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# **JORDAN FISCAL REFORM II PROJECT**

## **EXCHANGE OF DATA AND INFORMATION IN THE SINGLE WINDOW FRAMEWORK - LEGAL BACKGROUND**

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# **JORDAN FISCAL REFORM II PROJECT**

## **Exchange of Data and Information in the Single Window Framework – Legal Background**

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# ACRONYMS

ASYCUDA Automated System for Customs Data

FRP II Fiscal Reform Project II

JD Jordanian Dinar

JSW Jordan Single Window

SW Single Window

SSC Senior Steering Committee

UN/CEFACT United Nations Centre for Trade Facilitation and Electronic Business

UNTDDED United Nations Trade Data Elements Directory

USAID United States Agency for International Development

# INTRODUCTION

To comply with the requirements of international trade, the import and export companies operating in Jordan have to prepare and submit a large volume of information and documents to the government regulatory agencies. The information and documents are provided, either manually or electronically, to a number of different agencies; incurring additional costs which may constitute a significant burden on both the government and the business community. One method to address this problem is to utilize single window processing through which information and/or documents related to imports and exports are submitted once, and disseminated to all concerned parties.

Since early 2008, Jordanian Customs has focused on the implementation of the single window concept in compliance with the United Nations standards, for the purposes of facilitating the movement of goods to and from Jordan. The application of Single Window first focused on the public sector, as this sector has the greatest impact on the operations associated with the release of goods. Jordan Customs Department, Jordan Standards and Metrology Organization, Ministry of Agriculture, and the Food and Drug Administration participated in the first phase. The Jordan Customs Department is currently increasing its capacity as the agency responsible for management and oversight the single window, by including the Telecommunications Regulatory Commission, Nuclear Regulatory Commission and the Ministry of Environment in the single window.

To strengthen the framework of the single window in Jordan, agencies are signing memorandums of understanding (MOUs) with Jordan Customs. The intent of the MOUs is to organize the cargo processing within the single window framework, specifically with regard to the management, operational coordination, and information exchange functions, in order to achieve a single window that is consistent with international standards and contributes to reducing the time and cost associated with import and export operations. While the importance of these elements cannot be ignored, the exchange of information and data remains the main issue impacting on the success of Single Window; because the successful management of information and data will lead to a reduction of the effort and the cost for both the government agencies and the private sector. To ensure that Single Window can be implemented properly, the legal framework that governs and regulates the exchange of data and information was reviewed.

# EXECUTIVE SUMMARY

The Special Committee prepared a draft MoU, which clarifies the framework of the single window. The senior managers of the participating agencies were presented with the draft for their review, approval and subsequent entry into force.

At the time of this report, Jordan Nuclear Regulatory Commission, Jordan Standards and Metrology Organization and the Food and Drug Administration have signed MoUs with Customs. Other agencies have expressed their concerns over the content of the MOU; therefore it is being reviewed in order to develop mutually agreed upon revisions that meet the main objectives of the single window.

The MoUs have addressed many topics to ensure the proper functioning within the single window framework. The most important is included in Article (6) and refers to the electronic exchange of information between the participating agencies in the single window, and takes into account the nature of this data and information and its confidentiality. The participating agencies must agree on the type and the timing of data, the right to obtain the data and how to obtain it, as well as how it will be circulated and the regulations that govern it. All these issues will be agreed upon between the concerned parties, according to the recommendations of the technical team which will be formed for the purpose of reaching agreement and serving the public interest.

The current review indicates that the laws in force do not constitute an obstacle to the exchange of data and information between the government agencies participating in the single window and that these laws provide the necessary protection for such data and information.

The next step should be to develop a procedure and a mechanism defining how the exchange of such data and information will be accomplished, what information can be exchanged, the timing of the exchange, and how to use this information. A proposal has been made to review all these issues by a team specialized particularly in information technology, since Jordan Single Window will depend on the electronic exchange of information, and the team will be required to develop a vision to be agreed upon between the concerned parties and documented as an appendix to the MoUs, including those signed and in force between the participating agencies.

# JORDAN SINGLE WINDOW

In 2005, the United Nations Centre for Trade Facilitation and Electronic Business (UN / CEFAC), issued recommendation number 33 under the heading “*Recommendation and Guidelines on establishing a Single Window to enhance the efficient exchange of information between trade and government.*” Within the context of this Recommendation, a Single Window is defined as follows:

***“A facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfill all import, export, and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once”.***

In practical terms, the single window aims to expedite and simplify the flow of data and information between the government and the trade sector and to achieve meaningful gains to all parties involved in trade across the border. The single window is, in general, centrally administered by a lead agency (leading the process), enabling the authorities and relevant government agencies to acquire data and information appropriate for their own purposes. In addition, the authorities and the participating agencies should coordinate the regulations and controls that they apply. In some cases, the single window may provide facilities for payment of customs duties, taxes, and fees incurred on the business process.

The Jordanian authorities have realized the importance of applying the single window and its impact on facilitating the movement of trade across the border. In 2009 they completed, as a first phase, the implementation of this concept in six customs houses, Aqaba Customs House, Zarqa Free Zone Customs House, King Abdullah II City Customs House (*Sahab*), Amman Customs House and Al Hassan Industrial City, and the participation of four government agencies, Jordan Customs, Ministry of Agriculture, Jordan Standards and Metrology Organization, and the Food and Drug Administration. In 2010, as the second phase, Jordan Single Window was expanded to include three more government departments which regulate the operations of international trade; Telecommunications Regulatory Commission, the Nuclear Regulatory Commission, and the Ministry of Environment were invited to join the single window.

In the first phase, the application process showed a number of challenges of which the most important one was to identify an agency to oversee the administrative operations of the single window, including the risk management of the inspections conducted by the participating government agencies, as well as developing a mechanism for the exchange of data and information between these agencies. In mid-2011, the concerned government departments developed joint document drafts that created the foundation for the conclusion of MoUs between these parties thereby enabling them to address the obstacles that emerged in phase 1. Through the application of the first phase of the single window project, the MoUs have addressed key issues, which can be summarized as follows:

- Jordan Customs shall assume the duty of the administrative supervision on the activities of the parties participating in the single window at the border;
- Agreement to exchange data and information between the participating agencies and develop a vision for that; and

- Adoption of the customs clearance system "ASYCUDA" for the purposes of the exchange of risk management data and information for each agency.

The Nuclear Regulatory Commission, Jordan Standards and Metrology Organization and Food and Drug Administration have actually signed MoUs with Jordan Customs, and the other agencies are currently working on reviewing them and they are expected to be approved before the end of 2011.

The work is currently in progress to develop a plan for the coming years aimed at expanding the scope of Jordan single window according to the best international practices.

# EXCHANGE OF DATA AND INFORMATION

The exchange of data and information between the agencies participating in the single window constitutes the backbone of its success, and its effective application. To achieve this goal we must consider what data and information are needed by the agencies participating in the single window and to determine if it is possible, according to the laws currently in force, for these agencies to share this data and information. How can agencies enable each other to have access to the data obtained from their clients and by what means can the information they obtained be shared, and if it can be used to do its legal function, as for example evidence of fraud?

With respect to identifying the required data, by the end of the year 2010, all agencies participating in the single window completed development of their own standardized data set, prepared in terms consistent with the international standards related to the United Nations Trade Data Elements Directory (UNTDDED). This data set, prepared locally, contains the data related to international trade that the agencies participating in the single window need to be able to carry out the requirements of their work, and was formally adopted and submitted to the World Customs Organization in early 2011.

Regarding the information obtained by the official authorities participating in the single window or the information that they generate (such as intelligence or statistical), it will be defined through the evolution of work and progress needs arising as cooperation increases among the participating agencies.

## ***The legal status of data and information***

The exchange of data and information between the participating agencies is linked to the laws currently in force and governing the work of each one of them. These laws have been reviewed for all of the seven agencies participating in the single window, and the following information is provided:

### **1- Food and Drug Administration**

The Food and Drug Administration applies the following laws:

- a. Food and Drug Administration Law No. (41) for the year 2008\*
- b. Food Control Law No. (79) for the year 2001 and the amended law to the Food Control Law for the year 2003.
- c. Drug and Pharmacy Law for the year 2001, according to the latest amendments.
- d. Narcotic, Drugs and Psychotropic Substances Law No. (11) for the year 1988.

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\* "for" the year represents legal terminology in Jordan indicating the year the law was enacted

None of these laws indicated how the administration's staff shall deal with the data and information provided to them in terms of confidentiality or exchange with the other concerned government agencies.

## **2- Nuclear Regulatory Commission**

The commission applies the Law of radiation protection, safety and nuclear security No. (43) for the year 2007, and this law contains no specifics as to how to deal with data and information provided to them or obtained through their activities.

## **3- Jordan Standards and Metrology Organization**

The organization applies the Standards and Metrology law No. (22) for the year 2000, and paragraph "c" of Article "15" has referred to the information obtained by the organization through the conformity assessment procedures, as follows: "The information related to the procedures of conformity assessment is considered confidential" and it is noticed here that the text here has been limited to information related to the activities carried out by the corresponding organization and no other text refers to the data and information which the organization deals with and obtain as a result of the control procedures carried out by the organization.

## **4- Telecommunication Regulatory Commission**

The Telecommunications Law No. (13) for the year 1995 regulates the work of the commission, and article 71 of this law is devoted to protect the information exchanged through communication networks where the text of the article is as follows:

**Article 71:** "Any person who spreads or discloses the content of any communication through a Public or Private Telecommunications Network or a telephone message which came to his knowledge by virtue of his post, or records the same without any legal basis, shall be punished by imprisonment for a period not less than one month and not exceeding one year, or by a fine not less than (JD100) and not more than (JD300), or by both penalties".

We understand from this text that the data and information which are protected are those that are exchanged across communication networks, and no text indicated on how to deal with data and information provided to the commission by its clients such as operators or importers.

## **5- Ministry of Agriculture**

The Law of Agriculture for the year 2002 governs the work of the ministry and there is no indication in the law to the exchange of data and information or maintaining it.

## **6- Ministry of Environment**

The Environmental Protection Law No. (52) for the year 2006 is the legal instrument governing the work of the ministry, and by reviewing the articles of this law there was no indication to the exchange of data and information or maintaining it.

## **7- Jordan Customs**

Jordan Customs is working within the framework of Customs Law No. (20) for the year 1998 and its amendments, and this law has singled out an article with an explicit text which governs the framework through which the data and information are circulated and related to the implementation of its provisions, the text of the article is as follows:

### **Article 175:**

- A. Anyone performing official duties in execution of this Law shall consider all documents, information and statements, as well as any other information relating to this Law or execution of its provisions as secret and confidential and shall be handled accordingly.
- B. The Department shall be entitled to exchange information with Ministries, government agencies and official bodies for the purpose of executing the provisions of this Law and other Laws in force.

In addition, Article 58 of Jordan Customs Employees' regulation for the year 2006 governs how the customs officers shall deal with the information and documents circulated and obtained during carrying out their duties.

## **8- The Civil Service Regulation No. 30 for the year 2007 and its amendments**

The provisions of this law cover all the official departments in the Kingdom (unless operating under its own regulation) and it includes all departments working within the framework of the single window (with the exception of Jordan Customs, which operates under Jordan Customs Employees' regulation for the year 2006), and therefore the provisions contained therein shall be binding to these parties, and paragraph b of Article 68 states the following:

### **Article (68):**

The employee is prohibited and subject to disciplinary responsibility for taking any of the following acts

- Keeping any official document or official correspondent or copies outside the workplace for himself or sharing them with any third party or declare or write about them without being within his/ her authority.

## 9- Ensuring the right of access to information Law No. (47) for the year 2007

Article 13: Subject to the provisions of the legislation in force, officials must refrain from disclosing the information related to:

- A. Secrets and documents protected under any other legislation
- B. Documents classified as confidential and protected, and obtained through an agreement with another state
- C. Secrets related to national defense, state security or foreign policy.
- D. Information which includes analysis, recommendations, suggestions or advice provided to the officials before a decision is taken, including correspondence and information exchanged between the different government departments related to it.
- E. Information and personal files related to the people's education, medical or employment records, bank accounts or transfers, or professional secrets
- F. Correspondence with a personal and confidential nature, whether by mail, telegraph, telephone or through any other technological means with government departments and their responses.
- G. Information that its disclosure will lead to influence the negotiations between the Kingdom and any country or other party.
- H. Investigations conducted by prosecutors or law enforcement or security services on any crime or case within its jurisdiction, as well as investigations conducted by the competent authorities to detect financial, customs or banking irregularities unless authorized by the competent authority to be disclosed
- I. Information of commercial, industrial or financial or economic nature and information on bidding, scientific or technical researches, which their disclosure will lead to breach the copyrights and intellectual property rights, fair and legitimate competition, or that lead to illegal loss or profit for any person.

### ***Exchange of data and information in accordance with the provisions of laws currently in force***

This topic involves a number of questions relating to the legal framework governing dealing with data and information that must be answered before activating the mechanisms of exchange them, and these questions can be summarized as follows:

- 1- Can the agencies operating in the single window have access to data and information related to each other and provided through the single window?
- 2- If these agencies can have access to the data and information provided by the clients of the single window, does the legislation currently in force ensure its protection?
- 3- In case any of these agencies obtained data or information which were provided through the single window and not provided by the client to a specific agency, can this agency use these data or information for legal purposes related to its work (used for the purposes of decision-making or evidence in the courts)?

The current review can answer the first two questions, and with respect to the third question it is related to the civil law and how the adoption of evidences in the courts is indicted, and

there is no room for discussing this question here, but it remains outstanding and must be handled by the competent legal parties.

According to what has been reflected in the previous section under the title “the legal status of the data and information” and in answering the second question above, the text of Article 68 of the Civil Service Law No. (30) for the year 2007 and Article 13 of the Ensure the right of access to information Law No. (47) for the year 2007, ensures the protection of such information in the event of sharing it among government agencies participating in the single window since those laws apply to all official agencies operating in the Kingdom (according to the parameters mentioned above), also paragraph “a” of Article 175 of the Customs Law No. (20) for the year 1998 and Article 58 of the Jordan Customs Employees Law for the year 2006 refer explicitly to the confidentiality and protection of such data and information, and the text of Article 175 of the Customs Law No. 20 for the year 1998 is not limited to customs employees only, but extends to each individual that his official work requires access to this information.

As for the possibility of exchanging information between the concerned agencies, it is addressed in the first question, Article 68 of the Civil Service Regulation No. (30) for the year 2007 left a room for the possibility of exchanging information with the official authorities as stated at the end of the text that declaring such information must be within the authority of the employee and it can be treated by defining the duties internally in these institutions through developing a framework between them to regulate this process and it does not need amendments in applicable laws, as for the information obtained by Jordan Customs as a result of applying the provisions of the Customs Law (since it is not covered by the civil service regulation), paragraph “b” of Article 175 of the Customs Law No. 20 for the year 1998 clearly indicates that the Jordan Customs have the right to exchange information concerning the application of the provisions of the Customs Law with the departments and official agencies, and the text extends also to include information collected by Jordan Customs and related to the application of the other applicable laws.

What mentioned above indicates that the existing laws which are related to the government agencies that are currently participating in the single window can allow the exchange of data and information among themselves and that these data and information are protected by the applicable laws.

# RECOMMENDATIONS

According to the above mentioned and based on the future vision of the single window, including taking into account the importance of exchanging data and information when considering the efficient operation of the single window, the following steps are recommended:

- 1- To request the Jordan Single Window Senior Steering Committee approve the formation of a working group from the concerned government departments to develop a framework that defines all aspects related to the exchange of data and information so that its duties include the following:
  - A. The communication means through which data and information will be exchanged
  - B. The data and information to be exchanged.
  - C. The responsibility of those agencies involved in providing data and information to the other agencies.
  - D. Data and information security
- 2- Although having access to all data provided to all participants by the Single Window agencies will achieve great benefits in making quick and accurate decision, the ability of these agencies to use such information and data as legal evidence will achieve an even greater benefit with respect to control and enforcement of applicable laws and regulation. Therefore the question must be answered regarding the legality of the use of data and information circulated through the single window by one of the participating agencies and that has not been submitted to the participating agency by the client. It is proposed that this question must be referred to the legal authorities in the concerned agencies for a decision or recommendations of change to the law.

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