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MINIMUM CAPITAL REQUIREMENTS IN JORDAN: OUTLINE OF LEGAL ISSUES

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MINIMUM CAPITAL REQUIREMENTS IN JORDAN: OUTLINE OF ISSUES

SUSTAINABLE ACHIEVEMENT OF BUSINESS EXPANSION AND
QUALITY (SABEQ)

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JORDANIANS

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Abbreviations and Acronyms

CCD	Companies Control Department
GOJ	Government of Jordan
JOD	Jordanian Dinars
MCR	Minimum Capital Requirements
MIT	Ministry of Industry and Trade
SABEQ	Sustainable Achievement of Business Expansion and Quality (SABEQ)

Executive Summary

The objective of this report is to summarize all legal provisions that may need amendment or consideration if the minimum capital requirements (MCRs) for the establishment of limited liability companies are to be eliminated or significantly reduced in Jordan, by amending the Companies Law.

The report provides an outline in matrix form for both the case of reducing or eliminating MCRs by flagging relevant provisions within the Companies Law and other applicable laws and regulations.

I. Background

According to World Bank Doing Business Data for 2006, Jordan ranked at number 101 (out of 107 surveyed countries) in relation to MCR for limited liability companies, making it one of the highest in the world. More than fifteen (15) governments across the world eliminated or reduced MCRs from the period 2003 to 2006. The modern global view of MCRs is that they are significant and artificial barriers to business development.

The Government of Jordan (GOJ) has recognized that its current MCRs impede foreign and local investments and has committed to eliminating or highly reducing MCRs for limited liability companies.

The Matrices below outline the provisions in the Companies Law and other relevant legislation that may be affected by the decision to eliminate or highly reduce MCRs; Matrix (I) outlines issues relating to eliminating MCRs and Matrix (II) outlines issues relating to highly reducing MCRs.

It is worth noting that this exercise does not address or deal with special laws that require minimum capital for their own business considerations (leasing companies, travel agents, exchange companies, brokerage firms, publications, transport etc.)

II. Matrices

Matrix (I): Eliminating MCRs

RELEVANT LAW/REGULATION	RELEVANT ARTICLE	COMMENTS
COMPANIES LAW	Article (54)(a): Company Capital a) <u>The capital of the Limited Liability Company shall be fixed in Jordanian Dinars provided that the capital is not less than thirty thousand Dinars divided into indivisible shares of equal value of not less than one Dinar each.</u> However, should more than one shareholder jointly own such shares, for whatever reason, the shareholders must select one person from amongst them to represent them before the Company. However, if the shareholders disagree or do not make that election within thirty days from the date they become holders of such share, then they shall be represented by the person elected from amongst them by the Company manager or its Management	- Article 54 of the Companies Law is the most relevant Article that sets the minimum capital requirements for limited liability companies.

RELEVANT LAW/REGULATION	RELEVANT ARTICLE	COMMENTS
	Committee.	
COMPANIES LAW	<p>Article (53)(a): Founding of a Limited Liability Company</p> <p>a) The Limited Liability Company is composed of two persons or more. The Company liability shall be considered independent from the liability of every shareholder in it. The Company assets and property shall be liable for its debts and obligations. <u>The liability of any shareholder therein for these debts, obligations and losses is limited to its shares in the Company.</u></p>	<p>- This Article provides for the basic principle that governs limited liability companies and must be taken into consideration if MCR is eliminated.</p>
COMPANIES LAW	<p>Article (59): Registration of the Company</p> <p>(a) The Controller shall issue his decision approving the registration of the Company within fifteen days from the date the application's submittal and signed by the shareholders. He may refuse the application if he finds that the Company Articles or Memorandum of Association contains a provision that contradicts the provisions stipulated in this Law and the regulations promulgated in accordance therewith and contrary to any other legislation in force in the Kingdom, and the shareholders have not removed the violation within the period specified by the Controller. The shareholders may object to the rejection decision before the Minister within thirty days of the date they are notified of same. If the Minister rejects the objection, the objectors may challenge his decision before the High Court of Justice within thirty days of the date of notifying them of the decision.</p> <p>(a)(1) If the Controller approves the registration of the Company or such approval was secured by the Minister's decision in accordance with the provisions of paragraph (a) of this Article, <u>and after the shareholders submit documents which prove that not less than 50% of the Company capital has been deposited at a Bank in the Kingdom</u>, the Controller shall collect the registration fees and issue a registration certificate to be published in the Official Gazette. <u>In all cases, the remainder of the</u></p>	<p>- The Companies Law currently requires that no less than 50% of the capital of limited liability companies be deposited with a Jordanian bank</p>

RELEVANT LAW/REGULATION	RELEVANT ARTICLE	COMMENTS
	<p><u>Company capital shall be paid within the two years following its registration. The deposited amount can not be disposed of for purposes that are not related to the Company.</u></p> <p><u>(b)(2) The provision of clause (1) of this paragraph shall be applied to any increase that may occur to the Company capital.</u></p> <p><u>(c) The bank with which any amounts of the Company capital have been deposited, the Company being in the founding stage, may not return it unless a certificate from the Controller attesting to desisting from establishing the Company has been presented it. This provision shall be applied upon any increase to the Company capital</u></p>	
<p>COMPANIES LAW</p>	<p>Article (64): The Company General Assembly</p> <p>(a) The General Assembly of a Limited Liability Company is composed of all the shareholders therein, and shall hold one annual meeting during the first four months of the Company fiscal year upon the invitation of either its manager or the chairman of the Management Committee and in the place and on the date specified thereof.</p> <p>(b)(1) The General Assembly of a Limited Liability Company may hold one or more extraordinary meeting upon the request of its manager or Management Committee to discuss any of the issues falling within its jurisdiction in accordance with the provisions of this Law, in any of the following two situations*:</p> <ul style="list-style-type: none"> • <u>Upon the request of a number of shareholders holding at least one quarter of the Company capital provided that a copy of the request is sent to the Controller .</u> • <u>Upon the request of the Controller should he receive a request from shareholders holding at least 15% of the Company capital, and is satisfied with the reasons indicated therein .</u> 	<p>- The Companies Law provides for the possibility of shareholders to directly call for a general assembly meeting (if they own 25% of company's capital) or through Companies Controller (if they own 15% of the Company's capital)</p>
<p>COMPANIES LAW</p>	<p>Article (65): The Legal Quorum for General Assembly Meetings</p> <p>(a) The quorum for the ordinary meeting of the</p>	<p>- The Companies Law sets the quorum to hold ordinary and extraordinary General Assembly meetings in accordance with specific percentage of</p>

RELEVANT LAW/REGULATION	RELEVANT ARTICLE	COMMENTS
	<p><u>General Assembly of the Limited Liability Company shall be valid if attended by a number of shareholders representing more than one-half of the Company capital whether they attend in person or by proxy. If such quorum is not present within one hour from the time set for starting the meeting, then such meeting shall be postponed to another date which will be held within fifteen days from the date set for the first meeting. The absent shareholders shall be notified of this, and the quorum at the second meeting shall be considered valid with the shareholders present regardless of their number or the percentage of shares owned by them in the capital.</u></p> <p><u>(b) The quorum for the extraordinary meeting of the General Assembly of the Limited Liability Company shall be valid if attended by a number of shareholders representing at least 75% of the shares which form the Company capital, whether in person or by proxy unless the Company Memorandum of Association provides for a higher majority. If however, the quorum is not present within one hour from the time set for starting the meeting, then it will be postponed to another date to be held within ten days from the date set for the first meeting. The absent shareholders shall be re-notified thereof, and quorum for the second meeting shall be valid if attended by at least 50% of the shares forming the Company capital, whether in person or by proxy unless the Company Articles of Association provides for higher majority. Should such quorum not be present the meeting shall be cancelled whatever the reasons for calling it.</u></p>	company capital.
COMPANIES LAW	<p>Article (67): The Agenda for the Extraordinary General Assembly Meeting</p> <p>(a) The General Assembly of a Limited Liability Company shall be invited to an extra-ordinary meeting. None of the following issues can be discussed unless they have been stated in the agenda for this meeting:</p> <ul style="list-style-type: none"> • The amending the text to the Company Articles or Memorandum of Association • Increase or decrease of the Company capital and determination of the share premium or discount, provided that the provisions stipulated in Article (68) of this Law pertaining to the decrease of the Company capital are observed and that the method of increasing the 	- The Companies Law sets the quorum for decision making at General Assembly meetings in accordance with specific percentages of the company's capital.

RELEVANT LAW/REGULATION	RELEVANT ARTICLE	COMMENTS
	<p>capital is specified .</p> <ul style="list-style-type: none"> • Merger or incorporation of the Company by any of the incorporation methods stated in the Law . • Dissolution and liquidation of the Company . • Discharge of the Company manager or its Management Committee or any of its members . • Sale of the Company or all of its assets, or the ownership of another company or buying all or part of its assets . • Guarantee of third parties' obligations if the Company interest so requires . • Any issue that falls within the jurisdiction of the extraordinary General Assembly stated in this Law or the Company Memorandum of Association . <p>(b) Notwithstanding the provisions stipulated in Articles (68) and (75) of this Law and if the aim is to restructure the capital, the Company may decrease and re-increase its capital at the same extraordinary meeting of the General Assembly convened in accordance with the provisions of the Law for this purpose, provided that the invitation shall contain the justifications and feasibility which this procedure aims at, and that the restructuring of the capital shall be published in two local newspapers for at least one time.</p> <p>(c) <u>The General Assembly of the shareholders in a Limited Liability Company may at its extraordinary meeting discuss any of the issues mentioned in Article (66) of this Law, provided that the said issues are listed in the invitation for the meeting. The assembly shall adopt its decisions by the majority of the capital shares represented in the meeting.</u></p> <p>(d) <u>The General Assembly of a Limited Liability Company shall adopt its decisions in respect of any of the issues provided for in paragraph (a) of this Article by a majority of not less than 75% of the capital shares represented in the meeting, unless the Company Memorandum of Association provides for a greater majority.</u> Decisions adopted by the General Assembly regarding the issues mentioned in clauses (1), (2), (3), (4) and (6) of paragraph (a) and paragraph (b) of this Article shall be subject to</p>	

RELEVANT LAW/REGULATION	RELEVANT ARTICLE	COMMENTS
	<p>the provisions of approval, registration and publication stipulated in this Law.</p> <p>(e) If the General Assembly fails, during its ordinary or extraordinary meetings, to reach a decision as a result of a tie in the votes in two consecutive meetings, the Controller shall grant it a period that does not exceed thirty days to reach the appropriate decision. In case such a decision is not reached the Controller is entitled to refer same to Court to decide on its liquidation.</p>	
COMPANIES LAW	<p>Article (75): Company Losses</p> <p>(a) <u>Should the losses of the Limited Liability Company exceed half of its capital, the Company manager or its Management Committee shall invite the Company's General Assembly to an extraordinary meeting in order to decide on whether the Company should be liquidated or continue to exist in a manner that would rectify its position.</u> If the General Assembly fails to reach a decision in this respect within two consecutive meetings, the Controller shall grant the Company a grace period of not more than a month to reach the decision. If it fails in reaching a decision, the Company shall be referred to Court for the purposes of compulsory liquidation in accordance with the provisions of the Law.</p> <p>(b) <u>Should the Company's losses amount to three quarters of its capital, the Company shall be liquidated unless the General Assembly decides in an extraordinary meeting to increase the Company's capital to deal with the losses or quench the losses in accordance with the accredited international accounting and auditing standards, provided that the total of the remaining losses does not exceed half of the Company's capital in both cases.</u></p>	<p>- Article 75 of the Companies Law obligates companies to either rectify their status or force them to liquidate if losses exceed 50% or 75% of the capital, as the case may be.</p>
COMPANIES REGULATION NO. 50 FOR YEAR 1997	<p>Articles (3) and (4) of Companies Regulation provide that government fees for registration or transfer of shares in limited liability companies shall be based on a percentage of their capital</p>	<p>- Company registrations fees form a substantial source of revenue for GOJ (approx. JOD 14 million per year). The current fee structure is based on a percentage of declared capital of companies.</p>
FEED AND STAMP DUTY LAW	<p>Article 1(a) of Annex (i) of Fees and Stamp Duties Law provides that stamp duty shall be imposed on companies based on their registered capital (2% of company's capital)</p>	<p>- see above comment</p>
REGULATION OF	<p>Article 7 of Regulation provides that non Jordanian participation in any company (except</p>	<p>- Article 7 of Regulation of foreign investments must also be addressed in</p>

RELEVANT LAW/REGULATION	RELEVANT ARTICLE	COMMENTS
FOREIGN INVESTMENT NO. 54 FOR YEAR 2000	<u>publicly traded company) must not be less than JOD 50,000.</u>	case of elimination of MCRs, otherwise any change in Companies Law only would be limited in its effect to local investments.

Matrix (II): Reducing MCRs

RELEVANT LAW/REGULATION	RELEVANT ARTICLE	COMMENTS
COMPANIES LAW	<p>Article (54)(a): Company Capital</p> <p>a) <u>The capital of the Limited Liability Company shall be fixed in Jordanian Dinars provided that the capital is not less than thirty thousand Dinars divided into indivisible shares of equal value of not less than one Dinar each.</u> However, should more than one shareholder jointly own such shares, for whatever reason, the shareholders must select one person from amongst them to represent them before the Company. However, if the shareholders disagree or do not make that election within thirty days from the date they become holders of such share, then they shall be represented by the person elected from amongst them by the Company manager or its Management Committee.</p>	<p>- Article 54 of the Companies Law is the most relevant Article that sets the minimum capital requirements for limited liability companies.</p>
COMPANIES LAW	<p>Article (53)(a): Founding of a Limited Liability Company</p> <p>a) The Limited Liability Company is composed of two persons or more. The Company liability shall be considered independent from the liability of every shareholder in it. The Company assets and property shall be liable for its debts and obligations. <u>The liability of any shareholder therein for these debts, obligations and losses is limited to its shares in the Company.</u></p>	<p>- This Article provides for the basic principle that governs limited liability companies and must be taken into consideration if MCR is reduced.</p>
COMPANIES LAW	<p>Article (59): Registration of the Company</p> <p>(a) The Controller shall issue his decision approving the registration of the Company within fifteen days from the date the application's submittal and signed by the shareholders. He may refuse the application if he finds that the Company Articles or Memorandum of Association contains a provision that contradicts the provisions stipulated in this Law and the regulations promulgated in accordance therewith and contrary to any other legislation in force in the Kingdom, and the shareholders have not removed the violation within the period specified by the Controller. The shareholders may object to the rejection decision before the Minister within thirty days of the date they are</p>	<p>- The Companies Law currently requires that no less than 50% of the capital of limited liability companies be deposited with a Jordanian bank. A significant reduction of MCRs may make this requirement unnecessary</p>

RELEVANT LAW/REGULATION	RELEVANT ARTICLE	COMMENTS
	<p>notified of same. If the Minister rejects the objection, the objectors may challenge his decision before the High Court of Justice within thirty days of the date of notifying them of the decision.</p> <p>(a)(1) <u>If the Controller approves the registration of the Company or such approval was secured by the Minister's decision in accordance with the provisions of paragraph (a) of this Article, and after the shareholders submit documents which prove that not less than 50% of the Company capital has been deposited at a Bank in the Kingdom, the Controller shall collect the registration fees and issue a registration certificate to be published in the Official Gazette. In all cases, the remainder of the Company capital shall be paid within the two years following its registration. The deposited amount can not be disposed of for purposes that are not related to the Company.</u></p> <p>(b)(2) <u>The provision of clause (1) of this paragraph shall be applied to any increase that may occur to the Company capital.</u></p> <p>(c) <u>The bank with which any amounts of the Company capital have been deposited, the Company being in the founding stage, may not return it unless a certificate from the Controller attesting to desisting from establishing the Company has been presented it. This provision shall be applied upon any increase to the Company capital</u></p>	
COMPANIES LAW	<p>Article (75): Company Losses</p> <p>(a) <u>Should the losses of the Limited Liability Company exceed half of its capital, the Company manager or its Management Committee shall invite the Company's General Assembly to an extraordinary meeting in order to decide on whether the Company should be liquidated or continue to exist in a manner that would rectify its position. If the General Assembly fails to reach a decision in this respect within two consecutive meetings, the Controller shall grant the Company a grace period of not more than a month to reach the decision. If it fails in reaching a decision, the Company shall be referred to Court for the purposes of compulsory liquidation in</u></p>	<p>- The Companies Law provides for the possibility of shareholders to directly call for a general assembly meeting (if they own 25% of company's capital) or through Companies Controller (if they own 15% of the Company's capital).</p>

RELEVANT LAW/REGULATION	RELEVANT ARTICLE	COMMENTS
	<p>accordance with the provisions of the Law.</p> <p><u>(b) Should the Company's losses amount to three quarters of its capital, the Company shall be liquidated unless the General Assembly decides in an extraordinary meeting to increase the Company's capital to deal with the losses or quench the losses in accordance with the accredited international accounting and auditing standards, provided that the total of the remaining losses does not exceed half of the Company's capital in both cases.</u></p>	
<p>COMPANIES REGULATION NO. 50 FOR YEAR 1997</p>	<p>Articles (3) and (4) of Companies Regulation provide that government fees for registration or transfer of shares in limited liability companies shall be based on a percentage of their capital</p>	<p>- Company registrations fees form a substantial source of revenue for GOJ (approx. JOD 14 per year). The current fee structure is based on capital of companies.</p>
<p>FEED AND STAMP DUTY LAW</p>	<p>Article 1(a) of Annex (i) of Fees and Stamp Duties Law provides that stamp duty shall be imposed on companies based on their registered capital (2% of company's capital)</p>	<p>- see above comment</p>
<p>REGULATION OF FOREIGN INVESTMENT NO. 54 FOR YEAR 2000</p>	<p>Article 7 of Regulation <u>provides that non Jordanian participation in any company (except publicly traded company) must not be less than JOD 50,000.</u></p>	<p>- Article 7 of Regulation of foreign investments must also be addressed in case of elimination of MCRs, otherwise any change in Companies Law only would be ineffective and useless.</p>

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