

Contract No.: 278-C-00-02-00210-00

Contractor Name: Chemonics International, Inc.

USAID Cognizant Technical Office: Office of Economic Opportunities
USAID Jordan

Date of Report: 15/05/2005

Document Title: *Tourism Product Development Corporation Project*
Final Report

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Activity Title and Number: Achievement of Market-Friendly Initiatives and
Results Program (AMIR 2.0 Program)

Develop Legal and Regulatory Framework Strategy
Support Reform of Tourism Law 7262.5

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**Final Report
May 15, 2005**

This publication was produced for review by the United States Agency for International Development. It was prepared by consultants and/or subcontractors in collaboration with Chemonics International Inc.

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Practice Area: *Legal Counselor*

Service offering: *<Ask your component leader>*

List of Key Words Contained in Report:

Abstract

This report represents a review of all legal aspects related to the establishment of the Jordan Tourism Corporation which aims at developing tourism products in Jordan.

Table of Content

UTAbstract.....	3
UTExecutive Summary.....	5
UTIntroduction	6
UTSection One : Brief and General Summary	7
UT1-.....Why is a Tourism Development Corporation required?	7
UT2-.....The Mandate of the Corporation	7
TU-3UT..... Defining development of tourism products	8
UTSection Two: Legal Challenges.....	10
UT1.With regard to the delegation of the Ministry of Tourism’s powers and responsibilities to JTC	10
UT2.Ownership of Lands	11
UT3.Collection of Fees	12
UT4.Issues involved in defining tourism and historical sites as Public Utilities	12
UUT5.Can the Ministry delegate its powers to the JTC without following the transparency procedures govern	
UT6.Developing Historical Sites	13
UTSection Three: General Legal Framework of the Corporation’s Structure	15
UTa) Type of the Corporation	15
UTb) Ownership	15
UT1-.....Management	15
UT2-..... Objectives	16

Executive Summary

This report is prepared by IBLAW as part of the USAID funded AMIR Program activities supporting the development of Jordan's tourism industry by means of developing a national tourism strategy as well as providing technical and financial assistance to key private sector stakeholders in Jordan's tourism industry.

The Jordan Tourism Corporation was suggested as a vehicle to invigorate and accelerate private sector participation in the management and development of tourism sites and products under an effective and commercially viable scheme. Notions for such corporation was suggested and contemplated early on and identified by both the private sector and the government as an efficient tool for development of tourism sites and hence, products.

Thus, IBLAW was requested to conduct a research of the legal aspects and provisions related to, or impeding the establishment of such a corporation, namely the Jordan Tourism Corporation ("JTC"). The review aimed at identifying legal enablers or obstacles pertaining to the establishment of such Corporation; its mandate; authorities and operational framework. Our review is preliminary as further information is required for the issues to be more comprehensively addressed.

In our report we have explained the need to establish the Corporation; the type of authorities that such Corporation will assume; and addressed the framework and legal challenges of the proposed corporation including whether the Ministry of Tourism can delegate its powers and responsibilities to the JTC, the issue of ownership of lands that are developed for tourism purposes, the authority that collects the fees related to tourism sites, as well as the issues involved in defining tourism and historical sites as public utilities and whether the Ministry can delegate its powers to the JTC without following the transparency in procedures governing the bids.

Our initial recommendations are to establish and register JTC as a Private Shareholding Company owned by the government and managed by a Board of Directors, represented by both the government and private sector. This Corporation will be responsible for tourism site development and management. We also highlighted the objectives that should be included in the JTC's Articles and Memorandum of Association which will attain its intended purposes.

Introduction

This report states the results concluded by us after our study of various legal issues relevant to the establishment of Tourism Development Corporation.

However, such results are still preliminary as there is a need for more information and clarification about the nature and powers of the corporation as well as its relations with relevant competent authorities, in order to fully cover all legal issues.

Section One : Brief and General Summary

1- Why is a Tourism Development Corporation required?

- Development of the tourism product in a coherent and comprehensive manner to keep in line with the national tourism strategy.
- Participation in the preparation of Tourism Master Plans in participation with private sector and in accordance with the market needs of tourism products as well as the demand for verified, high standard tourism product so as to enhance Jordan's competitiveness in this field .
- Attraction of investments in the tourism sites as shall be defined later on.
- Allow Ministry of Tourism to concentrate on the creation of developed organizational and legislative environment, while the corporation shall be responsible for the executive side, previously assumed by Ministry of Tourism, namely, development of tourism sites, taking into consideration that experiences in various countries proved the weak efficiency of the public sector to carryout both organizational and development roles at the same time.

2- The Mandate of the Corporation

From the discussions held concerning the mandate or scope of work of the Tourism Product Development Corporation , and although we have no complete clear vision as well as our need for more relevant information from concerned parties , we can confirm two important principles defining the framework of this corporation business as follows :-

- The corporation shall not have any role and / or authority in restoration and maintenance of antiquities, and of course, in the ownership of antiquities¹, but its role shall be limited, as far as historical sites are concerned, to the management, operation and animation of such sites and to invest them in tourism, in a way not denying the role and responsibility of the public sector towards the rich heritage of Jordan.
- The corporation shall not aim , basically , to tourism investment in the fields successfully and efficiently assumed by the private sector , such as hotels and transportation sectors and others , but shall aim at assuming the development ,

PT¹ TPThe Antiquities law clarifies that antiquities are movables or immovable established, written , constructed, or engraved by Man prior to the year 1750 . But if the date of such referred to after 1750 the Law has stipulated issue of a decision by the Minister to consider them antiquities.

management and operation of tourism sites in the fields already assumed by the public sector , and as we shall later on clarify .

It's worth mentioning that the Antiquities Law has defined the historical site, while the Tourism Law entitled the Council of Ministers , upon recommendation by the Minister , to determine the tourism sites .

In spite of the above, the corporation is expected to aim at tourism investment in the tourism products related, without limitation, to the following:-

1. Management, operation and animation of tourism sites.
2. Development of tourism sites surrounding historical sites.
3. Development, management and operation of natural reserves.
4. Development, management and operation of public rest houses as well as tourism services centers.
5. Development, of tourism attraction sites especially inside cities such as Salt and Madaba downtown's and Amman downtown.

3- Defining development of tourism products

Both tourism and Antiquities laws have not clarified the concept of development and nature of works included in such concept . The type of works and activities to be carried out by the corporation, discussed in the meetings held so far , are still not clear for us as needed . But we shall endeavor to state in general , the works which may be included within the concept of development of tourism products which may be carried out by the corporation , for the purposes of legal study and analysis , as follows :-

- a) Works limited to the management and operation of the historical and tourism sites , as they shall include , without limitation , the following :-
 - i. Management, organization and operation of tourism and historical sites in conformity with appropriate commercial principals and practices, aiming at improving the services rendered, without investing in the infrastructure or superstructures of such sites.
 - ii. Establishment of facilities, installations and activities to attracts tourists to such tourism and historical sites (Site Animation and Presentation).
 - iii. Keep high standard of cleanliness in the sites.
 - iv. Organize the entry and exit procedures in the sites.
 - v. Collection of entry fees.

- vi. Payment of the operation expenses incurred as a result of managing such sites.
- vii. Appoint and train persons qualified to deal with tourists in such sites.
- viii. Connection of various tourism and historical sites, so as to have similar services as far as possible.

In such cases the relation between the corporation and the government may be arranged by Management and Operation Services Contract, especially if dealing with the fees collection issue is in conformity with the nature of such contracts. However, it's worthy to mention, that in such cases the relation may be defined as an investment contract having the nature of franchise (concession) especially if no return has been determined against such services, but the return has been tied with the investment return, and if the contract has a long term exclusivity, which may arise more complicated legal issues.

- b) The development works with the concept of investment and development of infrastructure and superstructure and then to manage and operate the same, and in such case the relation shall be arranged as BOT² (Build, Operate, Transfer) or BOO³ (Build, Own and Operate) contract, as the case maybe.
- c) The development works in the concept of investment in the infrastructures, management and operation as aforementioned, and in a direct manner, in addition to the undertaking to attract subsidiary investments by other parties especially in the superstructure works. In this case the corporation shall be the party authorized to develop the tourism product, in general, and its role shall not be limited to certain product.

PT² TPBuild Operate & Transfer
PT³ TPBuild Own & Operate

Section Two: Legal Challenges

1. With regard to the delegation of the Ministry of Tourism's powers and responsibilities to JTC

Article (3) of the Tourism Law no. (20) of 1988 as amended , has provided as follows :

“ The Ministry aims , in cooperation with the private sector and in coordination with the relevant competent official bodies, at encouraging and development of tourism , the development of tourism revenues and investment thereof, so as to increase its participation in supporting the national economy and to disseminate understanding among peoples, and to achieve this , the Ministry shall assume the following tasks and powers :-

a) To maintain develop and keep tourism sites, and invest them directly and indirectly, including their organization , management and supervise the execution of the infrastructures and basic installations therein .

b) Organize , encourage and care for investment in the tourism sector in accordance with the general policy adopted by the Council .”

The above provision has granted the Ministry of Tourism the right to indirectly invest and develop the tourism sites i.e through third party, which could be implicitly interpreted that Ministry of Tourism has the legal right to delegate the powers granted to it by law, in the management and development of tourism sites , to a third party .

But despite the explicit provision entitling Ministry of Tourism, to indirectly develop and invest the tourism sites , we , and for many reasons, see that such provision is unable to give the sound legal basis to cover all development works which may be entrusted to the corporation as previously said , due to the following causes :-

- This provision is sufficient for the works related to the management and operation (Service Management Contract) and to certain extent the development works in the concept referred to in clause (B) in Section One hereof taking into consideration any other legislation related to this field . But we see that the nature and tasks of the Tourism Product Development Corporation, as mentioned in the previous discussions, go beyond these concepts as the implicit discussion of the project, is that the corporation shall be the party which shall, directly or indirectly, invest or invite the investment in conformity with the public tendency and the references of Ministry of

Tourism. Subsequently, the opinion is to delegate such powers to the corporation and the Ministry shall be the reference concerning the corporation's performance . therefore , we propose that Article (3) shall be amended so as to explicitly allow delegation of such tasks, wholly or partially, to any other party from the public or private sector, and the proposed provision may be as the provision of Article (28) of the Water Authority Law no. (18) for the year 1988 and the amendments thereof :

- a) *the Council of Ministers and upon recommendation by the Minister , may delegate any of the powers of the Authority or any of its projects or to implement any of the phases or the parts thereof , to any other party from the public or private sector , or to any public shareholding company or companies with limited liabilities owned wholly by the Authority or having an interest in its capital , and this may include transfer of the management of such projects or to lease them or transfer their ownership temporarily to any of such parties , in accordance with stipulations and for periods to be determined in the contracts concluded therewith for such purpose, provided to take into consideration the legal regulations applicable related to lease and transfer of ownership .*
- b) *In cases of concluding contracts for transfer of projects management or lease , the council of Ministers resolution may include an authorization for the employees of the parties concluded therewith to practice certain powers given to the employees of the Authority pursuant to the legislation's applicable concerning execution of such contracts .”*

2. Ownership of Lands

The second challenge shall be the issue of lands in which infrastructure and superstructure shall be developed and tourism and hotel facilities shall be constructed thereon.

Tasks of development and attraction of investment may necessitate transfer of lands ownership, or at least, to lease them to the corporation for long term, along with the right to lease or transfer their ownership to other parties.

To face this challenge, we must take into consideration the following matters:

- Regarding the corporation's ownership of the lands of tourism sites to be developed , it is inevitable to distinguish between two cases :

1. If such lands are owned by the Treasury, then transfer of their ownership must be pursuant to a decision issued by the Council of Ministers .
2. If such lands are private ownership, they must be expropriated by the Government prior to transfer of ownership to the corporation . This ,of course, shall raise a very important issue, namely, the legality of the Government expropriation of the land and transfer of its ownership to the corporation , this issue in addition to the investment and lease of land shall need a study no place for it herein .

3. Collection of Fees

The Tourism Law has not tackled the issue of entry fees to the tourism and historical sites, and if the Ministry of Tourism and / or the Antiquities Department has the right to remit such issue to any third party according to certain arrangements . Subsequently, granting the corporation to collect entry fees to the tourism and historical sites according to any arrangement with Ministry of Tourism and / or Antiquities Department shall necessitate amendment to both said Laws to face this issue .

4. Issues involved in defining tourism and historical sites as Public Utilities

Article (117) of the Jordanian constitution has provided as follows:-

“Each concession given to grant any right concerning investment of mines or metals or public utilities must be ratified by a law.”

Therefore , if the tourist and historical sites have been considered as public utility managed , developed and supervised by government , then granting the company the right to manage and develop such utility so as to have right in the investment returns exclusively in such utility, may require presenting the agreement to the parliament for the purpose of issuing law ratifying a concession agreement for this utility . This problem may be graduated, especially in case of giving rights to the corporation in the management and investment of historical sites such as Petra and Jerash .

5. Can the Ministry delegate its powers to the JTC without following the transparency procedures governing the bids ?

Article (3) of Privatization Law no. (25) of 2000 clarifies that the meaning of privatization is to adopt an economic procedure represented in enhancing the role of private sector in the economic activity to encompass the public sector's projects, which nature necessitates their management on commercial basis with the purpose of achieving the following :

- Increase efficiency of economic projects and raise their productivity and competitiveness.
- Management of economic projects in modern techniques , aiming to enable such projects to find stable markets and open new ones .
- Mitigate the financial burden on the treasury .

Article (4) of Privatization Law no. (25) of 2000 has setout methods of privatization of public establishments & projects owned by the public sector . The most important of which includes the following :

- Transfer of the project management from public sector to private sector pursuant to an agreement concluded by and between them granting private sector the right to manage and operate these projects .
- Grant private sector the right to establish certain project and use it solely, namely, pursuant to license contract or agreement concluded with the government for this purpose .

But Article (5) of the same law has confirmed commitment of privatization process by transparency, publicity (openness) and legal competitiveness .

We believe that this law urges delegation of tasks to the corporation, and therefore, it is our opinion that the Ministry of Tourism, unless otherwise provided, shall not be able to directly contract with the corporation due to the necessity of the Ministry's abidance by legal competition principles by virtue of the law provisions, rather the Ministry shall invite bids and offers from various companies having certain financial and technical conditions so as to ensure their capability to manage and develop tourism and historical sites, and then conclude a contract with the company having the best offer both financially and technically .

6. Developing Historical Sites

Article (3) of the Antiquities law no. (21) of 1988 and its amendments has provided that Antiquities Department shall assume a group of tasks and responsibilities, the most important of which shall be management of antiquities and historical sites in the Kingdom and to supervise, protect, maintain, restore and beautify their surroundings.

Through verification of the provision of this Article, it shall be obvious that the Antiquities law has not granted the antiquities department the right to assign such powers to any third party .

Accordingly, we believe that the Antiquities law must be amended so as to give the Antiquities Department the right to contract with any party qualified to assume management and operation of the historical sites, provided that basis and stipulations of such contract be determined pursuant to special Regulation to be issued for this purpose.

All matters concerning fees and concession as well as privatization of tasks related to development of tourism products shall cover both tourism and historical sites.

Section Three: General Legal Framework of the Corporation's Structure

a) Type of the Corporation

As far as the type of the Corporation is concerned , we believe the corporation should be “ private shareholding limited company “ aiming at making use of benefits given by law to this type of companies such as issuance of shares of different classes and privileges and rights, without any need to face requirements of incorporating a public shareholding company in the initial stages .

b) Ownership

Concerning ownership and partners , we propose this corporation shall be wholly owned by government due to many reasons, the most important of which, that management and development of tourism and historical sites are very sensitive issues because they have been connected with the Government since establishment of the Kingdom, in addition to the fact that such sites are considered of the national wealth, on which the local community in all its classes and sections are keen to protect and preserve them . This tendency also negates any problem concerning conflict of interests between shareholders in the private sector and the public sector in general, but this shall not negate the necessity to attract participation of the private sector in subsidiary investment of the cooperation in the superstructure of tourism sites.

It worth mentioning here that Jordan has achieved similar good assuring signs in the Aqaba Development Corporation wholly owned by Government, as the said corporation has succeeded in attracting private sector on the level of subsidiary investments and / or invitation of private sector to ownership in the company in a later stage .

In addition to all the above mentioned, we see necessity to enhance participation of the private sector on the level of the management of the company as follows:

1- Management

Concerning the management of the company, it is our opinion that the company's Board of Directors shall constitute nine members as follows :-

- Five members representing private sector.
- Four members representing the Government provided to include a Minister or Secretary General of Ministry of Tourism and Antiquities and Director of Antiquities Department.

2- Objectives

The main objectives of the corporation are management and development of the tourism product and in particular tourism and historical sites , and shall have the right to carry on any legal acts to achieve this , including :

- 1- Development and management of tourism products, and in particular, tourism and historical sites and to connect them, in conformity with appropriate commercial principles and practices, and in a manner to activate participation of private sector in development and management of such tourism products and to enhance and develop tourism in the Kingdom in general .
- 2- Participate in development and management of projects and infrastructure enabling the establishment of tourism projects according to appropriate commercial principles and practices.
- 3- To carryout deals and transactions which shall lead to the enhancement and development of tourism products, and in particular tourism and historical sites.
- 4- To participate in accelerating the development of tourism and to enable development thereof on comprehensive and integrated basis, as well as participation in making tourism one of the most important supporters to the national economy .
- 5- Acquisition of any company, commercial venture, business, name, goodwill, stock, shares, debentures, loan deeds or any financial tool, assets , movables or immovables, including without limitation, any land, buildings, factories or any other monies of whatsoever nature, either inside or outside the Kingdom, and to purchase and acquire and utilize any of them in any manner whatsoever .
- 6- To purchase or own all or any of the rights, assets and liabilities of any other person, trade project or company, and to be partner, merge or conclude any agreement with such person, trade project or company concerning mutual cooperation, or to merge or cooperate with any person or company.

- 7- To purchase, rent, replace, lease, own and acquire, for the purposes of the corporation, any lands, buildings, real estate, rights, privileges, patents, licenses, machines and tools and any movables or immovables needed by the corporation, and shall have the right to dispose the same in conformity with its interests, provided that purchase of real estate shall not be for trading purposes.
- 8- To apply for obtaining concession rights, patents, trade marks, industrial licenses, intellectual property rights and concessions in general, as shall be in the interests of the corporation and nature of its business, and to purchase or own such rights and privileges (Concessions) in any other manner, and to maintain the same and extend their terms either inside or outside the Kingdom. The corporation shall also have the right to use and invest such benefits, and to agree to carryout experiments, and endeavor to improve any concessions (Privileges), inventions or rights which may be owned or could be owned by the corporation.
- 9- To invest and dispose its monies not needed imminently in its business, in a manner achieving best revenues to the corporation.
- 10- To accept donations, borrow any monies necessary for its business or related thereto, or to pledge (mortgage) all or some of its assets, movables and immovable as surety for loans and liabilities of the company or those for any other person or company.
- 11- To enter, with any other private or public party, into contracts and agreements deemed necessary and appropriate for its business and related thereto , and to implement such agreements or contracts.
- 12- To merge with any other company having similar objectives being through selling, purchasing or partnership or any other similar arrangement or otherwise and to conclude any contracts or agreements with any party aiming at enhancing the company's objectives.
- 13- To open bank accounts and deposit in and withdraw from them, and to close and change the same.
- 14- To import machines, equipment, services and software required for the company so as to carryout any acts which are or may be necessary to implement the objectives said above or any of them, mentioned or not, and shall have the right to carryout all works stated above either by itself or by its representatives or agents.
- 15- To carryout any other matters or business which are or may be necessary to implement the above mentioned objectives or any of them, mentioned or not, and shall have the right to carryout all the above mentioned works, either by itself or by its representatives or agents.