability through rules to enforce openness, transparency and non-discrimination in public procurement."<sup>18</sup>

### **Measures at the territorial sub-divisions**

Only the central government is endowed with the power to adopt measures that might affect national treatment granted for foreign companies. As a consequence, Jordan does not report any exceptions to National Treatment at the sub-national level.

## Measures notified for transparency by Jordan

### **Measures based on public order and essential security considerations**

The 2003 Investment Law stipulates that a sectoral licence could be granted if the project achieves the “requirements of public order and morals, public health, education, public safety, environment, protection of natural resources, national security or execution of public economic policies and the interest of national economy” (Article 21). Since this provision applies to both domestic and foreign investors, there is no separate screening process of foreign investments for reasons of public order and security.

### **Other measures reported for transparency**

#### **Corporate organisation and key personnel**

The 2003 Investment Law does not contain restrictions related to key foreign personnel. The foreign investor “shall be free to manage the project in the manner he deems appropriate and through the person(s) of his choice.” To that end, the Jordanian authorities should provide the necessary facilities (Article 12 A 3).

In architectural, engineering, urban planning and landscape architectural services, foreign firms are required to train and upgrade the technical and management skills of local employees, according to the GATS schedule of Jordan.

Some BITs contains restrictions on key personnel. The FTA between the US and Jordan allows entry and sojourn of nationals of the other Party “solely to carry on substantial trade” and for the purposes of “establishing, developing, administering or advising the operation” of the investment (Article 8). The EU Association Agreement also contains employment provisions under conditions: employees should be key personnel (as defined) and be employed by the companies, subsidiaries or branches; the residence and work permits shall only cover the period of employment (Article 34).

Foreign individuals must obtain a residency permit and a work permit. To obtain a residency permit, the foreigner must have an employment agreement with a Jordanian individual or registered company. The residency permit for foreigners can now be delivered by the Jordan Investment Board, instead of the Ministry of the Interior. Work permit is granted on the basis of an economic needs test for certain categories (business visitors, intra-corporate transferees, executives, managers, specialists and professionals) as defined in the Jordan’s GATS schedule of specific commitments. It is subject to the Labour Law No. 8 of 1996 which affirms that foreign employees must possess qualification not available in Jordan and priority shall be given to Arab nationals (Oxford Business Group, 2012). The work permit is issued by the Ministry of Labour for a duration of one year.

Management positions are not allowed for non-Jordanian nationals and the managing director of a juridical entity or a branch must be resident in Jordan in the following sectors:

- ❖ Research and Development services: research centre.
- ❖ Other business services: advertising agencies, public opinion bureau, printing and publishing.
- ❖ Audio-visual services: retail outlets of audio-visual services, motion picture and video-tapes.
- ❖ Educational services: adult education centres and cultural centres.
- ❖ Insurance agency services.
- ❖ Medical labs.
- ❖ Travel agencies and tour operator services.
- ❖ Air auxiliary services: freight forwarding services, freight inspection services.
- ❖ Mining services.

**Business services.** *Auditing:* Auditing services must be performed through a resident licensed auditor in Jordan as a natural person or in general partnerships. Auditors must be Jordanian nationals.

*Architectural and engineering services and construction:* For engineering firms, in addition to the limit of 50% foreign ownership (see above), at least 50% of equity must be held by engineers. Non-Jordanian architectural, engineering, construction and contracting firms can provide services only through a contractual association with Jordanian companies for the purpose of implementing a specific project or tender. All engineering designs and plans must be undersigned by a Jordanian engineering firm before implementation in Jordan. Architects, engineers (including geological engineers), urban planners and landscape architects must be Jordanian nationals. The number of foreign engineers to be employed by a firm may not exceed twice the number of qualified Jordanian engineers employed by the same firm. As mentioned above, foreign firms are required to train and upgrade the technical and management skills of local employees in these service sectors.

*Banking sector:* Branches of foreign banks are required to have a resident regional manager.

*Medical, hospital and social services (nursing homes, convalescent homes, and rehabilitation centers):* At least three quarter of physicians in any hospital or nursing or convalescent homes and at least half of all staff must be Jordanian nationals. Physicians, as well as veterinarians and pharmacists, must be Jordanian nationals. One of the owners must be a physician except in a public limited company.

*Real estate services:* Real estate agents and licensed surveyors must be Jordanian nationals.

*Advertising services:* In addition to the limit of 50% foreign ownership for general partnerships (see above), Jordanians should be a majority in the board of directors of limited liability companies.

### **Sectors subject to public/private/mixed monopolies or concessions**

Monopolies and concessions must be notified under the OECD Declaration's National Treatment instrument under transparency measures. Monopolies can take two forms: i) a public monopoly, run by the State or managed by local governments, and ii) a monopoly exercised under an exclusive licence granted to a private operator.

#### **Public monopolies**

In Jordan, the following organisations have a monopoly over their respective field of activities:

- National Electric Power Company – NEPCO (transmission company in electric power sector).
- Jordan Post.
- Aqaba Railways.
- Water authorities: Water Authority of Jordan, Jordan Water Company (Miyahuna) and Amman Governorate Water Authority.

#### **Private and mixed (public-private) monopolies**

Jordan has notified the WTO of two state-trading companies with special and exclusive privileges (the Phosphate Mines Company and the Jordan Petroleum Refinery Company). Exclusive trading rights are granted to these two companies. The State has maintained a minority stake in three major enterprises (the Arab Potash Company, Jordan Phosphate Mines Company and Royal Jordanian Airlines Company). However, “*de jure* and *de facto* monopolies are still prevalent in a number of economic subsectors” (WTO, 2009).

#### **Concessions**

All investments in public utilities are generally subject to concessions. In sectors where service provision is granted by concessions, commercial establishment must be in the form of public shareholding companies.<sup>19</sup>

### **Jordan's plans for eliminating existing restrictions**

The main foreign investment restrictions are listed in the 2000 Regulation following the enactment of the 1995 Investment Law. The 2003 Law also

mentioned the issuance of a regulation to determine the conditions of foreign ownership, partnership and shareholding, but no new regulation was issued and the existing one was not amended. The Jordanian authorities have announced the revision of the investment law, but it is not known whether this new regulation will lift some of the existing restrictions.

Jordan has signed bilateral and regional trade agreements to liberalise trade, such as GAFTA, the Agadir Agreement or the FTA with the United States (Chapter 3). These agreements do not cover investment issues (except through provisions related to trade in services). Jordan has also ratified three BITs (United States, Canada and Singapore) which provide for treatment at the pre-establishment level, therefore for investment liberalisation. The other 50 BITs signed by Jordan do not contain liberalisation commitments.

Under the Association Agreement with the European Union, Jordan has given commitments, in particular under Article 67 on investments and promotion of investments, with respect to the development of i) harmonised and simplified administrative procedures, information channels and means to identify investment opportunities; and ii) a legal environment conducive to investment through the conclusion of investment protection agreements. Jordan intends to adopt these good practices progressively in its relations with other countries.

## **Instrument on International Investment Incentives and Disincentives**

The instrument on Incentives and Disincentives to Investment, which is part of the Declaration on International Investment and Multinational Enterprises, recognises that adherents may be adversely affected by the impact on its flow of international direct investments of measures taken by another country providing significant official incentives and disincentives to international direct investment. It stresses the need to strengthen international co-operation in this area. It first encourages them to make such measures as transparent as possible so that their scale and purpose can be easily determined. The instrument also provides for consultations and review procedures to make co-operation between adherents more effective. Jordan has declared it is ready and able to fulfil its commitments in this area, in particular by pursuing its efforts to make its support system more transparent and to undertake procedures for evaluating the costs and benefits of existing incentive measures (Chapter 3).

## **Instrument on Conflicting Requirements**

The instrument on Conflicting Requirements, which is also an integral part of the OECD Declaration on International Investment and Multinational Enterprises, provides that adherents should co-operate so as to avoid or minimise the imposition of conflicting requirements on multinational enterprises. By adopting an approach based on co-operation, adhering countries agree to hold

consultations on potential problems and to give due consideration to the interests of other countries in the regulation of their economic affairs.

Jordan, in undertaking to pursue its efforts to make its investment regime more transparent and uniform, considers itself able to fulfil commitments under the instrument on Conflicting Requirements and is ready to co-operate with other adhering countries in this area.

## OECD FDI Regulatory Restrictiveness Index

The OECD FDI Regulatory Restrictiveness Index (FDI Index) seeks to gauge the restrictiveness of a country's FDI rules (Box 2.4). The Index is currently available for 34 OECD countries, 10 non-OECD countries adhering to the OECD Declaration on International Investment and Multinational Enterprises and 12 other countries, including China, India, Indonesia and Russia. It is used on a stand-alone basis to assess the restrictiveness of FDI policies in reviews of candidates for OECD accession and in OECD Investment Policy Reviews, including reviews of new adherent countries to the OECD Declaration.

### Box 2.4. Calculating the OECD FDI Regulatory Restrictiveness Index

The OECD FDI Regulatory Restrictiveness Index covers 22 sectors, including agriculture, mining, electricity, manufacturing and main services (transports, construction, distribution, communications, real estate, financial and professional services).

For each sector, the scoring is based on the following elements:

- the level of foreign equity ownership permitted;
- the screening and approval procedures applied to inward foreign direct investment;
- restrictions on key foreign personnel; and
- other restrictions such as on land ownership, corporate organisation (e.g. branching).

Restrictions are evaluated on a 0 (open) to 1 (closed) scale. The overall restrictiveness index is a weighted average of individual sectoral scores.

The measures taken into account by the index are limited to statutory regulatory restrictions on FDI as reflected in the countries' lists of exceptions to the National Treatment instrument and measures notified for transparency without assessing their actual enforcement. The discriminatory nature of measures, i.e. when they apply to foreign investors only, is the central criterion for scoring a measure. State ownership and state monopolies, to the extent they are not discriminatory towards foreigners, are not scored.

For the latest scores, see: [www.oecd.org/investment/index](http://www.oecd.org/investment/index) and for a discussion of the methodology: OECD Working Paper on International Investment No. 2010/3.

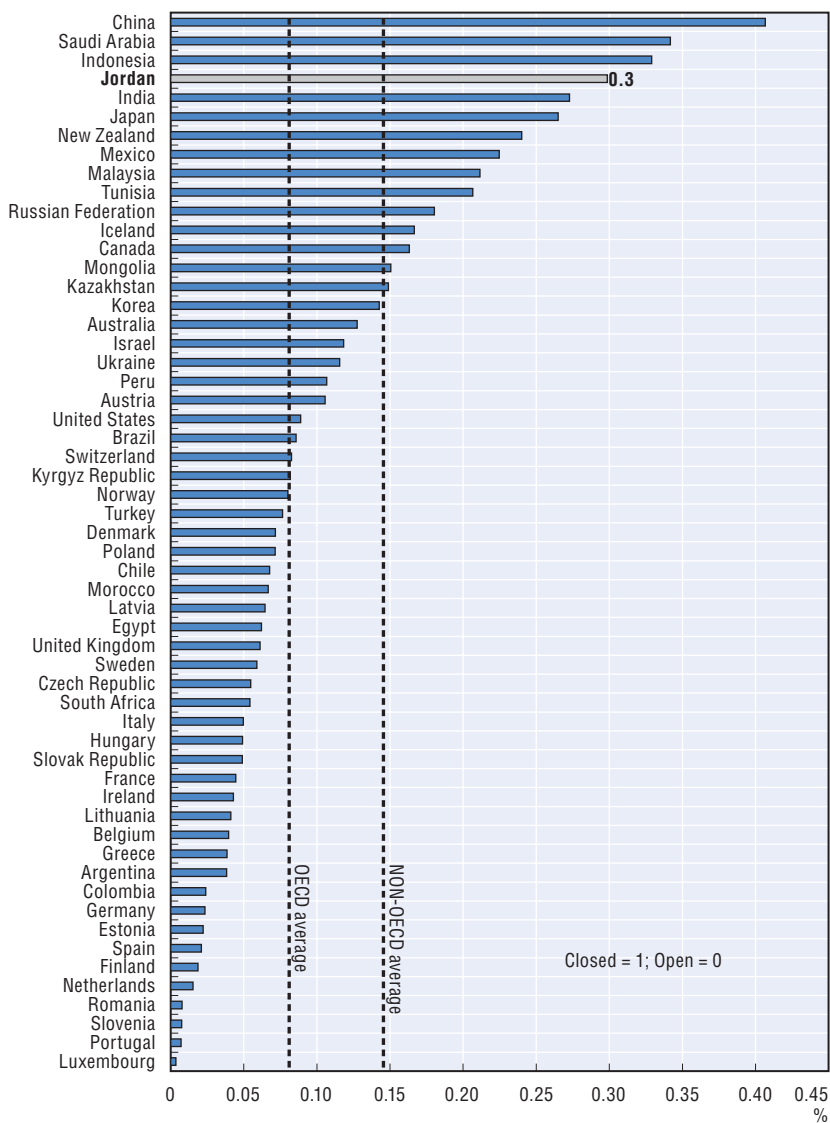
The FDI Index does not provide a full measure of a country's investment climate as it does not score the actual implementation of formal restrictions and does not take into account other aspects of the investment regulatory framework, such as the extent of state ownership, and other institutional and informal restrictions which may also impinge on the FDI climate. Nonetheless, FDI rules are a critical determinant of a country's attractiveness to foreign investors and the FDI Index, used in combination with other indicators measuring various aspects of the FDI climate, contributes to assessing countries' international investment policies and to explaining variations among countries in attracting FDI.

Jordan ranks rather high in the FDI Index compared to over 50 countries for which the Index is currently available (Figure 2.1). With a score of 0.3, Jordan stands higher than the average both among OECD countries (0.079) and among non-members of the OECD (0.145). The country thus ranks fourth in terms of statutory restrictions: among the countries covered by the classification, only China, Saudi Arabia and Indonesia score higher than Jordan in terms of FDI regulatory restrictiveness. In comparison with the countries in the region that have already adhered to the OECD Declaration, Tunisia ranks in the 10th position, but Egypt and Morocco show much less regulatory restrictiveness.

The score of Jordan results mainly from equity restrictions in a large number of sectors, in particular transport, distribution and construction (Figure 2.2). Among the measures notified by Jordan for transparency, some are taken into account using the Index methodology, in particular the requirement of Jordanian nationality for key foreign personnel in certain sectors such as professional services (auditing, architecture, engineering, and construction), banking and medical services.

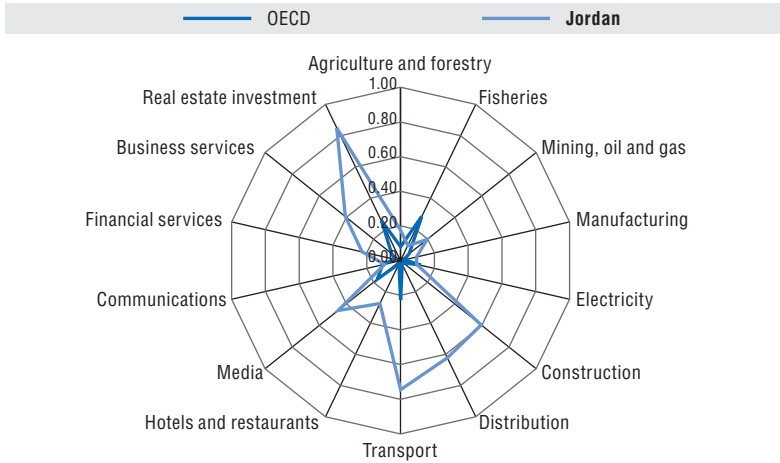
Therefore, given the number of restricted sectors, Jordan's overall scoring under the OECD's FDI Regulatory Restrictiveness Index is high and significantly above the average for adhering countries. As Jordan is currently revising its investment law, it is encouraged to consider lifting some restrictions on foreign investment in sectors that are usually open in other countries, when alternative, non-discriminatory measures make it possible to meet the legitimate public policy objectives. The Jordanian authorities are also invited to work with the Investment Committee in order to share experience and present the new proposed investment law for review and advice. They are also encouraged to take advantage of good practices in adhering countries to improve transparency and predictability as documented in Chapter 1 of the OECD Policy Framework for Investment User's Toolkit, including active consultation with the business community and other stakeholders prior to changing laws and regulations.



Figure 2.1. **OECD FDI Regulatory Restrictiveness Index, 2012**

Source: As of December 2012.

Figure 2.2. **OECD FDI Regulatory Restrictiveness Index by sectors: Jordan, 2012**



## Notes

1. The list of exceptions to national treatment and the list of measures reported for transparency by all adhering countries are available at [www.oecd.org/daf/investisement/nti](http://www.oecd.org/daf/investisement/nti).
2. Available at: [www.jordaninvestment.com/Portals/0/pdf\\_downloads/labor\\_law\\_no\\_8\\_2003\\_en.pdf](http://www.jordaninvestment.com/Portals/0/pdf_downloads/labor_law_no_8_2003_en.pdf).
3. According to the Constitution (Article 94), temporary laws are permitted and may be issued by the Council of Ministers, after approval of the King, when the Parliament is not sitting or has been dissolved. Provisional laws remain in force until they are placed before Parliament. In the event of rejection, the Council of Ministers shall declare their nullity, but such nullity shall not affect any contracts or acquired rights. The constitutional amendments adopted in September 2011 narrowed down the power to issue temporary laws to emergency situations (disasters, state of war and need for urgent expenditures). Therefore it would not be anymore possible to adopt laws such as the 2003 investment-related temporary laws.
4. Jordan Investment Board (2008), *The Legal Investment Environment in Jordan*, presentation made at a Workshop on Iraq National Investment Reform, organised by the MENA-OECD Investment Programme, [www.oecd.org/mena/investment/39989849.pdf](http://www.oecd.org/mena/investment/39989849.pdf).
5. *The Jordan Times*, 13 February 2012.
6. Several external sources also mention the lack of legal clarity and efficiency of the investment framework. For example, the United States Department of State mentions that “governmental efforts have made Jordan’s official investment climate welcoming; however, some large US investors have reported “hidden costs” due to bureaucratic red tape, vague regulations, and conflicting jurisdictions.” (US Department of State, 2011).

7. EnConsult, *The Regulatory Guillotine Pilot in Jordan's Licensing and Construction permitting Regulations*, document provided by the Ministry of Planning and International Co-operation.
8. "Foreign capital" shall mean monies invested in the Kingdom by a non-Jordanian in cash or in kind, or any material or corporeal rights of such investor that have a financial value, including copyrights and patents". Article 12 A 3 of the Investment Law No. 68 of 2003.
9. Article 7, Regulating Non-Jordanian Investments Regulation No. 54 of 2000 issued pursuant to Article 24 of the Investment Promotion Law No. 16 of 1995.
10. Law of renting and selling immovable properties to non-Jordanians and to legal entities and its amendments No. 47 of 2006.
11. The five sectors and activities mentioned above are listed in Article 6, Regulation No. 54 of 2000.
12. Without prejudice to paragraph d. of Article 3 of the Regulation No. 54 of 2000 stipulating that foreign ownership is limited to 50% for the clearance services linked to the transport services listed in paragraph c.
13. Next footnote also applies to these activities.
14. In the distribution services sector, for commission agent's services (except for firearms), access is restricted to Jordanian natural persons, Jordanian partnerships with the majority ownership by Jordanians, and Jordanian companies with a Jordanian majority on the board of directors.
15. Most of the sectors mentioned above are listed in Article 3, Regulation No. 54 of 2000. The Jordanian authorities have also deleted certain sectors and indicated additional ones, especially under services.
16. Article 4, Regulation No. 54 of 2000.
17. [www.trust.org/trustlaw/country-profiles/good-governance.dot?id=a3ac5e60-ea33-4cd5-8619-5380bc3d7648](http://www.trust.org/trustlaw/country-profiles/good-governance.dot?id=a3ac5e60-ea33-4cd5-8619-5380bc3d7648).
18. [www.g8.utoronto.ca/summit/2012campdavid/g8-transition-factsheet.html](http://www.g8.utoronto.ca/summit/2012campdavid/g8-transition-factsheet.html).
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## Chapter 3

### Jordan's policy framework for investment

*In addition to legal provisions, a number of policy areas have an important impact on the investment climate, such as investment policy, promotion and facilitation, trade policy, anti-corruption, competition policy, infrastructure and financial sector development.*

*Jordan conducted structural reforms aimed at liberalising its trade and investment regime and fostering private-sector led growth. It joined the WTO in 2000, signed 53 bilateral investment treaties, ratified the UN Convention against Corruption, adopted national legislation on intellectual property rights and competition, and has relatively well-developed infrastructures and financial sector compared to its regional peers. However, significant challenges remain. The policy framework for investment continues suffering from administrative and regulatory obstacles and lack of policy implementation and legal enforcement.*

This chapter examines Jordan's investment policy in light of the OECD Policy Framework for Investment (PFI) (Box 3.1). It does not address all the policy areas covered by the PFI, but focuses on Jordan's investment policy and promotion, trade policy, anti-corruption, competition, infrastructure and financial sector development. Some related areas are also discussed in the Chapter 4 on the adherence to the *Guidelines for Multinational Enterprises*.

#### Box 3.1. The OECD Policy Framework for Investment

The OECD Policy Framework for Investment (PFI) was developed within the OECD by the representatives of nearly 60 countries, and poses a list of key questions that should be examined by governments seeking to create a favourable investment climate. The objective of the PFI is to mobilise private investment in support of stable economic growth and sustainable development, contributing in this way to the prosperity of countries and their citizens and to combating poverty.

The PFI is not prescriptive. It is a flexible instrument that allows countries to evaluate their progress and identify priorities for action in ten policy areas: i) investment policy, ii) investment promotion and facilitation, iii) trade policy, iv) competition policy, v) tax policy, vi) corporate governance, vii) policies for promoting responsible business conduct, viii) human resource development, ix) infrastructure and financial sector development, and x) public governance. Three principles apply throughout the framework: policy coherence, transparency in policy formulation and implementation of policies, and regular evaluation of the impact of existing and proposed policies.

By encouraging a structured process for formulating and implementing policies at all levels of government, the PFI can be used in various ways, including for self-evaluations, peer reviews, regional co-operation, and multilateral discussions.

A User's Toolkit has been developed offering practical guidance on how to implement the PFI. It highlights how the core principles of the PFI influence investment, how the various chapters of the PFI relate to one another, and how the PFI can assist in an on-going and iterative process of reform and in fostering public-private dialogue.

Source: OECD, [www.oecd.org/daf/investment/pfi](http://www.oecd.org/daf/investment/pfi) and [www.oecd.org/investment/pfitoolkit](http://www.oecd.org/investment/pfitoolkit).

## Investment policy

In recent years, Jordan's economy has benefitted from a strong increase in FDI, especially from the Gulf States, but with the global economic crisis and the regional unrest, FDI inflows were halved between 2008 and 2011 and the GDP growth dropped to 2.6% in 2011 after the 5% seen in 2009. Recovery might be affected by the persistent global economic slowdown and regional events, such as the deteriorating situation in Syria, despite the strengthening of some export markets (e.g. Iraq) (Chapter 1).

Since the 1990s, the increase in FDI has been linked to Jordan's structural reforms to liberalise its trade and investment regime and further empowering the private sector. The government amended several laws and regulations and launched several legal reforms in areas such investment, tax, public-private partnership, secured lending and insolvency. Moreover, Jordan took some measures to improve the business environment and is continuing to promote reforms despite a slow pace in implementation. In early 2011, the government adopted a one-year roadmap to improve the investment and business climate in co-operation with the private sector. Adopted by the Council of Ministers, the roadmap outlined the responsibility of each ministry to ensure prompt delivery and accountability. The Executive Development Program 2011-13 also mentions the "completion of the draft national investment strategy for investment, which outlines a clear investment map for the Kingdom over the next ten years, to measure and evaluate the performance, results and objectives of the investment process".

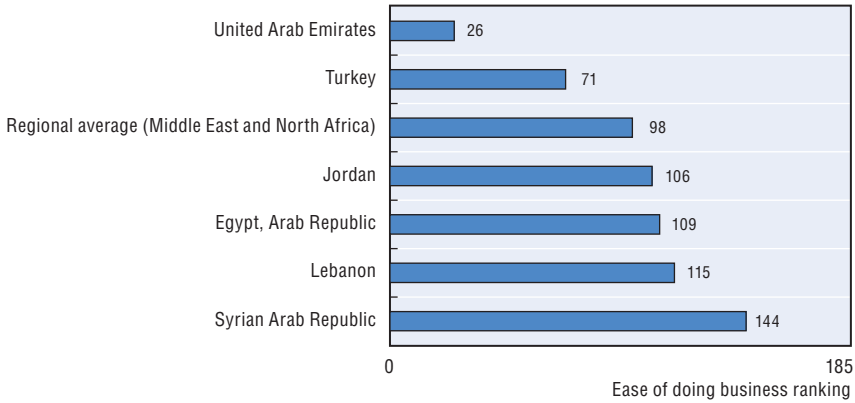
### ***Jordan's investment regime in international rankings***

Jordan does not rank very well in international business climate rankings for an upper middle-income country.<sup>1</sup> Following its ambitious programme of economic reforms in the 1990s, however, it is considered as a one of the best reformers in the MENA region and among middle-income countries (Abugattas-Majluf, 2012).

In the Doing Business 2013, Jordan ranks 106th among 185 countries and has lost one point in the ranking compared to 2012. In the Arab world, it holds the 9th position behind Saudi Arabia, United Arab Emirates, Qatar, Bahrain, Oman, Tunisia, Kuwait and Morocco (Figure 3.1). Jordan's strengths in this index are in the areas of paying taxes, getting electricity and trading across borders; weaknesses relate to getting credit, enforcing contracts and protecting investors (Figure 3.2).

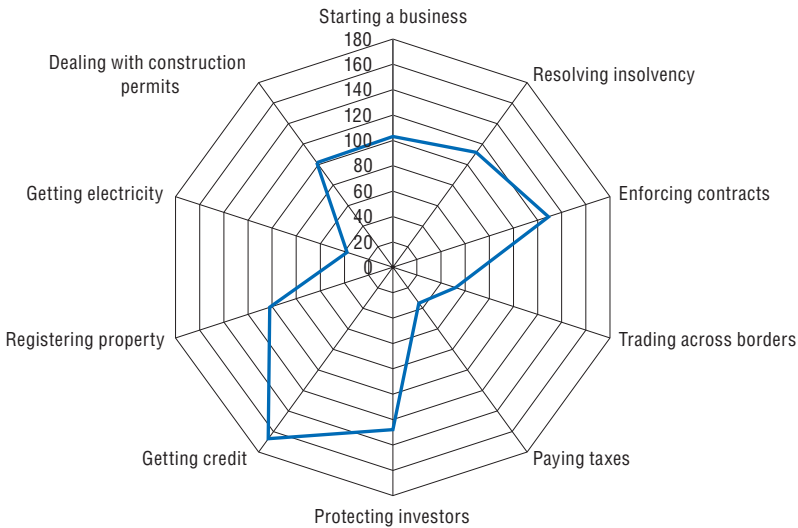
The World Economic Forum, in its Global Competitiveness Report 2011-12, ranks Jordan in 71th position among 142 countries, decreasing from 50th in 2009. The most problematic factors for doing business identified in that report

Figure 3.1. **Ease of Doing Business: Regional comparison**



Source: World Bank (2012), *Doing Business 2013*.

Figure 3.2. **Jordan's ranking in Doing Business 2013**



Source: World Bank (2012), *Doing Business 2013*.

are inefficient government bureaucracy, access to financing, tax rates and corruption.

Regarding economic freedom, Jordan ranks relatively well with the 32th position among 184 countries, according to the 2012 Index of the Heritage Foundation. Its score is better than last year and Jordan ranks 3rd out of 17 MENA countries. This reflects relative improvements in trade and investment freedom, even though “bureaucracy, red tape and inconsistent enforcement of regulations inhibit new investment”.<sup>2</sup>



### **Administrative obstacles and streamlining**

Inefficient government bureaucracy is considered as the most problematic factor in Jordan for doing business (WEF, 2011; Al-Nuemat, 2009; US Department of State, 2011; Heritage Foundation, 2012). Complex administrative procedures relating to licensing, slowness of execution and repetitive delays raise costs for investors. Jordan ranks 103th in the 2013 *Doing Business Report* on the indicator “starting a business” and has lost 11 points compared to previous year, though its ranking remains better than the regional average (113).<sup>3</sup> According to the Jordan Investment Board, its one-stop shop does not have the full authority to issue all licences and permits, and therefore requires 14 business days to obtain the required approvals. However, efforts were conducted and procedures have been streamlined (see next section on investment promotion).

The other obstacles to attract foreign investors are the number of governmental bodies that the investor has to deal with, the relatively limited qualification of public agents in investment management, and the insufficient budget allocated to the promotion of investment. According to Trustlaw, “numerous procedures have been streamlined, but they remain non-transparent and, along with red tape, continue to pose problems to foreign and local investors. [...] The initiatives to ease the complex regulatory system and the numerous procedures using the one-stop shop within the Jordan Investment Board have not been fully successful. Bureaucratic obstacles and delays remain and, at the level of local government, the application of customs, tax and labour laws is arbitrary and acts as an impediment to investment.”<sup>4</sup>

Jordan launched in 2011, in co-operation with USAID in the framework of the SABEQ<sup>5</sup> programme, a pilot project on the regulatory guillotine which focuses *inter alia* on the licensing process.<sup>6</sup> A manual for Regulatory Impact Assessment in Jordan has also been issued in 2010. However, the project has not managed to reverse the declining trend in the Doing Business indicators, especially for “starting a business”.

The government has also taken some initiatives in the area of e-governance which have contributed to rendering government services more transparent and more accessible. The US Department of State 2011 reports that the government had slowly but gradually been implementing its e-government promotion strategy in 2010. Several programmes, as well as a call centre, are now available as a response to the government’s promise of making public services, regulations and procurement procedures more transparent.

**Box 3.2. The Company Law: Entity forms including foreign companies**

The Companies Law No. 22, of 1997 and its subsequent amendments provide for several entity forms under which a business may be conducted in Jordan, and governs the process of company registration. The entity forms include, *inter alia*:

- General Partnership (2 to 20 natural persons), partners are liable for the company's debts, losses and obligations.
- Limited Partnership, founded by limited partners and general partners.
- Limited Liability Company (2 or more partners), liability is determined in accordance with capital shares.
- Limited Partnership in Shares (at least five partners), liability of general partners and shareholders is proportional to their shareholding.
- Public Shareholding Company, formed by 2 or more partners, who subscribe for shares that can be listed on the stock exchange. Companies operating franchises, banks, financial institutions and insurance companies may only be incorporated as public shareholding companies.
- Offshore Company, or "Exempt company", which can take the form of a private shareholding company with limited liability, a limited partnership in shares or a public shareholding company. The company is registered as a Jordan company but is not allowed to conduct its business in Jordan. It is prohibited for Jordanians to subscribe to its capital, and shares of such companies cannot be offered for public subscription in Jordan. A minimum of 5% of share capital must be invested in Jordanian securities. Offshore companies enjoy free tax, free status and minimal control and scrutiny. Therefore, the company's name must include the term "Exempt". This form of entity has been introduced in order to attract foreign investments.
- Foreign Company, which may be operating or non operating:
  - ❖ A foreign operating company is an entity registered outside the Kingdom, and whose headquarters are abroad. There are two types of foreign operating companies: a) companies operating for a limited period, which are awarded tenders in order for them to perform a work in the Kingdom, for a limited period of time (such as, typically, a construction contract). The registration thereof shall cease upon the completion of such work, unless new contracts are obtained; b) companies operating permanently in the Kingdom under license by the competent official authorities.

**Box 3.2. The Company Law: Entity forms including foreign companies**  
(cont.)

- ❖ A non-operating foreign company is a company which has a regional office or a representative office in Jordan for its operations conducted outside of Jordan or for managing and co-ordinating the operation of the regional office with headquarters. A foreign non operating company is prohibited from carrying out business in Jordan, but enjoys tax and duties exemptions. It may, however, collect information concerning general business opportunities in the Kingdom. At least half of a regional office's employees must be Jordanian citizens.

In addition, the Law introduced the not-for-profit company form as well as the civil company form, thus providing for the establishment of companies by professionals such as lawyers or doctors.

The registration of all companies – excluding joint ventures – must be done with the Controller of Companies in the Ministry of Industry and Trade and with the Chamber of Commerce or Chamber of Industry.

The Companies Law has been amended in 2002 with a view to further facilitate the establishment of foreign investors' companies in Jordan. As an example, an amendment introduced the concept of private shareholding company, which can list its shares on the financial stock market. Furthermore, the amended law organises procedures of merging companies and authorises the state to convert any official entity to a public or private shareholding company functioning on a commercial basis. As commentators noted,<sup>\*</sup> some amendments were specifically crafted to address the demands made by Microsoft ahead of investing in Jordan. Press reports claimed that Microsoft conditioned its USD 2 millions in a creative Jordanian software firm under the condition that the Companies Law is brought up to international standards.

Foreign companies which import goods need to appoint an agent registered in Jordan; the agent may be a branch office or a wholly-owned subsidiary of the foreign firm, notwithstanding the limitations on foreign ownership in certain sectors. The Commercial Agents and Intermediaries Law governs the contract between foreign firms and commercial agents. Private foreign entities, whether licensed under sole foreign ownership or as a joint venture, compete on an equal basis with local companies (US Department of State, 2011).

<sup>\*</sup> Nawafleh, 2010; *The Jordan Times*, 9 May 2002, "Companies Law Amendment Welcome by Some, Others Call for Additional Changes", T. Ayyoub.  
Source: Amman Chamber of Industry ([www.aci.org.jo](http://www.aci.org.jo)); Jordan Investment Board ([www.jordaninvestment.com](http://www.jordaninvestment.com)); Companies Control Directorate ([www.ccd.gov.jo/english](http://www.ccd.gov.jo/english)).

### **Property rights, registration for land and other forms of property**

Land ownership for foreigners is allowed in Jordan provided ownership is related to a business activity, except in the free zones where land can be leased. However, land ownership by foreign legal persons is subject to approval by the relevant Jordanian authorities. Natural persons may own land within zoning boundaries, on the condition that the land area does not exceed 10 dunums (equivalent to 10 000 sqm) and subject to reciprocity by the country of origin of the applicant. Therefore the acquisition of property by foreigners is based on the principle of reciprocity: if Jordanians can own property in the home country of the foreign investor, it is possible for the foreign investor to own property in Jordan. Some areas are subject to different provisions, however, and procedures and the reciprocity requirement does not apply to nationals of Arab countries.

Jordan ranks 101st in the indicator “registering property” in Doing Business 2013, due to the number of needed procedures (7) and the cost, which is among the highest in the region (7.5% of the property value against 5.9% in MENA countries and 4.5% in OECD countries). The time required to register property is long, especially for foreign investors who need to obtain an approval from the Ministry of Finance, the Department of Lands and Survey or the Royal Cabinet depending of the size and the zone.

The Jordanian Department of Lands and Survey (DLS), which is one of the oldest Jordanian institutions with origins dating from 1857, is in charge of cadastral surveying, registration of land property and management of treasury lands. It is also responsible for valuing land, managing expropriation, and collecting sale taxes and registration fees for the government.<sup>7</sup> All land transactions are processed and registered by the DLS, which has digitalised its procedures and documents, including cadastral plans and land registers. No land transaction is considered legal if it is carried out without DLS approval, except for specific zones, such as the Aqaba Region, which benefits from a special status (Box 3.7). A cadastral database has been established and is available online.<sup>8</sup> DLS is connected to a network of territorial land registration offices. Almost all of the territory is mapped and registered.

In spite of these efforts to modernise the cadastral and land registration systems, there remain many shortcomings (Madanat, 2010; Forni, 2003). For example, a land sale transaction still requires the presence and signature of two witnesses who know the person making the transaction. There is also a lack of conformity between the physical and the legal land boundaries. The current cadastral map does not always provide accurate information, especially on the layout of buildings. The current land tenure system coexists with an historic developed customary tenure law, *Urf*, which continues to regulate a large part of access to land. There is substantial overlap of different types of tenure within one farm ownership. Agricultural holdings are not

composed of clear categories of tenants and owners: there is a multiplicity of interrelated tenancy relationships in which the landholder accesses land through combinations of several patterns. Corruption remains a serious problem in the land market.

In order to overcome these problems, the government of Jordan is preparing a new unified Cadastre Law. Jordan has also launched a joint project with the EU for the “Enhancement of the Cadastral System in Jordan for the Department of Lands and Survey”. Its objective is to improve the technical and administrative capacities of the DLS in the field of cadastre and land administration and to develop a sustainable land management system that provides accurate and up-to-date land information.

### **Intellectual property rights**

Over the past decade, Jordan has made several economic and regulatory reforms on intellectual property (IP) rights in compliance with its accession to the World Trade Organization (WTO) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) in 2000 and the ratification of the Jordan-US Free Trade Agreement (FTA) in 2001. Both agreements called upon Jordan to strengthen intellectual property laws and to provide more effective enforcement of the laws.

Jordan has ratified some international conventions related to IP rights (Box 3.3) and amended its legal framework for IP rights protection (Box 3.4) to keep pace with international standards.

#### **Box 3.3. Conventions on intellectual property ratified by Jordan**

- Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (14 November 2008)
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (14 November 2008)
- Vienna Agreement Establishing the International Classification of the Figurative Elements of Marks (14 November 2008)
- WIPO Performances and Phonograms Treaty (24 May 2004)
- WIPO Copyright Treaty (27 April 2004)
- Berne Convention for the Protection of Literary and Artistic Works (28 July 1999)
- Paris Convention for the Protection of Industrial Property (17 July 1972)
- Convention Establishing the World Intellectual Property Organization (12 July 1972)

**Box 3.4. Jordan's laws and regulations related to intellectual property rights**

**Patents:**

- Patents Law No. 32 of 1999 and its amendments by Temporary Law No. 71 of 2001 and Law No. 28 of 2007
- Regulation of Patents of Invention No. 97 of 2001 issued pursuant to Article 42 of the Patent Law No. 32 of 1999

**Trademarks:**

- Trademark Law No. 33 of 1952 and its amendments by Law No. 34 of 1999, Law No. 29 of 2007 and Law No. 15 of 2008 which relates to the definition of well-known trademarks, licensing and fine increase for trademarks violation
- Trademarks Rules No. 1 of 1952 and its amendments by Regulations No. 37 of 2000, No. 128 of 2009 and No. 22 of 2010

**Trade names:**

- Trade Names Law No. 9 of 2006
- Regulations on Trade Names No. 116 of 2004 and its amendments by Regulation No. 65 of 2007
- Law No. 19 of 1953 on Marks of Goods and its amendments

**Geographical indications:**

- Law on Geographical Indications No. 8 of 2000

**Industrial designs and models:**

- Law on Industrial Designs and Models No. 14 of 2000
- Regulation No. 52 of 2002 on Industrial Designs and Models issued pursuant to Article 18 of the Industrial Designs and Models Law

**Copyright:**

- Copyright Protection Law No. 22 of 1992 and its amendments by Laws No. 88 of 2003 and No. 8 of 2005
- Deposit of Compilations By-Law No. 4 of 1994
- Regulation No. 36 of 2002 on Traditional and Popular Crafts and Industries and their Trading
- Deposit of Compilations By-Law No. 4 of 1994

**Plant varieties:**

- Law No. 24 of 2000 on Protecting New Varieties of Plants
- Regulation No. 76 of 2002 on Registration of the New Plant Varieties

**Box 3.4. Jordan's laws and regulations related to intellectual property rights (cont.)**

**Integrated circuits:**

- Act No. 10 of 2000 for Protection of Integrated Circuits Designs
- Regulation No. 93 of 2002 on the Protection of Layout-Designs of Integrated Circuits

**Trade secrets:**

- Law No. 15 of 2000 on Trade Secrets and Unfair Competition

The Ministry of Industry and Trade (Industrial Property Protection Directorate), the Ministry of Justice, the Ministry of Culture (National Library), the Jordan Customs, the Police Department (IPRs Protection Section), the Jordan Institute of Standards and Metrology (JISM), the Ministry of Agriculture (Jordan Food and Drug Administration), and the Ministry of Health are responsible to implement protection of and enforce IPR in Jordan.

### **Patents**

In 1999, Jordan abrogated the Patents and Design Law of 1953 and enacted a new Patent Law, further amended in 2001, to enter into compliance with TRIPS requirements. Through the patent system,<sup>9</sup> in exchange for publishing details of an invention, the State grants the inventor a monopoly over its invention for a fixed period of time. The Law provides that patents may be granted solely for inventions that constitute a novel inventive step and capable of industrial application.<sup>10</sup> Applications for patents must be filled with the Registrar of Patents at the Industrial Property Protection Directorate within Ministry of Industry and Trade. The Registrar examines the patentability compliance under the Law. Appeals against decisions of the Registrar of Patents may be made by petition to the Higher Court of Justice. Approved applications are published in the *Official Gazette* and are subject to public inspection. Patents are valid for a period of 20 years from the date of filing the application.<sup>11</sup>

In 2001, the Patent Law was amended to better comply with the WTO requirements and in response to pressure and complaints expressed by foreign IT and pharmaceutical companies investing in Jordan. Regarding the provision giving employees the right to a patent, if the invention is a result of an employment contract, the amended Article 5 gives more rights to the employer to ownership of the patent if the invention conducted by the employee during his employment relates to the business of the employer (Nawafleh, 2010b). Before joining WTO, the old Patents and Design Law offered

pharmaceutical firms protection for the process but not for the end product. In order to meet the TRIPS Agreement requirements, the amended Patent Law addresses the issue and also permits the granting of patents for foodstuff and pharmaceutical inventions.

### **Copyrights**

The Copyright Law No. 22 of 1992 has been amended many times to better address changing business needs. The Jordanian regime for copyright protection is inspired by the TRIPS Agreement. In order to meet its obligations under the TRIPS Agreement, Jordan also joined the WIPO's and Berne Conventions on Copyrights. The scope of protection covers original works of literature; art and science of any type, including works of art expressed in writing, sound, drawing; photography and motion pictures. An amendment in 2005 encouraged media investment in Jordan by granting performers exclusive rights over broadcasting and transmission to the public and on copying the performance in any way. Moral rights of performers have also been recognised by allowing them to claim such rights even after the financial rights have been transferred to a third party (Nawafleh, 2010b).

The various recent amendments to the Copyrights Law were also aimed at creating a favourable climate for investments in the information and technology sector, particularly the software sector. Stronger protection of software has facilitated investments from leading multinational IT firms, such as Microsoft and Intel, into Jordan's IT industry.

The duration of protection, for both Jordanians and foreigners, has been extended to the lifetime of the author plus 50 years. A copyright is filed at the Copyrights Department of the National Library. The Copyright Law provides penalties for infringement (prison sentence and fine), but does not give a clear definition of what constitutes a copyright infringement.

### **Trademarks**

In 1999, Jordan amended the Trademarks Law No. 33 of 1952 to meet the international standards contained in the TRIPS Agreement. To comply with the Jordan-US FTA and with the Madrid Protocol, the Trademarks Law was further amended in 2007 and 2008. Trademark regulations are currently being drafted. The amendments grant protection for service marks in particular for the Jordanian tourist industry, which is one of the most important sources of income for the country. The new protection of service marks is aimed at sending a positive signal to foreign investors investing in tourism.

All trademarks are registered with the Registry of Trademarks, held by the Industrial Property Protection Directorate at the Ministry of Industry and Trade. The period of registration has been increased to 10 years. A trademarks



registration is *prima facie* evidence of the validity of the rights of the trademark. One of the main innovations introduced by the amendments is the recognition of the concept of “well-known” marks and the prevention from registering a trademark similar to a well-known mark, even though the well-known trademark is neither registered nor used in Jordan.<sup>12</sup> The trademark owner may license one or more persons to use the mark for all or some of the goods, under a notarised contract and filing to the registrar is not compulsory.

### **Enforcement of intellectual property rights**

The Jordanian Customs (according to the Border Measure Law No. 20 of 1998 amended by Law No. 16 of 2000) has the right to suspend the release of any suspected goods which constitute an infringement of intellectual property rights. The right holder can file a criminal or civil case before the competent court during a period of eight days after being notified of the customs decision to suspend the release of the goods.

The Jordan Institute of Standard and Metrology (JISM) has the authority to inspect shops which they suspect hold, offer for sale, sell or display unauthorised infringed goods, and to seize and destroy such goods. Based on the JISM seizure, the owner of the trademark can file a criminal or civil case before the competent court or send an official notification through the notary public during a specified duration starting from the seizure date. The Police Department also established an IPR Protection Section within its Public Security Directorate.

The protection of IP rights has been strengthened with the establishment of an enforcement mechanism, attached to the National Library Department. The Library enforcement authority has broad powers to investigate violations of the law and to issue infringement fines. In case of recidivism, the Court may issue a ruling for the suspension of the infringer's business licence. The Aqaba Special Economic Zone Authority (ASEZA) also undertakes positive operational steps and procedures to protect intellectual property within the Aqaba Special Economic Zone.

However, according to the Jordan Investment Board, the current regime of intellectual property in Jordan might be problematic with regards to the enforcement mechanisms, although some improvements have been made in recent years. The US State Department also reports that more effective enforcement mechanisms and legal procedures are needed, especially with regard to software and video piracy. In the Intellectual Property Rights Index 2012, Jordan ranks 36th among 130 countries in terms of protecting IP rights. This places Jordan above Egypt, Morocco and Tunisia, but in terms of protection against copyright piracy, Jordan ranks only 48th out of 130 countries.<sup>13</sup> Jordan ranked last in 2012 in the Consumer International IP

Watchlist, in which 30 countries' IP laws and enforcement mechanisms for consumers are assessed.<sup>14</sup>

In the event of IP rights infringement, the rights' holder can seek compensation before courts, but the Copyrights Law does not set out the type of mechanism that should be used to calculate the amount of a fair compensation.<sup>15</sup> The new legal intellectual property regime has also faced some difficulties due to the lack of expertise among the judiciary and the increased caseload for the courts. It is noteworthy that despite such challenges, the number of cases relating to violations of the Copyrights Law has continuously increased over the past decade. Keeping up the momentum toward better enforcement of IP rights protection, the government is currently working on an amendment to the current legislative framework, so that it grants enforcement officers *ex officio* authority to seize pirated goods and sue violators. Moreover, the government is considering setting up an agency dedicated to intellectual property that would be in charge of co-ordinating government policy and enforcement efforts (US Department of State, 2011).

Jordan improved its IP legislation with a view to comply with international standards and commitments, but further efforts need to be made to ensure better enforcement of the legislation and to co-ordinate actions of the institutions dealing with IP protection. Awareness-building initiatives (communication campaign, training programmes) also need to be encouraged. The project of creating a dedicated agency would be useful in these regard.

### **Contract enforcement and dispute resolution mechanisms**

The Jordanian legal system comprises a mix of rules and principles borrowed from Islamic law and civil law systems. The Civil Code is inspired by the Napoleonic Code. The Constitution guarantees the independence of the judiciary from the legislative and executive branch, specifically stating that judges are "subject to no authority but that of the law".

Article 99 of the Constitution divides the Courts into three categories: civil, religious and special courts. The Religious courts, divided into Sharia courts for Muslims, and ecclesiastic courts for Christian minorities, only deal with matters relating to personal status. The special courts include, *inter alia*, a Tax Court, a Military Court, a Customs Court, and a Land Settlement Court. Civil Courts adjudicate all cases, be they of civil or commercial nature, which are not expressly reserved to the religious or special courts. There are no specific mechanisms to deal with commercial matters and the Law of Commerce is silent on commercial disputes. Until now, and despite repeated announcements of the creation of specialised commercial courts, the Civil Courts have jurisdiction over commercial disputes. Judges assigned to

examine commercial litigation are the same than those who examine any other type of litigation, and therefore do not have any specific experience in commercial fields.

The government is aware on the need to reform the Jordanian judiciary system, as reflected *inter alia* in its Executive Development Program 2011-2013 in which the pillar on legislation and justice is the first priority area. As pointed out by various sources,<sup>16</sup> the judiciary is susceptible to political interference from the executive. This can be linked to the legislative adoption process. The Prime Minister's Office, through the Legislation and Opinion Bureau, is responsible for the final drafting and approval of laws, and after adoption of the laws by the Parliament, the laws are submitted to the King for final endorsement, before publication in the *Official Gazette*. Various policy institutes also report growing corruption in the judiciary.<sup>17</sup> To address the criticisms of political interference, the constitutional amendments, as adopted in September 2011, recognise the independence of the judicial power (Article 27).

Jordan ranks 129th out of 185 countries in Doing Business 2013 for the indicator "enforcing contracts". Court efficiency remains one the major challenges faced in Jordan's business environment. Resolving a commercial dispute through domestic courts takes almost two years and the process costs more than 30% of the amount of the claim. As a result of these deficiencies, Jordan ranks below other countries in the region. Regular Courts are overwhelmed with jurisdictions of different types and lack experience to deal with economic activities. In terms of the efficiency of its legal framework in settling disputes, Jordan ranks 49th out of 142 countries in the Global Competitiveness Index 2011-2012.

In order to address the shortcomings of the existing judicial structure and to improve the efficiency of enforcing contracts, Jordan is currently envisaging several measures, including the establishment of special commercial courts. This could provide a more suitable framework for settling commercial litigation and improve the management of the commercial caseload, given that they should be equipped with a digitalised case management system. While the establishment of dedicated commercial courts has been announced several times over the past decade, it has yet to materialise. In the framework of the 2011-2013 Executive Development Program and its legislation and justice pillar, the Ministry of Planning and International Cooperation announced the government's intention to strengthen the state of law and institutions. More specifically, it calls for "restructuring the judiciary apparatus and the provision of qualified and specialised skills" with a view to improve the services of courts and the drafting of laws. This should be achieved through the "adoption of policies pertaining to the development of legislations to meet developments and emerging conditions, improving the

investment climate, (...) and raising the efficiency and effectiveness of the judiciary apparatus". Another initiative was announced in March 2012 under which the government is working with the Judicial Council to establish courts specialised in investment-related issues.<sup>18</sup> The government is aware of the need to reinforce the judiciary system to facilitate settlement of commercial and investment disputes, however, the announced measures have not yet been implemented.

The trend towards alternative dispute resolution (ADR) has gained in significance and widespread acceptance in the field of international trade and foreign investment. Jordan has made important steps in this regards, ratifying international conventions on arbitration and amending its Arbitration Law in 2001 and its Mediation Law in 2006. One of the goals of the legislative and justice pillar of the 2011-13 Executive Development Program is the availability of alternative methods for settling civil and commercial disputes out of court. Therefore, arbitration and mediation can be used as ADR mechanisms in Jordan, knowing that mediation is available only for civil issues and therefore does not apply to all dispute matters. Conciliation is used solely for settling collective labour conflicts.

The Arbitration Law No. 31 of 2001, which repealed the Arbitration Law of 1953, is derived from the Egyptian Arbitration Law of 1994, which in turn is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law of 1985 on International Commercial Arbitration. There is no provision in the Jordanian Arbitration Law that expressly refers to the UNCITRAL Model Arbitration Law, however.

The Arbitration Law widens the scope of arbitration to civil and commercial disputes between public or private persons, whatever the legal relationship to which the dispute is connected, whether contractual or not. The only exception to the jurisdiction of arbitration in Jordan concerns disputes involving commercial agency contracts. By virtue of the Commercial Agency Law of 2001, disputes arising out of such contracts fall within the exclusive jurisdiction of domestic courts. The Arbitration Law applies exclusively to arbitration conducted in Jordan.

The Law requires the existence of an arbitration agreement between the parties either attached to a contract or as a free-standing agreement. The arbitration agreement may take the form of a clause contained in a contract and providing that the parties would submit any dispute arising out of the agreement to arbitration. Alternatively, the arbitration agreement can be concluded in a separate agreement when the dispute has already occurred. In order to be valid, the agreement must be in writing. The separability of the arbitration agreement, which is an internationally recognised principle, is specifically provided for by the Law.

The Law also provides that the arbitral tribunal is empowered to decide upon its own jurisdiction, by virtue of the principle of competence-competence. A national court may address the issue of the jurisdiction and competence of an arbitral tribunal only in an action for nullity of the arbitral award. Parties are free to agree on the selection of arbitrators, as well as the applicable procedural and substantive rules. If the parties do not agree on the legal rules applicable to the subject-matter of the dispute, the arbitral tribunal shall apply the substantive rules in the law that is the most closely related to the dispute. Thus, there are no mandatory rules governing international arbitration proceedings seated in Jordan, as long as those proceedings do not contravene Jordan's public policy.

If the arbitral award has not been rendered within the period of time upon which the parties agreed, either party may apply to the president of the competent court to give an order setting another period, or terminating the arbitral proceedings. The arbitral award must state the reasons upon which it is based. A national court can intervene in the course of the arbitral proceedings if a matter outside of the scope of the arbitral tribunal's jurisdiction arises. The Arbitration Law contains no provision on the issue of interim relief.

Once it has been rendered, the arbitral award may not be challenged by any of the means provided for in the Law of Civil Procedures. The application for enforcement of the award shall be submitted to the competent court. The court orders its execution, unless the award contains a violation of public order, or has not been duly notified to the other party. The decision of the court ordering the execution of the award is not subject to appeal. On the contrary, a decision that would refuse the enforcement of the award is subject to challenge before the Court of cassation.

The Arbitration Law governs the enforcement of local arbitral awards, while foreign arbitral awards are enforced according to the provisions of the New York Convention on recognition and enforcement of foreign arbitral awards, the Law on Execution of Foreign Decisions and the Civil Procedures Law. Foreign arbitral awards may only be enforced if they have become enforceable in the jurisdiction where the award was rendered. The enforcement of foreign awards can be challenged before the civil courts on specific grounds.

Mediation is another alternative dispute settlement mechanism that can be defined as an informal and completely voluntary process in which any resolution must be agreed upon by the parties. Contrary to other countries' legislation in which mediation provisions are contained in the arbitration law (e.g. Morocco), Jordan has enacted separate mediation rules which apply only to civil matters.<sup>19</sup> The Mediation Law of 2006 supersedes the old Law of

Mediation for the Settlement of Civil Disputes of 2003. By virtue of the new Mediation Law, the administration of mediation takes place in Magistrate's and First Instance Courts and is handled by a Mediation Directorate, composed of judges appointed by the Chairman of the First Instance Court. When the Mediator reaches a settlement signed by the parties, the settlement agreement is considered a final judgment after the Judge has endorsed it.

Faced with the shortcomings of the judiciary and the lack of the courts' efficiency in enforcing contracts, arbitration and mediation could be useful means for investors to settle their disputes. Representatives of the private sector are promoting these means, such as the Jordan Chamber of Commerce which is offering arbitration services. It is not yet known to what degree the investors use available ADR means and whether they prove to be efficient.

### **Expropriation procedures**

Whenever a government exercises its legitimate right of expropriation, there is an uncontested need for compensation. The compensation must be fair and adequate and paid promptly. In addition, the government decision to expropriate land or other property ought to be motivated by a public purpose, observe due process of law, and be non-discriminatory and guided by transparent rules. As expropriation is perceived as a major political risk for an investor, clear and complete provisions regulating expropriation are needed and constitute an investment guarantee.

The Jordanian Constitution contains a general expropriation provision. It provides in Article 11 that: "No property of any person or any part thereof may be expropriated except for purposes of public utility and in consideration of a just compensation, as may be prescribed by law." An amendment was adopted in September 2011 which added "or any part thereof" attached to any person. Therefore the Constitution now clearly tackles expropriation of legal persons. Two other laws, the Investment Law and the Land Acquisition Law, provides for more detailed provisions on expropriation.

Article 13 of the 2003 Interim Investment Law mentions that "depriving of ownership of any project or subjecting it to any measures that may lead to such shall not be allowed". Therefore the Law covers both direct and indirect expropriation, i.e. the seizing of property owned by an investor as well as any measure that has a similar effect to direct expropriation without transfer of property.<sup>20</sup> The Law also indicates that the expropriation should be for the purposes of public interest and that just compensation be paid to the investor. The Law does not mention non-discrimination, nor make reference to the due process of law and the right to a judicial review. The compensation should be a convertible currency, but Article 18 on transfer of funds does not specifically mention the free transferability of compensation resulting from

expropriation. Moreover, the law does not set a delay within which compensation should be paid.

While the Investment Law deals with the expropriation of an investment project, the Land Acquisition Law concerns only land expropriation. The Land Acquisition Law No. 12 of 1987 provides the government with the discretionary right to acquire any land or property to develop a project solely for public benefit. The authority must pay a fair compensation to the owner. Such compensation shall amount to the market value of the investment immediately before expropriation, and it must be effectively realisable and freely transferable. If, after the expropriation, there is an indication that the land is not used for public benefit, the judiciary has the right to revoke the expropriation.

In the wake of several high-profile expropriation cases,<sup>21</sup> concerns were raised about the vagueness of the notion of public benefit purposes in the Land Acquisition Law. Commentators showed disapproval of the ease with which the executive has taken expropriation decisions without justifying the intended use of the taken land.

Most bilateral investment treaties (BITs) signed by Jordan contains provisions on expropriation, but scope and wording differs. The model BIT of Jordan is an example of a good practice as it lists all the four conditions for an expropriation to be lawful, covers both direct and indirect expropriation – in line with the Investment Law, provides details on the compensation and gives the right to the investor of a prompt review of its case. The expropriation provisions in the BIT with Canada, in its Annex B 13, include criteria to determine on a case-by-case basis whether a particular measure amounts to an indirect expropriation (see below in the section on international investment agreements).

There is one known investor-State dispute relating to expropriation settled by international arbitration: *ATA Construction, Industrial and Trading Company v. Hashemite Kingdom of Jordan*, which was brought before an ICSID tribunal (see below in the section on international arbitration).

In conclusion, expropriation is well covered under the Jordan legislation, but it would be worth considering including in the Investment Law all the criteria to make an expropriation lawful and in the Land Acquisition Law more precise definitions and processes. Both Laws could also be better harmonised to ensure fair expropriation and predictable interpretation in case of a dispute. They should aim at offering a clear balance between the legitimate rights of the State to regulate in the public interest and of the investors to protect their property rights.

### International investment agreements

Jordan is an active signatory of bilateral investment agreements (BITs) with 53 agreements signed, including 45 that are ratified (Table 3.1). It has also signed 27 double taxation treaties.<sup>22</sup> Figure 3.3 compares Jordan with three other countries in the region. It should be noted that Egypt with 103 BITs signed ranks among the top ten signatories in the world. Interestingly, only eight BITs have not been ratified by Jordan which demonstrates the country's efforts in implementing its treaties, as a non-ratification rate of 25-30% is rather common in the region and other countries. The BITs that have not been ratified include those with China and India. In terms of geographical repartition, Jordan signed BITs with 20 of the 34 OECD members. Two treaties have been renegotiated (with Germany and the Czech Republic). Approximately one third of Jordanian BITs have been signed with countries in the MENA region.

Table 3.1. **Bilateral investment treaties signed by Jordan**

	Date of signature	Date of entry into force
France	23-02-1978	18-10-1979
United Kingdom	10-10-1979	24-04-1980
Romania	02-07-1992	16-03-1999
Turkey	02-08-1993	24-01-2006
Malaysia	02-10-1994	03-03-1995
Tunisia	27-04-1995	23-11-1995
Yemen	18-06-1995	28-01-1998
Egypt	08-05-1996	11-04-1998
Italy	21-07-1996	09-11-1999
Algeria	01-08-1996	05-06-1997
Indonesia	12-11-1996	09-02-1999
USA	02-07-1997	12-06-2003
Poland	04-10-1997	14-10-1999
Netherlands	17-11-1997	01-08-1998
Morocco	16-06-1998	07-02-2000
Croatia	10-10-1999	27-04-2000
Spain	20-10-1999	13-12-2000
Bahrain	08-02-2000	05-07-2000
Sudan	30-03-2000	03-02-2001
Austria	23-01-2001	25-11-2001
Switzerland	25-02-2001	11-12-2001
Kuwait	21-05-2001	19-03-2004
Syria	08-10-2001	11-05-2002
China	15-11-2001	
Bulgaria	07-08-2002	27-05-2003
Lithuania	13-10-2002	05-05-2003
Lebanon	31-10-2002	30-08-2003
Belarus	16-12-2002	22-12-2005
Singapore	16-05-2004	15-07-2006



Table 3.1. **Bilateral investment treaties signed by Jordan** (cont.)

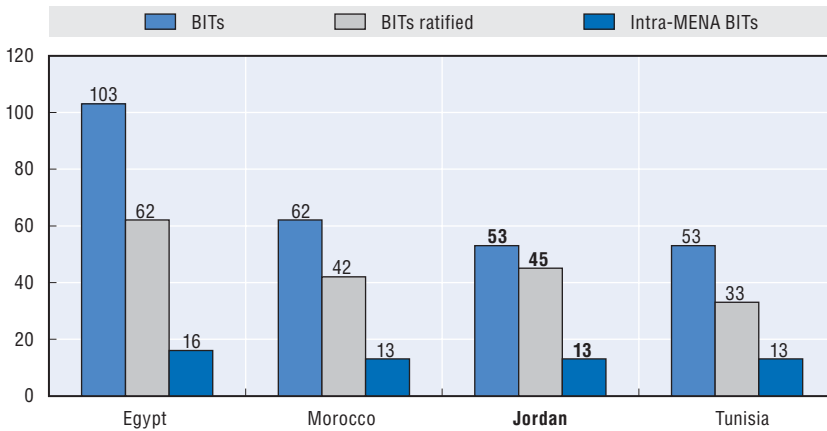
	Date of signature	Date of entry into force
Congo	23-06-2004	
South Korea	24-07-2004	25-12-2004
Ukraine	30-11-2005	17-04-2007
Thailand	15-12-2005	25-11-2007
Greece	21-12-2005	
Finland	01-11-2006	18-12-2007
Kazakhstan	29-11-2006	01-07-2008
India	30-11-2006	
Russian Federation	13-02-2007	16-06-2009
Oman	09-04-2007	05-09-2008
Hungary	14-06-2007	09-03-2008
Bosnia & Herzegovina	02-07-2007	24-07-2007
Germany	13-11-2007	
Slovakia	21-02-2008	09-06-2010
Azerbaijan	05-05-2008	25-12-2008
Qatar	28-01-2009	28-05-2009
Portugal	17-03-2009	
Czech Republic	06-04-2009	28-01-2010
United Arab Emirates	15-04-2009	12-02-2010
Libya	05-05-2009	12-02-2011
Canada	28-06-2009	14-12-2009
Tanzania	08-10-2009	
Cyprus <sup>1, 2</sup>	20-12-2009	19-07-2010
Estonia	10-05-2010	

1. The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".
2. The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Source: Jordan Investment Board, UNCTAD and Kluwer.

An interesting feature is that Jordan has signed all its BITs (except the ones with France and the United Kingdom) in the last 20 years while many countries signed the bulk of their BITs between the 1970s and the 1990s. This trend toward the signature of investment agreements goes hand in hand with the liberalisation policies and the implementation of major economic reforms adopted after the macroeconomic crisis of the 1990s.

Since 2000, the trend has continued with the signature of free trade agreements. Jordan ratified FTAs with the United States (2001), the European Free Trade Association (2002), Sudan (2003) and Singapore (2004). The FTAs with Canada and Turkey are both pending ratification. At the regional level,

Figure 3.3. **Bilateral investment treaties signed by countries in the region**

Source: National Investment Promotion Agencies (GAFI, AMDI, JIB and FIPA), UNCTAD and Kluwer.

Jordan signed in February 2004 a free trade agreement with Morocco, and Tunisia, known as the Agadir Agreement. Ratification was completed and the agreement entered into force in 2006. The free trade agreements do not contain substantive investment protection provisions, though some address investment promotion measures. BITs with the United States, Singapore and Canada have been negotiated or signed concomitantly with the FTAs (see below). This practice should be handled with care to avoid inconsistencies between trade and investment treaties.

An Association Agreement was signed with the European Union in 2002. It contains an article on the promotion and protection of investments (Article 67) which calls for the creation of a favourable and stable climate for investment, through: i) harmonised and simplified administrative procedures, co-investment machinery (especially for small and medium-sized enterprises) and information channels and means of identifying investment opportunities; ii) a legal environment conducive to investment through the conclusion of BITs and DTTs; iii) access to the capital market for the financing of productive investments; and iv) joint ventures. Forthcoming negotiations of Deep and Comprehensive Free Trade Agreements (DCFTAs) between the Deauville Partnership countries, including Jordan, and the EU are planned. The DCFTAs will cover a full range of regulatory areas of mutual interest and, for the first time in an EU agreement, investment protection issues. The EU-Jordan Task Force meeting in February 2012 planned the launch of the preparatory process of the DCFTA negotiations.

At the regional level, Jordan signed investment-related agreements within the framework of the League of Arab States (LAS) and the Organisation of the Islamic Conference (OIC). Jordan is a party to the 1980 Arab League

Unified Agreement for the Investment of Arab Capital in the Arab States. The agreement contains traditional investment protection provisions and institutes the Arab Investment Court (Box 3.5). Jordan is also party to the 1986 Agreement on Promotion, Protection and Guarantee of Investments among member states of the OIC (53 members). However, these instruments have not been effectively implemented, resorted to so far, or are unknown by investors.

**Box 3.5. Key features of the 1980 League of Arab States Unified Agreement for Investment of Arab Capital in the Arab States**

The agreement contains provisions related to investment protection, as well as an institutional mechanism for investment promotion and guarantees, and establishes a dispute settlement body. Main features are:

- The definition of investments is large, but there are limitations: they should have an economic development objective and a return is needed.
- The preamble mentions that the agreement constitutes a minimum standard to be applied in the treatment of Arab investments, including within the scope of domestic legislation.
- The agreement provides for freedom of investment, minimum standard, national treatment, most-favoured-nation treatment (but grant investor's right to choose the MFNT under another international agreement), but there is no mention of fair and equitable treatment.
- The agreement applies in priority in case of a conflict with domestic laws and regulations.
- The scope of free transfer of capital is wider than in some bilateral agreements and domestic legislations, except in banking services which can create conflicts.
- The agreement contains all requirements for a lawful expropriation. Indirect expropriation is however not covered.
- The entry and sojourn of foreign personnel is granted, but priority is given to Arab nationals.
- It sets a mechanism with a Council and national authorities for the implementation of the agreement and the promotion of intra-regional investments.
- Investments are guaranteed through the Inter-Arab Guarantee Corporation.
- Dispute settlement mechanisms are integrated, including the Arab Investment Court (only four cases reviewed until now).

Table 3.2 analyses the main features of Jordanian BITs. The study is based on the selected recent treaties signed by Jordan (in particular the BITs with

Table 3.2. **Main features of Jordanian BITs**

Key provisions	General description	Comments
<i>Scope issues</i>		
Investment	Defines assets to which the treaty applies, i.e. assets that qualify as protected investments. The scope of the treaty depends on the definition of the term "Investment".	<p>All of the Jordanian BITs analysed follow the general trend in BIT practice: a broad-asset based definition, followed by an open illustrative list of the forms the protected investments can take.</p> <p>Under Jordan's BITs, the investment can thus take a wide variety of forms. The non-exhaustive list of covered investments typically includes five types of assets: <i>a)</i> movable and immovable property and any related rights, such as mortgages and similar rights; <i>b)</i> interests in companies, such as shares, stocks, debentures and other forms of participation; <i>c)</i> claims to money and claims to performance; <i>d)</i> intellectual property rights; <i>e)</i> rights to engage in economic and commercial activities conferred by law or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources.</p> <p>Except for the Canada-Jordan BIT, in which claims for money arising out of commercial transactions are excluded from the qualification of investment, Jordan appears not to expressly limit the scope of investments that benefit from the treaty provisions. In particular, there is no explicit exclusion of portfolio investment, or of assets used for non-business purposes. These limitations are sometimes inserted by countries to make the definition of investment more precise.</p>
Investor	Defines those persons and legal entities benefiting from the treaty provisions. Nationality of juridical persons for the purposes of BITs is typically determined according to place of incorporation, principal seat of the enterprise, or alternatively, through the notion of control.	<p>With respect to natural persons, in the reviewed BITs, nationals of the contracting State party are considered as protected investors. The protection is not extended to permanent residents under domestic law of the State party.</p> <p>Concerning legal persons, all of the reviewed BITs, with some variations in language, refer to the place of incorporation to determine the corporate nationality of companies. Some treaties, including the model BIT itself, adopt a restrictive definition of investor, through additionally requiring that the company must be performing real business activity. Given that most restrictions to national treatment in the domestic law are linked to foreign equity participation, it could be relevant to take into account the notion of control in future BITs.</p> <p>It is noteworthy that the Canada-Jordan BIT, the coverage of which extends to the establishment phase, reiterates that its protection applies at a pre-admission stage through including, in the definition of covered investors, investors who seek to make an investment, "when concrete steps have been made".</p>
Temporal scope	Determines the time period of application of the investment treaty.	<p>Jordan's BITs analysed vary in terms of their temporal scope. Generally, Jordan BITs cover an initial period of ten to 15 years, which is tacitly renewable for a variable time period.</p> <p>Only the Singapore-Jordan BIT remains in force for an undetermined period of time, unless terminated by either party.</p>

Table 3.2. **Main features of Jordanian BITs** (cont.)

Key provisions	General description	Comments
<i>Admission and treatment</i>		
Admission of foreign investment	Provides for relative standards of protection, namely national treatment (NT) and most-favoured-nation treatment (MFN). Determines whether NT and MFN apply at the pre-establishment (admission phase), or only at post-establishment stage. Pre-establishment BITs indicate a political commitment to an open investment environment and aim at liberalising investment flows. Although more and more countries are committing to some pre-establishment liberalisation, the most common approach limits protection to the post-establishment phase. The admission of investments is subject to national laws.	<p>Jordan's BITs reviewed most often follow the traditional admission model, and provide for core standards of investment protection only at a post-establishment phase.</p> <p>The treatment of investment typically covers the "acquisition, expansion, operation, management, maintenance, enjoyment, use, sale or disposal of the investment" (model BIT).</p> <p>Notable exceptions to this approach are to be found in the BITs signed with Canada, Singapore and the United States, which adopt a pre-establishment approach and therefore provide foreign investors with national treatment and most-favoured-nation treatment (exception for the BIT signed with Singapore – see below) not only once the investment has been established, but also with respect to the establishment. In these agreements, Jordan commits to further liberalise investment.</p>
Most-favoured-nation treatment	Provides investors from the contracting party the best treatment given to investors from any other country.	<p>With the exception of the Singapore-Jordan BIT, all of Jordan's BITs reviewed in this study provide for the MFN standard of treatment.</p> <p>In most of Jordan's BITs, MFN and NT standards of treatment are provided for in the same article, and therefore cover the same scope of activities relating to the investment, namely the "acquisition, expansion, operation, management, maintenance, enjoyment, use, sale or disposal" (model BIT). Such language defining the covered activities appears to be more detailed than what is usually provided for in many BITs, which state only that MFN treatment applies to "investments and returns of investors". Jordan's approach to the coverage of the two standards of treatment may be interpreted as covering only substantive rights (and not procedural issues). This would mean that dispute settlement matters are excluded from the scope of the MFN and NT standards, which is a good practice in light of recent high profile arbitration cases. Jordan might consider adopting a more explicit exclusion in future treaties.</p> <p>While almost all of Jordan's BITs grant MFN treatment only in the post-establishment phase, the BITs with Canada and the US grant NT and MFN treatment at pre-establishment phase, subject to an annex of reservations (also named non-conforming measures, or schedule of reservations). It is indeed common practice to enumerate, in the pre-establishment phase, the sectors that do not benefit from NT. Sectoral exceptions derive from the national legislation and should be in line with the national regulations to avoid any misinterpretation, keeping in mind that international treaties prevail over national laws. It is worth noting that while the list of exceptions in the Canada-Jordan BIT is long and detailed, the US-Jordan BIT contains a rather short list of exceptions. This may raise questions in terms of consistency among Jordan's various international commitments. Furthermore, the Canada-Jordan BIT contains a clarification that MFN shall apply to measures taken at sub-national levels. The MFN and NT provision contain an exemption relating to special economic zones, customs or monetary unions, and international taxation treaties, which is rather common in BITs practice.</p>

Table 3.2. **Main features of Jordanian BITs (cont.)**

Key provisions	General description	Comments
National treatment	Grants foreign investors, in like circumstances, treatment no less favourable than the treatment of nationals. Like MFN, NT is a contingent or relative standard of treatment, as its content varies according to how other investments are treated by the host state.	<i>See above.</i> Some of Jordan's BITs, while providing for NT, allow the host state to introduce new exceptions to NT. This gives leeway to the authorities, for example to enact legislation promoting and protecting domestic investments in certain sectors. This is illustrated in the Jordan-Russia BIT, which reads as follows: "each contracting party shall reserve the right to apply and to introduce in accordance with its legislation exceptions of national treatment to foreign investors and their investments, including reinvestments." NT is granted in the 2003 Investment Law. The Singapore-Jordan BIT, which contains no MFN provision, grants NT to foreign investors at pre- and post-establishment phases. This extension of the scope of the NT obligation to the pre-entry phase is rather rare in treaty practice, and reveals a commitment to investment flows liberalisation, parallel to the investment protection provided for.
Performance requirements	Performance requirements are conditions imposed by host countries on investors in pursuance of particular policy objectives. They can take for example the form of a required percentage of local content, a limitation of imports to a certain volume, a trade balancing requirement, technology transfer requirements or exclusive suppliers' requirements. Limitations on performance requirements signal commitments to liberalisation. Disciplines are found in the WTO TRIMS Agreement and in investment agreements which contain liberalisation commitments.	The vast majority of Jordan's BITs do not limit performance requirements, as the majority of existing BITs. However, in line with a recent trend aiming at limiting the discretion of host countries to apply performance requirements, the BITs with Canada and the US restrict the use of a number of performance requirements contained in an exhaustive list. The model BIT also prohibits performance requirements on "the purchase of materials, means of production, operation, transport, marketing of products or similar orders", that have unreasonable or discriminatory effects. This would limit the inclusion of performance requirements in investment contracts between Jordan and an investor from a host state signatory of a treaty. Some treaties, including the Singapore-Jordan BIT, also prohibit domestic content requirements.
Provision on key foreign personnel	Permits or regulate entry and sojourn of key personnel in connection with the investment	With regard to the regulation of key foreign personnel, Jordan's treaty practice seems to vary considerably. Some of the treaties analysed in this study do not include any provision dealing with key foreign personnel in connection with the protected investment. Another group of BITs, including the model BIT, address the issue by including a "best endeavour" clause subject to national legislations. Such clauses state that countries will examine with good faith requests for entry and work of personnel, with no firmer commitment. The treaty signed with the US goes much further, as it imposes an absolute obligation to abstain from imposing quotas when granting permits for entry and sojourn to foreign personnel from the home state. This obligation is balanced by a requirement to commit a "substantial amount of capital". This provision is intended to prevent abuse of treaty-investor status, but a reference to a "substantial amount of capital" might be too vague to provide investors with a clear guarantee that they will not be subject to such quotas. This should be read in light of the absence of restrictions related to key personnel in the 2003 Investment Law. According to the law, "foreign investors shall be free to manage the project in the manner they deem appropriate and through the persons of their choice". (For further information on regulation of key personnel, see Chapter 2.)

Table 3.2. **Main features of Jordanian BITs** (cont.)

Key provisions	General description	Comments
<i>Investment protection</i>		
Fair and Equitable Treatment, Full Protection and Security	Fair and equitable treatment (FET), and full protection and security (FPS) are absolute standards of protection, i.e. the required level of treatment is not contingent on treatment accorded to third parties by the host state and they do not relate to the domestic law of the host state. FET (which encompass, <i>inter alia</i> , an obligation not to deny justice) and FPS (which provides a minimum level of police protection that must be given to foreign investors – though interpretation has extended the concept to other policy issues) are almost always provided for in BITs. Considerable debate exists over where the threshold of treatment is set, in particular in relation to the minimum standard of treatment as defined by customary international law (Yannaca-Small <i>in</i> OECD, 2005). According to the most common interpretation, a violation of the FET obligation requires the host country to commit a gross misconduct, manifest injustice, or bad faith neglect of duty. Some arbitrators however prefer to assert the standard on a case-by-case basis.	In the majority of Jordan's BITs analysed, including the model BIT, the FET and FPS standards of protection are specified to be part of the international minimum standard of treatment, therefore based on principles of customary international law. Jordan's treaty practice varies in respect to the combination of the FET standard with the FPS standard. In some treaties, the two standards are provided for under the same article, while some others restrict the scope of the FPS standard to expropriation matters (such as in the Jordan-Germany BIT). When negotiating future BITs, Jordan might wish to adopt a consistent approach to FET and FPS standards. Given some difficulties in the interpretation of these notions, and their potential consequences in terms of responsibilities towards foreign investors, some countries now define more clearly the two standards. It would be recommended for Jordan to follow such careful approach when considering the inclusion of these standards of treatment in its treaties.
Legal stabilisation	Provides for continuity of the legal treatment of investors. Rarely found in BITs.	It is noteworthy that the model BIT includes a provision that relates to legal stabilisation. It reads as follows: "Each contracting party shall create and maintain in its territory a legal framework apt to guarantee to investors the continuity of legal treatment, including the compliance, in good faith, of all undertakings assumed with regard to each specific investor." It is not clear whether such clause implies a mere "best-endeavour commitment", or provides for a firm commitment to stabilise already existing legal situations. Such confusion could have repercussions regarding Jordan's liability towards foreign investors and should therefore be avoided, or at least clarified.

Table 3.2. **Main features of Jordanian BITs (cont.)**

Key provisions	General description	Comments
Expropriation and compensation	States have a sovereign right to expropriate under certain conditions. In line with customary international law, most BITs condition the exercise of this right on being: <ul style="list-style-type: none"> <li>❖ non-discriminatory;</li> <li>❖ taken under due process of law;</li> <li>❖ for a public purpose;</li> <li>❖ and against payment of prompt, adequate and effective compensation.</li> </ul>	With regard to expropriation, reviewed Jordan BITs are consistent with customary international law. With the notable exception of the Russia-Jordan BIT, all the treaties examined in this study cover both direct and indirect expropriations. In line with a recent trend, the BIT signed with Canada contains an annex clarifying what indirect expropriation means. With regard to the standard of valuation for compensation, Jordan is in line with most common treaty practice. The most commonly used formulation is the "fair market value", which must be evaluated immediately before the expropriation occurred. The right to judicial or administrative review of the legality of the expropriation is not specifically provided for in all of Jordan's BITs reviewed.  The model BIT provision on expropriation covers direct as well as indirect expropriation. The four conditions for a lawful expropriation are listed, a right to a prompt review of the case is granted, and details are provided on the process of compensation (without delay, based on a fair market value and freely transferable). To complete these provisions, it could be beneficial to add some clarifications, such as those found in the Canada-Jordan BIT. In particular, Jordan might wish to assert that non-discriminatory measures to protect legitimate public welfare objectives, such as public health, public safety, environmental protection, do not constitute indirect expropriation measures.
Compensation for losses	Stipulates that a State is obliged to pay compensation for damage arising from, <i>inter alia</i> , war, other armed conflict or a state of national emergency. Many treaties give compensation to investors in the event the host State provides compensation to its own nationals or nationals of a third state.	Jordan's BITs analysed consistently include clauses ensuring non-discriminatory treatment of foreign investors when their property is damaged as a result of wars or civil disturbances. The scope of the protection is relatively broad, as it applies to situations such as "armed conflict, civil disturbances, state of national emergency, revolution, riot or similar events". In such unusual situations, Jordan's BITs alternatively grant MFN treatment or NT in addition to the MFN treatment, or "the most favourable treatment". The US-Jordan BIT goes even further in providing an unconditional obligation to pay compensation when the losses result from a measure not required by the necessity of the situation, and from requisition and destruction.
Transfer of funds	Reduces – or eliminates – restrictions on monetary transfers arising in connection with investments. Free transfer of funds is a key element for investors and the operation of their investments. However, the host country should keep some leeway to administer its monetary and financial policy.	The vast majority of Jordan's BITs reviewed provide for a right to free transfer of funds. The covered funds are broadly defined and in a manner consistent with the provisions of the 2003 Investment Law.  Except in the BITs signed with Canada and the US, there is no exception to the free transfer of funds in the analysed BITs. Given that this provision may affect the government flexibility to properly administer its monetary and financial policies and hence limits its policy space for capital controls, Jordan may wish to consider some exceptions in its future treaties.  A first exception is linked to the fact that the transfer provision should not prevent a party from ensuring compliance with other measures related to matters such as bankruptcy, insolvency or criminal offences. This exception is found in the BITs signed with Canada and the US. Another exception relates to the possibility of experiencing difficulties of balance of payments (BoP), such as shortages in foreign currency reserves. Therefore some BITs include a BoP exception which allows the country to temporarily restrict transfers under certain conditions, including the consistency with the articles of the IMF Agreement.  Jordan may also wish to consider the standards of the OECD Code of Liberalisation of Capital Movements for repatriation of capital and the Code of Liberalisation of Current Invisible Operations for repatriation of profits.



Table 3.2. **Main features of Jordanian BITs** (cont.)

Key provisions	General description	Comments
Umbrella clause	<p>Elevates certain undertakings by host states into treaty breaches. It can therefore give access to arbitration in the event of a contractual or other dispute.</p> <p>The umbrella clause grants investors the most favourable treatment resulting from the application of the host state's domestic legislation or international obligations. For example, an umbrella clause can be used to limit performance requirements, providing that the host state is party to some international treaties containing a prohibition of performance requirements (such as the TRIMs Agreement).</p>	<p>The Jordan's reviewed BITs and the model treaty contain an umbrella clause (e.g. Article 9 on application of other obligations in the model BIT), except the BITs with Canada and Russia.</p> <p>Jordan might wish to reassess its need to insert an umbrella clause in its treaties, as such a clause has been broadly interpreted in some cases and given rise to a large number of investment disputes.</p>
Denial of benefits	<p>Provides for the right of the State to deny the benefits of the agreement to certain investors. For example, such a clause allows the denial of treaty protection to companies that have no substantial business activities in the home State (e.g. a shell company organised under the laws of a Contracting Party but controlled by nationals of a third country), or to companies originating from a country with which the host State does not maintain normal economic relations.</p>	<p>None of the reviewed treaties contain such a clause, except the BITs with Canada and the US.</p> <p>Jordan may wish to consider including such a provision in future treaties.</p>
Intellectual property rights	<p>Specific provision providing for protection of intellectual property rights.</p>	<p>No specific provision protecting IP rights is to be found in Jordan's BITs, but IP rights are included in the list of assets used for the definition of an investment.</p>
<i>Dispute settlement</i>		
State-State dispute resolution	<p>Mechanism for settlement of disputes between the contracting parties to the agreement.</p>	<p>All of the reviewed BITs contain a clause providing for a State-to-State dispute settlement mechanism.</p>

Table 3.2. **Main features of Jordanian BITs (cont.)**

Key provisions	General description	Comments
Investor-State Dispute Resolution	Enables the investor directly to assert its rights accorded under the treaty.	<p>Jordan's BITs are fairly consistent in their treatment of investor-State dispute settlement (ISDS) issues. All of the BITs reviewed provide for: <i>a)</i> amicable settlement (six-month waiting period); <i>b)</i> dispute settlement before national courts or through arbitration. All the treaties reviewed (except the Singapore-Jordan BIT) include a choice-of-forum clause. The investor can choose to submit its dispute to domestic courts, to arbitration of the International Centre for Settlement of Investment Disputes (ICSID) or to <i>ad hoc</i> arbitration, most often in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The International Chamber of Commerce (ICC) in Paris and the Stockholm Chamber of Commerce are also mentioned as possible venues. Six of the 14 BITs signed with Arab countries also refer to the Arab Investment Court as one of the available <i>fora</i> for dispute resolution in its BITs with Arab countries as Jordan is a signatory of the 1980 Arab League Investment Agreement (Box 3.5). For consistency purposes, all the BITs signed with member of the Arab League could have included this reference.</p> <p>Approximately half of the treaties reviewed contain a fork-in-the-road clause, which means that resorting to international arbitration and resorting to domestic judicial procedures are mutually exclusive. Such a provision is a means to avoid forum shopping by investors. Jordan's BITs do not contain very detailed ISDS clauses, with the exception of BITs signed with North American partner countries. A recent global trend is to address ISDS mechanisms in more detail, providing greater guidance to the disputing parties with respect to arbitration proceedings. Jordan might wish to start doing so, in order to have greater control over the conduct of potential disputes.</p>
<i>Investment promotion</i>		
Promotion and Facilitation	Commitment to encourage the promotion and facilitation of investments between contracting parties.	<p>With regard to promotion and facilitation of investment, Jordan's treaty practice merely consists in including vague language in the preamble, which is not legally binding but can affect the interpretation of the treaty, and/or in including a non-binding declaratory provision in a separate article. For example, Article 2.2 of the model BIT reads as follows: "In order to encourage mutual investment flows, each contracting party shall endeavour to inform the other contracting party, at the request of either contracting party on the investment opportunities in its territory." This best endeavour approach is rather traditional and is found in a number of existing BITs. In order to foster investment flows with the treaty partner, Jordan may wish to include a more conducive approach (see below).</p>
Co-operation on investment	Provisions on the creation of institutional arrangements to strengthen bilateral investment ties.	<p>As mentioned, Jordan reviewed BITs merely contain vague language on co-operation on investment in their Preamble, creating no binding obligation to co-operate. Jordan might consider taking a step further on investment co-operation in establishing an institutional mechanism (such as a commission or a contact point) to supervise implementation of the agreement and promote investment flows. The BIT with Singapore mentions that the parties should designate contact points "for the purpose of facilitating communications" (Article 20), but it does not mention the promotion objective.</p>
Consultations	Encourages parties to consult on matters concerning the interpretation or application of the treaty.	<p>Another way to facilitate relations between parties is to include an article providing for consultations between State parties on matters concerning the interpretation and application of the BIT. Such provision is included in the BITs with Canada, Russia and the US. However, it is not known whether and how such consultations are held.</p>

Table 3.2. **Main features of Jordanian BITs (cont.)**

Key provisions	General description	Comments
Transparency	Promotes investment through the dissemination of information.	There is no provision on transparency in the model BIT. Only the treaties with Singapore, Canada and the US (from the reviewed BITs) include an obligation for the State parties to ensure the transparency of their regulations of investments. The commitment to transparency taken in the Article 19 of Canada-Jordan BIT is an example of good practice that could be duplicated in future treaties: “1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them. 2. To the extent possible, each Party shall: a) publish in advance any such measure that it proposes to adopt; and b) provide interested persons and the other Party a reasonable opportunity to comment on such proposed measures. 3. Upon request by a Party, the other Party shall provide information on the measures that may have an impact on covered investments.” Jordan to date does not apply such an obligation, as laws and regulations are difficult to access and there is no systematic possibility to comment investment-related draft laws.
Special provisions bearing on the protection of the environment, labour rights, and public health.	Language referring to specific public policy concerns.	Jordan's treaty practice appears not to be very innovative with regard to the inclusion of emerging issues such as, <i>inter alia</i> , labour rights, environmental protection, and public health. However, general exceptions pertaining to measures necessary to protect human, animal, plant life or health and conservation of natural resources are to be found in the Canada-Jordan BIT, and the US-Jordan BIT merely mention health, safety and environmental measures in the statement of goals contained in the Preamble. The Jordan model BIT could include more detailed provisions on these issues, in particular related to environmental protection. On the inclusion of social and environmental standards, it could be relevant to make a reference to the <i>OECD Guidelines for Multinational Enterprises</i> , following the future practice of the European Commission. The European Parliament, in its resolution of 6 April 2011 on the future European international investment policy, asked the Commission to include, in all future agreements, a reference to the updated <i>OECD Guidelines</i> .

Cyprus,<sup>23, 24</sup> Canada, Russia, Singapore, the United States and Germany), as well as the Jordanian model BIT, which is analysed in light of international best practices. Particular emphasis has been given to treaties that contain commitments towards liberalisation of investment, i.e. providing for pre-establishment treatment (BITs concluded with the United States,<sup>25</sup> Canada,<sup>26</sup> and Singapore<sup>27</sup>).

This analysis, based on a limited number of treaties and the model BIT, reveals that Jordan's recent treaty practice is fairly homogeneous, though the approach remains traditional and does not reflect the latest trends in international investment law. In line with the most common trends in existing treaties, Jordan adopts a rather classical approach to investment treaty drafting, as also reflected in the model BIT. Generally, Jordanian BITs contain succinct provisions and have not adopted innovative treaty practices and drafting detailing and clarifying concepts and procedures.

### **International arbitration**

Jordan is a party to both the New York Convention on Recognition and Enforcement of Arbitral Awards (ratified in 1980) and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) (ratified in 1972). Jordan has 45 BITs in force, the vast majority contain provisions on investor-state dispute settlement and provide for access to international arbitration.

Jordan has also signed the following treaties: Riyadh Arabic Treaty on Judicial Collaboration, Amman Arabic Treaty on Commercial Arbitration, Treaty on the Settlement of Investment Disputes in the Arab Countries (not entered into force), and Arabic Treaty on Commercial Arbitration (which stipulates that an Arabic Centre for Commercial Arbitration shall be established, but it has not yet been materialized). Finally, Jordan is an observer to the Energy Charter Treaty.

Article 33 of the 1995 Investment Law provides for the resolution of investment disputes through either Jordanian courts or through submission to ICSID for amicable, conciliatory settlement or arbitration. The interim Investment Law No. 68 of 2003 which repealed the 1995 Investment Law does not provide for dispute settlement provisions *per se*. It only refers to the application of Arab and international agreements containing dispute settlement provisions. Where the government – or any of its agencies – is a party to the dispute, Jordan favours settlement in local courts (US Department of State, 2011).

Jordan's arbitration law (Law No. 31 of 2001) is primarily based on the UNCITRAL Model Law of 1985 on International Commercial Arbitration (see above).

Jordan has been a respondent state in five known investment disputes, all submitted to ICSID. Out of these five cases, three have been settled between the parties before an award was rendered.

- **JacobsGibb Limited v. Hashemite Kingdom of Jordan** (Case No. ARB/02/12), was submitted to ICSID in 2001 and settled between the parties in 2004. The dispute related to a waterway construction project.
- **Salini Costruttori S.p.A. and Italstrade S.p.A. v. the Hashemite Kingdom of Jordan** (Case No. ARB/02/13) was submitted to ICSID in 2002 and adjudicated in favour of Jordan in 2006.

The dispute arose out of an alleged non-payment by Jordan of amounts due under a contract between two Italian companies and a Jordanian entity for the construction of the Karameh Dam project in Jordan. The claim was brought against Jordan under the Italy-Jordan BIT. The events at the root of the dispute go back to a meeting between the Prime Ministers of Italy and

Jordan, during which the claimant argued that Jordan had orally undertaken to refer the claimants' contractual claims to arbitration, even though there was a contractual exclusive jurisdiction clause, and had then failed to abide by such commitment. The claimant claimed that Jordan, by refusing to submit the dispute to arbitration, breached its obligations under the BIT to ensure fair and equitable treatment to the investors, and "to create and maintain in its territory a legal framework apt to guarantee to investors the compliance in good faith, of all undertakings assumed with regard to each specific investor" (ICSID award, 2006). In response, Jordan argued that there had never been such agreement to refer to arbitration.

The tribunal stated that it was for the Italian claimants to prove that a legally binding agreement was concluded orally between the two governments, which would have created a legal obligation for Jordan to refer to arbitration. Since the claimants failed to prove this fact, the tribunal rejected their submission and therefore did not consider Jordan's legal obligations under the BIT. Additionally, the tribunal decided that each party would equally bear the costs of the proceedings.

- **Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan** (Case No. ARB/07/25) was registered in 2007 and settled between the parties in 2009. The case related to an oil exploration concession.
- **ATA Construction, Industrial and Trading Company v. Hashemite Kingdom of Jordan** (Case No. ARB/08/2) was concluded in 2010, with a mixed outcome.

The claimant was a Turkish construction company engaged in large scale infrastructure projects, including a dike on the Dead Sea, built for an entity that was, at that time, majority-controlled by the Jordanian State. The construction contract, governed by Jordanian law, contained an arbitration clause. After completion of the construction, the dike collapsed. A commercial arbitration was initiated, and an award was rendered in favour of the Turkish company. However, the Jordanian Court of Appeal interfered with the arbitral proceedings, holding that the award should be set aside and annulling the arbitration agreement, by virtue of the Jordanian Arbitration Law 2001 – which mandates extinguishment of an arbitration clause in cases where an award is annulled.

Consequently, ATA commenced ICSID arbitration proceedings against Jordan under the Turkey-Jordan BIT. The claimant argued that Jordan, by annulling the arbitral award and cancelling the arbitration agreement, had expropriated its investment and breached the MFN provision. ATA also alleged that its right to fair and equitable treatment and its legitimate expectations had been violated by Jordanian Courts. In response, one of Jordan's counterclaims was that an interest in a damages award could not constitute an investment for the purpose of the BIT.

The ICSID arbitral tribunal dismissed most of ATA's claims, which were inadmissible *ratione temporis*, but it upheld ATA's claim with regard to the extinguishment of the right to arbitration, which was held to constitute a breach of Jordan's FET obligation and of ATA's legitimate expectations. Jordan was therefore ordered to immediately and unconditionally terminate the ongoing courts proceedings and ATA was allowed to restart the commercial arbitration. In a further decision on interpretation rendered in March 2011, the arbitral tribunal clarified that the effect of the awards on the merits was to restore the validity of the arbitration agreement.

- **International Company for Railway Systems (ICRS) and Privatisation Holding Company (PHC) v. Hashemite Kingdom of Jordan (Case No. ARB/09/13)** was registered in 2009 and settled between the parties in 2011. Its subject matter was a light rail system.

## Investment promotion and facilitation

### **Investment promotion strategy and agency**

The Jordan Investment Board (JIB)<sup>28</sup> was created in 1995 by the Investment Promotion Law No. 16 of 1995. The interim Investment Promotion Law No. 67 of 2003 re-established JIB and clarified its functioning. According to the authorities, this law re-organises the legal and administrative framework of JIB, and in particular regulates JIB's internal functioning. As the 2003 law is not translated into English, it could not be consulted for the purpose of this review.

JIB's goal is to promote and facilitate investment in Jordan and its current vision is based on the National Investment Strategy that was launched early 2008. JIB provides information to domestic and foreign investors on investment-related issues and opportunities, accompanies them in the registration and operationalisation of their businesses, identifies matching business partners, including between the private and public sector, and is also responsible for policy advocacy with a view to channel investor and business needs to the political sphere. In recent years, emphasis has been given to the policy advocacy and after-care functions of JIB.

JIB is managed by a Chief Executive Officer reporting to a board of directors. The board of directors, composed by one half of government or public sector officials and another half of private sector representatives, is chaired by the Minister of Industry and Trade and co-chaired by a private sector representative. JIB operates four offices outside of Jordan (United Arab Emirates, Qatar, Kuwait and China).

JIB enjoys financial and administrative independence (Article 13 of the 1995 Investment Law). The budget is submitted to the Board of Directors for approval. Its funds are constituted by the following sources: funds allocated by the Government; returns of services rendered by the JIB; local or foreign loans,

provided that the Council of Ministers approves the foreign loans; profits on the JIB's funds; and grants, aids, gifts, and wills or other funds offered to JIB (Article 15).

JIB has two main pillars:

- investment promotion which also deals with public relations and communication, and research and studies;
- investors affairs and services which supervises several departments, including investment facilitation, investment window shop, after-care, policy advocacy, information technology and legal affairs.

In 2010, following an evaluation conducted in co-operation with the European Commission, JIB established the after-care and the policy advocacy departments. The after-care department is responsible for following up with investors who have already registered their business, in order to facilitate and remove obstacles to their operations. This includes conducting regular impact assessments such as survey and field studies. In addition, a Customer Relationship Management system is currently being implemented. The policy advocacy department aims at creating a pro-business investment environment to further promote domestic and foreign investments – including conducive taxation policies, favourable fiscal and other incentives, absence of exchange controls, adequate protections, lowering the costs of doing business, and easing the bureaucratic burden. Surveys of private sector's concerns are conducted through this department, as well as assistance in lobbying and communicating with government through official channels.

JIB acts as the one-stop shop for investors, called the Investment Window to provide licensing and registration services to new projects. It is composed of representatives of nine governmental agencies dealing with the registration and licensing, including Ministry of Industry and Trade, Ministry of Interior, Ministry of Environment, Ministry of Municipal and Rural Affairs, Greater Amman Municipality, Ministry of Labour, Ministry of Health, Ministry of Tourism and Antiquities, and Department of Land and Survey.

The OSS facilitates the delivery of required administrative documents for operating a business in Jordan but does not have the authority to directly issue licences. It provides the following services: registration of projects according to the Companies Law, issuance of preliminary licensing approvals for launching projects, facilitation of visas and permanent residency approvals for investors and foreign staff required for the project. The OSS needs an average of 14 days to obtain from the concerned governmental bodies<sup>29</sup> the approval on registration and licences. JIB intends to obtain the necessary delegation of powers from approval bodies with a view to reduce the number of days to register a company and get licenses. According to the Jordan Economic Dialogue

Committee Report of May 2011, the Investment Window should be involved in the revision of the legislation and instructions to cancel unnecessary licenses.

The Jordan Development and Free Zones Commission (DFZC), in charge of administering the economic zones, also assists investors in obtaining licenses and exemptions through a one-stop-shop. There seems to be some overlaps and lack of co-ordination between the DFZC and the OSS in JIB.

JIB has adapted its strategy to adopt a targeted promotion approach focusing on attracting specific companies in certain priority sectors. JIB is competent to foster investment in the five sectors mentioned in the 1995 Investment Law and four additional sectors as decided upon by a resolution of the Council of Ministers.<sup>30</sup> The investors' targeting approach focuses on four priority sectors for the development of Jordan's competitiveness: information and communication technology, renewable energies, pharmaceuticals and tourism. In parallel, specific countries are targeted depending on the sectors. JIB also launched the Investment Map Project, which provides investors with pre-feasibility studies for 150 projects in 15 sectors.

There is no programme in Jordan to foster business linkages between foreign investors and local enterprises, though it is a recommendation by the Economic Dialogue Committee Report established in May 2011. Such a programme would provide for market access to local SMEs and foster their competitiveness, which could have a positive impact of job creation.

The government announced early 2012 its intention to merge all investment-related governmental institutions into one entity, but this has not yet been done.

According to JIB, Jordan has internal investment promotion issues that hinder the growth of FDI and local investment. JIB identifies as key internal problems, the lack of staff in main departments (due to the freezing in hiring in the public sector) and the frequent changes in managerial and expert personnel, the changing government attitudes towards foreign investors, and the lack of empowerment of the one-stop shop as it does not have yet full authority to issue licences and permits.

### ***Dialogue with investors***

Investment promotion agencies can play an important role in facilitating communication and consultation with investors, and in creating an effective channel to relay investors' concerns to relevant governmental agencies, thus potentially influencing government activities, decisions, and regulations having an impact of the investment climate.

In Jordan, ministries are in principle required to submit to the private sector and civil society their draft regulations and launch public consultations. The Kingdom has also taken commitments under some of its bilateral



investment treaties. For example, the transparency provisions of the BIT signed with Canada recommends publishing in advance proposals and providing for a reasonable opportunity to comment them (see above in the section of international investment agreements).

It has been reported that representatives of the private sector have received and been given the opportunity to comment on the new draft investment, but no formalised public-private consultations have been launched. Stakeholders mentioned that the process is not systematic, structured, inclusive or transparent. No channels or websites could be identified to allow for access and comments on draft laws, as it could be found in other countries such as Morocco.<sup>31</sup> In particular, the Jordan Chamber of Industry is calling for the formalisation of public-private consultations to comment the relevant laws and regulations before they are submitting to Parliament.

Some consultations are taking place in the framework of specific bodies, such as the Committee for Economic Dialogue set up in 2011, or through the participation of private sector representatives in decision-making bodies. For example, half of the members of JIB Board of Directors are representatives from the private sector. The Economic Dialogue Committee Report, issued in May 2011, recommends to “receive all forms of complaints and to meet the needs of investors, and find optimal solutions to obstacles that might hinder investors in the short term and raise such obstacles to the Policy Support Unit in the JIB”.

The Office of the Ombudsman, created in 2008, receives complaints about decisions taken by the public administration. The Ombudsman's role is to look into whether an administrative decision has been taken in accordance with the regulations in force. It does not constitute a judicial body and only has a power to give advisory opinions, issue statements and publish his findings, with no means to enforce its decisions. No information is available on the number of cases brought to the Ombudsman and their settlement. Stakeholders also expressed concerns about efficiency and independence of the Ombudsman.

Jordan launched in 2011 in co-operation with USAID a pilot project on the regulatory guillotine which foresees a stronger participation of the private sector and other stakeholders in the definition of policies and laws. The objective is to institutionalise consultation processes, possibly through a Consultation Law.<sup>32</sup>

The Jordanian authorities are encouraged to expand dialogue with investors – domestic and foreign, small and large, existing and potential, and representing all sectors beneficial to local development. This dialogue should be systematic and inclusive. Its results should be communicated to the

relevant government structures to ensure that the needs of investors and the private sector in general are better taken into account. In this regard, Chapter 2 of the OECD Policy Framework for Investment User's Toolkit, which is based on the good practices of adhering countries, is a useful tool for assessment and implementation of active and fruitful consultation with investors.

### ***Investment incentives and disincentives***

The instrument on International Investment Incentives and Disincentives is an integral part of the OECD Declaration on International Investment. It encourages adhering states to ensure that incentives as well as disincentives are as transparent as possible, so that their scope and objectives may be easily determined. Jordan has declared it is ready and able to fulfil its commitments under this instrument (Chapter 2). The OECD Policy Framework for Investment encourages states to evaluate the costs and benefits of incentives, in particular the use of tax incentives together with the level of the tax burden they impose on businesses with a view to meet its investment promotion objectives.<sup>33</sup> The OECD Checklist for Foreign Direct Investment Incentive Policies also helps raise awareness from decision makers in assessing the usefulness and relevance of investment incentives.<sup>34</sup> In addition, the OECD Tax and Development Programme has identified the need for a more effective global transparency framework for tax incentives for investment – the purpose of which is to promote transparency in decision-making processes, increase the information available on costs and benefits, limit discretion and increase accountability. To that aim, a set of principles has been developed (Box 3.8).

The Jordan legal investment regime provides for a wide range of incentives to domestic and foreign investors. The system established by existing laws and regulations is rather complex with different overlapping schemes and zones. The incentives provided by the Investment Promotion Law No. 16 of 1995 offers different levels of tax exemptions according to sectors and place of investment (classification by districts and governorates). In addition, different sets of incentives are provided for in the various preferential economic zones established in Jordan (industrial estates, development areas, free zones, Aqaba Special Economic Zone which has free-zone status and its own investment regime, and Qualifying Industrial Zones which offer specific incentives for exports to the United States [Box 3.7]). In addition, the Council of Ministers has the authority to grant additional benefits and incentives to an investment project. Therefore, the incentive regime lacks transparency and predictability for investors linked to its complexity and a certain level of discretion.

The interim Income Tax Law of 2009 eliminated from 1 January 2010 income tax exemptions (except for selected social matters, concession agreements, development zones and the Aqaba Special Economic Zone)<sup>35</sup> thus substantially diminishing tax incentives provided for investors, which are therefore subject to the general corporate income tax regime (Box 3.6). Consequently, the application of the 1995 Investment Law does not anymore cover income tax exemptions and is only valid for customs and sales tax incentives.

#### Box 3.6. Corporate income tax regime in Jordan

The corporate income tax rates in Jordan are the following:

- 30% on banks and financial companies.
- 24% on insurance and telecommunication companies, and financial institutions including money exchange and capital leases.
- 14% on all other companies, including industrial and commercial companies.

Source: Jordan investment Board.

The 1995 Investment Promotion Law, which has been repealed by the interim Investment Law No. 68 of 2003 except for its provisions on sectors, incentives and exemptions, establishes the general framework for investment incentives. The sectors that benefit from the exemptions of the Law are the following: industry; agriculture; hotels; hospitals; maritime transport and railways; leisure and recreational compounds; convention and exhibition centres; pipeline transportation; and distribution services for water, gas and petroleum derivatives as well as its exploitation.

Though the below classification and exemptions do not currently apply according to the interim Income Tax Law, it is described as the 1995 Law and its pursuant regulation<sup>36</sup> are still in force. Jordan is divided in three development areas (A, B and C) which enjoy income and social services tax exemptions:

- Zone A, in which a tax exemption of 25% is applied, covers investments in the hotel sector in the shore of the Dead Sea; in leisure and recreational compounds, and conventions and exhibitions centers; and in the industry sector in selected districts of Jordan (mainly in the Governorate of Amman).
- The Qualified Industrial Zones are classified under zone B and benefit from a 50% tax exemption. Investments in some few districts across the territory in the industry sector, hotels and hospitals also enjoy this exemption.
- Investments in Zone C benefit from the highest level of exemptions from income and social services taxes (75%). Zone C classification comprises the sectors of agriculture, maritime transport and railways, half of the districts in the industry sector, and most of the districts in hotels and hospitals.

The exemption period is ten years and can be extended by the Investment Promotion Committee. Additional exemptions are granted if the investment project has been expanded, developed or modernised.<sup>37</sup>

Both applicable investment laws (the 1995 and 2003 laws) allows the Council of Ministers to grant any benefits and exemptions from tax and fees to an investment project for the period and conditions it deems appropriate.<sup>38</sup> In such cases, the Council of Ministers shall consider the development impact of the project (in terms of R&D, export increase, transfer of technology and job creation) and its geographical location.

The 1995 Investment Law also provides for the following components of investments to be exempted from customs duties, sales tax, and other fees and charges, with the exception of municipal fees and taxes:

- Imports of fixed assets for the use of the project exclusively (for three years). These assets include machinery, equipment and supplies used in the project including furniture and equipment for hotels and hospitals.
- Imports of spare parts up to 15% of the import value of the fixed assets (for ten years); and
- Fixed assets required for expansion, development and modernisation of the project, provided this results in an increase in production capacity of at least 25%

The 2003 Interim Investment Law adds that goods and services, imported or purchased locally for an exempted project, shall be exempt from the general sales tax (Article 3 A 2).

The 2003 Investment Law also defines new procedures to apply for incentives. The Law establishes an Investment Incentives Committee to review the applications submitted by investors in relation to fees and tax exemptions. Decisions should be made within 30 days. Any rejection should be justified. The investor is allowed to object the Committee decisions to the Minister of Industry and Trade and the Minister's decision is subject to appeal with the Court of Higher Justice (Articles 7 to 12). These provisions give more predictability for investors.

Therefore, both 1995 and 2003 investment laws are regulating incentives for investment, in addition to the various regimes established by the laws administering the economic zones (Box 3.7) and the temporary lift of income tax exemptions. The provisions related to incentives of the 1995 Investment law apply, but the 2003 Investment Law also contains procedural provisions on incentives that may overlap. The 2003 Interim Investment Law gives the choice to the investor to either i) continue to enjoy exemptions and benefits granted prior to its effectiveness until the expiration of the incentive period; or ii) enjoy the exemptions and benefits of the new law provided that the

### Box 3.7. Economic Zones in Jordan

#### **Industrial estates**

The Law No. 59 of 1985 established the Jordan Industrial Estates Corporation (JIEC), a semi-governmental corporation with the objective of establishing and managing industrial estates. According to the WTO (2009), the five JIEC-managed industrial estates comprised 461 factories with a workforce of close to 41 000 in 2006, and contributed JD 725 million (24.8%) to Jordan's total merchandise exports. Industrial projects that are established within industrial estates benefit from the incentives and exemptions provided for under the 1995 and 2003 investment laws, in particular exemption from income and social services tax for two years; exemption from buildings and land taxes; and exemption from or reduction of most municipality fees.

#### **Development areas**

The Development Areas Law was introduced in 2008 in order to develop and encourage investments in certain specific sectors and areas of the country with a view to reducing disparities between governorates. Established by the Law, the Development Areas Corporation acts as a one-stop shop to streamline the regulation of the six existing zones. Projects operating in development areas can be fully owned by non-Jordanians and are subject to a more favourable fiscal and customs regime. They benefit from an income tax rate reduced to 5%, are exempt from sales tax, dividends tax, social services tax and customs duties on imports, except for products that do not qualify as having Jordanian origin.

#### **Free zones**

Jordan's free zones were established under the Free Zones Corporation Law No. 32 of 1984 and the Free Zones Corporation Investment Regulation No. 43 of 1987 to promote export-oriented industries and transit trade. They are open to local and foreign investors. Investments in the free zones are required to meet set criteria, such as introduction of new technology, use of local raw materials and manufactured parts, improvement of labour skills, and import substitution. Investors operating in free zones benefit from exemption from income and social services taxes, custom duties and fees for a period of 12 years. Salaries of non-Jordanian employees working in free zones are exempt from income and social taxes, and investors may transfer profits abroad without any restriction. Moreover, constructions in the free zones are exempt from license fees, and land is exempt from property taxes. There are 5 public and 24 private free zones in Jordan.

The Development Areas Law has been amended in 2010. It became the Economic Zone Law which now also governs the free zones and industrial estates. The three entities administering the different economic zones have been merged into one corporation, the Development and Free Zones Commission (DFZC), wholly owned by the Jordanian government.

**Box 3.7. Economic Zones in Jordan (cont.)****Aqaba Special Economic Zone**

ASEZ was established in 2001 with a view to create a regional hub for investment and tourism around the city of Aqaba. It is Jordan's largest free zone and has a distinct legal status. It is a duty-free and low-tax multi-sector development zone. It spreads over 375 km<sup>2</sup> and encompasses the total Jordanian coastline (27 km). It hosts all Jordanian sea-ports and an international airport. It is managed by the Aqaba Special Economic Zone Authority (ASEZA), a financially and administratively independent institution responsible for the management, regulation and development of the zone and which operates as legal entity outside Jordan. The zone is subject to the Jordanian laws but the provisions of the ASEZA Law prevail to the extent of a conflict. The zone, open to private domestic and foreign investors, provides a number of privileges and incentives including exemptions from customs duties, sales tax, social services tax, land and building taxes and a flat income tax rate of 5%. There are no foreign equity restrictions on investments, land can be purchased or leased and up to 70% of the workforce may be foreigners.

**Qualifying Industrial Zones**

QIZ have been established following a 1996 amendment to the United-States-Israel Free Trade Area Implementation Act of 1985, with the aim of promoting peace and development between Israel and its Arab neighbours (Jordan and Egypt). For goods moving into and out of the zones, customs procedures are streamlined and tariffs do not apply. In addition, products from QIZs are permitted to enter the United States duty free. Qualifying businesses must meet certain criteria such as promoting economic co-operation between Israel and Jordan for the products to be eligible for duty-free treatment. Local content should at least 35% of which a minimum of 11.7% must be Jordanian and 8% Israeli. QIZs differ from other trade zones as they operate in two countries (Israel and Jordan), produce goods solely for export to the United States, and operate under the oversight authority of the United States. There are currently 13 QIZs approved by the US Trade Representative in Jordan. The implementation of the QIZ initiative has led to an important growth of the textile and clothing industry. The garment sector increased its participation in the manufacturing sector from 2.5% prior to the QIZ regime to 12% in 2006 which was the peak year, garment exports represented 30% of total exports in 2006. Foreign investment, mainly from Asia, represented 94.3% of total investment. Only 20% of the firms are wholly owned by Jordanians. Almost 65 % of all employees were expatriates. However, despite these impressive results, very little value added has been retained in the country. As investors are mainly operating simple assembly plants at the low end of the value chain, employing predominantly foreign workers, the value chain for Jordan has not been upgraded (Abugattas-Majluf, 2012).

investment project adjusts its status and abides by the conditions and requirements specified in the Law and the regulations issued pursuant thereto. However, no new regulation has been issued after the 2003 Law – the 1996 Regulation related to the sectors and areas benefitting from exemptions still apply. Therefore the level of tax exemptions, the sector and areas in which they are authorised are not available under the 2003 Law.

The overlapping legal regimes of investment incentives and the uncertainties linked to the temporary elimination of the income tax incentives raise questions about transparency and effectiveness of the incentives objectives. The discretion accorded to the Council of Ministers in granting additional benefits and exemptions can lead to inconsistencies and difficulties in the management of incentives with the tax administration. As Jordan is currently revising its investment law, it may wish to thoroughly assess the impact of incentives as they can impose a financial burden on the government budget at a current time of severe constraints. The new regime should clarify responsibilities of the authorities for the many tax and other investment incentives, with a mandate to simplify the system, periodically assess its net benefit, and improve transparency.

The OECD Checklist for Foreign Direct Investment Incentives Policies brings awareness on the need to assess the costs and benefits of using incentives to attract FDI, to provide operational criteria for avoiding wasteful effects, and to identify the potential pitfalls and risks of excessive reliance on incentive-based strategies. There are several criteria to consider in implementing an effective investment incentives policy in order to ensure clarity, visibility and predictability for investors. First, there are criteria of transparency and non-discrimination with a view to provide a predictable and conducive environment for investors. Second, an efficient incentive system should not operate without evaluation mechanisms. In order to ensure that incentives are fulfilling their objectives, i.e. attracting more investment, they need to be subjected to both *ex ante* and *ex post* evaluations to determine their effectiveness and their impact on the national budget. Such cost-benefit analyses can also improve the transparency and direction of policies.

The OECD Tax and Development Programme also developed Principles to enhance the transparency and governance of tax incentives for investment in developing countries (Box 3.8). Considering these principles could be useful for the Jordanian authorities to promote the management and administration of tax incentives for investment in a transparent and consistent manner.

The Jordanian authorities are encouraged to engage with the Committee of Fiscal Affairs to conduct analyses of tax policy for investment; in particular, the OECD Tax and Development Programme can provide assistance in

**Box 3.8. OECD Principles to enhance the transparency and governance of tax incentives for investment in developing countries**

Action is needed by governments to:

- Make public a statement of all tax incentives for investment and their objectives within a governing framework.
- Provide tax incentives for investment through tax laws only.
- Consolidate all tax incentives for investment under the authority of one government body, where possible.
- Ensure tax incentives for development are ratified through the law-making body or parliament.
- Administer tax incentives for investment in a transparent manner.
- Calculate the amount of revenue forgone attributable to tax incentives for investment and publicly release a statement of tax expenditures.
- Carry out periodic review for the continuance of existing tax incentives by assessing the extent to which they meet the stated objectives.
- Highlight the largest beneficiaries of tax incentives for investment by specific tax provision in a regular statement of tax expenditures, where possible.
- Collect data systematically to underpin the statement of tax expenditures for investment and to monitor the overall effects and effectiveness of individual tax incentives.
- Enhance regional co-operation to avoid harmful tax competition.

In addition to governments, stakeholders have responsibilities.

Action is needed by business to:

- Refrain from seeking or accepting exemptions not contemplated in the statutory or regulatory framework related to taxation, financial incentives or other issues.

Action is needed by civil society to:

- Draw attention to, and publicise, revenues forgone from wasteful tax incentives that could free up resources for development.

Action is needed by development partners and donors to:

- Include tax incentives and revenues forgone in the dialogue with governments in developing countries and provide appropriate technical advice and assistance.

comprehensive analysis of tax incentives for investment within the framework of the Governance and Transparency Principles.



## Trade policy

Policies relating to trade in goods and services can support more and better quality investment by expanding opportunities to reap scale economies and by facilitating integration into global supply chains, boosting productivity and rates of return on investment. Based on the OECD Policy Framework for Investment, this section addresses the question of how implementing WTO commitments by Jordan and signing market-expanding international trade agreements can increase investment opportunities. It also analyses the recent efforts of the government to reduce the compliance costs of customs, regulatory and administrative procedures at the border.

Jordan's foreign trade policy is oriented towards economic openness and integration into the world economy. The Kingdom became a member of the World Trade Organization (WTO) on 11 April 2000 and undertook a Trade Policy Review in 2008. During and following the accession process, the country liberalised significantly its trade regime. As estimated by the Trade Restrictiveness Index,<sup>39</sup> its most-favoured nation (MFN) applied tariff has decreased from an average of 18.6% during the 2000-04 period to an average of 9% during the 2006-09 period. Currently, Jordan has one of the most open trade regimes in the region and its MFN applied tariff is below the MENA regional average of 11.9%. Agricultural products face higher trade barriers, with an average MFN applied tariff of 11.9%, in comparison to 8.6% on non-agricultural goods. Jordan also maintains an open services trade regime, ranking 17th on the GATS Commitment Index among 148 countries (World Bank, 2010).<sup>40</sup>

During the 2000s, trade has grown substantially in nominal and real terms, having slightly decreased in 2009 reflecting the global economic slowdown. Following the WTO accession in 2000 until 2008, trade as a share of GDP grew on average 3% per year. According to the World Bank, merchandise trade represented 81% of GDP in 2010, above the average of its regional peers. Trade in services accounted for 34% of GDP, the second highest level in its region, only behind Lebanon (74% of GDP). Jordan's exports are mainly concentrated in manufacturing products (fertilisers, medicines, textiles and apparel, and telecommunications equipment) and tourism, being respectively responsible for more than 40% and 24% of total exports. Major exports markets are the United States (16%), Iraq (15%), India (13%), Saudi Arabia (11%) and the United Arab Emirates (4%).

Nevertheless, the increase in exports revenues has been offset by rising import costs. With limited natural resources, Jordan is highly dependent on oil and gas imports. Rising oil prices and disruptions in supply from Egypt are largely responsible for current account deficits in recent years. Other significant products imported are telecom and transport equipment. Jordan's main import partners are the European Union (20%), Saudi Arabia (20%), China

(11%), United States (6%) and Egypt (5%). With rising import costs increasing external pressures, it becomes essential for Jordan to design trade and investment policies capable of attracting further FDI in export-oriented industries. Jordan already has a comparative advantage in certain sectors (e.g. tourism, clean energy technology, transport, ICT, pharmaceuticals...) and product lines that can be fostered through an efficient trade and investment policy addressing transaction costs that hinder exports performance.

The Ministry of Industry and Trade is the authority responsible for designing and implementing Jordan's trade policy. Under its authority, the Executive Committee for Trade Policy, which is constituted by public and private sector representatives, is in charge of providing the government with advice and recommendations relating to Jordan's foreign trade policy and the implementation of the Jordan's Foreign Trade Strategy 2010-2014. The Strategy seeks to i) strengthen the competitiveness of national economy by promoting the diversification of Jordan's exports, by attracting foreign and domestic investments and by opening new markets for Jordanian products; ii) develop trade performance through effective new trade and economic agreements; iii) develop institutional performance through capacity building and technical assistance in trade policy related issues.

### **International trade agreements**

During the last decade, the country has committed itself to trade liberalisation reforms and has advanced its trade diplomacy by actively participating in WTO negotiations and by engaging in bilateral trade relations with its main trading partners. Efforts to bring the trade regime into compliance with WTO agreements have included: harmonising legislation, gradually reducing customs tariffs on agriculture and goods trade, and reducing subsidies, with the exception of income tax exemption on export profits. Nonetheless, Jordanian authorities reported on May 2012 that this tax exemption would be phased out at the end of 2015, following a WTO General Council decision. Despite having also liberalised services trade, existing FDI restrictions in certain sectors (transport, distribution, financial and business services) partially impede cross-border delivery of such services (Chapter 2). Further liberalisation of FDI restrictions in such sectors would contribute to increase Jordan's competitiveness and attract more trade-oriented investment.

The Ministry of Industry and Trade has negotiated a number of free trade agreements with main trading partners to expand market access to Jordanian products (Table 3.3). Pursuing this trend, and in line with the objectives of the Foreign Trade Strategy 2010-2014, Jordan is currently negotiating FTAs with MERCOSUR and Pakistan.

Table 3.3. **Trade agreements concluded by Jordan**

Agreement	Current status	Date of signature	Entry into force
Pan-Arab Free Trade Area (GAFTA) <sup>1</sup>	In force	19 Feb. 1997	1 Jan. 1998
Jordan-EU Association Agreement	In force	24 Nov. 1997	1 Mar. 2002
Jordan-US Free Trade Area Agreement	In force	24 Oct. 2000	17 Dec. 2001
Jordan-EFTA Free Trade	In force	21 June 2011	1 Jan. 2002
Agadir Agreement <sup>2</sup>	In force	25 Feb. 2004	6 July 2006
Jordan-Singapore Free Trade Agreement	In force	16 May 2004	22 Aug. 2005
Jordan-Turkey Free Trade Area	In force	1 Dec. 2009	1 Mar. 2011
Jordan-Canada Free Trade Area	Signed	28 June 2009	1 Oct. 2012

1. Jordan, United Arab Emirates, Bahrain, Saudi Arabia, Oman, Qatar, Morocco, Syria, Lebanon, Iraq, Egypt, Palestine, Kuwait, Tunisia, Libya, Sudan and Yemen.

2. Jordan, Egypt, Morocco and Tunisia.

Source: Jordan, Ministry of Industry and Trade.

At the regional level, the Pan-Arab Free Trade Area (PAFTA, also called GAFTA) is considered as one of the most significant economic efforts to promote trade integration among Arab states. The treaty, which includes 17 member countries, entered into force in 1998 and is implemented and monitored by the Social and Economic Council of the Arab League. Besides having provisions on trade in goods and services liberalisation, the PAFTA also contains provisions on rules of origin. As of January 2005, all trade barriers and customs fees on goods have been eliminated among member countries. Liberalisation of trade in services has been slow due to the discordance among members though it is recognised as a priority. Jordanian authorities have reported that a new approach is being negotiated to allow countries that have agreed on their services commitments to move on. Jordan has also engaged in bilateral trade agreements with various Arab countries, in parallel to the PAFTA liberalisation process.

PAFTA members account for the majority of Jordan's exports and are the recipients of a diversified range of Jordanian products.<sup>41</sup> Exports to PAFTA countries have increased by 17% on a yearly average since 2000, having intensified since 2005 as a result of trade in goods liberalisation. This demonstrates Jordan's comparative advantage, which is particularly significant given that inter-Arab trade has been sluggish. However, lengthy borders controls and transit procedures continue to add to trade transaction costs and hinder competitiveness (WTO, 2009).

Further trade integration with other Arab States has been pursued through the Agadir Agreement, which includes Egypt, Morocco and Tunisia. The agreement applies the Pan-EUROMED cumulative rules of origin that allows free circulation of goods that carry a Euro-Med certificate of origin. This system, which encourages businesses from signatory countries to work

together to improve their competitiveness in the European market, is aimed at attracting investments to the region.

The Jordan-US Free Trade Agreement (JUSFTA), which entered into force in 2001, was the first FTA signed by the United States with an Arab country. The agreement contains provisions on trade in goods and services, intellectual property rights, labour, environment e-commerce and rules of origin. Under the JUSFTA, both countries agreed on eliminating duties gradually on nearly all products until 2010. Since then tariffs no longer apply. Jordan has also benefited from preferential trade treatment in the United States under the Qualifying Industrial Zones (QIZ) initiative signed in 1997. As of 2012, there are 13 QIZs in Jordan, of which three are state-owned and managed. These zones have attracted mainly enterprises in the garment and textile sector. Through the QIZ initiative, goods manufactured in Jordan can access the US market quota and duty free provided they are produced in partnership with Israeli companies (8% minimum content in general or 7% for high-tech products) (Box 3.7).

Both the JUSFTA and the QIZ initiative have significantly expanded Jordan's trade. Exports to the US increased 16% on a yearly average since the FTA entered into force in 2001, according to the IMF trade database. The garment industry was the main beneficiary of such agreements, having dominated Jordan's exports to the United States during the decade. However, with the dismantling of the Multi-Fibre Agreement and the termination of the transitional WTO Agreement on Textiles and Clothing in 2005, the industry lost its advantage of preferential access to the US market. As a consequence, Jordan's exports to the US have declined. Nonetheless, the garment industry was still responsible for 87% of total exports to the United States in 2011.

The Jordan-EU Association Agreement was signed in 1997 following the 1995 Barcelona Declaration that established the Euro-Mediterranean Partnership to create an industrial goods free trade area between the EU and 12 Mediterranean countries. The Association Agreement entered into force in 2002 and provided for the creation of a free trade area over a 12-year transition period from the date of entry into force.<sup>42</sup> Provisions on the rules of origin follow the Pan-EUROMED system. Relationships were later strengthened in the context of the European Neighbourhood and Partnership Instrument launched in 2004. Both parties have agreed that trade and investment development is a priority under the co-operation. In 2006, a side agreement entered into force increasing the scope of agricultural products eligible for preferential treatment.

The EU has always been an important trading partner for imports, particularly consumer goods, transport equipment and industrial machinery. Imports from the EU represent around one-third of Jordan's total imports.

However, Jordan has not been able to fully capture the benefits of Association Agreement with the EU. The EU remains a relatively small export market (roughly 8% of total exports in 2011) given its proximity and potential complementarities. Jordanian exporters still face constraints due to stringent EU standards, high compliance costs associated with the complex rules of origin system and customs and trade logistics barriers (USAID, 2008). Addressing these issues is of particular importance to allow Jordan's agricultural exports to benefit fully from the separate agreement on agricultural products in force since 2006. While a rising share of Jordan's agricultural exports (nuts, fresh fruits and vegetables) have been directed towards EU, they remain relatively low.

Following the 2011 events in the Arab world, and with a view to support the associated democratic and economic transitions, the European Commission (EC) received a mandate to negotiate agreements establishing a Deep and Comprehensive Free Trade Area (DCFTA) with Egypt, Morocco, Tunisia and Jordan. Negotiations are to be launched between the EC and Jordan. Both parties have carried out preliminary discussions on a scoping paper, which was proposed by the EC, and exchanged views and areas of interests. According to the Jordanian authorities, further discussions are needed to address issues of rules of origin and technical standards. The DCFTA is expected to promote a progressive economic integration of these countries with the EU, by going beyond existing relations as it covers other issues relevant to trade, such as government procurement, environmental standards and investment protection. Further regional economic integration among the Agadir countries is also expected as the EU has declared that it will support in the context of DCFTA negotiations measures that can strengthen economic relations between those countries.

### ***Streamlining cross-border trade measures***

Jordan has a relatively favourable trade facilitation environment. Drawing on technical assistance from USAID, Jordan has streamlined customs procedures and border controls, reducing the time required and compliance costs for trade operators. These improvements have allowed Jordan to raise its competitiveness and improve its ranking on the "trading across borders" indicator of the World Bank Doing Business report. Jordan ranks 52 (out of 185 economies) in the Doing Business 2013 Report. Likewise, the WEF Enabling Trade Index 2012, which takes into account market access, border administration, transport and communication infrastructure and the business environment, ranks Jordan 42nd among 125 countries.

Customs clearance times for both importers and exporters were reduced by two and three days respectively with the implementation of a new electronic system for customs declarations – the ASYCUDA (Automated

System for Customs Data) World System (World Bank, 2012). The system allows online submission of customs declarations to be made in advance. The system also allowed the introduction of a Golden List programme to facilitate customs procedures for pre-approved companies presenting low non-compliance risk. The Golden List programme relies on voluntary enlistment and compliance, enabling customs to apply a risk-based inspection regime to pre-approved traders based on post-clearance audit, pre-arrival clearance of shipments and expedited procedures (e.g. reduced cargo inspection). In addition, the authorities have reduced to 30% the share of containers subject to physical inspection with the introduction of an e-transit tracking system. The system also allows customs to monitor the transit of trucks inside Jordan via satellite and thereby be more selective on inspection. This has made the transit of goods inside the country faster and has reduced inspection costs for owners.

Nonetheless, structural reforms are still needed to facilitate trade in the country. While Jordan's overall performance on the World Bank Logistics Performance Index (LPI) is good, it indicates that Jordan could further improve the quality of its transport and IT infrastructure. USAID (2008b) reports that improving trade logistics (including truck regulation) and streamlining further customs procedures could be particularly fruitful for Jordan-EU trade of agricultural products as these mostly depend on road transportation.

With the accession to the WTO, Jordan has significantly strengthened its foreign trade policy, opened its trade regime and stimulated its exports, including through FDI attraction in export-oriented activities. Some imbalances remain, notably with the European Union, and trade deficit is affected by Jordan's dependency on oil and gas and the related increase in import costs. While Jordan improved customs, regulatory and administrative procedures at the border, trade facilitation efforts need to be pursued.

### Anti-corruption<sup>43</sup>

Anti-corruption policies are critical for the confidence and decisions of all investors and for reaping the development benefits of investment. Jordan's efforts towards a corruption-free business environment are a positive signal for investors from Parties to the OECD Anti-Bribery Convention and contribute to the interest of the Jordanian society as a whole.

This section addresses the following questions of the OECD Policy Framework for Investment:

- Has the government established and implemented a coherent and comprehensive regulatory reform framework to fight corruption, consistent with its broader development and investment strategy?

- To what extent have international anti-corruption and integrity standards been implemented in national legislation and regulations? Do penal, administrative and civil law provisions provide an effective legislative and regulatory framework for fighting corruption, including bribe solicitation and extortion as well as promoting integrity, thereby reducing uncertainty and improving business conditions for all investors?
- Do institutions and procedures ensure transparent, effective and consistent application and enforcement of laws and regulations on anti-corruption? Have standards of conduct by public officials been established and made transparent? What measures are used to assist public officials and to ensure the expected standards are met? Are civil society organisations and the media free to scrutinise the conduct of public officials' duties? Are "whistle-blower" protections in place?
- Is the government a party to international initiatives aimed at fighting corruption and improving public sector integrity? What mechanisms are in place to ensure timely and effective implementation of anti-corruption conventions? Do these mechanisms monitor the application and enforcement of the anti-corruption laws implementing the conventions?

Jordan signed the United Nations Convention against Corruption (UNCAC) on 9 December 2003 and ratified it on 24 February 2005. In the same year, King Abdullah II stepped up the fight against corruption by directing the government to form an independent commission, draft a law to combat corruption, and stamp out payment of *wasta* (commissions). Accordingly, the Anti-Corruption Commission Law No. 62 was enacted in 2006 and the Jordan Anti-Corruption Commission (ACC)<sup>44</sup> started operations in 2008. The ACC developed a National Anti-Corruption Strategy for 2008-2012 to combat corruption and pursue its perpetrators. The Law was amended in 2012 to expand the scope of the Commission and to provide for witness and whistleblower protection. Jordan is also a signatory to the League of Arab States' Arab Anti-Corruption Convention which was opened for signature on 21 December 2010.

### **Legal framework**

The laws related to anti-corruption in Jordan are:

- The Anti-Corruption Commission (ACC) Law No. 62 of 2006 as amended by Law No. 10 of 2012.
- The Penal Code No. 16 of 1960.
- The Anti-Money Laundering Law No. 46 of 2007<sup>45</sup> as amended in May 2010.
- The Jordanian Law of Economic Crimes of 1993 as amended in 2004.
- The Ombudsman Law No. 11 of 2008.

- The Financial Disclosure Law No. 54 of 2006.
- The Right to Access Information Law No. 47 of 2007.

The 2006 Anti-Corruption Commission Law, as amended in 2012, defines corruption by referring to the relevant provisions of the Penal Law, the Economic Crimes Law, other criminal laws and to the international anti-corruption conventions to which Jordan is a party. As such it covers offences such as trading in influence and the act of influencing behaviour as outlined in the Penal Code, crimes that have a negative influence on the public trust, economic crimes specified in the Economic Offences Act No. 11 of 1993, any action or omission that jeopardises public funds, the abuse of power and the acceptance of nepotism and favouritism, which may lead to unfairness, and all criminal activity and offences noted in the international anti-corruption conventions to which the Kingdom is a party (Article 5).

As regards sanctions, the Article 22 of the ACC Law mentions that a sanction of not less than four months or a fine between JD 500 and JD 5 000 apply without prejudice to any penalty stipulated in other legislation. Each contract or agreement obtained in the course of committing an offence which is deemed to be a corruption offence under the ACC Law, shall be annulled or rescinded and the ACC may request suspension during investigation. Jordan legislation also provides for sanctions against legal persons, which consist of a financial penalty, as well as suspension and/or dissolution of the legal entity (Article 20 of the Penal Code). Article 22b of the revised ACC Law introduced responsibility for bribery of foreign and international public officials.

The 2012 amendments to the ACC Law provide for protection of informants, witnesses, whistleblowers and experts in corruption cases. Articles 23 to 25 define the scope of the protection and the sanctions. However, the legal structure is still rather complex and simplification could contribute to better implementation.

In August 2008, the Jordan Anti-Corruption Commission (ACC) published the National Anti-Corruption Strategy 2008-12, which was prepared in co-ordination with the Ministry of Planning and International Cooperation and a group of experts provided by the EU. The Strategy comprises several components such as strengthening the capacity of the ACC, simplifying the business environment, reforming the public sector, training of public officials, awareness raising, reviewing anti-corruption legislation, co-ordinating anti-corruption efforts and strengthening international co-operation. An action plan to implement the strategy has been elaborated, comprising specific measures, deadlines, responsible agencies and verifiable indicators. A co-ordination committee has been established, including members of the ACC, the Ombudsman Bureau and the Audit Bureau. A new strategy is currently under preparation in consultation with the private sector.



Jordan has criminalised bribery of national public officials, both in its active and passive forms. Public official is defined widely.<sup>46</sup> To facilitate prosecution of the offences, the jurisprudence of the Jordanian Court of Cassation<sup>47</sup> provided a more precise definition of official duty, rather than public official (UNODC, 2011). The issue arises therefore as to whether the public official would need to be acting within the scope of his official duties at the time of the alleged criminal activity. This would greatly limit the definition of public official. The 2012 amendments to the ACC Law also establish the criminal offence of bribing foreign public officials and officials of public international organisations in reference to international treaties that are in force in Jordan (Article 22.b).

Jordan also criminalises the conduct of illicit enrichment. The 2006 Financial Disclosure Law imposes the legal responsibility to disclose assets on senior members of the government including and from the prime minister to mayors of local and provincial offices, municipal council chairs, heads of tendering committees and representatives of the Senate and Council (Article 2). The disclosure is to include all assets, including those of spouses and children. The information is not released to the public (Article 9), and a failure to provide the information in accordance with the legislation is an offence. Articles 12 and 13 provide for detention of six months to three years and financial sanctions. There does not appear to be any link between the amount illicitly obtained and the period of detention. In some circumstances if the illicit amount obtained is significant the penalties seem hardly dissuasive. Article 6 of the Financial Disclosure Law of 2006, provides for confiscation of assets found to be illicit but does not prescribe limits for retaining records of declared assets – however a proposal has been made to set such a limit to five years (UNODC, 2011). As of May 2008, 514 officials had not complied, and the Prosecutor General was preparing nearly 150 indictments. However, there had been no high-level convictions by mid-2009 (Freedom House, 2009).

To prevent corruption of officials, in 2006, the Ministry of Public Sector Development issued a Code of Conduct in the public sector. The Code of Conduct requires ministers to put aside personal interests when performing their duties and to submit a financial disclosure statement. It forbids them to hold seats on the board of private companies, to take part in commercial or financial business or to receive any salary from a third party (OECD, 2010).

Money laundering is criminalised by Law No. 46 of 2007, amended in May 2010 by Law No. 8 which remedied areas of non-compliance to the Financial Action Task Force standards<sup>48</sup> and added provisions combating the financing of terrorism. Money laundering applies to natural and legal persons, and both may be held criminally liable, with offences punishable by a fine, imprisonment (natural persons) and confiscation (Article 74 of the Penal Code). The MENA Financial Action Task Force (FATF) Report indicates that the

penalties appear to be dissuasive. The Law captures all the 20 designated serious offences prescribed by the FATF. The Jordanian Financial Intelligence Unit (FIU) is located within the Central Bank and is responsible for receiving all suspicious transaction reports and provides for mandatory reporting. The FIU has an appreciable level of financial, administrative and operational autonomy. The FIU has published figures that reveal the number of suspicious transactions reported for the years 2008, 2009 and 2010 (195, 150 and 190, respectively). The FIU sent 21 and 11 intelligence reports to the ACC in 2008 and 2009, respectively. The FIU's non-membership in the Egmont Group<sup>49</sup> limits its ability to exchange information with other FIUs.

### ***Institutional framework***

Like other countries in the region, a series of authorities and Commissions have been assigned to tackle corruption and regulate different sectors of the integrity framework. They include the Anti-Corruption Commission (ACC), the Audit Bureau, the Jordan Securities Commission, the Ombudsman Bureau, the Financial Disclosure Department, the Anti-Money Laundering Unit, the Inspectorates (internal control bodies within each ministry), the Ministries of Justice and Interior, the Judicial Council, the Public Security Directorate (PSD) and the Office of the Public Prosecutor.

Most bodies are inaccessible to the public, however, and proceedings and information are not made publicly available. The general consensus of reports produced by recognised institutions (such as the UNCAC Implementation Review Group, Global Integrity Report, the Business Anti-Corruption Portal and TrustLaw) is that such bodies are not highly effective in the fight against corruption. One of the common criticisms is the lack of co-ordination between and amongst the institutions responsible for dealing with corruption. There is also lack of clarity as to individual mandates and jurisdiction. Some of these weaknesses are even recognised by the country itself as mentioned by the report of the UNCAC Implementation Group: "The Jordanian authorities highlighted the following challenges that need to be addressed: weak inter-agency co-ordination; limited capacity in terms of human resources and institutional infrastructure; limited awareness of state-of-the-art programmes and practices for witness and expert protection; and limited financial resources for implementation." Jordan requested technical assistance in these areas (UNODC, 2011). The National Anti-Corruption Strategy 2008-12, issued by the ACC, recognised that the Commission requires "all tangible and moral resources necessary for its work and new staff that needs training and guidance".

The Jordan Anti-Corruption Commission, which began functioning in 2008 with members appointed in March 2007, has a preventive role and enforcement powers. First, it has a mandate to co-ordinate and establish a

comprehensive policy for preventing and combating all forms of corruption in the public and private sectors. Second, pursuant to Article 7 of the ACC Law, the Commission is tasked to investigate “financial and administrative corruption”, and to prosecute “those who breached the provisions of the Law”. It also has the ability to refer cases to the judicial authorities. There are prosecutors delegated by the Prosecution Office to the ACC, who can prosecute and submit cases to court. The Commission must release its findings on an investigation within three months of commencement. Prosecution includes seizure of properties, ban from travel, request to refrain from performing work and to stop salaries and other financial entitlements. As the ACC Law, as amended in 2012, defines corruption by referring to the criminal laws and international anti-corruption conventions to which Jordan is a party, it is therefore understood that the Commission is empowered to prosecute all the offenses contained in these instruments.

Article 11 stipulates the role of the Board of the Commission: define the general anti-corruption policy and propose draft legislations, raise public awareness and publish periodical reports, co-operate with local, regional and international entities, take the necessary decisions on corruption cases including referring them to the competent judicial authority, and contribute to restoring the proceeds of corruption offences inside and outside Jordan and delivering them to their legitimate beneficiaries.

The Anti-Corruption Commission reports directly to the Prime Minister and enjoys financial and administrative independence (Article 3). It is managed by the Board consisting of a President and six members who are appointed by royal decree upon recommendation of the Prime Minister. This is potentially an issue with respect to the independence and transparency of the work of the Commission. The ACC issues annual reports which are accessible through its website in Arabic.

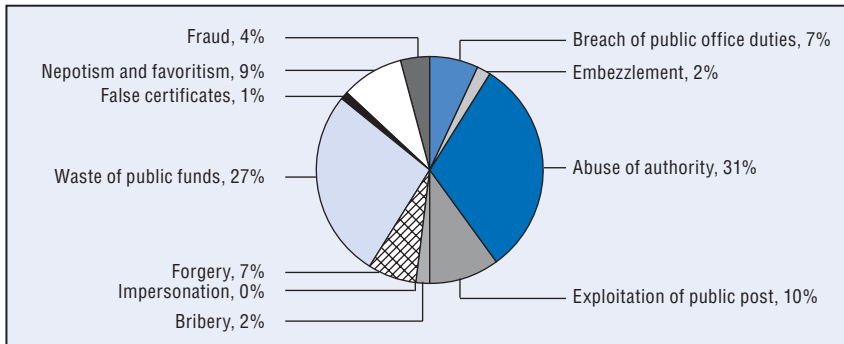
Article 11 stipulates the role of the Board of the Commission: define the general anti-corruption policy and propose draft legislations, raise public awareness and publish periodical reports, co-operate with local, regional and international entities, take the necessary decisions on corruption cases including referring them to the competent judicial authority, and contribute to restoring the proceeds of corruption offences inside and outside Jordan and delivering them to their legitimate beneficiaries.

In the first ten months of 2008, the ACC examined 465 corruption-related cases and transferred 82 cases to the courts or other relevant institutions, and in 2009, 834 cases were examined (UNODC, 2011). The number increased in 2010, but decreased in 2011 (Table 3.4). The majority of cases related in 2011 to abuse of authority and waste of public funds (Figure 3.4).

Table 3.4. **Complaints handled by the Jordan Anti-Corruption Commission**

Complaints	2010	2011
Referred to the public prosecutor	87	46
Retained	713	267
Straightened	19	17
Under investigation	207	384
Total number of complaints handled	1 026	714

Source: Jordan Anti-Corruption Commission.

Figure 3.4. **Corruption acts committed in 2011: Distribution by issues**

Source: Jordan Anti-Corruption Commission.

The Public Security Directorate (PSD) is also responsible for the prevention, investigation, apprehension and prosecution of crimes, including corruption-related offences. PSD co-operates with the ACC in the investigation and prosecution of corruption. It uses special investigation techniques and provides evidence to the ACC at its request. In 2010, 10 reports were shared by PSD with ACC (UNODC, 2011).

The Ombudsman Bureau was created in 2008 and its activities started in February 2009. According to Global Integrity 2009, the institution is not fully protected from political interference since the Ombudsman is nominated by the Prime Minister.

In the field of inter-agency co-operation for investigating and prosecuting corruption offences, Jordan reported that a number of memoranda of understanding have been signed between competent authorities. For example, a MoU has been signed between the ACC and the Audit Bureau, which is an independent institution set up by the Constitution with the – mostly preventive – mandate to audit revenue and expenditure of public service, as well as public accounts of the state, and ensure compliance with financial regulations. However, suspicious transactions uncovered in the

course of its audit work are not reported directly to the ACC; they are reported first to the Minister in charge of the particular ministry and the Minister of Finance who set up a joint investigation Committee (UNODC, 2011).

### **Assessments and way forward**

Jordan, as one of the first Arab countries to sign the UNCAC, hosted the first session of the Conference of the States Parties to the UNCAC and joined the voluntary pilot review programme. The 2011 report from the UNCAC Implementation Review Committee (UNODC, 2011) was overall positive, but noted that Jordan has not systematically and precisely imported the provisions of the Treaty in its domestic legislation and that co-ordination between national institutions in the implementation of UNCAC needs to be improved. Jordanian authorities indicated that they responded to the Review by adopting some of the recommendations, including through the 2012 amendments to the Anti-corruption Commission Law.

Jordan ranks 56 out of 180 countries in the 2011 Transparency International Corruption Perceptions Index (down from 48 in 2009).<sup>50</sup> However, Jordan scores better than other countries in the region (Egypt: 112, Morocco: 80 and Tunisia: 73). The Jordan Transparency Center was launched on 13 February 2012.

A report from TrustLaw<sup>51</sup> notes that corruption is still a significant feature of “doing business” in Jordan. It expressed concerns with respect to poor government accountability which reportedly led to abuse of public office and to corruption. High ranking public officials are not sufficiently held in check, prosecution of high ranking officials is not pursued and charges of corruption are quite difficult to prove. The 2011 Jordan investment climate assessment by the US Department of States affirms that “allegations of influence peddling and a lack of transparency do arise in government procurement and dispute settlement. The use of family, business, and other personal connections to advance personal business interests is endemic and regarded by many Jordanians as simply part of the culture and part of doing business.” However, the WEF Competitiveness Report does not rank corruption high in the list of most problematic factors for doing business.<sup>52</sup>

In conclusion, Jordan has made progress in setting up a legal and institutional framework to combat corruption. Political declarations place the fight against corruption as a priority. However, the Parliament suspended early 2012 some high-profile investigations and the demonstrations that have taken place in Jordan since early 2011 clearly convey public discontent with corruption levels in the government. Efforts to improve the legislation are notable, in particular the 2012 amendments to the Anti-Corruption Commission Law. However, amendments did not simplify the Law to ensure better implementation and enforcement. Jordan needs to develop rules and

regulations to properly implement the legislative provisions. The institutions in place lack co-ordination and adequate means. Visibility of the Jordan Anti-Corruption Commission remains low and its independence, though recognised by law,<sup>53</sup> may still be problematic. It is indeed questionable that a commission that reports to the executive branch and which board members are appointed by royal decree, be granted judicial powers for the prosecution of crimes, along with the right to seize private property.

According to the 2011 assessment of the UNCAC Implementation Review Group, Jordan should continue its efforts to finalise the updating of legislation with a view to criminalising corruption in the private sector and more generally to strengthen the accountability of the judiciary through a consistent and strict application of the legal and disciplinary means to sanction corruption (UNODC, 2011). Jordan should engage further – including through international co-operation – in enhancing the effectiveness of the legal framework and ensuring co-operation and collaboration of the different institutions.

The OECD Secretariat is co-operating with Jordan through its regional initiatives and partnerships, including the MENA-OECD Initiative on Governance and Investment for Development, to help the country address these concerns, and in particular the need to further examine the implementation of the current and forthcoming strategy and legislation. The ACC and various non-government representatives are involved in the Strengthening Integrity in Business in Arab Countries (SIBAC) initiative led by the MENA-OECD Investment Programme. SIBAC's objective is to raise awareness of international anti-corruption and integrity standards and principles and share good practice in furtherance of business integrity. It also aims at encouraging governments and companies to develop and implement integrity measures and tools with a view to levelling the playing field for businesses operating in the region. The MENA-OECD Investment Programme is committed to follow-up in 2013 to the February 2012 call by Jordan's public and private sector representatives on support for the establishment of a multi-stakeholder dialogue, making use of OECD instruments and experience.

Jordan may wish to co-operate with the OECD Working Group on Bribery and consider the standards of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The authorities are also invited to consider undertaking an Integrity Scan, a self-assessment exercise supported by the OECD based on a tool covering all relevant OECD anti-corruption and other integrity instruments.

Jordan is generally committed to improve its public and private governance. Recent political reforms have been undertaken in that direction. The country is co-operating with the OECD on governance issues. Following

the adoption of a Code of Conduct for the Public Sector in 2006 by the Ministry of Public Sector Development, the OECD carried out an assessment of its implementation and identified priority actions for improvements and enforcement (OECD, 2010a). More recently, Jordan became a participant to the Open Government Partnership in the framework of the Deauville Partnership with Arab Countries in Transition launched by the G8, aiming at promoting transparency, fighting corruption and harnessing new technologies to strengthen governance. With the support of the OECD, Jordan is implementing a National Open Government Partnership Action Plan.

## Competition policy

Competition policy favours innovation and contributes to conditions conducive to new investment. Sound competition policy also helps to transmit the wider benefits of investment to society. The key questions addressed by the OECD Policy Framework on Investment on the issue are the following:

- Are the competition laws and their application clear, transparent, and non-discriminatory? What measures do the competition authorities use (e.g. publishing decisions and explanations on the approach used to enforce the laws) to help investors understand and comply with the competition laws and to communicate changes in the laws and regulations?
- Do the competition authorities have adequate resources, political support and independence to implement effectively competition laws?
- To what extent, and how, have the competition authorities addressed anti-competitive practices by incumbent enterprises, including state-owned enterprises, that inhibit investment?
- To what extent are competition authorities working with their counterparts in other countries to co-operate on international competition issues, such as cross-border mergers and acquisitions, bearing on the investment environment?

Jordan is the first Arab country in the Middle East to have adopted national legislation on competition. Jordan enacted in 2002 the provisional Anti-Trust Law No. 49 which was replaced in 2004 by the Competition Law No. 33. It regulates anti-competitive practices, abuse of dominant positions and mergers and acquisitions. The provisions of the Competition Law apply to all production, commerce and service activities in the Kingdom, as well as any economic activities occurring outside the Kingdom and having an effect inside the Kingdom.

Jordan has also signed an Association Agreement with the European Union signed in 1997 and entered into force in 2002, which contains competition provisions (Title IV, Chapter 2: Competition and other Economic

Matters). According to the authorities, provisions of the Article 53 of the Association Agreement are reflected in the Jordanian Competition Law. Following the ratification of the Agreement, capacity-building initiatives were carried out in co-operation with several competition authorities of EU member countries (training and twinning programmes). Jordan is also currently negotiating and drafting the Arab Competition Regulations under the League of Arab States.

The core objectives of the legislative framework adopted by Jordan are the protection of fair competition, the achievement of a competitive market structure, the protection of all market participants, and the competitiveness of national enterprises, especially SMEs. The Law aims to provide a conducive framework for foreign investments and encouraging enterprises to improve their competitiveness.

The Law is based on a principle of free determination of prices in accordance with market mechanisms and principles of free competition, with the following exceptions:

- Prices of “essential commodities” subsidised by the government (Article 3). Price controls may be applied pursuant to the Industry and Trade law No. 188 of 1998 and other specific laws. Essential commodities, as determined by the Council of Ministers, currently cover bread, bran and barley.<sup>54</sup>
- Temporary governmental control of prices in the case of emergencies or natural disaster.

In order to preserve and enhance the competitive structure of markets, the Law bans a number of practices that would limit competition, impeding innovation and consumers’ access to products and services at prices that are cost-based. The prohibited practices include anti-competitive agreements, abuse of dominant positions and dumping.

Regarding anti-competitive practices, the Competition Law bans any explicit or implicit agreements that would restrict competition.<sup>55</sup> *De minimis* agreements are exempted from this ban provided that they do not fix prices or share markets. The Ministry of Industry and Trade has set a 10% threshold for market share below which agreements qualify as *de minimis* agreements.

Regarding abuse of dominant positions, the Law does not ban dominant positions as such, but rather prevents enterprises with a dominant position in the domestic market from abusing their dominance to limit competition. Enterprises are prohibited from abusing dominant positions in order to prevent, limit or weaken competition including: “fixing or setting prices or conditions of resale of products or services; activity or action which leads to setting barriers of entry of other enterprises to the market, or their elimination there from, or their exposure to gross losses including loss selling; discrimination between customers in similar contracts with regard to price of



products or services or conditions of sale or purchase; forcing any of its customers to refrain from dealing with a competing enterprise; attempting to monopolise certain resources necessary for a competing enterprise to carry out its activities or to purchase a particular product or service to an extent that leads to increasing the price thereof on the market or preventing its decrease; refusing, without objective grounds, to deal with a particular customer under the usual commercial conditions; tying the sale of a product or the provision of a service to the purchase of another or others or the purchase of a limited amount or a request for the provision of another service; excessive pricing in contradiction of the grounds specified in the instructions issued by the Minister for this purpose” (Article 6). This paragraph and its terminology seem rather unorthodox, though the above is extracted from an unofficial translation and only the Arabic version is legally binding.

The resale of a product at a price below its actual purchase price plus taxes, charges and transport costs (dumping) when practiced with the intention of limiting competition is prohibited. Dumping is not prohibited in the cases where it concerns perishable goods, liquidation of businesses, or sales to restock a business. Any violation of this provision is penalised by fines varying between JD 200 and JD 20 000.

Economic concentration operations that could potentially harm competition in the market by causing or enforcing a dominant position are subject to monitoring. The merger notification threshold is set at 40% of the market share. Above this limit, notification and request for approval are needed. These are accomplished by submitting a filing to the Competition Directorate comprising requested documents. The Competition Directorate must publish an announcement regarding the merger filing in two daily newspapers at the expense of the applicant. The Minister of Industry and Trade may then approve the operation provided it does not negatively affect competition, or if the suggested economic benefits outweigh the latter. The Minister must issue its approval within 100 days. Appeals against a prohibition are made to the Supreme Court of Justice. If any entity is aware of any merger meeting the merger notification threshold which has not been notified, it can bring this to the Ministry's attention.

In addition to the regulation of anti-competitive practices, the Competition Law also addresses a number of practices that violate the fairness of commercial transactions. According to Article 8 of the Law on practices detrimental to fairness of commercial transactions, producers, importers, wholesalers and service providers are prohibited from setting a minimum resale price for a product or service, whether directly or indirectly, and from subjecting another party to benefit “from preferential and unjustified prices or conditions of sale or purchase in such a manner as to impart upon such party a benefit as regards competition”.

Practices and arrangements that fall under the definition of anti-competitive practices shall not be considered anti-competitive if they lead to positive results with a common benefit that cannot be achieved without this exemption, including the improvement of competitive ability of enterprises, or production or distribution systems, or providing certain benefits to the consumer. To benefit from these exemptions, relevant enterprises should make a request in accordance to a designated form (for examples, see CUTS, 2006).

Three competent authorities deal with competition matters: the Competition Directorate, the Competition Affairs Committee, and the judiciary.

The Competition Directorate was established in 2002 as a part of the Ministry of Industry and Trade. It is in charge of the implementation of the Competition Law. The Competition Directorate's tasks are the followings: setting Jordan's competition policy and related legislation; spreading a competition culture; conducting the necessary investigations to uncover practices that may contravene competition; receiving complaints, receiving and reviewing economic concentration notifications and exemptions requests; issuing clarifying opinions on competition matters; and co-operating with similar entities outside the Kingdom for the purpose of exchanging information and data and in relation to the execution of competition rules to the extent permitted in international treaties. The Directorate's staff is authorised to conduct investigations, i.e. carrying out inspections and examination, accessing documents and records and conducting hearings with parties. Any person who prohibits an officer from carrying out his duties or destroys or conceals documents shall be punishable by a fine no less than JD 500 and no more than JD 5 000.

The Competition Directorate has special allocations accorded by the General Budget Law, but the authorities recognise that these allocations can barely cover its expenses. They also mention that the Directorate has never addressed anti-competitive practices by incumbent companies nor tackled any barriers to entry in any sector. Since its establishment, the Competition Directorate has dealt with over 300 cases and economic applications, including 50 in 2010 (US Department of State, 2011), including complaints, requests for advice, economic research and studies. As of July 2012 and according to the authorities, eight cases were filed before the court of first instance, one case is still under hearing, five cases were dropped by amnesty resolutions and two cases were subjected to government fines of JD 400. In the latter cases, the complainants had a right to ask for compensation for his losses.

The Competition Affairs Committee, which is the advisory body of the Competition Directorate, provides opinions and advice on the general competition strategy and reviews matters related to the Competition Law,

notably draft laws and regulations. It is composed of private and public sectors representatives and is chaired by the Minister of Industry and Trade.

By virtue of the Competition Law, the Judicial Board and the Justice Ministry are responsible for naming judges and prosecutors to review cases of practices contravening competition and to deal with the peculiarity of the execution of the provisions of the Law. In all cases, the Ministry shall be a party to the dispute and may submit any studies or comments to the Court. The Court of first instance is competent to hear any case related to any violation of the Competition Law, including the non-compliance of the concerned enterprises with the decision of the Minister on an economic concentration transaction. Any cases related to violations of the Competition Law must provide evidences derived from a decision by the Minister of Industry and Trade upon the recommendation of the Director, enterprise of the private sector, consumer protection associations, a minimum of five consumers who claim to have suffered harm, chambers of commerce and industry, or professional organisations and unions. The Court can order the suppression of the violation within a specific delay, and set a suitable penalty for the violator (Dabbah, 2007; Hawamdeh; Karky, 2010; OECD, 2010b).

Jordan has set up a legal regime on competition and an institutional framework to deal with policy and enforcement issues. However, the institutions dealing with competition matters appear to suffer from lack of adequate resources and support, and some weaknesses in enforcement of the legislation are reported. The competition authorities have issued a document containing law enforcement procedures with a view to better disseminate competition culture, promote competition in all sectors, build capacity of institutions dealing with the implementation of the law, train staff, develop monitoring and information systems, improve transparency, co-operate with other national and international institutions and fora, assess the implementation of the law and suggest amendments.

The Jordanian authorities are invited to engage with the OECD Competition Committee and its secretariat to remedy remaining problems and strengthen legislative enforcement in line with OECD best practices.

## Infrastructure development

Sound infrastructure development policies ensure scarce resources are channelled to the most promising projects and address bottlenecks limiting private investment. Relevant questions addressed in the OECD Policy Framework for Investment are:

- What processes does the government use to evaluate its infrastructure investment needs? Does the government have clear guidelines and transparent procedures for the disbursement of public monies funding

infrastructure projects? Are the regulatory agencies that oversee infrastructure investment and the operations of enterprises with infrastructure investments independent from undue political interference?

- What steps have been taken to attract investors to supply infrastructure at fair and reasonable prices, to ensure that investor-state contracts serve the public interest and to maintain public support for private involvement infrastructure?
- In the telecommunications sector, does the government assess market access for potential investors and the extent of competition among operators?
- Has the government developed a strategy to ensure reliable access to electricity services by users, and economic incentives to invest and supply electricity?
- What processes are followed to inform decisions on the development of new transport facilities, as well as the maintenance of existing investment in transport infrastructure?
- Has the government evaluated the investment needs in water required to support its development goals? To what extent is the private sector involved in water management, supply and infrastructure financing?

### **Overview of infrastructure development in Jordan**

Jordan has well-developed infrastructure stocks and is ranked in the top 30% of countries around the world in terms of the quality of its overall infrastructure (WEF, 2012). Access rates are virtually 100% for transport, electricity, water supply, sanitation facilities and mobile telephone subscriptions (Table 3.5). While access to the Internet is not as advanced as in other sub-sectors, the rate is actually above the Arab region average of 26.9% (World Bank Infrastructure data<sup>56</sup>). The quality of its air transport infrastructure, electricity supply and roads is particularly good by global standards (Table 3.6). There is, however, room for improvement. For instance, while infrastructure systems are in place, the provision of steady and

**Table 3.5. Infrastructure development indicators in Jordan**

% of pop with access to electricity	99.90%
% of pop with access to improved sanitation facilities	98%
% of pop with access to improved water sources	97%
Mobile phone subscriptions per 100 people	106.9
Internet users per 100 people	38.8
% of paved roads	100%

Source: Based on data in the *World Development Indicators*, World Bank 2012.

Table 3.6. **Jordan's global infrastructure competitiveness**<sup>1</sup>

Quality of roads	47
Quality of railroads	107
Quality of ports	34
Quality of air transport	34
Quality of electricity supply	41
Fixed telephone lines/ 100 people	102
Mobile phone subscriptions /100 people	60

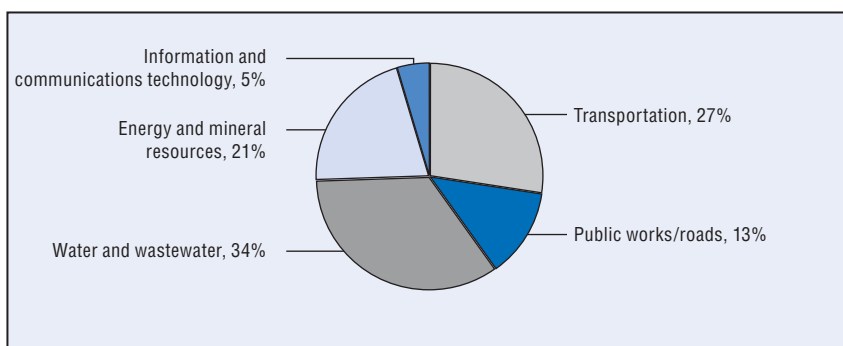
1. The number indicates Jordan's ranking out of 142 countries.

Source: Based on data in the Global Competitiveness Index 2011-2012, WEF 2012.

continuous supply is often a problem, particularly for water. Also, while Jordan boasts a world-class airport in Queen Alia International Airport, its railways lag behind in terms of the quality and length of the network. This chapter analyses the state of Jordan's infrastructure and the role the private sector can play in its continued development.

### **Government policies for infrastructure development**

The government has put in place a number of sectoral policies and an overall economic development programme that specify the investment needs and strategies for infrastructure development. The 2011-13 Executive Development Program, for instance, indicates that JD 3.4 billion (about USD 4.8 billion) is needed for infrastructure upgrades over the triennium.<sup>57</sup> This is equivalent to 55% of the projected expenditure for all sectors in Jordan (Figure 3.5).

Figure 3.5. **Projected expenditure for infrastructure upgrade (2011-13)**

Note: The Executive Development Program includes government buildings, housing and the environment in its projected expenditure calculations but they have been excluded here.

Source: Compiled from data in the Executive Development Program.

The government aims to involve the private sector to secure the necessary funding. Between 1990 and 2011, private investment amounted to USD 6.6 billion,

with most of the investment (44%) in the telecommunications sector (Table 3.7). At this scale, the private sector will not be able to contribute significantly to the massive capital expenditure needs under the government's infrastructure development programme. Some initial projects with private sector participation have given the government experience that can be beneficial for future projects. Notable projects to date include the expansion of Queen Alia airport (2007); the Disi Water PPP (2009); the AES Amman Jordan independent power project (2007) and the Al Qatrana power project (2009). A total of USD 2.4 billion was invested in these projects, with 30% equity participation from various project sponsors (EIB, 2011). Recently, the government has showed a willingness to put in place a private-public partnership (PPP) framework that can help accelerate the scale of private investment in Jordan's infrastructure.

Table 3.7. **Cumulative private investment in Jordan's infrastructure, 1990-2011**

Sector	Amount of investment (USD m)	Proportion of total investment (%)
Electricity	989	15
Telecom	2 917	44
Transport	1 562	24
Water and sewerage	1 120	17
TOTAL	6 588	100

Source: World Bank, PPI Database, extracted 16 August 2012.

Jordan's initial experiences with private sector participation can pave the way for a more ambitious programme under the forthcoming PPP legislation and institutional framework (Box 3.9). Moreover, the Executive Privatization Commission has proved adept at procuring projects, such as the Queen Alia airport project, whose success provides a demonstration effect on the feasibility of mega-projects in Jordan. The Executive Development Program lists priority projects in each infrastructure sector, their costs, sources of funding and responsible entities, thereby signalling to investors a pipeline of projects backed by political will and institutional accountability.

There are a few issues that need to be addressed as Jordan moves forward with its PPP and private sector agenda. The government may have to consider incentives and risk mitigation measures to attract investors in the absence of a legal and regulatory framework for PPPs. Moreover, local financing has been difficult to secure so many projects are funded from international sources denominated in USD. As a result, projects are skewed towards large-scale, high-profile projects whereas smaller projects driven by the local private sector struggle for funding. Thirdly, the experience of some projects, such as the Zarqa Light Rail, highlights the challenges of insufficient project preparation, over-ambitious project scope and a failure to agree to terms

### Box 3.9. Public-Private Partnerships (PPPs) in Jordan

The Executive Privatization Committee has developed a draft PPP Law that has not yet been enacted by Parliament. The new law would likely repeal the current Privatisation Law and establish a legislative framework for promoting PPP policy design and project implementation. In so doing, Jordan joins the ranks of other MENA countries, including Egypt, Syria, and Lebanon, that have also adopted specific PPP legislation. The draft PPP Law outlines a number of objectives, including mobilising private finance, reducing the Treasury's debt burden, encouraging private delivery of works and services, and increasing technical capacity and management techniques. The draft Law covers all economic infrastructure sectors – water, energy, transport, and information technology and private sector participation in the form of concession, lease and management contracts. Moreover, the Law does not discriminate between domestic and foreign investors. To implement the Law, it is envisioned that a high-level Partnership Council will be created and tasked with identifying projects; overseeing the tendering process; and awarding contracts to successful bidders. This high-level body is to be chaired by the Prime Minister and its members will include five ministers, the Governor of the Central Bank and the Chairman of the PPP Commission. A PPP Commission is also expected to be established, replacing the Executive Privatization Commission. The PPP Commission would play the role of the national PPP Unit in providing technical guidance to contracting authorities; preparing recommendations and briefings for the Council; executing the Council's decisions; and promoting PPPs. It would also prepare feasibility studies, undertake performance reviews of projects, and prepare PPP regulations. Although the PPP Law was drafted and finalised in 2010, it has not yet been endorsed by Parliament. According to news reports, the new government has been revising the draft Law and making amendments to the provisions on the institutional and jurisdictional framework. The Law is not expected to be presented to Parliament before 2013. Moreover, regulations to accompany the PPP Law may take even longer to develop, thereby creating uncertainty about how the PPP programme will be undertaken. The lack of a stable, predictable legal framework for PPPs may deter investors and raise Jordan's risk profile.

Source: OECD analysis and *The Jordan Times*, 2 July 2012, <http://jordantimes.com/public-private-or-public-public-partnership>.

among co-contractors.<sup>58</sup> To improve private sector participation in infrastructure, projects need to be better prepared and scaled to meet investor interest, and early negotiations among all parties encouraged to promote mutual understanding (EIB, 2011).

## **Specific sectoral policies**

### **Electricity**

The government has taken a number of measures in the past few years to liberalise the electricity sector. Electricity Law No. 64 (2002) created an independent regulator, the Electricity Regulatory Commission (ERC); set up a new tariff framework; and unbundled the power sector into separate generation, transmission and distribution companies. As a result, the main generation company, Central Electricity Generating Company (CEGCO), was privatised in 2007. Independent power producers (IPPs) are allowed to generate electricity and sell it to National Electric Power Company (NEPCO), the national utility and sole off-taker. NEPCO is government-owned and is obligated by law to purchase the electricity produced by IPPs and bear the cost of interconnecting their power plants to the grid.

NEPCO is also responsible for the transmission network, which includes not only IPP plants but also the interconnector system that transmits electricity from Egypt and Syria. The government plans to restructure NEPCO into three separate companies: transmission, bulk supply and systems operations (ERC, 2010). According to the 2007 Energy Master Plan, NEPCO plans to enter into power purchase agreements with eight IPPs between 2010 and 2020, which will add approximately 2 560 MW to the national grid. This would be a significant addition given that the total installed capacity in Jordan was 3 069 MW in 2010 (ERC, 2010). The national distribution company, Electricity Distribution Company (EDCO), was also privatised, in 2008, and a couple of private companies are also involved in distribution.

Experience in other countries, such as Uganda, has shown that unbundling can increase competition, promote nascent industries such as renewable energy, and improve the quantity of energy supply. In Jordan, the first IPP, the Amman East power plant, raised USD 75 million in private equity, USD 180 million in loans and a partial risk guarantee of USD 45 million for a total of USD 300 million in capital. The IPP is considered to be a success, and there is scope for even more IPPs especially as developers enter the renewable energy market.

Despite the government's initial reforms, there are still a number of challenges to strengthening the investment framework for Jordan's power sector. There is growing demand for electricity, at a rate of 7.4% in 2010 (ERC, 2010), which exceeds the GDP growth rate of 2.3% in 2010 (World Bank, 2012) whereas the two should be in tandem to avoid a supply deficit. Moreover, Jordan has been experiencing an energy crisis since 2011, when attacks began on the Arab Gas pipeline, which brings gas from Egypt to Jordan and other Arab countries. With supplies disrupted, NEPCO has been forced to import more expensive fuel from other countries at a cost estimated to reach JD 1.7 billion



(USD 2.4 billion) by the end of 2012 (EIU, 2012). The crisis has bolstered the case for diversifying Jordan's energy sources and raising NEPCO's electricity tariffs to full cost-recovery levels (IMF, 2012). In light of this need, the ERC announced in May 2012 that tariffs would be raised for industrial consumers to offset NEPCO's losses but that 88% of consumers would be exempted from the increment. The government's decision was criticised by the private sector, which claimed that the government did not consult with them enough beforehand, and that industry should not shoulder the burden alone (EIU, 2012). Moreover, the tariff hike will only cover 10% of NEPCO's losses so it is possible that households and other end-users may have to pay higher tariffs to ensure NEPCO's financial sustainability in the near future. Tariff reform is imperative, as blackouts may become a reality and the attendant costs will pose an additional strain on the economy (EIU, 2012).

### **Transport**

The transport sector contributes 12% to Jordan's GDP (Ministry of Transport, 2011), and is growing at a rate of 6% a year. Investment in the road sub-sector alone is expected to reach more than USD 1.8 billion over a 25 year period (Jordan Investment Board, 2012). Private sector participation is quite developed in the sector, mainly in the form of concessions for large-scale projects. Moreover, according to the World Bank PPI Database, the transport sector accounts for the second largest share (24%) of all private investment in Jordan's infrastructure sectors.<sup>59</sup> The government launched a National Strategy Plan for 2012-14, which sets a number of goals and outlines some priority projects. Among its goals are: establishing the Jordan railway corporation; developing the terminals at the Iraq-Jordan border; and seeking bilateral agreements to liberalise air travel. High-profile projects include the Jordan National Railways network; the expansion of Queen Alia airport; and the Amman Al-Zarqa Light Rail Project. The government also plans to develop a long-term national sector strategy covering the period up to 2030 (Ministry of Transport, 2011).

The transport sector has enjoyed a number of successes from private sector participation. The Amman Ring Road is an example. A build-operate-transfer (BOT) project, the ring road was constructed over three phases, the first by the Ministry of Public Works and the second and third by private companies. The idea for developing a ring road around Amman had first been floated in the 1980s but the project was only approved in 2004, when the level of traffic congestion in Amman became excessive (PPIAF, 2011). The project was successfully tendered and is scheduled for completion on time by September 2013 (World Bank, 2011). However, the government should take a cue from increasing urbanisation rates to engage in long-term sectoral planning that anticipates increased transport demand and develops projects

ahead of time. Another example, the Aqaba Port management contract, also led to private sector participation under a crisis situation due to traffic congestion at the port (Box 3.10). The danger is that contracts may be hastily negotiated if they are not underpinned by detailed policies and planning. The long-term sectoral strategy may help to address this challenge.

**Box 3.10. Lessons learned from private sector participation in Aqaba port**

Reforms to liberalise the port sector began in 2003, when the government handed over control of the management of Aqaba Port, the Kingdom's most important and strategic port, to the Aqaba Development Corporation (ADC). ADC was specially set up by the government to manage private investment in the Aqaba special economic zone. Private sector involvement began with a two year management contract with APM Terminals, a multinational port operator. APM was able to successfully clear the congestion at the terminals, improve worker productivity, increase the volume of ships, and bring down import and export costs. These accomplishments are staggering given that at one point the terminal came to a stand-still because of the severity of the congestion and the economy was losing USD 120 million a year as a result. Following the success of the management contract, the company went on to sign a 25 year PPP deal with the government in 2006. The deal faced opposition from a number of quarters. Port workers were concerned that the port concession would lead to job losses, and Parliament was concerned about involving the private sector in a strategic asset important for the nation's security. The success of the deal stemmed from the extensive consultation that ADC engaged in through the media and directly with the stakeholders in order to explain the objectives of the PPP. As a corporatised entity, ADC was well-placed to respond to the private company's needs while also addressing the public's concerns. The King's supports for the project also helped to allay concerns and sent a powerful signal of government commitment to the investor. The project is currently ongoing and illustrates some key lessons that can be applied to private sector participation in other sectors.

*Source:* Compiled from a World Bank case study (World Bank, 2008) and information on ADC's website.

Jordan has three airports and is planning to extend the Queen Alia International Airport, which currently handles 97% of Jordan's air traffic. Phase 1 will be completed by 2012, and will increase the airports capacity to 9 million travellers annually. Phase 2, which will expand the airport's capacity to 12 million, will increase passenger levels by another 8 million. Efforts to

liberalise the airways sector seem to have contributed to the success of the Queen Alia airport. In 2010, the number of passengers on Royal Jordanian Airlines grew by 13.6% (Central Bank of Jordan, 2010).

The airline sub-sector has functioned well in part because of the institutional framework in place. There is a clear delineation between the Civil Aviation Commission, which performs regulatory functions, and the operational side, which is within the purview of private operators. The Jordanian Airport Company, for instance, was established to operate Amman Civil airports while the Aqaba Airport Corporation is in charge of operating the King Hussein International airport in Aqaba.

The railway sector is not as developed as the airport and port parts of Jordan's transport system. There are currently two railway companies, Jordanian-Hejaz Railway and Aqaba Railway, operating passenger and freight services. A light rail project connecting Amman to Zarqa, a neighbouring industrial city, has been in the pipeline for over a decade. It was tendered in 2006 as a BOT PPP with a Kuwaiti-led consortium. Under the terms of the contract, the developer had to secure financing for the project within a fixed period of time and received a capital infrastructure grant equivalent to USD 85 million and a USD 11 million adjustable revenue guarantee from the government. The government also allocated land for the project. However, the international financial crisis undermined the concessionaire's ability to raise capital on the markets and after two extensions, it failed to raise the necessary funds for the project and the BOT was voided. Some analysis suggests that more public funding could have made the project more viable, and that too much revenue risk was allocated to the private party.<sup>60</sup> Moreover, the experience with this project shows that there is a need to scale projects to match investor appetite (EIB, 2011).

The government plans to implement a National Railway System, which would connect with the railway networks of Saudi Arabia, Syria, Turkey and on to Europe. The system will be implemented in partnership with the private sector. The railway network would comprise a "core" standard-gauge network consisting of: North-South Railway (NSR) Syrian Border-Aqaba, and East-West Railway (EWR) Iraqi Border to Saudi Arabia. This "core railway" might be supplemented by other domestic rail lines. As the government rolls out the National Railway System, it could try to avoid the problems encountered with the Amman-Zarqa rail project.

### **Telecommunications**

According the International Telecommunications Union, Jordan has fairly weak Internet penetration rates compared to neighbours such as Saudi Arabia and UAE (ITU Database, 2012). In addition, Jordan ranked 47th out of

142 countries in the 2012 Networked Readiness Index, which measures the degree to which economies across the world leverage ICT for enhanced competitiveness. Jordan ranked 47th in government prioritisation of ICT, 70th in secure Internet servers, and 49th in terms of mobile network coverage. The report also noted that Jordan still needs to work on improving its ICT infrastructure, especially in terms of gaining access to a wider international Internet bandwidth.<sup>61</sup>

Jordan has received significant investment in telecommunications in recent years (Table 3.8). USD 400 million has been invested in a number of technology solutions designed to make Jordan more accessible to the rest of the world. These include ADSL penetration to 95% of Jordan's populated areas and reduced call-pricing to offshore locations. Service has been improved through the deployment of digital switching equipment. Furthermore, mobile telephone adoption among Jordanians has also been swift and mobile penetration is over 100% (Table 3.5).

Table 3.8. **Investment in the telecom sector (millions of JD)**

	2005	2006	2007	2008	2009
Fixed phone	12.3	12.7	12.2	23	24
Mobile phone	137	139	92.5	65	120
Internet	5.6	2.3	11.1	22	31
Other	0.4	1.5	0.5	5	0.5
<b>Total</b>	<b>155.3</b>	<b>155.4</b>	<b>116.3</b>	<b>115</b>	<b>175.5</b>

Source: Telecommunications Regulatory Commission.

Jordan has good quality infrastructure and has developed some experience with working with the private sector through a number of projects. Moving forward, it will be important to improve railway infrastructure and encourage investment in small-scale projects, which would also have the benefit of allowing the domestic private sector to play more of a role in Jordan's infrastructure. Providing a legal framework for PPPs is also a priority. It is also important to integrate infrastructure policies with general environmental policies (Chapter 5) as there is significant scope to green Jordan's infrastructure sectors.

## Financial sector development

The OECD Policy Framework for Investment (PFI) recognises that effective financial sector policies facilitate enterprises and entrepreneurs to realise their investment ideas within a stable environment. This section addresses some of the following PFI questions:

- What process does the government use to evaluate the capacity of the financial sector, including the quality of its regulatory framework, to support

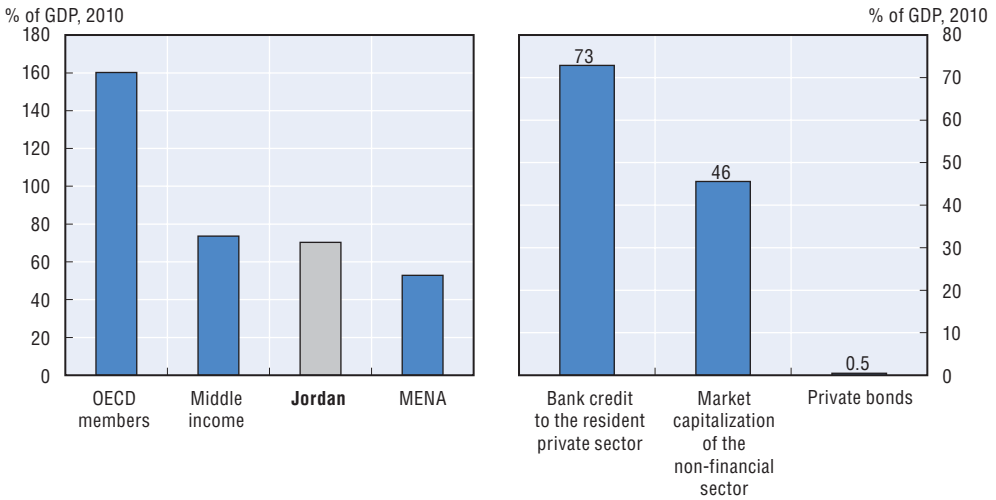
effectively enterprise development? What steps has the government taken to remove obstacles, including restrictions on participation by foreign institutions, to private investment in the development of the financial sector?

- What laws and regulations are in place to protect the rights of borrowers and creditors and are these rights adequately balanced? Is a registry system in place to support the use of property as collateral and to expand business access to external sources of credit? What data protection and credit reporting laws have been enacted to facilitate the flow of information and improve financial sector stability, thereby enhancing the investment environment?

Jordan has a well-developed financial sector relative to its regional peers and other middle-income countries. Having limited natural resources (essentially an oil importer with limited agricultural land), and a rather well-educated workforce, Jordan has focused on developing its financial sector. Reforms implemented in the late 1990s and early 2000s have successfully increased the size and depth of Jordan's financial system, notably in comparison to other MENA countries (Figure 3.6a). Jordan also performs relatively well in terms of financial supervision and regulation, which has contributed to improve the soundness of its financial sector.<sup>62</sup> However, advances achieved in the early 2000s have yet to be sustainable. According to World Bank data, the ratio of domestic credit to GDP increased from 2002 to 2005, remained stable until 2007, and declined since then to roughly the same level of 2002 in 2010. Jordan has also some macroeconomic challenges ahead to reduce its fiscal deficit and control government debt. The current regional unrest and the adverse external economic conditions pose significant challenges to Jordan's fiscal sustainability and to the development of its financial sector (IMF, 2012).

Despite recent developments, there is a need for further financial deepening and sophistication to support economic growth and to further extend access to finance to SMEs. Related to this is the low and declining level of competition among financial institutions in Jordan (Demirguc-Kunt and Pería, 2010). The World Bank's 2013 Doing Business Report highlights access to credit as the main obstacle for conducting businesses in Jordan (it ranks at the 167th position among 185 countries). This has been partially addressed with the enactment of the temporary Credit Information law of 2010 and its by-laws, which provides for the creation of private credit bureaus. Currently, the limited coverage of the public credit registry system and the lack of a collateral registry system remain a challenge for extending financing to riskier business. While Jordan ranks relatively well in the overall performance (96th among 183 countries), when compared to its peers in the MENA region, it largely underperforms in the access to credit indicator. Jordan ranks 150th under this indicator, behind Egypt (78th), Tunisia (98th) and Morocco (98th).

Figure 3.6. (a) Domestic credit to the private sector, 2010 (% of GDP) and (b) Financing sources to the private sector, 2010 (% of GDP)

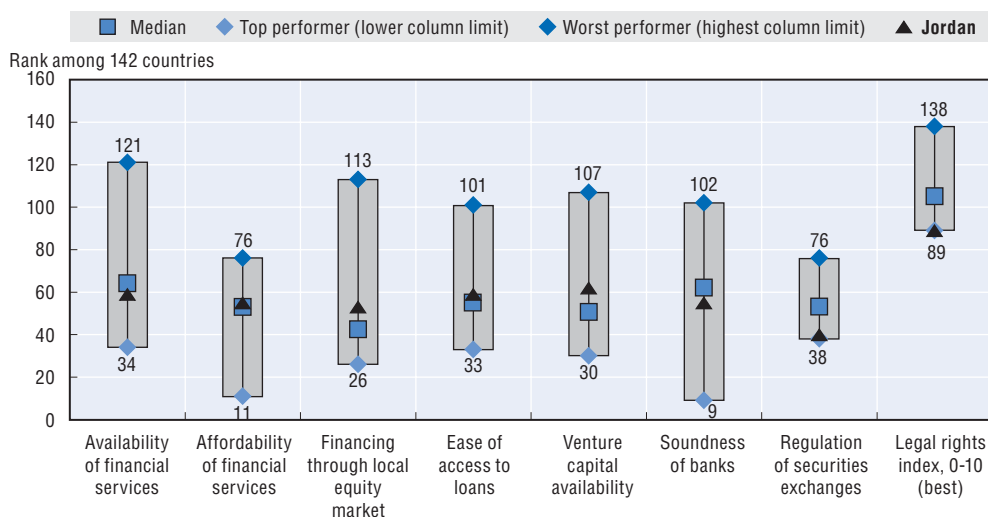


Source: World Bank Global Financial Development Database, Central Bank of Jordan and Amman Stock Exchange.

According to the World Economic Forum's (WEF) competitiveness report of 2012, Jordan's performance in terms of financial sector development is equal to the median of its peers and slightly superior to the group average.<sup>63</sup> Jordan underperforms the median in four out of eight indicators: affordability of financial services, financing through local equity market, ease of access to loans and venture capital availability (Figure 3.7). Overall, Jordan ranks 65th among 142 countries, in front of Tunisia (76th) and Egypt (92nd), but behind Morocco (62nd) and Lebanon (58th). However, it lags far behind the top performers within its peer group in almost all indicators, except for legal rights and regulation of securities exchanges.

The government is aware of the need to further develop Jordan's financial sector, notably the capital market, as the country remains particularly dependent on the banking sector to provide capital to Jordanian business (Figure 3.6b). In the Executive Development Program 2011-13, the government has set the objectives of improving and modernising financial services (banking, insurance services, loan guarantee mechanisms, and the capital market), and of strengthening the financial market by further improving the technical and legislative infrastructure for the national capital market. The Central Bank of Jordan (CBJ) has also taken measures to strengthen the banking sector and to avoid potentially disruptive impacts of the global financial crisis, by stating a temporary blanket guarantee of all bank deposits with an expiry date set for the end 2009, which was extended until the end of 2010.

Figure 3.7. Jordan's level of financial sector development



Source: World Economic Forum, *Competitiveness Report 2012*.

### The regulatory framework

The legal framework of Jordan's financial sector comprises the following laws: Banking Law (2000), Insurance Regulatory Act (1999), New Securities Law (2002), Deposit Insurance Corporation Law (2000), Credit Information Law (2010), and the Anti-Money Laundering and Combating Terrorism Financing Law (2007). These laws have modernised Jordan's financial sector regulation and brought them closer to international standards. The 1995 Investment Law, and the following Regulation No. 54 from 2000, also played a role in further opening Jordan's financial sector to foreign investors. Restrictions to FDI in the financial sector are detailed in Chapter 2.

The Banking Law has considerably improved the banking environment, by further protecting depositors' interests, diminishing money market risk, monitoring the concentration of lending, and including articles on e-commerce and e-banking services and money laundering (US Department of State, 2011). The Deposit Insurance Corporation Law has contributed to raise confidence in the banking system by insuring deposits up to JD 50 000. The need for improving the credit information system has been addressed with the approval of a temporary credit information law in 2010 that established the legal framework for setting a private credit bureau in the country, licensed and monitored by the CBJ. The associated by-laws and regulations were approved in August 2011. This is expected to facilitate SME access to credit by improving credit information and reducing collateral requirements.<sup>64</sup> A complementary

private credit bureau system is indeed welcomed. According to Jordanian authorities, the licensing of credit bureau companies was on-going as of May 2012.

The CBJ has implemented measures to improve the supervision and resilience of banks in accordance with Basel II regulations, implemented in 2008, and in line with recommendations from the World Bank and IMF under the 2008 Financial Sector Assessment Programme.<sup>65</sup> Basel III implementation is already on the CBJ's agenda and consultation with banks on the matter is on-going (IMF, 2012). The CBJ has also issued the Corporate Governance Code 2007, requiring banks to implement principles and measures in line with standards of the Code, which was based on the OECD Principles of Corporate Governance and the Basel Committee on Banking Supervision (Chapter 4). To strengthen Jordan's consumer protection rules on financial services, the CBJ issued in 2012 specific instructions addressing issues of fairness, transparency and protection for customers in bank-client relationships. The instructions seek to ensure that the disclosure of information of financial products and services is made clear and in understandable terms, so that customers comprehend the properties, benefits, risks and costs of the products offered to them. A range of issues is covered, such as: transparency and controls related to credit to retail customers, ceilings on specific commissions and fees, protection of inactive customer accounts, and effective handling of customers' complaints.

In 2011, in co-operation with the USAID Jordan Economic Development Programme, the government prepared a new Insolvency and Bankruptcy Law. The Law is still awaiting approval, but it is believed that it will contribute to enhance the protection of investors' and creditors' rights, making it easier for SMEs to obtain credit, ensuring higher recovery rates of short durations, and easing the liquidation and reorganisation of businesses (Jordan, 2011).

### **The banking sector<sup>66</sup>**

Jordan's banking sector is profitable, well capitalised and is fully privately owned.<sup>67</sup> This latter characteristic is rather peculiar in the MENA region, where state banks tend to have a dominant or significant position (World Bank, 2011). As of end 2011, there were 26 commercial banks operating in Jordan, of which 13 Jordanian commercial banks, nine foreign banks, three Jordanian Islamic banks and one foreign Islamic bank. The banking sector dominates financial intermediation in the country, with assets to GDP amounting to 184% in 2011. Deposits denominated in Jordanian Dinars represent the main funding base as showed by the ratio of bank credits to the private sector to bank deposits of 71%. The banking sector has grown at a 10% compound annual growth rate (CAGR) from 2000 to 2011, as measured by asset growth, largely due to an increase in domestic assets.



The number of bank branches has increased by 50% since 2000, from 462 to 695 branches. This was mostly due to the entry of foreign banks in the last decade, including the entry of two major regional banks in 2010, and another in 2011. The ratio of the population per bank branch has diminished since 2003 from roughly 12 000 per branch to 9 000 per branch in 2011. Government efforts to develop Jordan's banking system have resulted in a declining percentage of non-performing loans to total gross loans since 2002 (Figure 3.8a), although this trend has been reversed since 2008 due to the global economic recession. According to the authorities, at the end of June 2012, non-performing loans amounted to 8.4% of all loans outstanding. Although not entirely comparable, this was similar to the year level of 8.2% and 8.5% seen at the end of 2010 and 2011 respectively. A higher level of provisions is however expected in 2012 by the authorities as provisions to non-performing loans as of June 2012 amounted to 63.3%. Again as a reference, provisions in 2010 and 2011 covered about 52.4% and 52.3% of non-performing loans.

There is still room for improvement if compared to middle income countries. Further, financial sector deepening has not been matched by financial access given the population size. Financial access, as measured by bank loans and deposits accounts per 10 000 adults, remains low given Jordan's relatively high level of credit and deposits to GDP (World Bank, 2011). The banking system remains relatively concentrated with the three largest banks accounting for 86% of total assets in the sector in 2009.<sup>68</sup> Entry in the banking industry remains restricted by the Central Bank and capital requirements are high, and there is no tested exit framework that promotes competition (Demirguc-Kunt and Peria, 2010).

Islamic banking is still underdeveloped with only a few banks with limited financial ability operating in the country (Box 3.11).

### **The capital market**

From its establishment in 1976, the Amman Financial Market served as both a stock exchange and regulatory body. As the development of the Jordan capital market became a priority of economic reform, major restructuring of the market and its regulations was carried out and new entities were established. The previous Securities Law of 1997 modernised Jordan's capital market, by separating the regulatory body (Jordan Securities Commission – JSC) from the market operation, and empowering JSC with well-defined authority to supervise, organise and monitor the non-banking financial sector. Three new institutions emerged out of the Amman Financial Market: the Jordan Securities Commission (the regulator), the Amman Stock Exchange (ASE), and the Securities Depository Centre (the custodian).

### Box 3.11. Islamic finance in Jordan

Over the last decade, the global market for Islamic finance has impressively grown at an annual average rate between 20% and 30%. The industry growth has also been resilient to the recent financial instability. In 2010, total Islamic assets worldwide overcame USD 1 trillion and are forecasted to reach USD 4 trillion by 2020. Islamic banking assets amounted to USD 850 billion as at the end-2010, while Islamic insurance assets (*takaful*) and the Islamic bond market (*sukuk*) amounted respectively to USD 9.1 billion and USD 143 billion. The Islamic fund industry has also emerged across major Islamic countries in the Middle East and Southeast Asia, with 810 Islamic funds managing around USD 58 billion assets in 2010. GCC countries and Iran were respectively responsible for roughly 42% and 36% of the worldwide Islamic finance industry in 2010. Malaysia was by far the largest market for *sukuk*, with around 67% of *sukuk* bonds outstanding. The Middle East is responsible for 26%.

This impressive growth has been accompanied by the development of specific institutional and regulatory frameworks that enable the participation of both Islamic and non-Islamic financial institutions in the market and ensure that Islamic financial products are indeed compliant with the *Shariah* principles. Islamic and non-Islamic financial institutions have to establish *Shariah* supervisory boards that are responsible for advising and guaranteeing that operations and activities are compliant with *Shariah* principles. Islamic finance is based on the following distinguishing principles: the prohibition of interest on financial transactions, the ban on contractual uncertainty and thereby speculation, the promotion of risk-sharing and profit-sharing instruments on financial transactions, the use of tangible assets to back any financial transaction, and the prohibition of non-lawful investments under *shariah* (e.g., business involving alcohol, firearms, tobacco, and adult entertainment, among others). Islamic banking (*muamalat*) involves several *shariah*-compliant instruments, such as *wadiah* (deposit account), *mudarabah* (profit loss sharing “loan mechanism”), *murabahah* (similar to “rent to own” arrangements). *Takaful* is the Islamic “equivalent” of insurance instruments and *sukuk* is the Islamic “equivalent” of Islamic capital market financial certificates that are equivalent to bonds in traditional finance. They are *shariah*-compliant instruments that can be structured as a partial ownership in a debt, asset or equity.

In Jordan, Islamic banking assets in 2010 represented only 12% of total banking assets (USD 49 billion), while Islamic insurance assets (*takaful*) in 2011 represented 8% of total insurance assets and 8% of total gross written premium. The industry is expected to reach USD 12 billion by 2015, roughly

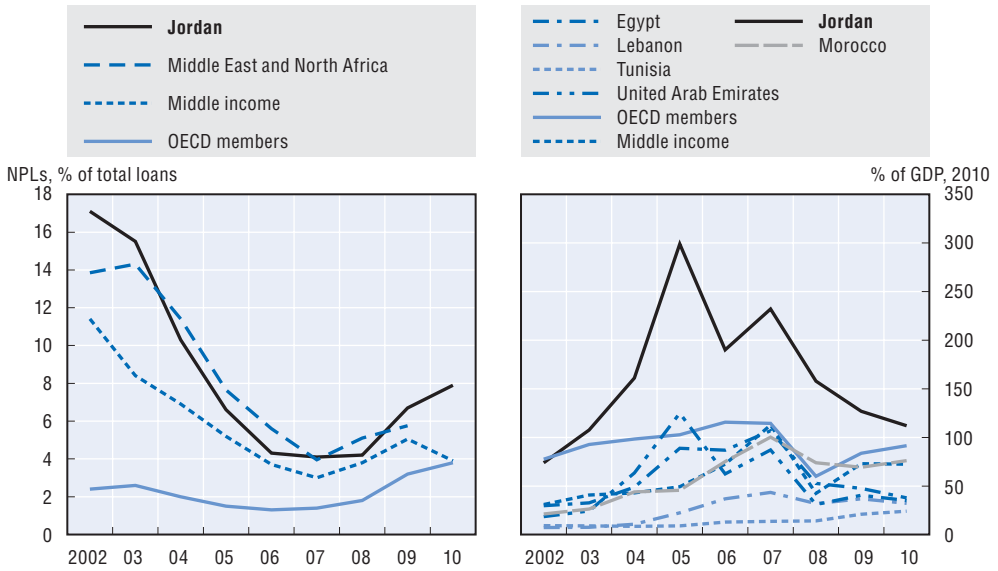
**Box 3.11. Islamic finance in Jordan (cont.)**

the double of its current size. Foreign investors and also domestic ones have demonstrated interest in investing in the country. The successful issuance of the first Islamic bond (*sukuk*) in Jordan in 2011 by Al Rajhi Cement Company Jordan, a subsidiary of the Saudi Arabian conglomerate, and valued at JD 85 million (USD 120 million), reinforces the potential for development of Islamic financial instruments in the country. The transaction was structured through a special purpose vehicle abroad to overcome the inexistence of appropriate legislation in the country at that time. Jordan could draw on its relatively well established conventional banking sector and regulatory agency *vis-à-vis* its regional counterparts to develop its Islamic banking industry. These new financial instruments can mobilise funds standing in Islamic financial institutions throughout the world and contribute to raise economic activity in Jordan, while providing a complementary borrowing alternative for the government.

Developing *shariah*-compliant financial instruments will require developing specific Islamic banking laws and regulations so that these instruments can be competitively structured and marketed. In view of developing such a market, the Jordanian government has approved a *Sukuk* Law in early October 2012. The law is expected to enable banks to develop *shariah*-compliant financial products in all of its variations and allows the government to tap into Islamic capital markets. The Law should set the environment for a rapid development of Islamic finance instruments in the country.

The Securities Law (2002) further enhanced disclosure requirements and JSC's supervisory powers. Currently, a new Securities Law is being drafted and is expected to establish a new legal framework for the mutual funds industry, and enhance disclosure requirements and overall regulations of capital markets activities. The JSC has since 1997 been a member of the International Organization of Securities Commission (IOSCO), after substituting the Amman Financial Market authority as Jordan's securities regulator. In 2008, the JSC became a signatory to Appendix A of the IOSCO's Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMoU) after having its legal regime assessed. The MMoU sets an international benchmark for cross-border co-operation among signatory countries critical to ensuring enforcement of securities regulations. The JSC has also issued a Corporate Governance Code for listed companies in line with the OECD Principles of Corporate Governance that came into effect in 2009 (Chapter 4).

Figure 3.8. (a) Bank non-performing loans to total gross loans and (b) Market capitalisation of listed companies (% of GDP)



Source: World Bank Global Financial Development Database.

As a result, Jordan developed one of the most advanced stock markets in the region. As of March 2012, there were 248 listed companies at the Amman Stock Exchange (ASE), up from 201 listed companies in 2005. Market capitalisation of the Amman Stock Exchange amounted to 103% of GDP in 2011, down from 112% of GDP in 2010.<sup>69</sup> Although having declined significantly since 2005, when it achieved its historical top performance since its creation in 1978, it has consistently retained the highest capitalisation within the MENA region (Figure 3.8b). The share of foreign ownership of market capitalisation amounted to 52% at the end of 2011, up from 45% in 2005.<sup>70</sup> Initial Public Offerings (IPO) activity in Jordan was significant in the 2000s in comparison to international standards (World Bank, 2011).<sup>71</sup> Trading activity, however, is rather low even in relation to some of its regional peers.

Based on World Bank's Global Development Finance database, Jordan's trading activity, as indicated by the value of stocks traded as a share of GDP in 2010, is fairly developed in relation to equity markets in the region, but is rather low in comparison to the OECD average and other middle income countries. The turnover ratio of traded stocks, which indicates liquidity levels relative to the market size, is low compared to international standards, and it is lower than in Morocco, Egypt and United Arab Emirates. Further, free-floats remain relatively low in Jordan, as in other MENA countries, reflecting either large residual state shareholding or large family shareholdings in companies with small public share offerings (World Bank, 2011). In 2009, free-floats in

Jordan amounted to roughly 34% of market capitalisation at the Amman Stock Exchange, while the world average was 54%.<sup>72</sup>

The fixed-income market is still largely dominated by government debt. According to data from the ASE, between 2005 and 2010, the public bonds market represented on average 88% of the total bond market. The issuance of public bonds does not follow a pre-established calendar, and bonds are not regularly issued for all maturities. This remains a concern for secondary market development and for further advancements of the private bond market. The lack of a diversified investor base also limits the liquidity in secondary markets.<sup>73</sup> In 2010, the value of traded bonds (both private and public) was less than 1% of GDP.

The private bond market is still incipient, partially as a consequence of a limited development of the public bond market.<sup>74</sup> The Jordan Securities Commission (JSC) is aware of the need to develop the corporate bond market to provide an alternative financing option for companies, which are still too dependent on internal and banking finance. It has organised seminars and training to enhance the knowledge of market professionals on the importance of the private bond market as a financial strategy (OBG, 2007).

The Ministry of Finance has also been studying the possibility of issuing debt instruments compliant with Islamic finance principles (e.g. *sukuk* bonds). With the new *Sukuk* Law, approved in October 2012, that has removed the legal barriers impeding the issuance of *sukuk* bonds in Jordan, the government will be able to pursue this strategy (Box 3.11). Authorities have reported that the JSC is beginning the work on the draft of regulations for the *sukuk* market and is engaging in co-operation with local and international organisations with this purpose.

### **The non-bank financial sector**

Non-bank financial institutions need to be further developed. According to the World Bank (2011), mutual funds are negligible, even in comparison to other MENA oil-importer countries, limiting the development of capital markets, notably the equity market. While in Morocco and Tunisia, assets under management by mutual funds reached, respectively, 23.4% and 7.2% of GDP in 2009, in Jordan they accounted for only 0.1% of GDP.

Private pension funds are rare and have yet to accumulate large financial resources. The government has introduced reforms that may contribute to promote the development of the sector.<sup>75</sup> The existing private pension funds cover mainly financial sector employees, and have had only a limited contribution to financial development. The public pension system is well developed for regional standards, with assets amounting to 30% of GDP in 2008 (World Bank, 2011). Jordan has also undertaken reforms to improve the

governance, disclosure and investment policies of public pension funds, acknowledging the system constraints in dealing with an aging population and in contributing to the development of the capital market. Public pension funds are beginning to diversify their asset allocation by investing in equities and other foreign assets, although in a limited manner. The new Temporary Social Security Law (2010) has allowed the creation of a mechanism to raise pension funds, enhance social justice, and improve the financial position of the Social Security Corporation (SSC).<sup>76</sup> In 2009, the SSC held JD 5 billion in assets (CBJ, 2011).

The insurance sector has grown significantly since 2000. As of December 2012, it comprises 27 companies licensed to practice insurance business in Jordan,<sup>77</sup> two non-operating foreign insurance companies (regional representative office) and more than 900 providers of insurance supporting services. Insurance penetration – gross written insurance premiums to GDP – reached 2.13% in 2011 compared with 1.5% for the Middle East and Central Asia and 6.6% for international average.<sup>78</sup> Life insurance premium remains relatively small given Jordan's income level and demographic profile. Non-life insurance, on the other hand, is rather developed (Insurance Commission of Jordan, 2011). Nonetheless, gross written premiums (JD 437 million) in Jordan represent less than 3% of total estimated market of MENA countries. Non-life insurance accounts for more than 90% of premiums, a much higher rate than in Morocco (69%) and Egypt (57%) that have a more developed insurance sector. The level of insurance assets to GDP is also lower for Jordan (5%) in comparison to Morocco (18%) and Lebanon (7%). Jordan's insurance sector suffers from overcapacity, with an abundance of capital and an excess of players which decreases profitability and hinders the development of the industry (World Bank, 2011).

Jordan's insurance sector is regulated by the Insurance Commission (IC), established in 1999 to monitor insurers' solvency and financial health, and contribute to improving the efficiency of market players. The IC promulgated regulations in 2008 allowing the development of banc-assurance, which may lead to further development of the life insurance sector. As of December 2012, there were 27 insurance companies operating in Jordan, and 10 licensed banc-assurance operators (IC, 2011).

Financial leasing is regulated by the Financial Leasing Law (2008). The Law complies with the latest international practices, and even includes provisions for out-of-court collateral enforcement which do not exist for other financial assets in the country. The implementation of this Law has provided support for the industry growth. The total value of leasing operations in the country has grown at a 35% CAGR during the 2004-2008 period, reaching a value of USD 239 million in 2008 (IFC, 2009). Despite its significant growth, in 2008 it still

represented only a small share (1.3%) of total credit facilities. At the end of 2008, there were 31 licensed companies providing leasing services (CBJ, 2011).

Jordan has also three publicly-owned specialised credit institutions that provide medium and long-term financing to development projects in specific sectors: the Agricultural Credit Corporation, the Housing & Urban Development Corporation, and the Cities and Villages Development Bank. Total assets held by these are small, amounting to JD 418 million or 1.3% of total banking assets at the end of 2009. Credit facilities represented only 2% of total banking credit. As such, they do not crowd out the private sector (CBJ, 2010).

### **Access to credit by SMEs**

Throughout the last two decades the government has launched several initiatives that aimed at facilitating access to finance by SMEs in the country. In 1994 the government set up the Jordan Loan Guarantee Corporation (JLGC) to facilitate SMEs access to the banking system by guaranteeing the risks of loans (including commercial and political risks involved in export credit) extended by commercial banks and other financial institutions. In 2002, with the support from the Japan International Cooperation Agency (JICA), the government set up the National Fund for Enterprises Support (NAFES) with the aim of supporting the development of managerial capabilities of Jordan's SMEs. In 2008, the Jordan Enterprise Development Corporation (JEDCO) was created to enhance SME competitiveness in agriculture, services and industrial sectors. Despite government efforts, SME access to finance remains constrained. In 2009, SMEs loans accounted for only 10% of total loans in Jordan, according to the World Bank (2011). In Morocco, Lebanon and Tunisia, SMEs' share of total loans were, respectively, 24%, 16% and 15%. Loans requiring collateral in Jordan amounted to 97.6%, the highest in the MENA region according to the World Bank Enterprise Survey database, but the type of collateral required limits considerably the ability of firms to access financing.

Aware of such challenge, the government has intensified its efforts to support the development of SMEs in the country. According to the authorities, a temporary Credit Information Law of 2010 was enacted and its by-laws were recently approved, paving the way for the creation of a private credit bureau in the country. Such legislation enhances the ability of creditworthy SMEs to access formal financing from the banking sector by facilitating the flow of information within the financial system. The government has also been working on developing a collateral registry system that would facilitate the extension of loans to SMEs. These normally fail to meet the minimum immovable property-based collateral requirements of banks, but their movable assets could be used as collateral for loans if proper legislation on creditors' rights concerning movable property were in place. An efficient collateral registry system by registering pledges on movable property would

allow banks to more easily assess if another creditor already has claims over the assets. Such a system, in combination with the credit information law recently approved would enable banks to accept movable property as collateral and contribute to further reduce transaction costs in providing credit to SMEs.

In 2011, the government launched a national programme to support SMEs that is expected to contribute with USD 400-500 million to the development of the sector through loan guarantees, technical assistance and grants. The government recognises the importance of SMEs to the economy, as they account for 70% of jobs (Jordan, 2011). In October 2011, the United States agreed to provide USD 300 million for a SME loan guarantee scheme (Jordan Loan Guarantee Facility Program) that would work with private banking institutions to broaden access to credit by SMEs.<sup>79</sup> Likewise, the JEDCO and the European Investment Bank launched in 2011 two new venture capital funds to support the development of SMEs: the Early Stage Fund, a EUR 5 million fund to support start-ups; and the Capital for Growth Fund, a EUR 20 million fund to provide long-term capital and institutional support to SMEs (EIB, 2011). JEDCO has also launched a small business grant programme to promote women entrepreneurs. The programme allows women entrepreneurs to get a loan of up to 90% of the project cost (because of their higher level of difficulty in offering collateral for traditional loans), whereas male entrepreneurs' loans are limited to 60%-80% of the project cost. The European Union has also agreed to provide funds to assist in the development of Jordan's manufacturing and agro-industry sectors. In 2012, JEDCO launched the JUMP II programme was launched to extend grants totalling EUR 11.25 million to SMEs in those sectors.

Jordan has also become in 2012a member of the European Bank for Reconstruction Development (EBRD), which has extended its operations to the Southern and Eastern Mediterranean region since the establishment of the Deauville Partnership, a G8 initiative to support Arab countries in transition. In May 2012, the EBRD agreed to establish a special fund amounting to USD 1.25 billion for investment in the four Arab emerging economies (Egypt, Jordan, Morocco and Tunisia) with a focus on private sector development and SME growth. Jordan hosted a conference in May 2012 with the EBRD and private sector representatives to discuss projects to benefit from the fund (EIU June 2012). In September 2012, the EBRD announced that its first investments in the region had been approved, with one project being located in Jordan. The EBRD will provide a USD 30 million trade finance line for InvestBank in Jordan for the development of new products aimed at SMEs, which trade with counterparts in other countries where EBRD operates. Improving SME access to finance via banks and equity funds has been identified as a priority by the EBRD together with the energy sector, municipal services and infrastructure.



Further efforts to develop the microfinance industry have also been taken by the government. Jordanian authorities have reported that the Ministry of Planning and International Cooperation (MOPIC) is leading a process of developing a National Microfinance Strategy and an Action Plan. MOPIC is committed to developing the micro, small and medium enterprises (MSME) sector to ensure that it plays a more vital role in creating employment opportunities, with a focus on regional disparities. Since April 2012, a joint World Bank-IFC mission has been assisting MOPIC in such a development in the context of the Middle East and North Africa MSME Facility under the umbrella of the Arab World Initiative. According to Jordanian authorities, the country has the highest microfinance coverage for the poor in the Arab region. Further growth, however, is constrained by the lack of enabling microfinance regulatory and legal framework, and barriers to set up microfinance institutions (MFIs) as investable corporations rather than NGOs.<sup>80</sup> The current regulatory framework is unprepared to address non-prudential risks, such as over indebtedness. The government with the support of the Central Bank is also working on acquiring a USD 70 million loan from the World Bank to on-lend to MSME through local banks.

In general, Jordan has managed to implement a series of reforms over the past two decades that have enhanced the depth of its financial sector. The banking sector is profitable and well capitalised, and the Amman Stock Exchange is relatively well developed in comparison to regional peers. The country has so far made good use of support from international organisations to continue improving the infrastructure and legal framework of its financial sector. Significant challenges remain though, such as enhancing the access to financial services, in particular for SMEs, developing the non-bank financial sector, and deepening private fixed income markets, among others. Nevertheless, the authorities reported to have already begun to tackle some of these issues, as noted in this section. The current regional unrest and the adverse global economic conditions act as impediments to the development of Jordan's financial sector, but the effective implementation of such reforms is important for supporting Jordan's economic development in the long run.

## Notes

1. The World Bank classifies Jordan as an upper middle income country, as its 2010 GDP per capita of USD 4 340 exceeds the cut-off level of USD 3 976.
2. The Economic Freedom Index of the Heritage Foundation covers four domains of economic freedom through 10 indicators: rule of law (property rights and freedom from corruption), limited government (government spending and fiscal freedom), regulatory efficiency (business freedom, labour freedom and monetary freedom), and open markets (trade freedom, investment freedom and financial freedom). [www.heritage.org/index/country/jordan](http://www.heritage.org/index/country/jordan).

3. According to the Doing Business report, the number of procedures to set up a business is 7 and the number of days is 12. In the region, Jordan ranks 9th out of 19 MENA countries for the indicator "starting a business" after Egypt (2nd), Morocco (3rd) and Tunisia (4th) and most Gulf countries (World Bank, 2012).
4. [www.trust.org/trustlaw/country-profiles/good-governance.dot?id=a3ac5e60-ea33-4cd5-8619-5380bc3d7648](http://www.trust.org/trustlaw/country-profiles/good-governance.dot?id=a3ac5e60-ea33-4cd5-8619-5380bc3d7648).
5. The Sustainable Achievement of Business Excellence and Quality (SABEQ) programme, recently known as the Jordan Economic Development Program, was launched in 2006. With the view of promoting business-friendly public policy, it focused on job creation, revenue enhancement, export development, and attraction of foreign and domestic investment in high value-adding knowledge sectors.
6. EnConsult, *The Regulatory Guillotine Pilot in Jordan's Licensing and Construction permitting Regulations*, document provided by the Ministry of Planning and International Co-operation.
7. Duties and authorities of DLS are regulated by the By-Law No. 80 of 1999.
8. [www.dls.gov.jo/dlsMap/dlsWeb/viewerAR.htm](http://www.dls.gov.jo/dlsMap/dlsWeb/viewerAR.htm).
9. According to Article 2 of the Patent Law No. 32 of 1999, amended in 2001 by Law No. 71, patent is defined as "the certificate granted for the protection of an invention", and invention is defined as "any innovative idea, in any of the fields of technology, which relates to a product or a manufacturing process or both and practically solves a specific problem in any of those fields".
10. Subject matters such as discoveries, scientific and mathematical theories, inventions contrary to public order and morality, and therapeutic methods are considered statutorily non-patentable. However, the JUSFTA in its Memorandum of Understanding requires Jordan to clarify that the exclusion of mathematical theories does not include business methods or computer-related inventions, which therefore shall be patentable.
11. Patents rights are freely transferrable, however, such a transfer must be notified with a publication in the *Official Gazette* and registered with the Patent Office in order to become valid *vis-à-vis* third parties.
12. Higher Court of Justice Case No. 43/97.
13. [www.internationalpropertyrightsindex.org/profile?location=Jordan](http://www.internationalpropertyrightsindex.org/profile?location=Jordan).
14. <http://a2knetwork.org/reports2012/jordan>.
15. Higher Court of Justice Case No. 43/97.
16. US Department of State, 2011; Economic Freedom Index, 2012. The report of the Economic Freedom Index states that despite efforts to limit its influence, the Ministry of Justice significantly affects judges' careers. It also points out a lack of transparency and influence peddling which undermine the fairness of dispute settlement.
17. Heritage Foundation, Economic Freedom Index, 2012.
18. *The Jordan Times*, 7 March 2012, "Investment agencies to be merged into one entity".
19. [www.scribd.com/doc/14853083/Environmental-Law-law-of-mediation-in-jordan-](http://www.scribd.com/doc/14853083/Environmental-Law-law-of-mediation-in-jordan-).
20. "Indirect expropriation occurs when the state interferes in the use of the investor's property or the benefits, even where the property is not seized and the title of

- property is not affected, for instance, when governmental measures force an investor to flee the country, deny him access to his funds or profits, or compel him to sell or transfer at an unfairly low price (Rosenn, 1998)” (World Bank, 2010).
21. For example, Talal Abu Ghazaleh Group International (TAGI) v. The Greater Amman Municipality (GAM), Jordan’s Supreme Court, March 2008, or the “Jordan Gate” case in Amman, JIB website: [www.jordaninvestment.com/Portals/0/mediacenter/venturearticle/tagi\\_april2008.pdf](http://www.jordaninvestment.com/Portals/0/mediacenter/venturearticle/tagi_april2008.pdf).
  22. Jordan signed DTTs with the following countries: Algeria, Azerbaijan, Bahrain, Bulgaria, Canada, Croatia, Egypt, France, India, Indonesia, Iran, Kuwait, Lebanon, Malaysia, Morocco, Netherlands, Oman, Pakistan, Poland, Romania, South Korea, Syria, Tunisia, Turkey, United Kingdom and Ukraine and Yemen.
  23. The information in this document with reference to « Cyprus » relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.
  24. The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.
  25. The BIT with the US was signed in 1997 but only ratified in 2003 after the entry into force of the Jordan-US FTA.
  26. The FTA and the BIT with Canada were signed on the same day in 2009, but only the BIT has been ratified to date.
  27. The FTA and the BIT with Singapore were negotiated concomitantly. Both agreements entered into force on 22 August 2005.
  28. [www.jordaninvestment.com](http://www.jordaninvestment.com).
  29. Such as the Controllor Department of the Ministry of Industry and Trade for companies’ registration or the Ministry of Interior for security checks imposed on certain nationalities.
  30. Industry; agriculture; hotels; hospitals; maritime transport and railways; leisure and recreational compounds; convention and exhibition centres; pipeline transportation; and distribution services for water, gas and petroleum derivatives as well as its exploitation.
  31. See the website of the Moroccan Government General Secretariat: [www.sgg.gov.ma/sgg.aspx](http://www.sgg.gov.ma/sgg.aspx).
  32. EnConsult, *The Regulatory Guillotine Pilot in Jordan’s Licensing and Construction permitting Regulations*, document provided by the Ministry of Planning and International Co-operation.
  33. [www.oecd.org/daf/investment/pfi](http://www.oecd.org/daf/investment/pfi).
  34. [www.oecd.org/dataoecd/45/21/2506900.pdf](http://www.oecd.org/dataoecd/45/21/2506900.pdf).
  35. Article 67 of the interim Income Tax Law of 2009.
  36. Regulation No. 2 of 1996 of the investment areas and sectors issued pursuant to Article 4 of the Investment Law, as amended in 1997 and 2001.
  37. Article 7 of the 1995 Investment Law and Article 3 of the Regulation. The additional exemption period shall be for one year per each increase in production capacity

not less than 25% and for a maximum of four years. According to Article 8 of the Investment Law, additional exemptions can also be granted for investment projects in hotels and hospitals.

38. Article 3 b of the Investment Law No. 16 of 1995 and Article 5 A of the Interim Investment Law No. 68 of 2003.
39. Trade Tariff Restrictiveness Index (MFN applied tariff): "this indicator reflects the equivalent uniform tariff of a country tariff schedule that would maintain domestic import levels constant" (World Bank, 2010).
40. The GATS Commitment Index is an indicator that "measures the extent of GATS commitments for all 155 services sub-sectors as classified by the GATS and in the four modes of the GATS" (World Bank, 2010).
41. A large share of Jordan's agricultural exports (Processed food such as vegetable oil and fresh fruits and vegetables) goes to other PAFTA members (around 80% of agricultural exports). PAFTA is also the destination of Jordanian fertilizers and other chemicals, pharmaceuticals products, some home-appliances and electrical and engineering equipments (USAID, 2008).
42. The Jordan-EU FTA covers the liberalisation of tariffs and non-tariffs barrier, on the conduct of trade in agricultural and industrial products, right of establishment and services, cross-border supply of services, payments and capital movements, competition, intellectual property rights, financial co-operation and economic co-operation in relation to standards, transportation, telecommunications, energy, science and technology, environment, tourism, statistics, money laundering and the fight against illegal drugs. Under the agreement, the EU also agreed to set up a special fund to assist in developing Jordan's export competitiveness and export capacity.
43. The below analysis is based on available information and the on-going work conducted by the MENA-OECD Investment Programme on anti-corruption issues, in co-operation with the Jordan Anti-Corruption Commission.
44. [www.jacc.gov.jo](http://www.jacc.gov.jo).
45. [www.sdc.com.jo/english/index.php?option=com\\_content&task=view&id=332](http://www.sdc.com.jo/english/index.php?option=com_content&task=view&id=332).
46. According to Article 2 of the Economic Crimes Law, public official is defined as every official, employee or worker in the following bodies: Ministries and public official departments and institutions; the Senate and House of Deputies; municipalities, local councils and joint services councils; syndicates, unions, associations and clubs; banks, public companies and specialised credit institutions; political parties; any authority with a budget mainly supported through the State's budget; and any authority stated by the law administering public funds. Moreover, the concept of "public officials" has been expanded to include the heads and members of the boards of public companies as well, with or without payment (UNODC, 2011).
47. Decision No. 1755-2008.
48. In line with Article 78 of the EU-Jordan Association Agreement.
49. The Egmont Group is an informal international association of financial intelligence units, from participating countries, that was formed in 1995. Its aim is to facilitate international co-operation. Egypt and Saudi Arabia are both members of Egmont.
50. [www.transparency.org/country#JOR](http://www.transparency.org/country#JOR).
51. [www.trust.org/trustlaw/country-profiles/good-governance.dot?id=a3ac5e60-ea33-4cd5-8619-5380bc3d7648#country-snapshot](http://www.trust.org/trustlaw/country-profiles/good-governance.dot?id=a3ac5e60-ea33-4cd5-8619-5380bc3d7648#country-snapshot).

52. Corruption is listed 8th among 14 indicators, after tax regulations, access to financing, inefficient government bureaucracy, tax rates, inadequately educated workforce, poor work ethic, and political instability (WEF, 2011).
53. Article 3b of the ACC Law states that "the Commission shall freely and independently undertake its duties and work without any influence or interference from any other party".
54. Reviewed by Prime Minister Resolutions every six month.
55. According to the Article 5 of the Law, anti-competitive agreements are defined as agreements aiming to price fixing; production control or limitation; market sharing; setting entry barriers or eliminating competitors from the market; colluding in bids.
56. <http://data.worldbank.org/topic/infrastructure>.
57. However, the projected expenditure for transport, public works and roads, water and wastewater, and energy and mineral resources are JD 3 billion (about USD 4.2 billion).
58. Presentation made by Barry Francis and Rebecca Engwall of Pinsent Mason law firm, [www.tecniberia.es/documentos/PPP\\_Egipto\\_Argelia\\_Jordania.pdf](http://www.tecniberia.es/documentos/PPP_Egipto_Argelia_Jordania.pdf).
59. World Bank PPI Database, [www.worldbank.org/ppi](http://www.worldbank.org/ppi), accessed 16 August 2012.
60. Metro Report International (2009), Jordan Amman-Zarqa Light Rail Project is Derailed, June 2009, [www.cpcstrans.com/\\_files/JordanLightRail.pdf](http://www.cpcstrans.com/_files/JordanLightRail.pdf).
61. *The Jordan Times*, 8 April 2012, Kingdom rises in ranks of ICT index by infrastructure improvements needed, <http://jordantimes.com/kingdom-rises-in-ranks-of-ict-index-but-infrastructure-improvements-needed>. For the Index, see WEF (2012): [www3.weforum.org/docs/GITR/2012/GITR\\_OverallRankings\\_2012.pdf](http://www3.weforum.org/docs/GITR/2012/GITR_OverallRankings_2012.pdf).
62. These included for instance the increase in capital requirements for banks along the lines of Basel II, and the implementation of supervision and monitoring of bank's exposure to the stock market.
63. Peer countries refer to: Egypt, Lebanon, Morocco, Syria and Tunisia.
64. Previously, banks reported on bounced checks and defaulters to the CBJ, which made information available only to banks. This system however had its limitations, particularly with the development of the non-bank financial sector. The CBJ required that banks reported borrowers' information only for loans over JD 30,000. Borrowers could therefore apply for loans under this value with several banks without having their information reported. Banks could eventually request other banks for information about borrowers on informal basis, but this was not systematic. The lack of any reporting of borrowers under that amount made it particularly difficult for SMEs to access loans from banks (USAID, 2008).
65. The CBJ has taken measures to control the exposure of banks to foreign exchange, and conducts off-site and on-site supervision on a regular basis to keep track of the needs of banking institutions. Measures were also taken to improve off-site monitoring through the implementation of an automated data collection system. The CBJ has also raised the level of risk-weighted capital requirements and performed reviews of the submitted bank Internal Capital Adequacy Assessment Process following recommendation by the 2008 Financial Sector Assessment Programme undertaken by the World Bank and the IMF (IMF, 2012).

66. Data used in this session, when not indicated contrary, comes from the Central Bank of Jordan's monthly and yearly statistical bulletins, and from its macro prudential indicators report available in the website.
67. The capital adequacy ratio was estimated at 18.7.3% at the end of the first half of 2012, while it registered 19.3% at the end of 2011. This is well above regulatory requirements of 12% established by the CBJ and global benchmarks (8% of Basel II).
68. According to data from World Bank's Financial Structure Database. This might be overestimated as the data comes from Bankscope, which might not cover all the smaller banks.
69. According to data from the ASE, market capitalization in Jordan is largely dominated by the financial sector (52%), particularly the banking sector which detained roughly 45% of total market capitalization as of March 2012. The extractive sector accounted for 26%, the services sector for 18%, and the industrial sector for 5%. The banking sector is also one of the main traded sectors in the Amman Stock Exchange (ASE). In 2011, it was responsible for 16% of total value traded at the ASE, only behind real estate and other financial services. As of March 2012, there were 15 banks listed at the ASE, and they were responsible for roughly 45% of total market capitalization at the ASE.
70. The banking sector is one of the main receivers of foreign investments at the ASE. According to data available on the websites from the ASE and the CBJ, as of March 2012, non-Jordanian ownership of banks amounted to 60%, only behind mining and extraction companies (63%) and technology and communication enterprises (62%).
71. According to data from the ASE, IPO activity averaged 8% of GDP between 2005 and 2010, reaching JD 119 million in 2010.
72. Free-float capitalisation refers only to those shares that are readily available for trading in the market. It generally excludes promoters' holding, government holding, strategic holding and other locked-in shares that will most probably not come to the market for trading.
73. Banks dominate the domestic public primary debt market, accounting for 81% of total investment in the market. Banks' usual buy-and-hold strategies tend to hinder liquidity of secondary markets, and further limit the diversification of the investor base (World Bank, 2011).
74. The public bond market provides a comparison for setting price and developing other private instruments by providing a lower risk benchmark yield curve to the private market.
75. The government has introduced a voluntary contribution private pension plan, but it will take time for them to develop a relevant asset base. Without enforcing the creation of private pension funds, it will be difficult to develop the market (World Bank, 2011).
76. New provisions include the compulsory incorporation of employers and self-employers to the social security system, voluntary contribution by home-staying women, and voluntary maternity insurance for women, compulsory unemployment insurance, and the link of pension to the inflation rate, among others (ISSA, 2012).
77. One of which is licensed as a life insurance company, 10 as non-life insurance companies, and 16 as composite companies (life and non-life insurance).
78. [www.swissre.com/sigma/](http://www.swissre.com/sigma/).

79. The agreement between the Ministry of Planning and International Co-operation, USAID and OPIC, signed in October 2011, allowed USD 300 million in guarantees for loans, and additional support to the new USD 30 million investment fund set up by JEDCO, the EIB and Abraaj Capital was granted (EIU, 2011). In addition, the CBJ has permitted that such guaranteed loans be excluded from reserve requirements, and has allowed these facilities to be risk-weighted at zero percent for the purpose of capital adequacy ratio.
80. According to the Jordanian authorities, just a few MFI-NGOs are successfully expanding lending to the small enterprises segment. Under the current NGO framework it is hard to raise funds to expand operations, as MFI-NGOs face regulatory restrictions on the types of services they can provide. Current regulations limit the ability of authorities to address potential financial risks arising from MFI-NGOs operations as they are subject to little or no oversight. Improvements in the regulatory and legal framework would enable more professionalism of MFIs and enhance their capacity in offering additional financial services, such as such as savings, payments and remittances.

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## Chapter 4

### **Jordan's adherence to the OECD Guidelines for Multinational Enterprises**

*Policies for promoting responsible business conduct (RBC) in Jordan are still scarce. The concept is relatively new, the level of awareness is low and there is no comprehensive national policy. The government, enterprises and NGOs are, however, progressively taking initiatives to incorporate RBC into their practices. The authorities developed a Corporate Governance Code based on the OECD Principles of Corporate Governance. They ratified human rights conventions, but further steps are needed to guarantee respect for human rights by enterprises. The legal and institutional framework for employment and labour relations has been reinforced, but challenges remain in relation to freedom of association and social dialogue. Environmental impact assessments are conducted, though awareness on green business conduct is limited.*

*With a view to promoting the OECD Guidelines for Multinational Enterprises and their observance by companies, Jordan will establish its National Contact Point within the Jordan Investment Board.*

This chapter reviews Jordan's public policies to promote responsible business conduct, and Jordan's envisaged institutional arrangements for fulfilling its commitments as future adherent to the OECD Declaration on International Investment and Multinational Enterprises, in particular the *Guidelines for Multinational Enterprises*.

The *Guidelines*,<sup>1</sup> which form part of the Declaration on International Investment and Multinational Enterprises, are recommendations jointly addressed by adhering governments to multinational enterprises which operate in and from their territories in all major areas of business ethics. They provide principles and standards of good practice consistent with applicable law and internationally recognised standards. They aim to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the investment climate and enhance the contribution of investors. They are not aimed at introducing differences of treatment between domestic and foreign enterprises but reflect good practices for all. Adhering governments should not use them for protectionist purposes, nor use them in a way that calls into question the comparative advantage of any country where multinational enterprises invest.<sup>2</sup>

The *Guidelines* are also supported by a unique implementation mechanism, the National Contact Points, designed to promote the effective use of the *Guidelines* and address issues that may arise from the non-observance of the *Guidelines*.

First adopted in 1976, the *Guidelines* have been reviewed five times, and most recently in 2011 (Box 4.1).

**Box 4.1. The OECD Guidelines for Multinational Enterprises (MNEs) and the 2011 update**

The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*) are recommendations jointly addressed by governments to multinational enterprises. They aim to ensure that the operations of these enterprises are in harmony with government policies, to strengthen the basis of mutual confidence between enterprises and the societies in which they operate, to help improve the foreign investment climate and to enhance the contribution to sustainable development made by multinational enterprises.

**Box 4.1. The OECD Guidelines for Multinational Enterprises (MNEs) and the 2011 update (cont.)**

Following the update in May 2011, the *Guidelines* include new recommendations notably on human rights and a general principle on the need to exercise due diligence to avoid or mitigate negative impacts on third parties, notably with respect to the management of supply chains and other business relationships.

The recommendations of the *Guidelines* cover all major areas of corporate responsibility, namely:

- disclosure,
- human rights,
- employment and industrial relations,
- environment,
- combating bribery, bribe solicitation and extortion,
- consumer interests,
- science and technology,
- competition, and
- taxation.

The *Guidelines* comprise a distinctive implementation mechanism, the National Contact Points (NCP), which are government offices charged with advancing the *Guidelines* and handling enquiries in the national context and supporting mediation and conciliation procedures, called “specific instances”. The 2011 update has clarified and reinforced these procedures to strengthen the role of the NCPs and foster functional equivalence.

Source: OECD, [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).

## Establishment of a National Contact Point

Upon Jordan's adherence, the *Guidelines* will apply to foreign enterprises operating in Jordan as well as to Jordanian enterprises investing abroad. Jordan will also undertake the commitment to set up a National Contact Point in Jordan to further the effectiveness of the *Guidelines* by undertaking promotional activities, handling enquiries and contributing to the resolution of issues that arise relating to the implementation of the *Guidelines* in specific instances, taking account of the procedural guidance. The business community, worker organisations, other non-governmental organisations and other interested parties shall be informed of the availability of such facilities.<sup>3</sup>

NCP should be composed and organised so as to be able to operate in an impartial manner while maintaining an adequate level of accountability to the adhering government. Adhering countries shall make available human and financial resources to their National contact Points so that they can effectively fulfil their responsibilities, taking into account internal budgetary priorities and practices.<sup>4</sup> The 2011 update has clarified and reinforced the implementations procedures, notably as regards the handling of specific instances, to strengthen the role of the NCPs and foster functional equivalence.<sup>5</sup>

### **Jordan's National Contact Point**

Jordan is planning to set up its NCP at the Jordan Investment Board (JIB). JIB has led the adherence process to the Declaration on International Investment and Multinational Enterprises, and is fully aware of the commitments to be fulfilled as a new adherent country to the *Guidelines*.

With the purpose of enhancing impartiality, accessibility and transparency, the government plans to establish an advisory body to the NCP, comprising representatives of commerce and industry chambers, the business community and civil society. JIB indicated that it will make available the necessary human resources to ensure a proper functioning of the NCP. It will also provide the necessary budget so that the NCP can effectively fulfil its responsibilities, such as undertaking promotional activities, handling enquiries and contributing to resolving issues related to the implementation of the *Guidelines*. The Jordanian NCP will disseminate the *Guidelines* through its website in English and Arabic. Furthermore, it will raise awareness of the *Guidelines* among public entities, the business community, commerce and industry chambers and NGOs.

The Jordanian authorities have indicated they will look forward to working with other NCPs after adherence to ensure that the future Jordanian NCP is fully effective, transparent, accessible and accountable.

## **General policies for promoting responsible business conduct in Jordan**

According to the *Guidelines*, enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders.<sup>6</sup> Effective implementation of the *Guidelines* and a positive contribution of companies to economic, environmental and social progress require governments and business to work in partnership and in a framework of mutual trust in accordance with their respective rights and duties (Box 4.2). On one hand, it is the government's role to provide an adequate regulatory framework in the areas covered by the *Guidelines*, and to

provide incentives for companies to comply with this framework and build on it to further develop good business practices. On the other hand, the *Guidelines* are addressed to enterprises which have independent responsibilities and thus are encouraged to go beyond to the domestic regulatory framework, especially if the latter shows weakness or is poorly implemented. There is a distinction between the duties of the government and the responsibilities of the enterprises.

In addition to the recommendations encouraging enterprises to contribute to economic, environmental and social progress, to build local capacity and to uphold good corporate governance principles, the updated *Guidelines* address several new issues, notably aspects related to due diligence, supply chains and the role of the Internet. Enterprises are invited to carry out risk-based due diligence to identify, prevent and mitigate actual and potential adverse impacts on matters covered by the *Guidelines*.<sup>7</sup> They should avoid causing such adverse impacts through their own activities and when they are directly linked to their operations, products and services by a business relationship.<sup>8</sup>

**Box 4.2. Working in partnership to implement the *Guidelines* for Multinational Enterprises**

“The common aim of the governments adhering to the *Guidelines* is to encourage the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimise the difficulties to which their various operations may give rise. In working towards this goal, governments find themselves in partnership with the many businesses, trade unions and other non-governmental organisations that are working in their own ways toward the same end.

Governments can help by providing effective domestic policy frameworks that include stable macroeconomic policy, non-discriminatory treatment of enterprises, appropriate regulation and prudential supervision, an impartial system of courts and law enforcement and efficient and honest public administration.

Governments can also help by maintaining and promoting appropriate standards and policies in support of sustainable development and by engaging in ongoing reforms to ensure that public sector activity is efficient and effective.

Governments adhering to the *Guidelines* are committed to continuous improvement of both domestic and international policies with a view to improving the welfare and living standards of all people.”

Source: *OECD Guidelines for Multinational Enterprises*, Preface, paragraph 9.

The concept of responsible business conduct (RBC) is relatively new in Jordan and the level of awareness is low. There is no comprehensive national policy on the issue, some Jordanian companies pursue philanthropic activities that are not directly related to RBC and the approach to corporate social responsibility is fragmented. However, the government, enterprises and NGOs are progressively taking initiatives to incorporate this concept progressively into their practices.

The United Nations Global Compact Local Network in Jordan was launched in October 2007, incentivising Jordanian businesses to commit with and align their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption. As of July 2012, 31 Jordanian companies participate in the UN Global Compact Local Network. At the occasion of the launch, three studies were presented assessing the situation in the private sector in Jordan related to the Global Compact principles. These studies focused on anti-corruption, labour rights and environment, and provided information and recommendations.<sup>9</sup> However, no activities have been reported by the local network since 2009.

Some business-led initiatives to promote responsible business conduct, including sustainability management and reporting, have recently emerged. For example, the Arab Sustainability Leadership Group (ASLG)<sup>10</sup> was launched by Queen Rania of Jordan in May 2008. It is a network of 13 companies, government entities, and NGOs committed to sustainability management, performance and reporting. ASLG promotes leadership, innovative policy, partnerships and advocacy and aims to be a linkage between the Arab region and the rest of the world on key sustainability issues. Several CEO-level and practitioner meetings were held until 2010. ASLG, in co-operation with AccountAbility, also developed the Arab Responsible Competitiveness Index (ARCI) covering 15 countries from the region. Jordan ranks at the 7th position in this Index (AccountAbility, 2009).

Available information on foreign companies investing in Jordan suggests that a significant number of foreign investors are aware of the importance of RBC and engage in some corporate social responsibility (CSR) activities, especially in the areas of the environment, health and education. However, the research conducted by the OECD points out that half of the large foreign acquirers of Jordanian companies<sup>11</sup> do not have any reference to RBC policies in their own homepages (Annex B).

### Jordan's policies in major areas of corporate responsibility

In addition to general recommendations to improve corporate responsibility and strengthen enterprises' contribution to sustainable development, the *Guidelines* include a set of voluntary recommendations in all the major areas of corporate responsibility.



## Disclosure

The *Guidelines* chapter on disclosure recommends that enterprises disclose timely and accurate information on all material matters regarding their activities, structure, financial situation, performance, ownership and governance and carry out annual audits by an independent, competent and qualified auditor. Enterprises are further encouraged to communicate additional information on social, environmental and risk matters, such as value statements; codes of conduct; information on internal audit, risk management and legal compliance systems. The chapter also recommends that enterprises apply high quality standards for financial and non-financial disclosure.

In Jordan, the Companies Law No. 22 of 1997 and its subsequent amendments request companies to elect an auditor (Article 192) and prepare annual audited financial statements. The auditor's duties comprise the monitoring of the company's operations and the auditing of its account (Article 193). Its report must ascertain whether the company maintains organised accounts, registers and documents and whether its financial statements are prepared in accordance with internationally recognised accounting and auditing principles (Article 195). Under the Companies Law, all companies are required to prepare audited financial statements in accordance with internationally recognised accounting principles. These usually follow the simplified International Financial Reporting Standards (IFRS). Nevertheless, the authorities recognised that further efforts should be made to ensure better compliance with international accounting standards.

Recognising the need to improve transparency and accountability of Jordanian enterprises, the Ministry of Industry and Trade and the Companies Control Department have developed a new Corporate Governance Code in partnership with the International Finance Corporation (IFC). Private shareholding companies, limited liability companies and non-listed public shareholding companies are now required to comply with the Code on a basis of the "comply or explain" principle. The Code is based on the OECD Principles of Corporate Governance and comprises a section on the disclosure of non-financial information, but there is no direct reference to the disclosure of non-financial information related to social and environmental performance. Consequently, companies publish the related information only on a voluntary basis.

Specific transparency and disclosure rules exist for listed shareholding companies, banks and insurance companies. A Corporate Governance Code for Shareholding Companies listed on the Amman Stock Exchange was issued in July 2008 by the Jordan Securities Commission (JSC) and contains a chapter on disclosure and transparency.<sup>12</sup> The Code is based on the OECD Principles of

Corporate Governance and largely complies with its principles. The Code<sup>13</sup> states that:

- the company shall establish written work procedures in accordance with the disclosure policy adopted by the board of directors to regulate disclosure of information and follow up on the implementation of the policy;
- the company shall provide shareholders and investors with accurate, clear, timely disclosure information, in accordance with the requirements of the supervisory authorities and the legislations in force, in a manner that would enable them to take their decisions;
- the company shall organise its accounts and keep its books and records in accordance with IFRS;
- the company shall use its Internet website to enhance disclosure and transparency, and to provide information;
- the company shall disclose its policy regarding the local community and the environment.

The authorities reported that efforts to monitor compliance with the Code are being developed. The IFC has been mandated to assist in the development of a scorecard that will allow JSC to monitor and ensure compliance with the Code. The JSC had already amended in 2004 the earlier Instruction on Disclosure, Accounting and Auditing Standards for Issuing Companies with the aim of strengthening the supervisory framework of disclosure of information by requiring greater specification of information from issuing companies. The Disclosure Department of the JSC is the responsible body for monitoring the compliance of listed companies with the Securities Law and Disclosure Instructions issued by the JSC, and takes appropriate measures against violators. According to the authorities, roughly 40% of the identified violations to general JSC instructions in 2004 were related to the failure in complying with disclosure instructions, and 13% of the companies under JSC supervision disclosed the requested semi-annual report in delay (JSC, May 2012). JSC co-operates with the Amman Stock Exchange in order to ensure compliance with listing requirements and take a range of enforcement measures towards non-compliant companies, including for instance publicising a list of non-disclosing firms.

In terms of sustainability reports, very few companies actually disclosure such information on a voluntary basis. Only one company listed in the Amman Stock Exchange published sustainability report in accordance with the Global Reporting Initiative (GRI) *Guidelines*. Notwithstanding, an initiative that might incentivise companies listed at the Amman Stock Exchange to improve their transparency, disclosure and performance of Environmental, Social and Corporate Governance (ESG) issues is the Pan Arab ESG Index launched in 2011 by Standard & Poors and the Hawkamah Institute for

Corporate Governance for the MENA region. While the Index provides investors with a tool to identify those companies that are top performers in ESG issues in the region, it also provides an incentive to pursue sustainable business practices. The Index includes the top 50 MENA companies based on their performance on ESG indicators. As of November 2012, two Jordanian companies are included in the Index.

In the case of banking institutions in Jordan, the Central Bank requests them to comply with a specific corporate governance code issued in 2007. The Corporate Governance Code for Banks also contains provisions on disclosure,<sup>14</sup> and is likewise based on the OECD Principles of Corporate Governance and on the guidance issued by the Basel Committee on Banking Supervision. The code serves as a model for Jordanian banks to design and implement their own corporate governance code by end 2007. According to the Code, Jordanian banks are required to disclose in accordance with the International Financial Reporting Standards (IFRS) and national legislation. They should make recommendations for the regular enhancement of their own disclosure practices, beyond those required by the Central Bank of Jordan. They recognise their obligations to provide meaningful information on their activities to shareholders, depositors, financial market counterparts, regulators and the public in general. Such information should comprise: information on the bank (financial condition, performance and activities), annual<sup>15</sup> and quarterly reports including financial information. Recommendations to further strengthen Jordan's corporate governance standards were prepared by the OECD in the Policy Brief on Corporate Governance of Banks in MENA (OECD, 2009). The paper provides recommendations on a broad range of issues that deserve attention from the regulatory authority to improve corporate governance of banks in Jordan (e.g. board performance, remuneration, disclosure and transparency, conflict of interest and related party transactions and the role of the supervisor in improving corporate governance standards).

Accounting policies and financial reporting for insurance companies are regulated by the instructions of the Insurance Commission in 2003.<sup>16</sup> These instructions are based on IFRS, IAIS (International Association of Insurance Supervisors) and IFSB (Islamic Financial Services Board) for Takaful insurance companies. They unify accounting policies applied by insurance companies and include disclosure requirements in financial statements. The corporate governance instructions for insurance companies issued in 2006 contain provisions on authorities and obligations of boards of directors of insurance companies and executive management,<sup>17</sup> require minimum independent board members, activate the role of the internal audit committee and the internal auditor, and encourage a clear written risk management policy. The Professional Code of Conduct and Ethics Concerning Insurance Companies

was issued in 2004 to ensure consistency of the practices and actions of the insurance companies when dealing with their clients. The Code sets special frameworks for business practices with customers and protection of information. It also includes provisions on promotional and advertising materials, insurance application form, insurance policy and its renewal, procedures handling claims, supervision of insurance agents, and services.

The voluntary disclosure of ESG information by banks and other institutional investors in Jordan is also scarce, and accepted international standards have not been embraced. For instance, no Jordanian institutional investor is signatory to the UN Principles for Responsible Investment (UN PRI), which recognise that ESG issues can affect the performance of investment portfolios. Institutional investors that are signatory to the UN PRI are encouraged to appropriately disclosure information on ESG issues, in addition to integrate such issues in their investment strategies.

Jordan has introduced in recent years several reforms to promote more transparent and accountable business entities. Adequate compliance will be crucial to have a positive impact on the country investment environment. Further efforts to establish national accounting regulations in line with international standards should also be undertaken. This would facilitate the flow and process of information and contribute to improve the business environment.

### **Human Rights**

The new *Guidelines* chapter on human rights aligns with the United Nations Framework for Business and Human Rights and is in line with the Guiding Principles for its Implementation. It establishes that in every country in which they operate, enterprises have the responsibility to respect human rights, which means exercising due diligence to avoid infringing on the human rights of others and addressing such impacts when they occur, i.e. providing for, or co-operating in, the remediation of adverse human rights impacts they have caused or contributed to. The due diligence process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.

Jordan has ratified six major United Nations conventions dealing with human rights – with reservations in two cases – including the two mentioned in the *Guidelines*,<sup>18</sup> as well as seven of the eight core ILO labour conventions (see below). The UN convention that Jordan did not ratify is the one on the protection of the rights of all migrant workers and members of their families.

The National Centre for Human Rights (NCHR), a successor of the Royal Commission for Human Rights, was established in 2006. It is an independent

institution which has a juridical personality with full financial and administrative independence in practicing its intellectual, political and humanitarian activities related to human rights. The objectives of the Centre are to enhance respect for human rights, to spread human rights cultures, and to “enhance the democratic process in the Kingdom with a view to creating an integrated, balanced model based on spreading freedoms, guaranteeing political pluralism, respecting the sovereignty of the law and guaranteeing the right to economic, social and cultural development”.<sup>19</sup> To that end, the Centre should verify that human rights are being observed in the Kingdom, propose legislation related to the Centre’s objectives, include human rights principles in the curricula of the different educational levels, especially as stipulated in Islam, organise training courses, issue statements, conduct studies and research, organise outreach activities (seminars, television and radio programmes), and establish a database of information related to human rights.

NCHR secured an A-status accreditation from the peer review process of the International Coordinating Committee of National Human Rights Institutions (ICC), giving it enhanced access to the United Nations human rights bodies. In the ICC annual meeting in March 2012, Jordan was elected chair of the network of 99 institutions. The NCHR Strategic Plan 2010-12 highlights the positive points of the Centre: creation by a permanent law, diversified activities and experience, international and national credibility, and committed human resources. Among the points of weakness or factors impeding progress, the Strategic Plan notes the weak institutionalised work and ineffective co-ordination, insufficient legal studies and inadequate awareness, a system based on complaints with a lack of violations detection, shortage in qualified human resources and unavailability of a code of conduct, lack of sufficient information and evaluation systems, and weak promotion and advocacy. It is recognised that the independence and performance of the Centre depend on the character and strength of the president.

During the OECD mission in May 2012, stakeholders mentioned that there is a need to update human rights laws in Jordan because they lack compliance with international agreements. In that regard, the NCHR Strategic Plan recommends that the Centre concentrate on revising legislation and policies and developing draft laws and amendments for the purpose of consistency with international standards, and providing advice and training on enforcing international conventions.<sup>20</sup>

Some NGOs are working on human rights issues in Jordan, such as the Arab Organization for Human Rights in Jordan, the Jordanian Society for Human Rights, the Law Group for Human Rights, Legal Aid-Jordan and some women’s associations (e.g. the Jordanian Women’s Union and the General Federation of Jordanian Women).

Jordan faces a peculiar situation *vis-à-vis* Palestinian refugees and has to shoulder important human responsibilities. The country has given shelter to three influxes of Palestinians refugees amounting to 1.6 million individuals – almost a third of Jordan's population. Most refugees received full citizenship and the associated rights, others have access to some government services, but pay non-citizen rates at hospitals, educational institutions, and training centers, and the rest have no access to government services and are almost completely dependent on the UN Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). The government reports that there were approximately 165 000 Palestinian refugees, mostly of Gaza origin, who do not qualify for citizenship. Discrimination against Jordanian citizens of Palestinian origin still persists. According to the Amnesty International annual report 2011,<sup>21</sup> the authorities continued arbitrarily to withdraw Jordanian nationality from citizens of Palestinian descent. Those whose nationality was withdrawn had few means to challenge the decision and were effectively made stateless and denied access to health care and education facilities.

In its annual report of 2011, Amnesty International also noted that some migrant domestic workers continued to be exploited and abused. Complaints focus mainly on unpaid salaries, passport confiscation and poor working conditions. In addition to Amnesty International, Human Rights Watch and the Tamkeen Center for Legal Aid reported that regulations introduced in 2009 to protect migrant domestic workers from exploitation, physical and psychological abuse in the workplace, regulating working hours and criminalising trafficking were not enforced. The Rule of Law Index 2011 (World Justice Project) mentions that Jordan's records in the area of fundamental rights are weak "particularly with regard to discrimination (ranking 55th out of 66 countries), and labour rights (ranking 63rd)."<sup>22</sup>

In Jordan, there is a perception that respect of human rights is not a specific issue for companies to deal with. To abide by the *OECD Guidelines*, the government will need to take steps to guarantee respect for human rights by enterprises and to encourage them to play a role and adopt policies in this area.

### **Employment and industrial relations**

Under the *Guidelines* chapter on employment and industrial relations, several recommendations echo the ILO Declarations on MNE and on Fundamental Principles and Rights at Work and related core ILO Conventions. Enterprises should respect basic labour rights, such as equal and non-discriminatory treatment; the elimination of child labour and forced or compulsory labour; workers' rights to join trade unions and representative organisations of their own choosing, and to have workers' representatives engage in collective bargaining. Enterprises should also promote consultation and co-operation between employers and workers, pay the best possible wage

that should be at least adequate to satisfy the basic needs of the workers and their families, and ensure adequate health and safety conditions in their operations. Further recommendations are to employ local workers and provide training, and to mitigate to the maximum effect possible adverse employment effects linked to changes in their operations.

Jordan has ratified seven of the eight fundamental ILO labour conventions on freedom of association and collective bargaining, on forced or compulsory labour, on equal remuneration for men and women, on the prevention of discrimination, on a minimum age for admission to employment and on child labour. The core convention not ratified refers to the freedom of association and protection of the right to organise. Jordan only ratified 14 of the 177 ILO technical Conventions.<sup>23</sup>

It is recognised that the Jordanian labour legal framework does not in general provide for the full implementation and enforcement of the seven ratified ILO Conventions, though the progress in attaining international labour standards during the last three years signals Jordan's political will and commitment to continue the labour reform process.

Some of the bilateral trade agreements that Jordan signed contain provisions related to labour. The Article 6 (labour) of the Jordan-United States FTA reaffirms parties' obligations under the ILO instruments; recognises that it is inappropriate to encourage trade by relaxing domestic labour laws; recognises the right of parties to establish their own domestic labour standards which should be consistent to internationally recognised labour rights; encourages enforcement of labour laws in a manner that do not affect trade between parties; and recognises that co-operation between parties provides enhanced opportunities to improve labour standards. The article also lists the internationally recognised labour rights.<sup>24</sup> The Jordan-EU Association Agreement contains two chapters respectively on social dialogue and social co-operation actions. It recommends the setting up by the Association Council of a working party with a view to establish a regular dialogue. This dialogue should seek ways and means to progress as regards to movement of workers and equal treatment and social integration. Basic social rights should be respected and priority actions comprise reduction of migratory pressures through job creation and training, promotion of the role of women, and improvement of social security and healthcare systems.

The Jordanian Labour Code of 1996 repeals the Labour Code of 1960 and governs all labour affairs in Jordan. It has been completed by regulations, instructions and decisions and several amendments were adopted. The 2002 amendments concern some important matters, such as extension of the law coverage to some categories of workers; establishment of private employment offices organising the recruitment of foreign domestic workers and control of

these offices by labour inspectors; protection of workers from dismissal due to economic and technical factors; regulation of working hours; and relations between employers' and workers' organisations. The 2010 amendments recognised the right to collective bargaining and established the National Tripartite Labour Committee which represents the government, the business sector and labour unions.

Jordan's Constitution contains a number of workers' rights, including equitable working conditions, limited working hours per week, paid rest, special compensation for workers on dismissal, illness, old age and emergencies arising out of the nature of the work, special conditions of employment for women and young, free trade unions within the limits of the law.<sup>25</sup>

Established in 1954, the General Federation of Jordan Trade Unions is the organisational structure for Jordanian labour movements. It currently includes all the 17 trade unions in Jordan. It is estimated that between 10% and 30% of the labour force is member of unions (US Department of States, 2011; Freedom House Report, 2012). In addition to the trade unions, there are 40 professional associations in Jordan. There have been recent changes to give more weight to the social dialogue, such as the 2010 amendment to the Labour Code recognising the right of collective bargaining and a stronger implication of the authorities on labour issues following the wave of unrests in the country and the region in 2011. However, according to the ILO, "there are real legal restrictions on freedom of association and social dialogue in Jordan. Restrictions on freedom of association in Jordan are enshrined in law, including the prohibition on public sector workers to organise and the inability of non-Jordanians to establish trade unions [...]. Social dialogue in Jordan has, as a result, historically suffered from weak institutional capacity of the social partners, and similarly weak social dialogue platforms" (ILO, 2012). The Freedom House report 2012 mentions that "workers have collective bargaining rights but must receive government permission to strike. Labour rights organisations have raised concerns about poor working conditions and sexual abuse in Qualifying Industrial Zones (QIZs), where mostly female and foreign factory workers process goods for export."<sup>26</sup>

Jordan faces several challenges related to its labour market and local employment. The high level of economic growth before the global economic crisis (7% on average during 2004 and 2009) did not translate into increased jobs for Jordanians. The unemployment rate has been stable over the last years (between 12% and 14%) and reached 13% in 2011.

According to the ILO, "the impact of investment policies on employment similarly remains uncertain. Trade liberalisation has led to an increased dependence on migrant workers in export zones, in turn decreasing real wages of unskilled labour. Job creation, on the other hand, was in predominantly low-



status low-skills jobs, instead of high value-added jobs that pay adequate wages, and are up to par with the expectations of Jordanian youth. As a result, over 600 000 Jordanians, a figure half the size of the Jordanian labour force at home, work abroad, mostly in skills intensive jobs; as the local supply of skills continues to exceed local demand" (ILO, 2012). Jordan is both a labour-sending and a labour-receiving country.

In 2011, in the wave of the regional uprisings, Jordan witnessed an unprecedented number of strikes. One of the demands of Jordanian demonstrators was higher salaries. The minimum wage, established at 150 Jordanian Dinars per month (approximately USD 210) by a 2009 decree, does not apply to domestic and garment work and the Qualifying Industrial Zones (QIZs). In response to popular demands, the minimum wage was raised to JD 190 in December 2011, but this increase does not concern non-Jordanian workers (ILO-IFC, 2012). The formal-informal divide should also be noted as 26% of employed wage workers have no contracts and no social security coverage.

The other challenges that Jordan is facing are the high level of inactive working age population, youth unemployment and the high proportion of employees in the public sector. Jordan is one of the ten economies in the world with the lowest ratio employment-to-population,<sup>27</sup> which is partly explained by an extremely low rate of female employment.<sup>28</sup> Jordan must also deal with its large ratio of young population. The economy cannot create the 60 000 jobs needed every year to absorb the entry into the labour market of young people – 70% of the population is under 30 years old.<sup>29</sup> The young population is still attracted by the public sector which accounts for 30 % of the Jordanian work force with higher advantages in terms of wages, job security and social benefits.<sup>30</sup>

Therefore, the Jordanian authorities have to find a balance between creating the needed quality jobs for the Jordanians and lifting rights for all workers in Jordan, including the low-skilled migrant workers. The government has tightened restrictions on the employment of foreigners in certain professions (Chapter 2), but also designed national strategies to address the problems.

Workforce employability, labour market productivity and effective job placement featured prominently in the National Agenda 2006-15,<sup>31</sup> which was complemented by the National Executive Development Plan (EDP) for the period 2011-13. The EDP put emphasis on social welfare and education. In 2007, the government also adopted a comprehensive labour reform action plan, which led to some improvements and amendments to the Labour Code. Within the action plan, the government collaborates with domestic and international stakeholders under a three pillar approach: improving working conditions through enforcement and compliance assistance; enhancing

institutional capacity; and increasing employment opportunities for Jordanians.

Some of the initiatives undertaken by Jordan since the labour reform action plan, though with mitigated results, include:

- Revisions of the monitoring and compliance mechanisms used by the government.
- Reform of the Labour Inspectorate through a comprehensive strategy.
- Provision of amnesty periods for migrant workers without documentation and of financial or legal assistance.
- Issuance of regulations establishing protections for domestic workers.
- Enactment of a new anti-trafficking law and establishment of the National Committee on Trafficking.
- Training of labour inspectors to target child labour, enhanced co-operation between government agencies and key NGOs, and establishment of the National Steering Committee on Child Labour to co-ordinate and leverage efforts.
- Improvements in technical and vocational training.<sup>32</sup>

Jordan launched a National Employment Strategy (NES) for 2011-20, officially endorsed in May 2011. Defined in co-operation with various partners, including the Jordan Chamber of Industry, the NES recognises that “employment remains a daunting challenge not so much for lack of analysis or diagnosis of the underlying problems and their solutions, but because of a lack of consistency in following through on plans and creating the institutional environment in which policy co-ordination, monitoring, and evaluation are applied to achieve the desired outcome of job creation” (Jordan, 2012).

The objectives of the NES are threefold. On the demand side, the strategic goal is to enable the private sector to move up the value chain, improve productivity, and expand the ability to export products and services. On the supply side, the goal is to graduate a skilled and motivated labour force armed with employable skills and technical knowhow as demanded by the labour market. The institutional framework goals are to enhance the ability of the government to carry out policy implementation, monitoring, and dialogue with social partners; and to establish a level playing field of social protection and access to health insurance. The 70 identified actions to be carried out are sequenced by periods of implementation. The Ministry of Labour is in charge of leading the process and setting up a monitoring mechanism.

The Ministry of Labour also launched the Golden List Programme.<sup>33</sup> The objective is to assess the actual performance of enterprises and their compatibility with labour standards and mechanisms as adopted by the programme and stated in the Labour Code. Any enterprise that has been

inserted within the Golden List after meeting all the indicated conditions shall be exempted from the bank guarantee stipulated in the Labour Law instructions in the event the employer wants to recruit foreign workers. According to the Ministry of Labour website, 42 companies are inserted in the Golden List.

Jordan also benefitted from programmes and technical assistance activities led by international organisations, in particular the ILO. The Better Work Jordan programme<sup>34</sup> is a five-year joint project between Government, the ILO and the IFC, launched in February 2008. It aims at improving compliance with labour standards and promoting competitiveness in Jordan's apparel industry by assessing current workplace conditions and offering customised advisory and training services to factories to address their individual needs.

Better Work Jordan (BWJ) conducts companies' assessment and collects data illustrating non-compliance with labour standards according to eight clusters: four based on ILO core labour standards regarding child labour, forced labour, discrimination, and freedom of association and collective bargaining, and four indicators based on national law of working conditions (compensation, contracts and human resources, occupational safety and health, and working time). The first public synthesis report in May 2010 covered 15 factories assessed by the programme, the second 24 factories and the last one released in March 2012, 27 factories, employing more than half of the total workers in the apparel industry.<sup>35</sup> The government decided to make the Better Work Jordan Programme mandatory for all garment factories. As of February 2012, 53 out of the 80 companies joined the programme (ILO, 2012). Following its implementation in the garment sector, Better Work Jordan plans to consider expansion to other labour-intensive Jordanian industries that contribute to global supply chains.

In March 2012, the second ILO Decent Work Programme in Jordan was launched. The Decent Work Programme, which is directly aligned with the National Employment Strategy and the National Executive Development Plan for 2011-13, is designed around the following three pillars: decent work opportunities for young Jordanians; a minimum level of social security extended to the most vulnerable groups of society, as part of a more comprehensive social security system in Jordan; the enhancement of employment opportunities, especially for young people (ILO, 2012).

In recent years, efforts have been made by the Jordanian government to address the issue of employment. The legal and institutional framework has been reinforced, an ambitious national strategy has been launched, programmes supported by international organisations have had an impact, but several challenges remain. The application of the law is still uncertain,

inspectors still note abuses in QIZs, suspicion of forced labour exists (US Department of States, 2011), several key international conventions are not signed, and the social dialogue is insufficient.

### **Environment**

The environment chapter of the *Guidelines for Multinational Enterprises* recommends that enterprises should take due account of the need to protect the environment, public health and safety, and generally to conduct their activities in a manner contributing to the wider goal of sustainable development. In particular, enterprises should establish and maintain a system of environmental management; provide information on the potential environment, health and safety impacts of the activities of the enterprise and of their products; and assess and address the foreseeable environmental, health, and safety-related impacts associated with the enterprise's activities. The *Guidelines* also recommend that enterprises continually seek to improve their environmental performance, and where appropriate, of their supply chain; provide adequate education and training to workers in environmental health and safety matters; and contribute to the development of environmentally meaningful and economically efficient public policy.

One of the main objectives of the Jordanian development plans has been to increase the quantity and value of Jordanian exports with a view to sustain economic growth, but insufficient attention has been paid to protecting the environment. Increasing industrialisation and urban development have resulted in several environmental problems with respect to water, land and air-pollution. Moreover, poor co-ordination among concerned institutions has led to increasing pollution problems in Jordan.

With respect to the legal framework, until 1995, environmental protection was provided for in laws which were designed to regulate other sectors, regions, services and activities. There were 187 articles in at least 18 laws and 8 regulations dealing with preservation of environmental resources in Jordan. Those laws pertained to specific sectors (water, agriculture, antiquities, quarries, etc.), regions (e.g. Aqaba, Jordan Valley) or specific activities (Traffic Law, Crafts and Industries Law, Municipalities Law, etc.). Most of these laws date back to the 1950s and 1960s when environmental awareness was still limited and environmental challenges – such as air pollution – less noticeable. As result, there were duplication and overlap between the laws, as well as many gaps where environmental issues are concerned. The National Environment Strategy for Jordan, developed in 1991, pointed out all these legal difficulties and strongly recommended the introduction of a special environmental legislation.

In 1995, the Law for the Protection of the Environment was adopted and a dedicated Ministry of Environment was created in 2003. A new Environment Protection Law No. 52 was subsequently adopted in 2006, repealing the 1995 Law (Table 5.2 in Chapter 5). Among other provisions, the law made environmental impact assessments (EIAs) mandatory for any companies with activities that bear on the environment. An upgrade of the provisions related to the EIAs with the assistance of USAID and a revision of the law with the support of the EU are ongoing with a view to establish a permitting framework that is efficient and investment friendly.

The government is also monitoring the activities of firms through its Royal Department for Environmental Protection, a unit in the Ministry of Environment that inspects industrial facilities to check their conformity with environmental regulations. Companies can be prosecuted for failing to follow regulations, and this can have a deterrent effect on harmful environmental practices. The government is also implementing a number of initiatives to encourage companies to adopt energy efficiency practices, water conservation and low-carbon buildings among other environmentally-friendly conduct (Chapter 5).

While the Ministry of Environment is the focal point on environmental issues in Jordan many ministries and sub-national institutions are involved, directly or indirectly in environmental management. The Development Zones Commission (DFZC) has made Strategic Environmental Assessments (SEA) an obligatory requirement for each new development or free zone to ensure that environmental issues are considered in an early stage of zone planning and conceptualisation. A Master Developer is required to conduct an SEA for the Master Plan and then prepare a Strategic Environmental Management Plan (SEMP) that would guide investment environmentally, provide measures to mitigate adverse impacts and propose compulsory and voluntary actions to enhance sustainable management of natural resources and integration of the environment within socioeconomic development.

To facilitate work within development and free zones, DFZC, as per the Development and Free Zones Law, has established a one-stop-shop service which entails an integrated permitting process for starting new businesses which includes environmental clearance. The latter is granted for economic activities after a screening process that classifies the activity according to its potential risk. For low risk activities, approval is given through a fast-track process and forms the basis for the environmental permit. For high-to-medium risk activities, further assessment is required through an EIA (full or limited scope) or additional permit conditions are requested. DFZC has just started applying this model of environmental clearance and it is expected to improve the environmental-friendly business climate as DFZC has responsibilities over all free zones and industrial estates (Box 3.7).

Regarding measures to encourage enterprises to offer training to employees on environmental issues, the Ministry and the National Energy Research Centre conduct awareness and training programmes through specialised training courses and guidance seminars for professionals and the general public. Guidance tips were prepared through the Jordanian TV and Radio, in addition to free distribution of publications on ways to conserve energy. The National Energy Research Centre issued a handbook of energy conservation equipment and devices, participates in specialised conferences on saving energy consumption and set up a direct line in the Office of the Public Service on energy and electricity.

There are nine non-governmental organisations dealing with environmental issues in Jordan and some regional associations. However, most of them are not targeting promotion of green business conduct and few initiatives have been conducted in this area, though it should be noted the organisation of the regional Corporate Environmental Responsibility Summit in 2007 and its interesting conclusions and initiatives that seem yet to be implemented (Box 4.3).

There is limited awareness in Jordan on green business conduct and initiatives to encourage enterprises to promote it (for example, disclosure of corporate environmental information on GHG emissions and water use) are scarce. The government is encouraging clean electricity generation, low-carbon transportation projects and wastewater treatment (Chapter 3, section on infrastructure), but more needs to be done to mainstream green growth into economic development action plans and to promote corporate environmental performance.

### **Combating bribery, bribe solicitation and extortion**

The chapter on combating bribery, bribe solicitation and extortion of the *Guidelines* recommends that enterprises should not offer, promise, give, or demand a bribe or other undue advantage to obtain or retain business or other improper advantage. The chapter covers bribe solicitation and extortion, and third parties such as agents and other intermediaries, representatives, distributors, consortia, contractors and suppliers. It also includes now the obligations for enterprises to develop and adopt adequate internal controls, ethics and compliance programmes or measures for preventing and detecting bribery. The *Guidelines* also recommend that enterprises promote employee awareness of and compliance with, company policies and measures against bribery, and that they refrain from making illegal contributions to candidates for public office or to political parties or to other political organisations.

The section on anti-corruption in Chapter 3 describes the legal and institutional framework to fight against corruption. Following the recent

#### Box 4.3. **The Arab Forum for Environment and Development**

The Arab Forum for Environment and Development (AFED), a regional non-governmental organisation, aims at promoting prudent environmental policies and programmes across the Arab region. Composed by experts and representatives of the civil society, business community and media, AFED also admits, in capacity of observers, national, regional and international bodies working in the fields of environment and sustainable development. AFED was created in Beirut in 2006, at the conclusion of a regional conference on public opinion and the environment, though the initiative started in 2001 as an informal gathering.

AFED received the status of international NGO and has been endorsed by the League of Arab States (LAS) and the United Nations Environment Programme (UNEP). AFED works towards bringing together all parties concerned with environment and development in the Arab world to discuss regional and national issues related to the environment, emphasising the pivotal role of civil society and the private sector. The Forum aims at spreading environmental awareness through promoting sensible information and education programmes, as well as supporting civil society organisations active in the environmental sector. An independent periodic report on the State of Arab Environment (SAE) is produced by AFED.

A Corporate Environmental Responsibility (CER) Summit was organised in Abu Dhabi in 2007 and attended by over 120 chief executives representing major business sectors from across the region. Participants agreed on taking the commitment to advance and adhere to the principles of environmental responsibility and cleaner production, and set a target to reduce the consumption of energy and water in their operations by 20% by the year 2012. The Corporate Environmental Responsibility Programme launched in 2008, which seeks to institutionalise environmental thinking and action in corporate decision-making, provides the platform to translate the declaration into action. Through the programme, AFED proposes to work in partnership with a group of corporations to improve their environmental performance. The CER programme proposes to conceive and implement an environmental sustainability reporting initiative with a view to enable CER corporate members to adopt a set of environmental accounting tools, which corporations can utilise to communicate to the larger public about their environmental performance.

Source: [www.afedonline.org/en/inner.aspx?menuID=1](http://www.afedonline.org/en/inner.aspx?menuID=1).

public discontent in this area, political will for reform is becoming more visible. Legislation still needs to be improved and better implemented. The institutions in place should build their capacities and receive stronger

governmental support. The 2011 assessment of the UNCAC Implementation Review Group mentions that Jordan should continue its efforts to update its legislation with a view to criminalising corruption in the private sector and more generally to strengthen the judiciary with a view to better apply legislation and enforce sanctions (UNODC, 2011).

According to Trust Law, “the government encourages foreign investment, but companies should note that the use of *wasta* to advance business interests is very widespread in Jordan. This has in part affected some foreign companies and large American companies operating in Jordan have reported hidden costs stemming from bureaucracy, red tape, vaguely formulated regulations and conflicting jurisdictions. It is recommended that foreign investors therefore implement integrity systems and carry out extensive due diligence when exploring investment opportunities, looking for partners, and concluding purchases agreements.”<sup>36</sup>

### **Consumer interests**

The chapter on consumer interests of the *Guidelines* recommends that enterprises act in accordance with fair business, marketing and advertising practices and take all reasonable steps to ensure the quality and reliability of the goods and services they provide. Enterprises should co-operate fully with public authorities to prevent and combat deceptive marketing practices and to diminish or prevent serious threats to public health and safety or to the environment deriving from the consumption, use or disposal of their goods and services. The *Guidelines* emphasise on promoting consumer education by enterprises in areas that relate to their business activities to help consumers make informed decisions, better understand the economic and social impact of their decisions and support sustainable consumption.

In Jordan, like in Morocco, there is no consumer protection law, unlike in other countries in the region (Algeria, Egypt, Lebanon, Tunisia and Syria). Few provisions can be found in the legislation on the issue. The Penal Code provides for customer due diligence, with Article 14 specifying that due diligence needs to be undertaken at the start of a business relationship, and when transacting with occasional customers. The Competition Law also provides for some provisions dealing with consumer interest: practices and arrangements, as exempted by the Minister of Industry and Trade, “shall not be considered anti-competitive if they lead to positive results, including (...) providing certain benefits to the consumer” (Article 7 B). A licensed consumer protection association or any group of at least five consumers can bring a claim on a case of violation of the Competition Law to the public prosecutors (Article 17). Finally, the Competition Affairs Committee should have as a member the president of any consumer protection association which should be named by the Minister.



No governmental agency dedicated to consumer protection has been set up. The Quality and Market Control Directorate of the Ministry of Industry has the responsibility to receive complaints from consumers and initiate investigations.

In 2001, the National Society for Consumer Protection (NSCP) was set up as an NGO. It contributed to the preparation of a draft law that included a mandate for a Higher Council for Consumer Protection, as well as provisions for the establishment of consumer protection societies nationwide. The draft law was submitted to the Ministry of Industry and Trade but has never been presented to Parliament for adoption. In addition, the NSCP remains largely dependent financially on the government which may lead to conflict of interest. A second consumer group, the Consumer Rights Association was created in 2009 by a few consumer activists and journalists (Sengupta, R. and U. Mehta, 2012).

Some regional initiatives are worth mentioning, such as the existence of provisions pertaining to consumer protection in the Charter on Human Rights adopted by the Council of Arab States in 2008; the launch of an Arab Consumer Day on 1 March every year by the members of the Gulf Cooperation Council; and the existence of an United Arab Consumers Federation which comprises a network of consumer organisations from 15 Arab countries (Sengupta and Mehta, 2012).

Generally, the issue of consumer protection is rather neglected in Jordan. The Economic Dialogue Committee Report of May 2011 recommends enhancing consumer protection tools and accelerating the issuing of the Consumer Protection Law. The media is slowly starting to build consumer awareness which seems to be rather low and limited. Civil society does not show strong interest and engagement in the area and the business sector seems indifferent. From the government side, more would need to be done to enact and enforce a consumer protection law, create an independent governmental body, support the consumer protection associations, explore the links between competition and consumer protection issues and build awareness of consumers. Companies are also encouraged to take into account the consumer protection dimension in their business conduct.

## Notes

1. [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines).
2. Chapter I. Concepts and Principles, paragraphs 1, 3, 5 and 7.
3. Section I.1 of Council Decision C/MIN(2011)11.
4. Section I.4 of Council Decision C/MIN(2011)11.
5. As provided by the Implementation Procedures of the *Guidelines*.

6. *Guidelines*, Chapter II, General Policies.
7. Due diligence is understood as the “process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems.” See Commentaries on Chapter II, General Policies, *OECD Guidelines*, 2011.
8. The term ‘business relationship’ includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services. See Commentaries on Chapter II, General Policies, *OECD Guidelines*, 2011.
9. [www.unglobalcompact.org/NetworksAroundTheWorld/local\\_network\\_sheet/JO.html](http://www.unglobalcompact.org/NetworksAroundTheWorld/local_network_sheet/JO.html).
10. [www.theaslg.com](http://www.theaslg.com).
11. Source: Dealogic M&A Analytics.
12. Jordan Securities Commission (2008), Corporate Governance Code for Shareholding Companies Listed on the Amman Stock Exchange, [www.sdc.com.jo/english/images/stories/pdf/corporate\\_companies.pdf](http://www.sdc.com.jo/english/images/stories/pdf/corporate_companies.pdf).
13. The legal obligations of the provisions of the Code are recognised by the JSC Circular 12/1/4659 of 15 December 2010.
14. Central Bank of Jordan (2007), Corporate Governance Code for Banks, [www.sdc.com.jo/english/images/stories/pdf/corporate\\_governance\\_banks.pdf](http://www.sdc.com.jo/english/images/stories/pdf/corporate_governance_banks.pdf).
15. The annual report should include the bank’s corporate governance code, information on each director, organisation chart, terms of reference of Board Committees, remuneration policy, information on the risk management department and the bank’s significant shareholders.
16. Instructions No. 2 of 2003 and its amendments of the Insurance Commission of Jordan.
17. Disclosure requirements include any relationship between the chairman of the board of directors of the company and its general manager, the organisational structure including the structure of the board of directors and the executive management as well as their qualifications and experiences, the remuneration policy for every member of the board of directors and the executive management, the main risks in the company and the risk management policy.
18. Jordan ratified in 1975 the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights. However, it has not ratified the additional protocols to the Covenant on Civil and Political Rights. It also ratified the conventions on elimination of racial discrimination, on discrimination against women, against torture and on the rights of child, the latest three in the 1990s. Jordan is the only nation in the Middle East and North Africa that is a member of the International Criminal Court.
19. Article 4 of the Law No. 51 for the year 2006 establishing the NCHR.
20. [www.nchr.org.jo/english/AboutUs/StrategicPlan/StrategicPlan20102012.aspx](http://www.nchr.org.jo/english/AboutUs/StrategicPlan/StrategicPlan20102012.aspx).
21. [www.amnesty.org/en/region/jordan/report-2011](http://www.amnesty.org/en/region/jordan/report-2011).
22. <http://worldjusticeproject.org/country/jordan>.
23. [www.ilo.org/dyn/normlex/en/f?p=1000:11200:3027331298383801::NO::P11200\\_COUNTRY\\_ID:103201](http://www.ilo.org/dyn/normlex/en/f?p=1000:11200:3027331298383801::NO::P11200_COUNTRY_ID:103201).

24. Right of association, right to organise and bargain collectively, prohibition on the use of any form of forced or compulsory labour, minimum age for the employment of children, and acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
25. According to article 23 of Jordan' Constitution of 1952: "i) Work is the right of every citizen, and the State shall provide opportunities for work to all citizens by directing the national economy and raising its standards. ii) The State shall protect labour and enact legislation therefore based on the following principles: a) Every worker shall receive wages commensurate with the quantity and quality of his work. b) The number of hours of work per week shall be defined. Workers shall be given weekly and annual days of paid rest. c) Special compensation shall be given to workers supporting families and on dismissal, illness, old age and emergencies arising out of the nature of their work. d) Special conditions shall be made for the employment of women and juveniles. e) Factories and workshops shall be subject to health safeguards. f) Free trade unions may be formed within the limits of the law.
26. [www.freedomhouse.org/report/freedom-world/2012/jordan](http://www.freedomhouse.org/report/freedom-world/2012/jordan).
27. Only 40 % of the population above 15 years old is economically active (ILO, 2012).
28. 15% of women participate in the labour force in Jordan, compared to an average of 27% across the MENA region. World Bank (2010), GenderStats, Washington. See also OECD, 2012.
29. The median age in Jordan is 24 years old (ILO, 2012).
30. In particular women as 45 % of public sector employees are female (Jordan, 2012).
31. [www.nationalagenda.jo/Portals/0/EnglishBooklet.pdf](http://www.nationalagenda.jo/Portals/0/EnglishBooklet.pdf).
32. The National Employment Strategy states that "technical and vocational training continues to be weak and fragmented [... due to] the poor state of governance of the sector. In spite of a strategic focus by the National Agenda and considerable donor funding, reforms are slow, co-ordination is lacking, and quality control is weak or nonexistent. Beyond the conventional public programs, not-for-profit and private training providers are making considerable innovations."
33. [www.mol.gov.jo/Default.aspx?tabid=206](http://www.mol.gov.jo/Default.aspx?tabid=206).
34. [www.betterwork.org/sites/Jordan/English/Pages/index.aspx](http://www.betterwork.org/sites/Jordan/English/Pages/index.aspx).
35. All three reports are available on the BWJ website.
36. [www.trust.org/trustlaw/country-profiles/good-governance.dot?id=a3ac5e60-ea33-4cd5-8619-5380bc3d7648](http://www.trust.org/trustlaw/country-profiles/good-governance.dot?id=a3ac5e60-ea33-4cd5-8619-5380bc3d7648).

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## Chapter 5

### **Jordan's investment framework in support of green growth**

*Jordan is facing environmental challenges. It is one of the world's most water-poor countries and the energy mix is heavily focusing on oil. There are significant opportunities in terms of mobilising private investment, including foreign, in support of green growth. The National Energy Strategy plans to increase by 2020 the share of renewable energy sources in the energy mix to 10% and to reduce the energy consumption by 20% through energy efficiency measures. A Law on Renewable Energies and Energy Efficiency was adopted in 2010 and incentives are provided. Despite promising initiatives, gaps remain to increase investment in green sectors. The phasing out of fossil fuel subsidies and a feed-in tariff could help stimulate investment in renewable energy. A closer monitoring of government programmes could also ensure better results.*

This chapter provides an overview of Jordan's policy framework for investment in support of green growth. The OECD defines green growth as "fostering economic growth and development, while ensuring that natural assets continue to provide the resources and environmental services on which countries' well-being relies. To do this, it must catalyse investment and innovation which will underpin sustained growth and give rise to new economic opportunities" (OECD, 2011).<sup>1</sup> Investment for green growth includes *inter alia* investments in infrastructure such as water sanitation and distribution, transport, and housing, renewable energies, energy efficiency, and natural resource conservation.

A framework for green investment is in many aspects similar to an enabling framework for investment in general: a solid investment framework will, in principle, also provide a good basis for green investment. However, a good investment framework will not necessarily contribute to direct investment in green (or less polluting) activities and operations unless certain elements are also given – starting with i) a strong government commitment, both at international and national levels, to support green growth and promote private investment to support achievement of these goals; ii) policies and regulations that guide investors towards greener investment, including policies promoting green business conduct; iii) the country's institutional capacity to design, implement and monitor green investment policies; iv) incentives for green investment; and v) policies supporting private participation in green infrastructure projects. This chapter describes Jordan's investment framework in these areas.

## Green growth in Jordan – challenges and opportunities

Like many countries, Jordan faces both challenges and opportunities in promoting green growth. The challenges involve energy security, demographic changes, climate change and water stress. Key opportunities are linked to Jordan's natural resources, particularly renewable energy; its relative political stability at a time of upheaval in the region; and the potential for technological innovation. A measured and inclusive approach, based on a sound policy framework that promotes investment in green sectors, can help address the challenges and exploit the opportunities in a way that complements a sustainable development path for Jordan.

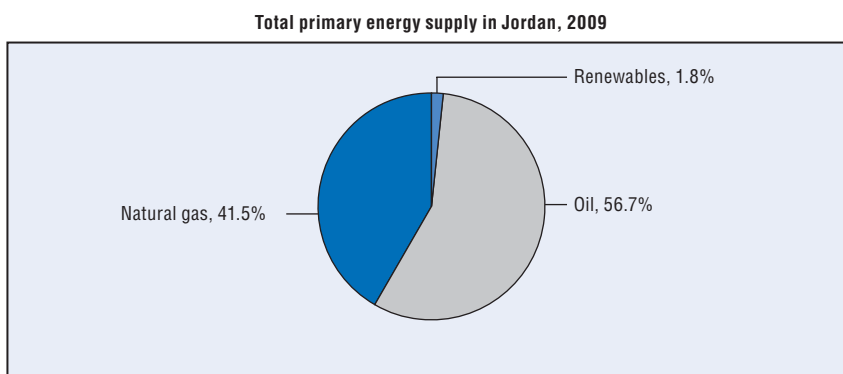
## Challenges

### Securing Jordan's energy security

Jordan faces two related challenges: its reliance on energy imports and its heavy consumption of fossil fuels. The Kingdom has few fossil fuel resources of its own and imports 96% of its energy needs from its neighbours in the region (REEP, 2010). Until 2003, Jordan secured most of its oil supplies from Iraq via overland truck routes at highly discounted prices. Since late 2003, following the war in Iraq, Saudi Arabia has been Jordan's primary source of imported oil, which is transported by tanker through the Aqaba port. Saudi oil is also subsidised, but not to the same extent as Iraqi crude oil was. Jordan also imports gas from Egypt through the Arish-Amman part of the Arab Gas Pipeline. However, as a result of the unrest in Egypt in 2011, the pipeline has been attacked 11 times and supplies were interrupted for a total of 150 days (Trend, 2012). As a result, the government of Jordan has been compelled to use its limited oil and diesel reserves, at a cost of USD 5 million a day, and to resort to costly gas imports from Iraq and Qatar.<sup>2</sup> The IMF estimates that the public debt to GDP ratio increased by about 64.5% at the end of 2011 because the Jordan National Electric Power Company had to borrow heavily to defray the costs of importing fuel products (IMF, 2012). If supplies from the Arab Gas Pipeline continue to be interrupted, the Energy Ministry estimates that the Treasury could lose USD 2 billion by the end of 2012. The pipeline attacks illustrate the danger of depending on external supplies of energy and raise the question of how Jordan can ensure its energy independence while meeting its energy needs.

The dominance of fossil fuels in Jordan's energy mix compounds the challenge of securing a stable and cheap supply of energy. Oil makes up 57% of the portfolio, followed by natural gas at 42%, while the share of renewable sources is negligible (Figure 5.1). Relying on oil exposes the country to

Figure 5.1. **Jordan's energy portfolio**



Source: IEA Energy Statistics, [www.iea.org/stats/pdf\\_graphs/JOTPESPI.pdf](http://www.iea.org/stats/pdf_graphs/JOTPESPI.pdf).

fluctuations in world oil prices and takes a heavy toll on the environment. Moreover, a forthcoming report to the UNFCCC will show that the energy sector produces 74% of greenhouse gas emissions in Jordan – mostly from carbon dioxide originating from oil combustion.<sup>3</sup>

### ***Dealing with demographic changes***

Jordan's population is growing by 2.2% a year (World Bank, 2012), a rate that has been exacerbated by waves of refugees from Iraq and Palestine – the latter now comprising over a third of Jordan's population and the influx of guest workers from South Asia. The arrival of thousands of Syrian refugees continues to strain resource needs such as health care provision. Water resources have also come under pressure by the flood of refugees (MEO, 2012). Given regional turmoil and uncertainties in the outcome of the Syrian unrest, Jordan may have to continue coping with an ever-increasing population due to refugees or immigrants and thus, increased stress in scarce resources.

### ***Water stress and the impact of climate change***

Jordan is one of the ten most water-poor countries in the world (Northcliff, 2008). Moreover, water resources are being rapidly depleted due to unsustainable usage patterns. Jordan withdraws 99.37% of its freshwater resources, and the exploitation of aquifers (mainly for agriculture) is twice the replenishment rate (UN, 2012). Over 90% of the country receives less than 200mm of rainwater a year, which limits the supply of renewable water resources even further (UNESCO, 2012). Population increase has exacerbated the problem by creating greater demand for water. While 97% of the population is connected to water supply infrastructure, compared to a global average of 86%, (UN, 2012) the actual provision of water belies the high rate of access. Utilities regularly disrupt water supply to cope with the overwhelming demand and it is not uncommon for some parts of Jordan to receive water only once a week. As a result, groundwater abstraction is far above replenishment levels and hundreds of illegal water wells are used across the country (MoPIC, 2011).

The government needs to address the country's water challenges with urgency due to demographic changes and the threat of climate change on water supply. Approximately 80% of Jordanians live in urban areas and as the population continues to grow, stress on water resources will continue to increase. Already, the per capita share of water is 145 m<sup>3</sup> per year which is well below the international water poverty level of 1 000 m<sup>3</sup> a year (MoWI). Moreover, climate change simulations suggest that temperatures in Jordan may increase by 1 °C to 1.3 °C by the year 2050, with even higher temperature increases in summer, while precipitation will probably decline (MoE, 2009). Therefore, Jordan will likely be even more vulnerable to droughts in the future. Also, runoff from rainfall is expected to decrease in most parts of the country,



placing a strain on food and water security as wheat and barley, the main agricultural staples, rely heavily on rainfall.

### ***The high cost of environmental degradation***

According to the World Bank, Jordan loses USD 205 million or 2.35% of its GDP per year due to environmental degradation (World Bank, 2010).<sup>4</sup> Air pollution accounts for 48% of the environmental degradation in Jordan, followed by water (35%), waste (10%), soil (5%) and coastal zones (2%) (World Bank, 2010). Vehicles are a significant source of carbon emissions, partly because about a third of all vehicles on the road were purchased before 1990 and are not energy efficient. Cement plants, mining activities and power plants are other major sources of air pollution. The consequences are serious and demand attention. Exposure to emissions has resulted in respiratory diseases, high health costs, productivity losses, reduced visibility and a lower aesthetic value of the natural landscape (World Bank, 2010).

Water quality is another cause of environmental degradation in Jordan. To respond to the problem, the government has commissioned a number of wastewater treatment plants to recycle wastewater in an efficient way. Moreover, it has identified a series of reforms that could address the water and waste situation in the Kingdom (see water and sanitation section below). However, Jordan fares badly on measures of progress on reforms related to the environment. The Kingdom is ranked 117th out of 132 countries on the Environmental Performance Index, which ranks countries on 22 performance indicators spanning ten policy categories related to the environment, public health and ecosystem vitality (Yale, 2012). Jordan is also one of the poorest performers in the region and has in fact declined in performance over time (Table 5.1). According to the Index, Jordan faces particular challenges in air quality, biodiversity and water resources. Jordan's ranking on the Index suggests that progress has been slow in meeting the government's stated policy goals on improving ecosystem vitality in terms of air, water and biodiversity.

### ***Opportunities***

Despite Jordan's environmental challenges, there are a number of opportunities that make the Kingdom an attractive destination for investment in green sectors. Jordan has an abundance of alternative and renewable energy sources that have not yet been fully exploited. Given energy consumption patterns, there is wide scope for energy efficiency investments that could in turn lead to financial benefits for the economy. Other promising areas include nascent industries such as clean tech, organic farming and eco tourism, which could take off given the right mix of incentives and investment. These opportunities are discussed below.

Table 5.1. **Environmental performance in Jordan and the MENA region, 2012**

2012 EPI Region Rank	
1	Egypt
2	Israel
3	United Arab Emirates
4	Saudi Arabia
5	Algeria
6	Lebanon
7	Tunisia
8	Qatar
9	Sudan
10	Morocco
11	Oman
12	Syria
13	Iran
<b>14</b>	<b>Jordan</b>
15	Libya
16	Kuwait
17	Yemen
18	Iraq

Source: Yale Centre for Environmental Law and Policy.

### **Renewable energy**

Between 1997 and 2007, power consumption in Jordan grew by 60%, a trend reflected in other countries in the region. For instance, the growth rate was 62%, in Saudi Arabia 73% in Egypt and 96% in Iran (GE, 2010). This trend is projected to continue, ostensibly presenting a challenge but in reality also offering an opportunity for Jordan and its neighbours. According to the Electricity Regulatory Commission, renewable energy amounts to 108 MW of installed electricity capacity, which is equivalent to 3.5% of the total electricity generated in Jordan (ERC, 2010). The proportion of renewable energy in Jordan is consistent with the Middle Eastern average of less than 5% (USAID, 2011). However, some analysts project that by 2050, about 50% of the region's electricity will be generated from renewable sources (Menon, 2010) and were Jordan to fully exploit its solar resources now, it could become a global leader and exporter of renewable energy in the future. Currently, renewable energy is estimated to contribute 2.5% to 4% growth to Jordan's GDP and to create at least 3 000 new jobs (USAID, 2011). Because renewable energy projects are more labour intense than conventional energy sources, there are reasons to expect a net increase in employment from renewable energy, which could be significant at a time when jobs in the hydrocarbons sector are minimal (OECD, 2012 forthcoming b).

Solar energy is a significant opportunity for Jordan, and the MENA region as a whole. Jordan has favourable conditions for solar energy, with almost flat topography in the Southern region, approximately 300-330 sunny days per year, irradiation rates of 2 600 Kwh/m<sup>2</sup>/y, and no significant humidity to hinder the operation of solar cells. Jordan could benefit by developing concentrated solar power (CSP) production capacity and supporting infrastructure but funding and incentive schemes are needed to support this development in the short to medium term. Funding sources could include climate finance, concessional loans, revenue from exporting solar electricity to Europe, while incentives such as long-term power purchase agreements, feed-in tariffs and tax rebates can also help bring investment into CSP (USAID, 2011).

**Box 5.1. The Sahara Forest Project: Investing in Solar Energy by Creating Synergies**

The Sahara Forest Project illustrates how investment in solar energy can create positive externalities beyond the scope of a single project. The Sahara Forest initiative generates solar electricity that can be used to power desalination plants, thereby increasing water supply for agriculture and developing the local community. A feasibility study was concluded in April 2012. The project will be developed in the Aqaba special economic zone, whose proximity to the Red Sea will enable sea water to be pumped to the site of the solar power plant and converted into fresh water, which can then be used for farming purposes. This project is innovative because it takes an inclusive and holistic approach, making linkages between energy, water, agriculture and local development and creating synergies among different technologies. It also combines the contributions of the public and private sectors in a way that maximises their respective merits: the Aqaba SEZ authority facilitates access to land and a water pipe running from the Red Sea; the developers creates linkages with the local communities and sought to understand the local conditions; private investors provides capital; the government of Norway financed the feasibility studies; and local universities and NGOs have also been involved. The project has a regional element, as a pilot project will also be undertaken in Doha, Qatar. The developer estimates that were the Sahara Forest project rolled out into ten areas, it is expected to create investment opportunities of USD 1.5 billion.

*Source:* Institute of International of European Affairs, Presentation, [www.iiea.com/event/archive\\_view?urlKey=greening-the-desert-the-sahara-forest-project](http://www.iiea.com/event/archive_view?urlKey=greening-the-desert-the-sahara-forest-project) (2012) and SFP (2012), Sahara Forest Project: Enabling a Green Future for Jordan, [http://saharaforestproject.com/SFP\\_jordan.pdf](http://saharaforestproject.com/SFP_jordan.pdf).

Wind power is also a promising renewable energy resource in Jordan. Currently, Al-Ibrahemya (320 kW) and Hofa (1 125 kW), two wind farms, are operating in Northern Jordan, producing 3 GWh per year (Energy Charter

Secretariat, 2010). This compares to the government's goal to produce 600 MW or 1 577 GWh from wind energy by 2020. Seven other wind projects are in the pipeline, with the potential to add 940 MW if fully developed (EIB, 2010). Hydropower is limited to one project, the 10 MW King Talal Dam, although there is potential to develop three small dams at Aqaba provided the Electricity Regulation Commission approves it. Geothermal resources, while available on the Dead Sea Rift, are not enough to generate electricity and are rather used for heating at local sites.

### ***Energy efficiency***

In addition to renewable energy, energy efficiency is a promising industry estimated to attract around JD 195 million (about USD 270 million) annually over the next ten years. Investments in energy conservation can also save the nation one-fifth of its energy usage over the next 12 years (UNEP, 2011). A key part of the energy efficiency industry is green buildings. There is potential for a strong green building market in Jordan, especially in the context of a burgeoning residential and industrial construction market. In fact, it is projected that the residential and commercial green building sector in Jordan will witness growth rates that exceed 20% a year in the next five years, spurred by an expanding construction sector and population and business growth (USAID, 2011). USAID recommends that, in order to give a boost to the green building sector, the government should set clear standards for construction, materials, and landscaping (USAID, 2011). The government should also mandate all new public sector builds to be LEED-compliant (USAID, 2011).<sup>5</sup> While this would raise capital costs by 1%-10% initially, the returns from more efficient operations would make up for the initial investment.

### ***Clean technology***

The Sustainable Achievement of Business Expansion and Quality (SABEQ), was a USAID economic development initiative undertaken between 2006 and 2012 with the aim of establishing "innovation clusters" in order to boost competitiveness and productivity in Jordan. The programme helped establish a clean technology innovation cluster in the Ma'an development zone. The cluster is a platform that brings together representatives of various sectors (government, research and academia, NGOs, private sector, service providers, donors, etc.) to exchange views and knowledge on clean technology challenges and projects. SABEQ undertook a study that selected Ma'an as a potential hub for renewable energy supporting industries, building on the existing interest in solar power projects and the abundance of silica in Ma'an region which can be used to manufacture glass-based components for solar PV and CSP equipment and in green building applications. Moreover, establishing the cluster in a development zone would appeal to investors,

because they could share labour resources, branding, supply chains, waste streams and technologies (USAID, 2011).

USAID has estimated that Jordan could generate USD 80 million in investment in its clean tech sector within two years if the right regulatory framework and incentives were in place (USAID, 2011). At present, only the United Arab Emirates has pursued clean technology at a significant scale, through projects such as Masdar City, so Jordan would join a sparse field were it to develop this niche sector aggressively.

### **Other Opportunities**

The Ministry of Environment commissioned UNEP to produce a Green Economy Scoping Study, which, *inter alia*, identified some of the benefits that could accrue to Jordan from investing in environmental conservation. The study estimates that such investment could result in a minimum of 50 000 jobs and over JD 1.3 billion in revenues over 10 years (UNEP, 2011). In order to achieve these benefits, an integrated and co-ordinated approach that involves all branches of the government would be needed. Moreover, a USAID study found that the government would need to assess and target the right niches (such as those highlighted in box 5.2); identify key drivers (regulations, policies and consumer demand); consider short-term subsidies and funding mechanisms that offset high capital costs; develop local markets; nurture a specialized workforce; and support research and development (USAID, 2011). Box 5.2 provides a summary of some of the green opportunities in Jordan.

#### **Box 5.2. Opportunities for green growth in Jordan**

The **transport sector** is the biggest energy consumer in Jordan and accounts for 24% of total energy emissions, the second biggest after energy industries. There is therefore significant scope to green the sector. The government removed customs duties and taxes on hybrid vehicles in 2008, in order to encourage the purchase of fuel efficient vehicles, which led to an increase in the purchase of hybrid vehicles but customs duties were reinstated two years later, leading to a drop in demand. The tax incentives on hybrid cars were reintroduced in 2012. It is worth considering further support to environmentally-friendly cars, as they can save the Jordanian economy JD 44 million a year.

In the **waste sector**, there is significant need for collecting and treating solid waste. There are some private recycling initiatives in place, and evidence shows that recycling can lead to energy savings of between 24% and 95% and a decrease in air pollution of between 20% and 95%. The municipality of Amman is looking to expand biogas waste-to-energy projects and to engage in PPPs in solid waste management more broadly.

**Box 5.2. Opportunities for green growth in Jordan (cont.)**

In the **agriculture sector**, organic farming has the potential to significantly improve agricultural production, and replenish soil nutrients, hence diminishing the environmental impact of conventional farming. Moreover, organic farming uses less water than conventional farming, which is important because agriculture is the biggest consumer of water of all sectors in Jordan. The government has set a target to have 5% of farms offering organic goods by 2014. However, few incentives have been offered for investment in the sector and there is no proper labelling system for organic products. This needs to be addressed to fully exploit the benefits of this niche.

According to a USAID study, Jordan leads the Arab region in **eco-tourism** and there is room to develop the sector even further. For instance, there are few nature reserves in the country, and there is a great need for environmental conservation efforts. A number of sites – such as the Badia area and Jawa – are ripe for eco-tourism investment. There is also scope for electricity and water efficiency measures, because tourists use significant amounts of both resources. The opportunity for green tourism jobs is worth exploiting. To illustrate, if 5% of all tourists used sustainable infrastructure, approximately 3 900 jobs could be created annually in addition to the already high levels of job creation from “regular” tourism. Incentives can be put in place to spur investment, such as subsidised access to technical assistance; access to grants and low-interest loans from dedicated government funds; and access to low-cost land for constructing LEED-compliant buildings. In addition, nature conservation efforts can help draw in tourists and ensure they do not degrade the environment.

Source: UNEP, 2011; Ministry of Environment, 2009; USAID, 2011.

The government of Jordan is interested in exploring nuclear energy, oil shale and natural gas as part of its energy sector strategy. However, these alternative energy options are controversial and their benefits in terms of securing Jordan's energy supply are alloyed by potentially adverse impacts on the environment and other negative consequences.

### **Nuclear energy**

Jordan is currently seeking to engage with private developers to build up to four nuclear reactors by 2022. A dedicated agency, the Jordan Atomic Energy Agency (JAEA) and a sector regulator, the Jordan Atomic Energy Commission (JAEC), were established in 2007. Since then, JAEA has signed an agreement with the French energy company, Areva, to explore uranium sites in central Jordan. The power generated from the reactors is expected to power water desalination plants and thus complement another government strategy to

develop alternative sources of water supply (JAEC, 2011). However, there has been significant public outcry over the government's plan to build the first 1 000 MW nuclear reactors near residential areas in Mafraq.<sup>6</sup> There are also concerns about the amounts of water needed to operate nuclear reactors, as a single reactor uses over 3 million gallons of water a day. This has led the government to locate the nuclear reactor near the Khirbit al-Samra wastewater treatment plant so that treated wastewater can be used to cool the reactor, but there are few examples in the world where this has been attempted successfully.<sup>7</sup> Moreover, a Parliamentary report recommended that the nuclear programme be suspended, in part because the Jordan Atomic Energy Agency under-estimated the cost of building the nuclear reactor by focusing only on the construction of the plant and overlooking other costs such as water cooling, electricity grid update, nuclear waste storage and plant decommissioning (MENA-FN, 2012). The nuclear programme in Jordan may continue to face obstacles unless clarity is achieved on the costs and full effects of the programme, and public acceptance is assured.

### **Oil shale**

Jordan's oil shale resources are estimated to be 50 billion metric tons, or the equivalent of 50 billion barrels of oil (NERC, 2012). The government wants to attract private investors to develop the oil shale potential in the country and there is some indication of reciprocal investor interest.<sup>8</sup> An agreement was signed with EESTI Energia, an Estonian company, to build a 600 MW-900 MW oil shale power plant, which is expected to start producing electricity in 2016. However, the process can disturb the land around which the shale is mined and negatively impact on air and water quality (Sierra Club, 2012). The extraction process also uses a significant amount of water, which can exacerbate the dwindling supplies in the country.

### **Natural gas**

Up to now, Jordan has imported the bulk of its natural gas via the Arab Gas Pipeline that stretches from the Al Arish terminal in Egypt to Aqaba in the South, on to northern Jordan and beyond. The government now wants to exploit domestic sources of natural gas, most of which are located in the eastern part of the country at the Risha gas field. The government launched a competitive bidding process in 2010 for the concession to develop the Risha field. BP won the concession and has begun exploration and development since 2010 (JEAC, 2011). In addition, the government plans to promote fuel switching to natural gas as a means of greenhouse gas mitigation (MoE, 2009). According to the Energy Master Strategy, USD 2.46 billion is needed between 2007 and 2020 to develop the natural gas sector. In particular, distribution networks need to be built at Aqaba, Zarqa and Amman; the Risha field

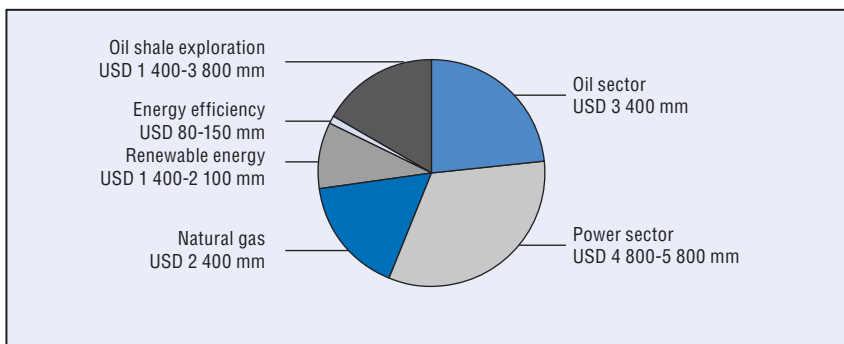
expanded; and additional capacity added to the Arab Gas Pipeline from Rehab up to the Jordan-Syria border (MoEMR, 2007). The private sector is expected to provide the capital and development expertise for these projects. Licences have already been issued to private companies to develop the relevant networks and supply commercial and residential customers with electricity (MoE, 2009). Despite this progress in local production, imported natural gas will continue to be an important source of energy supply in the Kingdom. The government aims to diversify its foreign suppliers by reducing imports from Egypt, which are rather limited, and exploring Saudi Arabia and Iraq as alternative sources (MoEMR, 2007).

The development of natural gas can have significant environmental impacts. It entails an intensive industrial process; wells need to be drilled and hydraulic fracturing used to extract the gas from the wells, which can limit land use; there is a risk of air pollution and contamination of surface and groundwater and greenhouse gas emissions are released during the entire cycle of natural gas supply (IEA, 2012). However, there are technologies and know-how that can reduce the scale of these challenges in order to reduce the environmental and social impact of natural gas extraction. The International Energy Agency, for instance, has compiled a number of “golden rules” for exploiting natural gas in a sustainable way, such as treating water responsibly and surveying the geology of the drilling area (IEA, 2012).

### **Investment needs in priority areas for green growth**

The Energy Master Plan estimates that USD 14 to 18 billion is needed for the energy sector between 2008 and 2020. Figure 5.2 illustrates the breakdown of the investment needs.

Figure 5.2. **Investment needs for the energy sector 2008-20**



Source: Ministry of Energy and Mineral Resources presentation: [www.eib.org/attachments/general/events/8th\\_conference\\_femip\\_sabra.pdf](http://www.eib.org/attachments/general/events/8th_conference_femip_sabra.pdf).



The total sub-sector needs mask some important details. For instance, the USD 1.4 billion needed for renewable energy is a fraction of the USD 14 to 18 billion needed for the energy sector overall during the same period. Also, while energy efficiency requires up to USD 150 million in investments, it could lead to important financial savings as well. The National Energy Research Council (NERC) analysed the potential savings for ten Jordanian enterprises (hotels, banks, and a health centre) were they to adopt energy efficiency measures. NERC estimates that an average investment of JD 1.3 million would be needed, at an average payback period of 1.6 years on the investment, in order to save 20% of their energy usage (NERC, 2010).

### Jordan's international commitment to green growth

A strong government commitment to support green growth objectives and set clear targets to reach such objectives provides encouraging signals to investors. The government currently allocates less than 0.5% of its budget to the environment (UNEP, 2011). The establishment of national green growth policies or economic development plans which integrate environmental concerns and opportunities, and the allocation of adequate public funds and other resources show government's determination to achieve green growth objectives and can help raise investors' confidence.

In 1992, Jordan signed the United Nations Framework Convention on Climate Change (UNFCCC) and ratified the Kyoto Protocol in 2003. Jordan is also signatory to a number of environmental conventions: the Regional Convention for the Conservation of the Red Sea (1982), also known as the Jeddah Convention; the Convention of Biological Diversity (1993); the Convention on Nuclear Safety (1994), the Convention on Combating Desertification (1996), the Stockholm Convention on Persistent Organic Pollutants (2002), and the Convention on Nuclear Safety (2009). Signing on to these conventions is more than a symbol of Jordan's commitment to the environment; it is also a factor in securing financing for green projects from the Global Environment Facility (GEF), a UNDP, UNEP and World Bank partnership that provides concessional funding for environmental projects. Jordan has already received funding under the GEF for the Gulf of Aqaba Environmental Action Plan (1995); for biodiversity in medicinal and herbal plants (2002); for ecosystem management of the Jordan Rift Valley (2006); for developing the wind power market (2007); and for energy efficiency (2008) (World Bank, 2010).

The EU-Jordan Association Agreement and the Barcelona Declaration of Measurement Principles give special consideration to regional co-operation in the environment field. Jordan is also eligible to receive funding under the LIFE programme, the EU's funding vehicle for environmental and nature conservation projects. As of September 2012, Jordan had received funding for nine projects (European Commission, 2012).

In only a few cases has Jordan made mention of the environment in its trade and investment agreements with other countries. The bilateral investment treaty (BITs) with the United States includes a preamble stating that investment can be encouraged without “relaxing health, safety and environmental measures of general application”. Jordan also signed a BIT with Canada (2009), which includes environmental provisions (Article 11). Specifically, Article 11 states that “it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures” and that both parties can consult with each other if one of them thinks the other party has waived its environmental measures in order to encourage investment. No other BITs to which Jordan is a Party include environmental provisions, although this omission is common among OECD and non-OECD countries (Gordon and Pohl, 2011).

In addition to BITs, free trade agreements (FTAs) can sometimes contain references to the environment. The Jordan-US FTA signed in 2000 states that each party should “strive to ensure that its laws provide for high levels of environmental protection” and that neither party would relax its domestic environmental laws in order to facilitate trade and investment with the other (Article 5). The negotiations leading up to this FTA resulted in the creation of a Joint Forum on Environmental Technical Cooperation, which aims to facilitate technical co-operation between the United States and Jordan on environmental initiatives. The Joint Forum has met thrice since its creation in 2000 and has developed two work plans that outline the nature of technical co-operation, including building capacity in government agencies to design and implement environmental policies and laws (US State Department, 2012). A 2012-13 work plan is expected to continue along these lines. There are no other examples of environmental provisions in FTAs with other countries.

## Regulatory and policy framework for green investment

Jordan has set a number of targets for greening its economic and social sectors and promoting the environment. Regulations, such as on improved resource use, reducing pollutants, product market competition, trade and FDI, private sector voluntary initiatives and procedural oversight, can incentivise or impede green growth depending on their formulation and application (OECD, 2011). Policies for green investment are context-specific but common formulations include a mix of market instruments such as taxes and levies on pollutant activities; targeted subsidies that shift incentives towards more environmentally-sound products and practices; measures to improve competition in electricity and water sectors; and financial incentives to stimulate investment in green infrastructure (OECD, 2011). Table 5.2 summarises relevant environmental policies and legislation in Jordan.

Table 5.2. **Summary of environmental policies and legislation**

Name of Policy/Legislation	Main features
National Biodiversity Strategy and Action Plan (2001)	Focuses on habitat and species protection; includes 60 proposed projects and five year implementation timetable; outlines priority measures such as creating a National Red Data List of endangered and vulnerable species; expanding the network of protected areas; establishing a national botanical garden and herbarium etc. Sets up a National Biodiversity Unit to monitor the implementation of the Action Plan.
Energy Efficiency Strategy (2005)	Removes subsidies on petroleum products and electricity; proposes building standards and performance standards for equipment; establishes an integrated energy database; calls for the creation of a dedicated fund for energy saving projects.
Environment Protection Law No. 52 (2006)	Main legislation on environment in the country; designates the Ministry of Environment as the responsible authority for environmental protection in Jordan; bans hazardous waste from entering the Kingdom; forbids pollution of territorial waters; makes EIAs mandatory for any companies with activities that affect the environment; establishes an Environment Protection Fund.
National Energy Strategy (2007)	Sets RE target of 7% by 2015 and 10% by 2020; 600 MW of wind energy projects and 300-600 MW of solar thermal projects; liberalises the oil market; phased removal of fossil fuel subsidies; establishes a single regulator for the electricity sector; sets a goal of reducing Jordan's energy consumption by 20% by 2020.
Nuclear Energy Law Nos. 42 and 43 (2007-2020)	Established the Jordan Atomic Energy Commission and the Jordan Nuclear Regulatory Commission.

### **Renewable energy and energy efficiency**

Jordan's National Energy Strategy (2007-20) sets targets to increase the share of renewable energy sources in its energy mix to 7% by 2015 and 10% by 2020. In order to meet this target, the government plans to install 600 MW in new wind generation capacity; 300 MW to 600 MW in solar power capacity; and 30 MW to 50 MW in biomass capacity by 2020. Other targets under the Energy Strategy include equipping 30% of all households with solar water heating system by 2020 and implementing a solar power demonstration project at Aqaba. The government plans to invest between USD 14 to 18 billion in the energy sector to achieve the goals of the Energy Strategy and the private sector is expected to contribute additional capital and expertise.

As a follow-up to Jordan's National Energy Strategy, a Law on Renewable Energies and Energy Efficiency (No. 3 of 2010) was adopted to boost the development of the clean energy sector. The Law mandates the Ministry of Energy and Mineral Resources to promote the exploitation of renewable energy sources and to identify a list of locations that demonstrate a high

potential for hosting renewable energy projects. The Ministry is also tasked with launching tenders to attract competitive proposals for projects. To catalyse investment and attract project bids, Article 11 establishes a Renewable Energy and Energy Efficiency Fund (REEEF) to provide the necessary funding for exploiting renewable energy sources (Box 5.3).

**Box 5.3. Renewable Energy and Energy Efficiency Fund (REEEF)**

The REEEF was created in 2010 to provide funding for renewable energy initiatives and activities geared towards reducing energy consumption. The Fund is capitalised from various sources: allocations from the general budget; aid from international donor institutions and domestic sources; a percentage of the proceeds from the sale of Certified Emission Reductions Credits (CERs); and other resources allocated by the Council of Ministers. The Fund has a legal personality and is administratively independent. The Board of Directors of the Fund oversees its activities, under the chairmanship of the Energy Minister, with members comprised of the Minister of Planning and International Cooperation, the Minister of Finance, the Secretary General of the Environment, and three representatives of the private sector.

The Fund provides incentives for investors to undertake renewable energy and energy efficiency initiatives. For instance, it offers: subsidies for privately owned and operated renewable energy facilities; interest rate subsidies on commercial loans used for related projects; a Public Equity Fund to support private investment into the sector; a renewable energy guarantee facility to ease credit access for project developers; and research and technical co-operation grants for targeted programmes and feasibility studies. Both national and foreign private companies are eligible to apply to the Fund. Because of the significant risks involved in green projects, due to new or untested technology, incomplete regulations, variable weather and so on, the REEEF offers risk-mitigation measures that can assuage investors' concerns. Moreover, many local financial markets may not be liquid enough to finance green projects. In response to these risks, However, The REEEF can help Jordan catalyse the growth of a clean energy market and position itself as a competitive destination for clean energy production.

The 2010 Law allows domestic and international companies to submit unsolicited proposals for renewable energy projects directly to the Ministry of Energy, instead of through a regular bidding process. The proposals must include details on the design, financing and use of local inputs related to each project. Applicants must demonstrate at least five years' experience in the renewable energy field, with a record of project implementation. They can propose a fixed electricity tariff, as long as it falls within a pre-determined

range, and be ready to enter into a Power Purchase Agreement (PPA) with the national power company, NEPCO, or retail supply licensees. Under this system, NEPCO is obliged to purchase the entire amount of electricity produced by private producers and is also expected to guarantee grid access to each facility and bear the associated interconnection costs (IEA/IRENA, 2012). The Ministry must give a response within six months of receiving the application. In addition, residential and commercial establishments that have installed renewable energy facilities on their premises are allowed to sell any excess electricity to NEPCO, thereby offering a strong incentive for clean energy use at small-scale level.

As of November 2012, 34 local and international firms had submitted expressions of interest for developing wind, solar photovoltaic and concentrated solar power projects in Jordan. The Ministry of Energy and Mineral Resources selected 20 of these companies and has started negotiations on the terms.<sup>9</sup> The strong response from the private sector bodes well for Jordan's future developments in renewable energy exists, although other complementary factors, such as interest from local banks, will also have an impact on how quickly the renewable market grows.

Following the adoption of the 2010 Law, Parliament passed an amended Law No. 13 on Renewable Energy and Energy Efficiency in 2012. Amendments include a new Article 11 that exempts all systems and equipment for renewable energy and energy efficiency purposes from customs duties and sales tax. The 2010 Law established a Renewable Energy and Energy Efficiency Fund and outlined the structure of a Board of Directors, comprised of Secretary Generals from various ministries and representatives of the private sector, to oversee its operations. The 2012 amendments create a Committee to manage the Fund instead, and the membership differs somewhat from the Board of Directors proposed in the 2010 law. The Committee is to be comprised of one Secretary-General (from the Ministry of Energy and Mineral Resources), two representatives from the public sector, and three representatives from the private sector. The 2012 amendments also list proceeds from the sale of Certified Emission Reduction credits as a potential financial resource for the REEEF.

While the government's clean energy targets demonstrate political commitment to the sector, they do not seem to be ambitious comparatively. For instance, Jordan's target to increase renewable energy to 10% by 2020 is less than Tunisia's target of 16% by 2016 (OECD, 2012 forthcoming) or Morocco's target of 15% by 2020 (OECD, 2012 forthcoming). The government mentions that the high cost of investment in renewable energy, plus the difficulty in securing funding, is a challenge for developing the renewable energy sector. However, experience in other countries, such as Germany, shows that the cost of renewable energy tends to go down over time as the market matures and new technologies are developed. Moreover, an EIB study

found that wind generated power is competitive with fossil fuel electricity, making the wind sector even more attractive from a financial stand point (EIB, 2010). While the 2010 Law and the 2012 amendments focus strongly on renewable energy, there is scant attention paid to energy efficiency. To address this gap, by-laws were developed for energy efficiency in various sectors. The by-laws cover the roles and responsibilities of different institutions, including an Energy Efficiency Office that would play a co-ordinating role; regulations on technical standards and labelling schemes; and provisions for collecting and monitoring data. The by-laws complement the National Energy Strategy, which targets reducing Jordan's energy consumption by 20% through improving energy efficiency by 2020. The transport sector is the biggest energy consumer in the country (38%), while the building sector consumes 35% of all energy in the country (Energy Charter Secretariat, 2010). Water pumping and street lighting, while low energy consumers, also have high potential for energy savings. Compared to other MENA countries, Jordan has had one of the highest rates of energy consumption per dwelling (OECD, 2012 forthcoming). There is therefore significant scope to introduce demand-side management solutions, such as smart grids, and to raise consumer awareness about the need to reduce energy consumption.

### **Water and sanitation**

As mentioned above, Jordan faces a number of problems related to water, including water scarcity, increasing demand, over-abstraction of groundwater sources and irregular supply. Aware of these challenges, the government of Jordan has formulated a Water Strategy covering the period 2008 to 2022. The Strategy aims to reduce the country's reliance on groundwater abstraction and diversify its water resources through wastewater treatment and alternative technologies such as desalination and the use of brackish water and rainwater harvesting. It defines a target of decreasing groundwater sources from 32% of the water supply in 2008 to 13% by 2022. At the same time, the share of treated wastewater is projected to increase from 10% to 13%, with most of it reserved for agricultural purposes. Moreover, the Strategy emphasises the need to improve efficiency in the provision of water supply, by reducing water distribution losses from 40% in 2010 to 25% by 2022 (Pinsent Mason, 2011). Improved metering and bill collection are expected to help in this regard. Another goal is to put in place cost-recovery tariffs to reflect the real value of water and discourage waste. To complement this goal, the Strategy highlights the need for demand-side management, including raising consumer awareness about the value of water.

Another aspect of the Strategy is demand-side management, including raising consumer awareness about the value of water. A USAID-funded programme, IDARA, has been instrumental in helping to reduce water demand

and create a conducive policy framework for water conservation. IDARA led to the adoption of a Water Demand Management Policy by the Council of Ministers in 2008 and to the creation of action plans by several ministries. The programme involved residential communities and private companies on a voluntary basis. Various private companies, including Coca Cola, Orange and Zain, participated in the programme. The first public-private partnership (PPP) in water efficiency in Jordan was spearheaded under IDARA, between HSBC bank and Miyahuna Water Company, a utility (Mendez England & Associates, 2011). The initial interest by the private sector suggests that water efficiency is a potential area for green investment in Jordan.

The government's water strategy involves increasing the amount of water supply in Jordan, in part through a number of strategic projects, the most notable being the Desi-water conveyance and the Red-Dead water conveyance projects (Box 5.4). To help fund these projects, the government has allocated 16.5% of the 2011-13 Executive Development Program funds for the water and wastewater sector, more than any other sector (MoPIC, 2011). The significant share of public spending reflects the government's commitment to addressing Jordan's serious water challenges. The funding is intended to rehabilitate water distribution and sewerage networks, upgrade water treatment plants, replace and modernise meters and facilitate operations and maintenance.

In addition to domestic measures, Jordan is co-operating with its neighbours on the shared management of water resources in the region. For instance, the government signed a bilateral water agreement with Israel in 1967 in which Israel would supply Jordan with water from the Jordan River. However, there has been increasing pressure from their neighbours for a more inclusive regional agreement that takes into account the needs of Lebanon and Palestine, who also share the Jordan River Basin. Jordan and Israel also signed the Wadi Araba Peace Treaty on 26 October 1994, in which they agreed that Jordan would have the right to use 3% of the water flow from the Jordan River while Israel could use 97% of it.

Institutionally, the Ministry of Water and Irrigation has overall responsibility for the water sector in Jordan, including wastewater management and irrigation. It formulates national policy, manages water systems, collects and disseminates data, and oversees projects. Under its jurisdiction are two other public entities. The Water Authority of Jordan (WAJ) was established by the WAJ Law of 1988 to develop water resources, construct and operate water and wastewater facilities and manage water and sewerage systems. The Jordan Valley Authority (JVA) was created by the JVA Law of 2001 and is mandated to carry out general economic development activities in the Jordan Valley,<sup>10</sup> including managing water resources for irrigation, hydroelectricity, and domestic and municipal supply. There is no independent regulatory institution for the sector although a regulatory body is planned by

#### Box 5.4. **The Desi Water Conveyance Project**

A major project is planned to extract 100 million m<sup>3</sup> of water a year from the 3000- year old Desi aquifer and transport it to the capital, Amman over a distance of 325 km. The project is expected to secure Amman's water supply for the next 50 years and relieve other aquifers from over-abstraction. However, the project has generated criticism because Desi is a non-renewable fossil groundwater aquifer and the abstraction could potentially harm the environment given the long distance between the aquifer and Amman. Environmental impacts could include permanent damage to the landscape, changes in the natural drainage system, fragmentation of desert habitats, including wildlife, the breeding of migratory birds and the cutting of trees (Al-Salaymeh, 2008). Moreover, evidence suggests that most of the wells around the Desi aquifer have radioactive content significantly greater than international standards set by the World Health Organisation (Vengosh et al. 2009). Moreover, the Desi aquifer is located in southern Jordan and northwest Saudi Arabia and the aquifer has already been exploited to a great extent on the Jordanian side since 1980. Additional water abstraction from the Desi aquifer would require costly water treatment to purify the water, and energy infrastructure to transport the water uphill, at a rate estimated to be up to 45 MW a year or the equivalent of 4% of the country's annual electricity production (IEEE, 2009). Lastly, the project would not significantly reduce Jordan's water gap and its full impact can only be realised in combination with other projects. To enhance the water supply from the Desi aquifer, the government is also developing a multibillion dollar project that links the Red Sea to the Dead Sea via an aquaduct and pipeline and involves the construction of a desalination facility and a hydropower plant to power the distribution. The project could produce 500 MCM of desalinated water for the Kingdom.

2022, as well as a Water Council. Clarity is needed, however, on the new regulator and Water Council's functions to ensure that there isn't undue institutional fragmentation in the sector.

#### **Private sector participation in water and sanitation**

The government recognises that the private sector can be a strong partner for enhancing water security and improving supply efficiency in Jordan. Water accounts for barely a fifth of private investment in Jordan and most of the investment has been for greenfield projects in treatment plants and water transfer systems (World Bank, 2012). Public funding dominates the water sector. For instance, of the scores of projects and activities highlighted



in the EDP, only three have been identified for private funding: technical consultations for the Jordanian Red Sea Development Project; the dredging of Al-Desi and the preparation of the financial and legal agreement of the Earth Water Global BOT. The rest of the activities are funded by the general budget, government units, and loans and grants from development partners.

The Action Plan to implement the National Water Strategy has a number of provisions aimed at scaling up private sector participation in the water sector. These include:

- adopting management contracts and concessions;
- expanding the role of the private sector in irrigated agriculture;
- revising tariffs to reach cost-recovery levels;
- linking cost-recovery to per capita GDP, domestic water usage, the cost of living, and domestic consumption;
- reflecting the true cost of water provision for industry, tourism; commerce and agriculture; and
- making use of concessionary loans, private borrowing and BOT arrangements for project finance.

Private sector participation in Jordan's water and sewerage sector began with a management contract in the late 1990s with LEMA, a joint venture between Suez Environnement (75% share ownership) and Montgomery Watson Arabteah Jardaneh, a local company (25% share ownership). The contract obliged LEMA to operate and maintain the water and wastewater system in Amman and its environs, including bill collection, staff training and customer service. The contract was signed in 1999 and was renewed after its first term, before expiring in 2005. LEMA managed to improve the consistency of water supply, implement a more efficient water rationing system, and reduce water pipe leakages by 40%.<sup>11</sup>

In addition to management contracts, there have been a number of build-operate-transfer (BOT) contracts signed with private companies to develop wastewater treatment plants (WWTP). As Samra was Jordan's first BOT project, a 25 year PPP between the Ministry of Water and Irrigation and a private sector consortium that includes Suez Environnement. USAID contributed 46% of the funding and the private sector, plus a number of banks, contributed 45% while the government of Jordan provided the rest of the funding (Degremont brochure). As with other wastewater treatment plants, As Samra reuses treated wastewater for agricultural purposes, while the sludge treatment process can be used to produce biogas for electricity. Several hotels and universities have also contracted private firm to construct wastewater treatment plants.

The government recognises that cost recovery has been difficult to achieve in the water sector, and has therefore resolved to set municipal and wastewater charges at a level sufficient to cover operation and maintenance costs (MoWI, 2009). Certain groups of consumers – particularly in industry, tourism, commerce and agriculture – are expected to pay a tariff reflecting the full cost of water service provision. An increase in the water tariff was approved in late 2010, potentially helping to improve cost recovery, but the Ministry of Water and Irrigation stated in June 2012 that tariffs would not increase further in the near future. Subsidies for water consumption, which currently cover 50-60% of the water bill, are expected to stay in place.<sup>12</sup> The tariff increase of 2011, coupled with measures to reduce non-revenue water, should help meet the Ministry's goal of becoming revenue neutral by 2022 (GWI, 2010). Further tariff revisions may need to be considered to spur changes in consumption patterns and to improve the prospects of private investment by making the sector more financially sustainable.

There is some indication that private sector participation in the sector is growing. In 2006, for instance, there was only one management contract with the private sector but now there are several. In some cases, private sector management has led to positive outcomes, as in the case of the governorate of Madaba, where a three year management contract with a local private company led to an improvement in the collection of bills (MoPIC, 2009). There is also a number of construction and operations contracts across the country for wastewater treatment plants, desalination facilities and reverse osmosis units. Because agriculture accounts for 71% of water usage, there are some arrangements whereby farmer associations in the Jordan Valley have been contracted by the local authority to manage water distribution in the area. The number of associations is expected to increase to ten by 2020 (EDP 2011-13). There is a promising market in Jordan for technologies, products and services related to water conservation, water reuse and desalination (USAID, 2011).

To make water services more efficient, the government has been corporatizing public utilities to make them follow commercial principles and private sector-like management practices. The Aqaba Water Company, which is owned by the Aqaba Special Economic Zone (ASEZA), has pursued corporatisation for a number of years. It has adopted practices such as having a Board of Directors and independent auditing according to international standards. Another utility, Miyahuna, was created by the Ministry of Water and Irrigation to take over the management of the water system in Amman after LEMA's contract expired in 2006. Miyahuna is an independent limited liability company that is run along commercial principles but wholly owned by the Water Authority of Jordan. The Northern Governorates Water Administration, which used to operate the water system in the northern

governorates of Irbid, Jerash, Ajloun and Mafrqa, was corporatized and transformed into the Yarmouk Water Company, which was created in 2010.

### ***Fossil fuel subsidy reform***

In 2008, the government completed a three-stage removal of fossil fuel subsidies, which led almost immediately to an increase in oil prices and adverse impacts on household incomes (Fattouh and el-Katiri, 2012). In response, the government increased public sector wages and instituted social protection measures, such as lifeline electricity tariffs that subsidise low-income users' consumption, to counteract the impact of increased energy prices. The removal of subsidies resulted in public financial gains, as the government was able to save the equivalent of 2.5% of GDP (OECD, 2010). While the purpose of fossil fuel subsidy reform was not environmental protection, it did create a boost in clean energy generation by removing price distortions for conventional and clean fuels. The subsidy reform was also hailed for its compensatory measures that helped cushion consumers from rising living costs (OECD, 2010). However, protests in 2011 parts of Jordan compelled the government to reverse its fossil fuel subsidy reforms in response. It put together a USD 230 million package to reduce food and fuel prices (Fattouh and el-Katiri, 2012). The IMF projects that the subsidies will taper off to 0.8% of GDP in 2013 and 2014 and 0.7% for the three years thereafter (IMF, 2012). If the subsidies remain in place at that level, they are still considerably less than the levels typical of the early 2000s.

## **Incentives to promote green investment**

A number of incentives are in place to promote investment in green sectors and encourage consumption of green products (Table 5.3 for a summary).

The government established two other funds: the Jordanian Energy Fund and the Environmental Fund, which could support early-stage investment and feasibility studies, and provide additional capital for green technologies but due to administrative obstacles, the funds have been idle since their creation (USAID, 2011).

### ***Clean Development Mechanism***

To date, Jordan has registered 4 CDM projects with the UNFCCC Secretariat: two fossil fuel switch and two landfill gas projects. These four projects brought in USD 194 million in investment and earned 2 354 certified emissions reduction credits (UNEP Risoe, 2012). Comparatively, several other countries in the region have had 1 to 6 projects (Iraq, Lebanon, Oman, Qatar, Saudi Arabia, Syria and Yemen) and only a few have more than ten projects (regional leader Israel has 35, UAE has 19 and Iran has 14).

Table 5.3. **Green investment incentives in Jordan**

Purpose of the incentive (and legislative or policy basis)	Type of benefit	Beneficiary
To promote RE in light of rising oil prices in 2009; (REEE Law 2012)	All locally-manufactured RE/ EE equipment and imports are exempted from custom and sales taxes	Project developers using RE/EE equipment and machinery for projects
To provide off-taker assurance for small-scale electricity generation (REEE Law 2010)	NEPCO is obliged to purchase electricity sold by residential and small-scale producers. NEPCO bears the cost of connecting renewable energy from source to the grid	Residents and small-scale producers selling electricity in local markets
To attract investment in electricity generated from renewable energy sources	Feed-in tariffs – but they have not yet been implemented	Eligible power producers
To increase access to energy saving equipment (National Energy Strategy)	Sales tax and customs duty exemptions on solar heaters and street lights	Industrial and residential consumers
To encourage uptake of solar energy among citizens: (REEE Law 2010)	Individuals that have installed solar panels in their homes or places of work are allowed to sell any excess electricity to NEPCO at a full retail rate	Households and enterprises.
To reduce energy consumption (National Energy Strategy)	Reduction in customs duties and sales tax and other fees on vehicles of small engines or hybrid vehicles	Individuals and corporations that purchase such vehicles
To encourage the purchase of fuel efficient vehicles	The tax on small-engine hybrid vehicles was reduced from 55% to 25%; a ban was imposed on importing vehicles older than 5 years into the Kingdom, as older vehicles tend to emit more. However, in 2012, the tax incentives for reinstated.	Individual car-owners, automobile manufacturers
To encourage generation of renewable electricity (REEE Law 2010)	Power Purchase Agreements NEPCO assumes cost of connecting power plants to the grid; NEPCO is also obligated to purchase the IPPs' generated electricity	Independent power producers

### **ODA to support private sector development in green investment**

In 2010, the latest available data, Jordan received USD 124 million in official development aid (ODA) to support its green sectors: USD 9.5 million for general environmental protection; USD 17.9 million for renewable energy and USD 102 million for water supply and sanitation (DAC, 2012).<sup>13</sup> In addition, some development partners are working with Jordan to support green activities, either through technical assistance, funding, project support or support for the enabling environment (OECD, June 2012). The Global Environment Facility (GEF) is helping to fund a number of projects in Jordan, for example through a grant to fund technical assistance in the design of the Fujeij wind power plant, which could produce 60-70 MW of electricity (World Bank, 2008). The French Development Agency (Agence française de développement)'s Green Lending Programme is another example. The Programme, undertaken in partnership with Jordanian banks, provides soft

loans to private companies to help them put in place energy efficiency measures in their operational processes. The Japan International Cooperation Agency (JICA) has also supported projects in Jordan, including an energy conservation and water supply project in Az Zarqa and a water rehabilitation project in the Tafieleh governorate in At Tafilah province.

## Barriers to green investment

### *Inadequate tax incentives and price-based mechanisms*

The government has not put in place a carbon tax or other disincentives to pollution (Azuela and Barroso, 2011). The government has also not introduced a feed-in tariff either, making it difficult for power generated from renewable energy sources other than wind to compete with conventional generation sources. Fiscal incentives in Jordan's clean technology cluster could stimulate investment. A USAID study on opportunities for green investment in Jordan's development and economic zones found that investors do not consider the Kingdom to be a key destination for clean tech development. This is because, compared to other countries that are promoting clean tech, Jordan's investment incentives – such as tax discounts – are not significant enough to make it competitive in this sector (USAID, 2011). Additional incentives, such as providing land at a lower cost for investors involved in constructing green projects or buildings, could help Jordan address the gap.

## Other elements of Jordan's green investment framework

### *Assessing the impact of investment incentives*

Sectors relevant to achieving Jordan's objectives for green growth, including water and waste management, benefit from the provisions of the 1995 and 2003 investment laws and Jordan's international commitments. There are no government mechanisms in place to assess the impact of investment incentives, nor incentives generally related solely to green growth, nor is there a mechanism to assess the possible negative environmental impacts of other investment incentives. Investment incentives are sometimes associated with negative externalities, such as higher costs than benefits accrued, opportunity costs, and adverse selection, therefore making cost-benefit analysis essential (Chapter 3).

### *Policy coherence for green investment*

In general, the success of the green economy is subject to the ability of other development sectors to adapt and innovate in an environmentally-friendly manner. Green growth policies should be integrated into environmental agencies as well as central planning, finance and sectoral ministries (OECD, 2011)

but in practice, this has not been the case in Jordan. The Ministry of Environment helps to ensure consistency and coherence of environmental, sectoral, economic and investment policies that affect private green investment across different levels of government and public agencies while the Ministry of Energy and Mineral Resources contributes to policy implementation. The Jordan Investment Board, which has a policy advocacy department, champions certain sectors, including renewable energy. While these initiatives are encouraging, more needs to be done to ensure that green policies are mainstreamed into regular policy making and implementation.

### *Policy monitoring and evaluation*

Constant monitoring and evaluation of green policies is also important for improving policy effectiveness, taking advantage of new scientific insights and new technologies and innovations (OECD, 2011). According to the authorities, this is one of the major challenges facing the development of green investments in Jordan, together with a lack of proper enforcement. The government is making an effort to address the challenges, but its efforts are dispersed and there are few formal mechanisms in place to evaluate policies and monitor their implementation. Jordan has been engaged in a process of reviewing and updating its environmental protection law and legal instruments with support from the EU since 2005. Regulations on environmental impact assessment are also being reviewed to establish a conducive, efficient and investment-friendly framework.

An Environmental Police Department was created within the Ministry of Environment in 2006, with the goal of enforcing environmental laws and regulations. In December 2008, the directorate's name was changed to the Royal Department for Environmental Protection, also known as the Rangers, whose task is to undertake inspection campaigns on industrial facilities to monitor their abidance by environmental regulations (MoE, 2009). The Rangers can also take environmental law violators to court.

In conclusion, Jordan's environmental challenges are significant but not intractable, as they also hold opportunities for Jordan to transform its current development path into a more sustainable one that can meet the needs of the future. The government is promoting investment opportunities in renewable energy, energy efficiency and eco-tourism to mention a few, but a more concerted effort is needed to scale up these nascent initiatives. In particular, Jordan is well-placed to develop niche areas such as clean technology and water conservation, but it needs to be more aggressive in setting targets and monitoring performance to ensure that promising markets develop rapidly. Moreover, addressing environmental issues can lead to economic benefits. For example, air pollution and low water quality currently pose a significant strain on public resources and tackling these problems could alleviate the financial

strain on the public sector. There are a number of incentives and government-funded programmes in place, but reforms that can allow green activities to become more competitive have been incomplete. A feed-in tariff, for instance, can help attract investment in wind and solar projects, as experience in other countries has shown.

An energy and water crisis is looming and population growth and urbanisation mean that a gradual approach is not appropriate for the scale of the problems. Voluntary initiatives and demand-side solutions may not be enough to make a significant impact either. A holistic approach is needed and public buy-in is essential. Therefore, championing a specific technology, as the government is doing with nuclear or desalination, may neglect other useful tools. Moreover, public opposition and environmental concerns about shale oil, natural gas, nuclear energy and some projects like the Red-Dead conveyance project must be taken seriously to ensure the sustainability of these government initiatives. There is a lot of room for improvement in Jordan's green growth agenda. Having taken some concrete steps already, there is reason to believe that Jordan has a good foundation on which to build. Economic, social and environmental benefits can also be expected to follow.

Lastly, the government of Jordan could consider adhering to the OECD Green Growth Declaration as 39 OECD and non-OECD countries have done as of November 2012.<sup>14</sup> The Declaration highlights that growth and sustainable management of natural resources are complementary and points out key policy approaches that can support a green growth agenda. These include supporting market-based instruments and policies to change behaviour and expanding incentives for green investment in areas such as low-carbon infrastructure. Adhering to the Green Growth Declaration not only signals Jordan's support for green growth but could also pave the way for additional co-operation with OECD on the issue. Jordan could thereby benefit from an understanding of how other countries, with similar developmental challenges, have been able to green their economies and societies.

## Notes

1. The OECD report "Towards Green Growth" (OECD, 2011) includes a Communication by the Freedom of Investment (FOI) Roundtable on "Harnessing freedom of investment for green growth". The communication sets forth findings of FOI Delegates on the role of international investment in supporting the realisation of countries green growth objectives.
2. *The Jordan Times*, 28 April 2012, "Egyptian gas supplies to return to Jordan 'next month'", <http://jordantimes.com/Egyptian+gas+supplies+to+Jordan+to+return+%E2%80%98next+month%E2%80%99-47448>.

3. The report, Jordan's third national communication to the UNFCCC, is currently under preparation. *The Jordan Times*, 12 June 2012, "Jordan preparing third climate change report", <http://jordantimes.com/jordan-preparing-third-climate-change-report>.
4. The cost of environmental degradation can be understood as a measure of the lost welfare of a nation due to environmental degradation. Such a loss of welfare may include loss of healthy life and well-being of the population, pain and suffering from illness, absence of clean environment, economic losses of environmental services (reduced soil productivity, lower tourism revenues, etc.) and loss of environmental opportunities (reduced recreational values of ecosystems). Source: World Bank, 2010.
5. LEED is a voluntary green building programme that provides third-party certification of individual buildings or complexes based on pre-defined criteria. It was developed by the US Green Building Council in 2002 but has been implemented in 135 countries to date. A LEED certification can demonstrate that the building performs to benchmark standards in terms of criteria such as water efficiency, indoor environmental quality, and energy efficiency, <https://new.usgbc.org/leed> for more information.
6. *The Jordan Times*, 18 March 2012, "Search for nuclear reactor site expands", <http://jordantimes.com/search-for-nuclear-reactor-site-expands>.
7. Wadam, Batir, <http://bwardam.wordpress.com/2011/06/02/why-we-are-against-nuclear-power-in-jordan/>, Arab Climate Change Blog, 2 June 2011.
8. For instance, at an energy investment summit held in Amman in October 2011, oil shale had particular prominence on the agenda. [www.iirme.com/jordanenergy/home](http://www.iirme.com/jordanenergy/home).
9. *The Jordan Times*, 6 November 2012, <http://jordantimes.com/article/intl-firms-lining-up-for-renewable-energy-opportunities-in-jordan>.
10. The Jordan Valley is defined as the Northern border of the Hashemite Kingdom of Jordan in the North to the Northern tip of the Dead Sea in the South; the Jordan River to the west and all areas in the Yarmouk and Zarqa basins that lie below the 300 m contour line to the East, [www.jva.gov.jo](http://www.jva.gov.jo).
11. According to Suez Environnement's assessment: [www.suez-environnement.fr/wp-content/uploads/2008/11/Water\\_Stories\\_Amman\\_UK.pdf?9d7bd4](http://www.suez-environnement.fr/wp-content/uploads/2008/11/Water_Stories_Amman_UK.pdf?9d7bd4).
12. *The Jordan Times*, 17 June 2012, "No plans to increase water tariff", <http://jordantimes.com/no-plans-to-increase-water-tariff---ministry>.
13. Within the renewable energy category, USD 0.5 million was for renewable energy generation; USD 10 million for nuclear powered plants; and USD 7.4 million for solar.
14. The text can be found at: [www.oecd.org/env/44077822.pdf](http://www.oecd.org/env/44077822.pdf). Non-OECD signatories include Colombia, Costa Rica, Morocco and Tunisia.

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## ANNEX A

# Jordan's exceptions to the National Treatment instrument

### A. Exceptions at national level

#### I. Investment by established foreign-controlled enterprises

*Trans-sectoral:* For registration purposes, non-Jordanian investments must have at least JD 50 000 of capital, except when participating in public shareholding companies.

*Source:* Article 7, Regulation No. 54 of 2000 Regulating Non-Jordanian Investments, Issued pursuant to Article 24 of the Investment Promotion Law No. 16 of 1995.

*Land:* Land ownership by non-Jordanian companies is allowed for approved business activities and is subject to Cabinet authorisation, except in the free zones where land can only be leased. Lease of land by non-Jordanian legal persons for more than three years requires Cabinet approval. The purchase or lease of state-owned lands is restricted to Jordanian nationals.

*Source:* Law of renting and selling immovable properties to non-Jordanians and to legal entities and its amendments No. 47 of 2006.

*Transport services:* Foreign investment is prohibited in passenger and freight road transport services (including taxi, bus and truck services). Foreign ownership is limited to a maximum of 50% in maritime transport and auxiliary services (except for maintenance and repair of vessels, shipping agents, maritime freight services and food supply catering where access is restricted to Jordanian legal entities); air transport auxiliary services (except for freight forwarding services, packing and crating services, and freight inspection services where access is restricted to Jordanian legal entities and excluding engine overhaul, airports duty-free shops, simulators training and computer reservation systems); rail transport auxiliary services (excluding passenger and freight transportation, pushing and towing services,

supporting services for rail transport such as rail passenger terminal services); road transport auxiliary services (excluding passenger and freight road transport which are prohibited to foreign investors); road transport services (including specialised tourist transportation services and supporting services of road transport); clearance services linked to the listed transport services; maintenance and repair services of land transport, and air catering services. Foreign ownership is limited to a maximum of 49% in scheduled and non-scheduled passenger, freight and mail air transport services; and aircraft rental services with an operator.

*Source:* Articles 3, 4 and 6, Regulation No. 54 of 2000.

Service fees for pilotage, berthing and docking are 10% less for Jordanian ships. Jordanian ships are exempt from any port dues when anchoring in Jordanian territorial waters. Jordanian ships enjoy preferential treatment in terms of bunker fees at the Aqaba Port.

*Distribution services:* Foreign ownership is limited to a maximum of 50% for the purchase of goods for purposes of leasing or renting (excluding financial leasing services) or for purpose of selling with profits; wholesale trade (except for firearms and pharmaceuticals where foreign investment is not allowed) and retailing (except for pharmaceuticals where foreign investment is not allowed); and franchising (a Jordanian juridical entity is required for franchising in meal services (with full restaurant services or in self-serving facilities or beverage serving services for consumption on premises) except when these services are operated in hotels and motels); import and export; distribution of goods and services; and supply services excluding food catering not conducted by restaurants, cafes and cafeterias. For commission agent's services (except for firearms), access is restricted to Jordanian partnerships with the majority ownership by Jordanians, and Jordanian companies with a Jordanian majority on the board of directors.

*Source:* Article 3, Regulation No. 54 of 2000.

*Other services:* Foreign ownership is limited to a maximum of 50% in professional services (engineering services including architectural services, construction services, technical testing services for construction purposes); placement and supply services of personnel; brokerage (excluding financial brokerage) and money exchange services (excluding those provided through banks or financial companies); advertising services; commercial and insurance agents; restaurants, cafes and cafeterias excluding those that are provided within hotels, motels, and on board of ships and trains; tourism and travel-related services (meal services, except when operated in hotels, ships or trains), travel agencies and tour operator services (service provider must be a Jordanian specialised (i.e. licensed) tourist firm).

*Source:* Article 3, Regulation No. 54 of 2000.

*Audio-visual and photographic services:* Foreign ownership is limited to a maximum of 50% in photographic services (excluding military portraits and aerial photography of the Jordanian territory, where foreign investment is not allowed); in audio-visual services (motion picture and video-tape distribution services); and in maintenance and repair services of radio and television transmitters and broadcast equipment.

Source: Article 3, Regulation No. 54 of 2000.

*Printing and publishing:* Foreign ownership is limited to a maximum of 50%. Ownership of periodical publications is restricted to Jordanian juridical entities wholly owned by Jordanians.

*Scientific and technical consulting services:* Foreign ownership is limited to a maximum of 50% (and Cabinet authorisation is required), except in scientific and technical consulting services related to prospecting, surveying, exploration, exploitation and map making, in which foreign investment is prohibited. Foreign investment is also prohibited in geology-related sciences.

*Research & Development services:* Foreign ownership is limited to a maximum of 50% in R&D services in natural sciences excluding geology-related sciences, where foreign investment is not allowed.

*Services incidental to agriculture and manufacturing and advisory and consultancy services incidental to animal husbandry:* Foreign ownership is limited to a maximum of 50%

*Convention services:* Foreign ownership is limited to a maximum of 50%.

*Leasing or rental services relating to machinery and equipment (excluding agricultural machinery and equipment and engines and turbines):* Foreign ownership is limited to a maximum of 50%.

*Refuse disposal services:* collection and treatment of solid waste services excluding collection and treatment of hazardous waste (50% limitation and any other limitations on legal form provided by the Jordanian law, establishment and provision of services subject to Cabinet authorisation and to an agreement with the Jordanian government, number of service providers may be restricted).

*Financial services:* For agency services, access is restricted to Jordanian general partnerships with a maximum of 50% foreign equity, and limited liability companies with Jordanians as majority on the board of directors. Foreign investment is prohibited in pension fund consultancy and management.

*Quarries for natural sand and stones used for construction purposes:* Foreign investment is prohibited.

Source: Article 6, Regulation No. 54 of 2000.

*Security and investigation services:* Foreign investment is prohibited.

*Source:* Article 6, Regulation No. 54 of 2000.

*Clearance services:* Foreign investment is prohibited (except when clearance services are linked to listed transport services in which foreign ownership is limited to 50%).

*Source:* Article 6, Regulation No. 54 of 2000.

*Real estate services:* Foreign investment is prohibited.

*Source:* Law of renting and selling immovable properties to non-Jordanians and to legal entities and its amendments No. 47 of 2006.

*Health services:* foreign investment is prohibited in dental services, wholesale and retail trade of pharmaceuticals.

*Sports clubs (including organisation of sports events services and excluding health fitness clubs services):* Foreign investment is prohibited.

*Source:* Article 6, Regulation No. 54 of 2000.

## **II. Official aids and subsidies**

None.

## **III. Tax obligations**

None.

## **IV. Government purchasing**

A 10% price preference is granted to domestic providers.

## **V. Access to local finance**

None.

## **B. Exceptions by territorial subdivisions**

None.

## Measures reported for transparency by Jordan

### A. Measures reported for transparency at the level of national government

#### I. Measures based on public order and essential security considerations

None.

#### II. Other measures reported for transparency

##### a) Investment by established foreign-controlled enterprises

None.

##### b) Corporate organisation

Research and development services (research centre); other business services (advertising agencies, public opinion bureau, printing and publishing); audio-visual services (retail outlets of audio-visual services, motion picture and video-tapes); educational services (adult education centres and cultural centres); insurance agency services; medical labs; travel agencies and tour operator services; air auxiliary services (freight forwarding services, freight inspection services); mining services: management positions are not allowed for non-Jordanian nationals and the managing director of a juridical entity or a branch must be resident in Jordan.

**Auditing:** Auditing services must be performed through a resident licensed auditor in Jordan (natural person or general partnership). Auditors must be Jordanian nationals.

**Architectural and engineering services and construction:** For engineering firms, at least 50% of equity must be held by engineers. Architects, engineers (including geological engineers), urban planners and landscape architects must be Jordanian nationals. The number of foreign engineers to be employed by a firm may not exceed twice the number of qualified Jordanian engineers employed by the same firm. Foreign firms are required to train and upgrade the technical and management skills of local employees.

**Banking sector:** Branches of foreign banks are required to have a resident regional manager.

**Medical, hospital and social services (nursing homes, convalescent homes, and rehabilitation centers):** At least three quarter of physicians in any hospital or

nursing or convalescent homes and at least half of all staff must be Jordanian nationals. Physicians, as well as veterinarians and pharmacists, must be Jordanian nationals. One of the owners must be a physician except in a public limited company.

*Real estate services:* real estate agents and licensed surveyors must be Jordanian nationals.

*Advertising services:* Jordanians should be a majority in the board of directors in limited liability companies.

*Distribution services:* For commission agent's services (including insurance), access is restricted to Jordanian companies with a Jordanian majority on the board of directors.

**c) Government purchasing**

None.

**d) Official aids and subsidies**

None.

## **B. Measures reported for transparency at the level of territorial subdivisions**

None.

## **C. Activities covered by public, private, mixed monopolies or concessions**

### **At the level of national government**

#### **I. Public monopolies**

- National Electric Power Company – NEPCO (transmission company in electric power sector).
- Jordan Post.
- Aqaba Railways.
- Water authorities: Water Authority of Jordan, Jordan Water Company (Miyahuna) and Amman Governorate Water Authority.

#### **II. Private or mixed (public/private) monopolies**

State-trading companies with special and exclusive privileges, including exclusive trading rights:

- Phosphate Mines Company.
- Jordan Petroleum Refinery Company.



The State has maintained a minority stake in three major enterprises (the Arab Potash Company, Jordan Phosphate Mines Company and Royal Jordanian Airlines Company).

### **III. Concessions**

All investments in public utilities are generally subject to concessions. In sectors where service provision is granted by concessions, commercial establishment must be in the form of public shareholding companies.

*Source:* Schedule of specific commitments, Jordan-United States Free Trade Agreement, entered into force in 2001.

#### **At the level of territorial subdivisions**

None.

## ANNEX B

## Selected companies investing in Jordan (2002-12) and Corporate Social Responsibility

The table below lists companies that have announced an investment acquisition project in Jordan between 2002 and 2012 according to the Dealogic database and look at whether these companies mention Corporate Social Responsibility (CSR) activities in their website.

Acquiror	Main industry	Home county	Homepage address	Reference to CSR	Main sectors of CSR
Actis Capital LLP	Private equity firm	UK	<a href="http://www.act.is/content/Home">www.act.is/content/Home</a>	No	
ACWA Power Projects Ltd	Power	Saudi Arabia	<a href="http://www.acwapower.com/">www.acwapower.com/</a>	Yes	Environment, climate change, renewable energy, health, sustainability
Al Nour for Communications	Conglomerate	Kuwait	<a href="http://www.nour.com.sa/home.aspx">www.nour.com.sa/home.aspx</a>	No	
Al-Nour	?	?	<a href="http://www.al-nour.net/">www.al-nour.net/</a>	?	
Amwal Al Khaleej Commercial Investment Co Ltd	Private equity firm	Saudi Arabia	<a href="http://www.amwalalkhaleej.com/">www.amwalalkhaleej.com/</a>	No	
Arab International Logistics Co – AIL	Logistics	UAE	<a href="http://www.aramex.com/">www.aramex.com/</a>	Yes	Sustainability, reducing carbon emission, road safety
Arabian Cement Co	Cement	Saudi Arabia	<a href="http://www.arabiancementcompany.com/">www.arabiancementcompany.com/</a>	Yes	Environment, health, safety
Astra Industrial Group	Industrial conglomerates	Saudi Arabia	<a href="http://www.astraindustrial.com.sa/Default.aspx">www.astraindustrial.com.sa/Default.aspx</a>	Yes	Environment, recycling, reducing energy use
Bahrain Telecommunications Co – Batelco	Telecommunications	Bahrain	<a href="http://www.batelco.com/portal/">www.batelco.com/portal/</a>	Yes	Health, education, community, culture, sports

Acquiror	Main industry	Home county	Homepage address	Reference to CSR	Main sectors of CSR
Bank of Palestine plc	Bank	Palestinian Territory, Occupie	<a href="http://www.bankofpalestine.com/index.php?lang=en">www.bankofpalestine.com/index.php?lang=en</a>	Yes	Youth innovation, education, economic diaspora affairs, health, environment, arts, culture, sports, humanitarian efforts
Brunei Investment Agency	Investment company	Brunei Darussalam	<a href="http://www.mof.gov.bn/ENGLISH/Pages/default.aspx">www.mof.gov.bn/ENGLISH/Pages/default.aspx</a>	No	
Burgan Bank SAK	Bank	Kuwait	<a href="http://www.burgan.com/Default.aspx">www.burgan.com/Default.aspx</a>	Yes	Human rights, health, education, environment
CityGroup KSC	?	?	?	?	
Consolidated Contractors Co WLL	Contractor		<a href="http://www.ccc.gr/">www.ccc.gr/</a>	Yes	?
Depa Ltd	Interior contractor	UAE	<a href="http://www.depa.com/english/home/">www.depa.com/english/home/</a>	No	
Efes Sinai Yatirim Holding AS	Soft drink beverages	Turkey	<a href="http://www.efesbev.com">www.efesbev.com</a>	?	
EFG Hermes Holding Co SAE	Investment banking firm	Egypt	<a href="http://www.efg-hermes.com/English/Home.aspx">www.efg-hermes.com/English/Home.aspx</a>	Yes	Health, human rights, labour, environment, anti-corruption
FCP Fund I LP	Venture capital fund	US	<a href="http://www.fcpcd.com/whoweare">www.fcpcd.com/whoweare</a>	No	
France Telecom SA	Telecommunications	France	<a href="http://www.orange.fr/">www.orange.fr/</a>	?	
Global Investment House	Investment company	Kuwait	<a href="http://www.globalinv.net/default.asp?lf=1">www.globalinv.net/default.asp?lf=1</a>	Yes	Women equality, education, humanitarian aid
Gulf Cable & Electrical Industries Co KSC	Wire and cable	Kuwait	<a href="http://www.gulfcable.com/">www.gulfcable.com/</a>	No	
Gulf Finance House BSC	Investment bank	Bahrain	<a href="http://www.gfh.com/">www.gfh.com/</a>	Yes	Education, sports
Gulf General Investment Co – GGICO	Conglomerate	UAE	<a href="http://www.ggicouae.com/#">www.ggicouae.com/#</a>	No	
Gulf Insurance Co KSC	Insurance	Kuwait	<a href="http://www.gulfins.com.kw/">www.gulfins.com.kw/</a>	Yes	Recycling
Hikma Pharmaceuticals plc	Pharmaceutical	UK	<a href="http://www.hikma.com/">www.hikma.com/</a>	Yes	Health, environment, sustainability, donation
HPF Private Investment Fund Co Ltd	Investment fund	Hong Kong	<a href="http://www.hpf.com.hk/eng/welcome.html">www.hpf.com.hk/eng/welcome.html</a>	No	

## 5. JORDAN'S INVESTMENT FRAMEWORK IN SUPPORT OF GREEN GROWTH

Acquiror	Main industry	Home county	Homepage address	Reference to CSR	Main sectors of CSR
Hummingbird Ventures	Fund		<a href="http://www.hummingbird-ventures.com/">www.hummingbird-ventures.com/</a>	No	
Invus Financial Advisors LLC	Fund		<a href="http://invus.com/">invus.com/</a>	No	
KGL Investment Co	Investment company		<a href="http://www.kglinvest.com/">www.kglinvest.com/</a>	No	
Kuwait Finance House KSC	Bank	Kuwait	<a href="http://www.kfh.com/en/index.aspx">www.kfh.com/en/index.aspx</a>	Yes	Charity, education, health, security, social program
Kuwait Invest Holding Co	Investment company	Kuwait	<a href="http://www.kic.com.kw/Home/index.asp">www.kic.com.kw/Home/index.asp</a>	No	
Malakoff Bhd	Power	Malaysia	<a href="http://www.malakoff.com.my/">www.malakoff.com.my/</a>	Yes	Community, education, sports, environment
Malaz Group	Venture capital firm	Saudi Arabia	<a href="http://www.malazgroup.com/index.htm">www.malazgroup.com/index.htm</a>	No	
Mobile Telecommunications Company	Telecommunications	Kuwait	<a href="http://www.zain.com/muse/obj/portal.splash">www.zain.com/muse/obj/portal.splash</a>	No	Economic development, vocational training, youth education
Nanjing Hongguo Industry Group Corp Ltd			?	?	
National Industries Group (Holding) SAK	Investment firm	Kuwait	<a href="http://www.nig.com.kw/AxCMSwebLive/home_en.cms">www.nig.com.kw/AxCMSwebLive/home_en.cms</a>	No	
Nutrexpa SA	Food	Spain	<a href="http://www.nutrexpa.es/en">www.nutrexpa.es/en</a>	No	
Oman National Investment Holding Corp – ONIC	Investment company	Oman	<a href="http://www.onicholding.com/">www.onicholding.com/</a>	No	
Piraeus Bank SA	Bank	Greece	<a href="http://www.piraeusbank.gr/echome.asp?lang=2">www.piraeusbank.gr/echome.asp?lang=2</a>	Yes	Society, environment, culture
Potash Corp of Saskatchewan Inc	Fertilizer company	Canada	<a href="http://www.potashcorp.com/">www.potashcorp.com/</a>	Yes	Community impacts, human rights, gender equality
Prime Ventures	Venture capital fund	Netherlands	<a href="http://www.primeventures.com/">www.primeventures.com/</a>	No	
Qatar National Bank SAQ	Bank	Qatar	<a href="http://www.qnb.com.qa/globalsite/">www.qnb.com.qa/globalsite/</a>	No	
Saudi Oger Ltd	Construction company	Saudi Arabia	<a href="http://www.saudioger.com/">www.saudioger.com/</a>	Yes	Education, environment, donation

Acquiror	Main industry	Home county	Homepage address	Reference to CSR	Main sectors of CSR
Savola Group	Conglomerate	Saudi Arabia	<a href="http://www.savola.com/savolae/index.php">www.savola.com/savolae/index.php</a>	Yes	Community, education, health, environment, employment opportunity
SK Telesys Co Ltd	Communication network	South Korea	<a href="http://www.sktelesys.co.kr/eng/">www.sktelesys.co.kr/eng/</a>	Yes	Education, scholarship, environment, social welfare, donation
Société Générale de Banque au Liban	Bank	Lebanon	<a href="http://www.sgbl.com.lb/sgbl_en/pages/home.aspx">www.sgbl.com.lb/sgbl_en/pages/home.aspx</a>	Yes	Culture, solidarity, sports
Sultan Center Food Products	Retail company	Kuwait	<a href="http://www.sultan-center.com/Default.aspx?pagelD=1">www.sultan-center.com/Default.aspx?pagelD=1</a>	Yes	Education, health, environment, donation
Swicorp	Investment firm	Saudi Arabia	<a href="http://www.swicorp.com/">www.swicorp.com/</a>	No	
Yahoo! Inc	Communication network	US	<a href="http://www.yahoo.com/">www.yahoo.com/</a>	No	



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