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*Author's Name: International Business Legal Associates
(IBLAW) by Ms. Rand Hannun*

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Strategy- Support Reform of Tourism Law 7262.5

**Establishment of the Human Resource Development Council
Support Reform of Tourism Law 7262.5**

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In IBLAW letter No. IBLAW/NH/Project/Mar/05/40/A, dated May 18, 2005, we have identified the different options pursuant to which a Human Resource Development Council (*hereinafter HRDC or the Council*) can be established.

The three options identified were to establish a Company; to issue a new legislation and to amend existing legislation. Each option was reviewed in details to assess its feasibility and effectiveness, in light of the objectives as and the intended outcome for such Council.

Upon further discussions with AMIR consultants, it became evident that amending an existing legislation is an impractical and unfeasibly long-term solution, therefore it was neglected. The remaining options however are specified in more details in this letter, in order to give policy makers a comprehensive and thorough analysis that would enable them to take the appropriate decision in this regard.

Hence, our options are:

- 1- **Form a new company under the Companies Law.** Within this scenario a company will be registered with the Ministry of Industry & Trade (MIT), and it will be managed and controlled by the Government and the Private sector. Objectives and goals of the Company will be specified in the its articles of association, as well as its governance, control, and the legal structure.
- 2- **Issue a new legislation to establish this new Council.** Legislation is in this case a regulation that will be issued pursuant to the Article (120) of the Constitution. The option to chose a regulation and not a law is that the regulation is easier to pass on via the legislative channels. The regulation will specify the structure, mandate, composition and relationship of Council with other entities.

The following is a detailed explanation of both options:

First: A New Company

A. *Description of the option:*

A Council could be established by registering a company with MIT to carry out the tasks and functions of the Council, in accordance with the following:

1- Capital and Ownership:

This company will be fully owned by the Government and will be represent by the ministries concerned with the functions and operations of the company (i.e. Ministry of Tourism, Ministry of Labor, Ministry of Education and Ministry of Planning). Other ministries of relevance can also be represented in such company as it is appropriate.

2- Type of the Company:

The companies law defined different types of companies with different structures and authorities. It is in our experience that the most practical and flexible type of such structures would be the Private Shareholding Company (PSC) which provides flexibility in setting up the structure of the company, its governance and separation between the ownership and management.

Within this option, the company will have Memorandum of Association (MoA) which regulates the structure of the company, the board of directors structure, method of their appointment or

election, their powers and duties and other corporate matters. The MoA of the company will be drafted to serve the needs, mission and vision of the Council, and will be submitted to the MIT.

The minimum capital of the PSC would be not less than JD 50.000, and will be distributed into shares owned wholly by the Government.

3- General Assembly:

The government as the owner of this company, will be represented in this company by officials (as mentioned above, ministerial level). The general assembly will be the body that is responsible for the appointment or election of the Board, approve the financial statements and any other matter that falls under the jurisdiction of the General Assembly in accordance with the MoA and the Companies Law.

4- Board of Directors (BoD):

The BoD will be elected or appointed by the Government in a way to conform with the structure proposed by AMIR experts¹.

The BoD will prepare policies, regulations and mandates of the Company, which will be executed by the operation team headed by the Chief Executive Officer (CEO). The CEO will be appointed by the BoD, and his/her duties, powers, obligations and salary will be determined by the BoD. He/she will be the head of the executive body in the company and responsible for the day-to-day operation.

5- Committees:

Within this option the BoD will be entitled to form special committees which will be as a coordinator with the related governmental entities including the ministries and any public institution relevant to training and development of human resources (e.g. Tourism Committee, Labor Committee, Education Committee ... etc.). The committees' scope of work, their powers and authorities will be determined by the BoD. Those committees will also serve as the contact point between the concerned entities and the company, and will make recommendations to the BoD regarding the technical matters discussed within.

Each committee will be chaired by a board member, and with the membership of the private or public sector appointed by the BoD (either from the board members or other stakeholders).

The committees will present their recommendations and input to the BoD who in turn will discuss and/or approve such. Upon approval, the recommendations can be produced within the Company's work plan, and can also be included within the (Memoranda of Understanding) MoUs that the company signs with each pertinent ministry/entity.

¹ As identified in AMIR report: (Institutional Framework For TOURISM HUMAN RESOURCE COUNCIL).

6- Financial matters and Funds of the Company:

The company should have an External Auditor, which will be elected by the General Assembly and will be responsible to audit the annual balance sheet and final accounts, including the profit and loss account, and cash flow statement in accordance with generally recognized international accounting principles, rules and criteria.

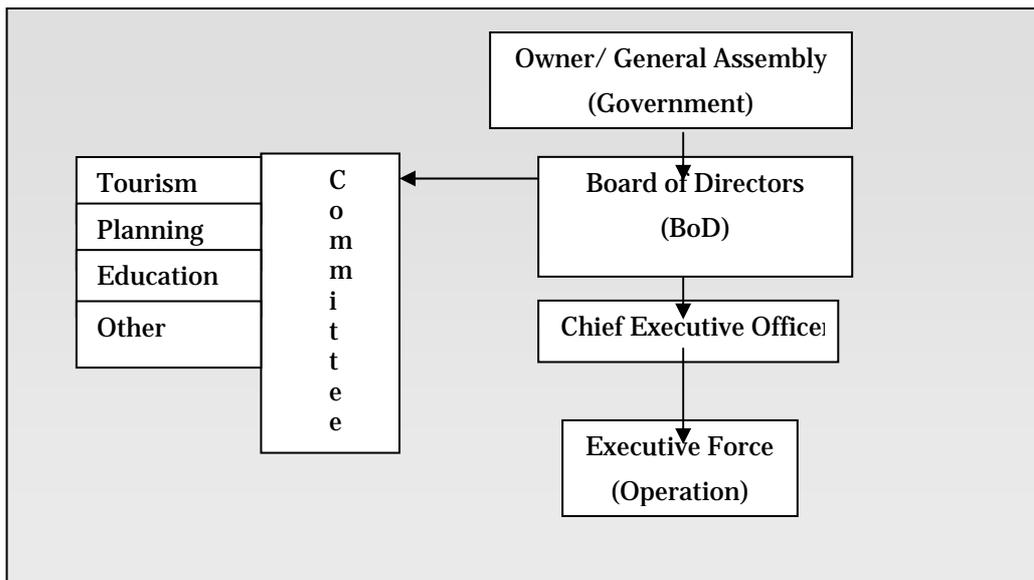
The capital will be disposed for the purposes related to the company, and the revenue of the company might consists of the profits generated out of its activities and functions, donations and contributions.

7- MoUs with other entities:

The company will enter into Memoranda of Association with the concerned ministries and institution in order to facilitate its coordinative role and to perform its objectives. These MoUs can be derived from the matters discussed within the technical committees formed by the BoD (mentioned above) and approved within the general consensus of the BoD.

8- Organization structure of the company:

The structure of the company will eventually look similar to the following diagram:



B. *Advantages of the option:*

- 1- Establishing and registering a company is not a long process. Once the MoA is drafted and the capital is allocated the company will be registered in accordance with the companies law with the MIT.
- 2- The company does need to go through the process of issuing a law or bylaw.

3- The company will be able to functions its coordinative role through MoU's with the concerned parties. Furthermore, the governmental representation in the Board as well as the ownership of the company, will facilitate the coordination between the company and other parties.

4- The company can within the strategy set out by its board exercise all the objectives, including research, training and development of HR.

C. Risks of the option:

1- Influencing role: this company might lack the influencing role, since laying out conditions and activities will be on a contractual basis with the concerned parties. In other words it will not be able to impose regulations and set rules (either on the concerned parties or the sector). However, this role can be practiced by the concerned parties and can be covered in the MoU's, where the formed committees will coordinate with the concerned bodies, and will coordinate with the BoD to direct them to play this role.

2- Costs for establishing the company might be higher than anticipated, particularly since the proposed structure (Private Shareholding Company) requires JD 50 thousand for registration, aside from other operational and setting up costs.

Second: A New Regulation

A. Description of option:

A Council could be established by a new regulation issued pursuant to the Constitution². Normally, new administrative structures are established pursuant to laws and it is rarely that this Article (120) of the Constitution has been used to pass new structures of the Government.

However, there has been precedents where the Council of Ministers issued regulations pursuant to the Constitution to establish new entities. For example, the Council of Ministers issued Regulation No. (24) Of 1989: The Agricultural Council Regulation. The Council is existing still and its Regulation is yet enacted.

This Council is formed under the chairmanship of the Minister of Agriculture, and includes representation of both public and private sector entities. Amongst its mandates, the Council is responsible for identifying the objectives of agricultural development and preparing the strategy necessary for achieving such. As well, the Council will also review the plans and programs for agricultural development in light of the economic and social developmental plans. The Council is entitled to form committees that are responsible for undertaking any activities entrusted therewith by the Council. Lastly, the Council has no funding mechanisms and has no direct affiliation with any entity³.

² Article (120) of the Constitution stipulates that administrative divisions in the Kingdom, and formation, levels and names of governmental departments and methods of administrating such... shall be specified by Regulations issued by the Council of Ministers upon the approval of the King

³ The Agricultural Council Regulation No. (24) pf 1989.

Another more recent precedent is the Royal Hashemite Jordanian Documentation Center, established pursuant to Regulation No. (39) of 2005. The Center is responsible for collecting and maintaining documents, on Jordan and bibliographic, historic and official papers, letters, microfilms, recordings and pictures pertaining to the Hashemites. The Center has a Board of Trustees appointed by a royal decree and a general manager appointed by the Board of Trustees. The financial resources of the Center include the allocations designated by the Council of Ministers, and any donations, grants and aids extended by local or foreign official entities or individuals⁴.

The two examples provided above lead us to two conclusions; 1) that the Government sees Article (120) as an option to justify the establishment of new entities thereunder; and 2) that such option is minimally used to create new “councils” since it was used only twice or maybe three times.

In all cases, the new HRDC regulation will be based on Article (120) and will be issued as a separate regulation under the Constitution. The Council could be affiliated to any entity that the regulation will specify. As well, this new regulation will flesh out the structure, mandate, funding and other regulatory functions that are allowed normally for quasi-government institutions (assuming the Council would be a semi-official body). This scenario will also ensure that the details for relationship and coordination with other agencies are stipulated therein.

B. Advantages of option:

1- Normally, having a legal tool is very effective for enforcement. This will ensure that such Council is enabled to assume its functions efficiently and swiftly. This is particularly important to the Council at the first phases of operation in order to ensure full support and cooperation by other public sector entities as well as an affective channel for the private sector to influence the government, in case a strong private sector representation is guaranteed. Enforcement is also important to guarantee compliance with specific standards and curricular requirements that the Council would wish to enforce at the beginning of operations.

Although we understand that enforcement for the Council should be by expertise, it is nonetheless important for the Council to set the basic strategic guidelines for training and education and be able to ensure the buy-in and abidance by the various stakeholders, whether public or private.

2- Mechanisms for funding will be readily available for the new agency, as per its creating legislation. As we understand, funding can be a major element in setting up this Council and is crucial for supporting the continuity of its activities, at least at the beginning. In the regulation, an appropriate funding mechanism can be specified, whether it is an allocation by the government from the annual budget, or a certain revenue specified as a fee.

⁴ The Royal Hashemite Jordanian Documentation Center Regulation No. (39) of 5005

C. Risks of option:

1- Passing a new regulation is somewhat a lengthy process that will require time until it is passed and in force. This might be less preferable considering the urgency for this Council. It is also difficult to anticipate the amount of time that this regulation will consume, as this heavily depends on various factors including government support, industry support, resources available to draft and advocate the regulation and the collaboration of the Legislative Bureau.

2- Moreover, a new r regulation will have to be reviewed against current entities which undertake similar activities. For example, arguments as to this Council's usefulness might occur while arguing the existence of other operational councils.

One of these entities is the Vocational and Technical Education and Training Council established under the Interim Law No. (58) of 2001. This Council is formed with the objective to improve the standards of vocational and technical education and training to promote the work force in a way that fulfills the requirements of comprehensive development in the Kingdom. The functions of this Council include the preparation of the general policy for vocational and technical education and training; establishing the bases of promoting the programs and systems for vocational and technical education and training, and enforcing such; adopting the general framework for educational and training programs in vocational and technical education and training schools; preparing and approving the professional standards and accreditation bases for educational and training programs in vocational and technical education and training schools, in coordination with the Accreditation Council in regards to applied collegial institutions; and preparing the general policy for habilitating and preparing vocational trainers.

This Vocational Council is particularly relevant to the Council's functions and objectives, and therefore, the HRDC must be described in details to indicate its sector-specific nature in order to avoid any linking to the Vocational Council, or any affiliation thereto.

3- Similar to point (2) above, a new entity will also be reviewed against public budget and staffing concerns, as this will add to the government's commitments to new public or semi-public corporations. This will lead in our opinion to many deliberations on the feasibility and usefulness of the Council, or at the very least will lead to passing the regulation by the Council of Ministers but impede its operations by withholding staffing and funding.

4- Quasi governmental agencies must be headed by a public sector chairman which will lead to a flaw in the HRDC structure since private sector participation (and maybe leadership) is restricted.

Lastly, IBLAW highly recommends the establishment of a new company rather than the issuance of a new regulation, considering the flexibility and effectiveness of the company, and in light of the fact that a law can be issued at a later stage to enhance and strengthen the company's functions and operations, if need be.