

**Access to Microfinance & Improved Implementation of Policy Reform
(AMIR Program)**

Funded By U.S. Agency for International Development

**LEGAL OPINION RE INSTITUTIONAL SET-UP
FOR A WHOLESALE LENDING FACILITY**

Final Report

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Form and jurisdiction options, pros and cons for creating a whole sale credit facility (Facility).

Our analysis below will show that a Jordanian Limited Liability Company would be the preferred form to establish the Facility. Although credit facilities are a legal novelty to the Jordanian legal scene, yet such set-up could involve a management contract with a licensed bank or financial company to carry out the activities of the credit facility.

I- The Central Bank of Jordan Approval “License”

The Jordanian Banking Law No. 24 of 1971 as amended defines “banking activities” as:

All banking activities especially accepting deposits and using all or parts thereof together with other resources in lending or in any other means permitted by this Law.

The Law defines “Financial Companies” as:

Any company whose memorandum or articles of incorporation provides that the company’s objectives include carrying out the activities of licensed banks and practicing any such activities, especially accepting deposits or providing credit. This provision shall not include insurance companies, which are subject to the insurance laws .

It is clear from the definition of “banking activities” and “financial companies” that although the Banking Law seems to indicate that lending money is characterized as banking activity, yet in its definition of financial companies, the Law includes lending only under banking activities’ rubric. The implication of this understanding is that legal entities whose objectives are lending money are subject to the licensing authority of the Central Bank of Jordan. Accordingly, such entities are subject to the conditions and stipulations set out in the Banking Law.

Therefore, establishing a credit facility in Jordan would likely require securing the prior approval, if not licensing, from the Central Bank of Jordan. In my judgment, and considering last year’s Central Bank’s approval of the establishment of micro-finance institutions, the Central Bank’s approval for establishing a credit facility would not be an insurmountable obstacle.

II- Alternative Forms and Jurisdictions to Establish the Facility:

The credit facility could be established as a Jordanian company or as an off-shore entity. The Jordanian Securities Law permits the establishment of Funds that invest in securities but such permission does not extend to lending portfolios.

As far as the Jordanian financial companies are concerned, the most common practice is to establish the financial company as a public shareholding company. Nonetheless, it is possible to establish a financial company as a limited liability company. A limited liability company may be established by at least two partners, and with a minimum capital requirement of JD 30,000. In cases where there is foreign investment

in the limited liability company, the minimum foreign investment should be JD 50,000.

Limited liability companies, as the name indicates, enjoy limitation of their liability to their capital. Other than acquiring the Central Bank's approval, establishing a limited liability company is relatively fast and uncomplicated. If all the necessary documents are available, it can be done in one day.

Upon registration, 50% of the limited liability company's capital should be paid. Limited liability companies may be managed by a single director or by a board of directors which consists of no more than seven and not less than two members.

Limited liability companies in Jordan are closely regulated as far as quorum requirements and voting majorities are concerned. The Companies Law stipulates a special majority vote for such issues as increasing or decreasing the company's capital, liquidation, and deposition of the board of directors.

For the purposes of this opinion, we need to distinguish between establishing a whole sale funding facility (Facility) and managing such Facility.

Establishing the Facility as an off-shore entity would bring the Facility outside the jurisdiction of the Central Bank of Jordan and the Controller of the Companies as far as the establishment of this Facility is concerned.

The Facility could be created in the form of an off-shore company or a trust in one of the off-shore jurisdictions, such as the Bahamas, Cyprus, and Jersey.

Establishing an off-shore entity, whether a company or a trust, is also uncomplicated and not time consuming. The legal instruments for creating any such entity could be prepared in Amman and sent via a law office in one of these jurisdictions to lodge the documents at the appropriate registry.

Off-shore companies, usually called international business corporations, usually enjoy greater flexibility and are not heavily regulated. Trusts on the other hand are more closely regulated and require more formalities.

Nonetheless, an off-shore entity would carry out its activities primarily in Jordan. Accordingly, such an entity would be subject to whatever prudential regulations imposed by the Central Bank and would be subject to Jordan tax laws. Therefore, establishing an off-shore entity does not guarantee exclusion of the Central Bank's role, if any. Such proposed structure, however, would enable the Facility to extend and recover loans from micro-finance institutions (MFIs).

An off-shore trust form does not rule out the possibility of subcontracting the Facility to an existing financial company. However, both scenarios, establishing an off-shore trust to lend MFIs or an off-shore trust subcontracted to a financial company, while being cost and time efficient, still pose the question of whether MFIs or a financial company would be entitled to receive loans from foreign sources. If the answer is in the negative, establishing the Facility as a loan fund is an unprecedented concept to the Jordanian legislation and would inevitably require approval from the Central Bank.

III- Managing the Facility

With the exception of the trust, which has to out source its management, the other alternative forms may build their own internal management or may out source to another entity. Such a management company in Jordan would most likely be a bank or a financial company. Since such set up is a novelty, the management contract and how would it be dealt with in cases of disputes suffers some unpredictability. The suggested legal set up requires exercising some discretion.

IV- Conclusion

In conclusion, establishing the Facility would ultimately require the approval of the Central Bank of Jordan regardless of the form and jurisdiction of the Facility unless borrowers are not denied to receive loans from an off-shore trust.

Managing the Facility could only be achieved through a bank or a financial company licensed by the Central Bank. The financial company would be subject to reporting requirements to the Central Bank.

Taking all of the above in consideration, and looking at the table below, a Jordanian limited liability company seems to be the most appropriate form for establishing the Facility. Difficulty to avoid involvement of the Central Bank, the Central Bank's preference for a Jordanian entity, tax implications, and the long term cost are but some of the considerations that support the establishment of a Jordanian limited liability company.

V- Table of Comparison

The following table summarizes the various issues to be addressed with regard to each alternative form.

V - Comparison

The following table summarizes the various issues to be addressed with regard to each structure alternative :

Issues	Limited liability Company	Off-shore Company	Off-shore Trust
Legal Reporting Requirements	Yearly	Some jurisdictions do not require it	Depends on Jurisdiction
Legal Authority to Extend Loans	Requires Central Bank's approval	Yes	Yes
Legal Authority to Enforce Creditors Rights	Efficient	Efficient	Efficient
Legal Authority to make On-shore and Off-shore Investments	Subject to prudential regulations	Tax implications	Tax implications
Cost / Time to Establish 10,000,000 USD Capital	If approval is their Duties 30,000 USD Fees 5,000 JDs 24 hours No maintenance fees	Duties and fees 6000-20000 USD 48 hours - 8 weeks yearly maintenance fee 2000 USD	Duties and fees 6000-20000 USD 48 hours - 8 weeks yearly maintenance fee 5000 USD
Management/Board Structure Requirement	Simplified board of directors	Simplified board of directors	Settlor and a trustee Effective

Issues	Limited liability Company	Off-shore Company	Off-shore Trust
Effective Laws regarding Fiduciary Responsibilities	Effective	Less effective	Effective
Legality of Manager Absorbing any Portfolio Losses and Receiving a performance Bonus	No	No	Depends on Jurisdiction
Avoiding Jordan's Central Bank Regulation	No	No	No
Central Bank's preference	Preferred	Less Preferred	Less Preferred
Flexibility	Rigid	Flexible	Rigid
Foreign exchange risk	No risk	High risk	High Risk
Tax implications	No tax if non-profit	Jordanian withholding tax	Jordanian with withholding tax