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# SUPPORTING THE DEVELOPMENT ZONES REGULATORY FRAMEWORK

Guidance for Regulations and Instructions  
- FINAL REPORT -

January 25, 2009

This publication was produced for review by the United States Agency for International Development. It was prepared by Geoff Wright of BearingPoint.

# **SUPPORTING THE DEVELOPMENT ZONES REGULATORY FRAMEWORK**

GUIDANCE FOR REGULATIONS AND INSTRUCTIONS

- FINAL REPORT -

USAID/JORDAN ECONOMIC DEVELOPMENT PROGRAM  
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## EXECUTIVE SUMMARY

This report briefly summarizes findings from an approximate 12-day mission by the author to Jordan in November/December, 2008, to review existing draft regulations and provide guidance on further regulations and implementing instructions to be administered by the Development Zones Commission under the recent Development Areas Law No.2 for the Year 2008.

The Commission intends to draw upon the successful experience of the Aqaba Special Economic Zone Authority (ASEZA) in regulating development zones – which are modeled after the Aqaba Special Economic Zone (ASEZ).

Zone designation and licensing regulations have been approved by the Council of Ministers and essentially adopt the Aqaba procedures with amendments applied from relevant implementation experience in Jordan. Recently drafted instructions will be ready for comment once translated into English in early 2009. Instructions for Company Registrations and Master Developer Registration have been published in the official Gazette.

Income tax policy and administration require further work – both need to be designed carefully to minimize the risk of significant income tax evasion and high taxpayer compliance costs. It is recommended that the Jordanian Income and Sales Tax Department (ISTD) administer the income and sales tax regime within development areas rather than the Commission. This has been agreed by the Commission and the regulations are at the Legislative Bureau with this in consideration. The reason why the Commission is outsourcing administration is because it is wary of creating an unwieldy and overlay large administrative unit within the commission.. Many investors likely to operate in zones will be existing ISTD taxpayers. Tax policy also needs to carefully allocate and monitor income earnings between the low tax zones and higher taxed customs territory.

Article 24 of the Law provides that the total development area will comprise a customs controlled duty-free area. Unlike free zones many development areas will be too large to be fenced so that zone customs will have to rely upon careful documentary and inventory auditing. There is a significant risk of smuggling inherent in the Law. Zones customs will have to employ innovative and sophisticated procedures to separate and monitor duty-free goods from duty-paid goods in these unfenced zones. One variation may be to have an industrial or warehousing area within a larger development zone fenced in order to facilitate greater customs control on areas of higher concentrations of duty-free goods.

Customs procedures will also need to permit enterprises to pay duties on imported inputs used to manufacture products destined for the EU or GAFTA – markets that deny duty preferences to imports from free zones, etc.

The Law requires the Commission to coordinate or agree with the Ministries of Labor and Environment over labor and environmental compliance with development zones. The commission has done this, and the labor instructions are at the Legislative Bureau for final confirmation. The Ministry of Labor has received a copy of the regulations and has provided their comments to the Legislative Bureau. Recent national labor inspection reforms prepare the Ministry of Labor to monitor labor in the zones. The Law mandates the national Customs Authority to administer customs within the zones.

A new vocational training licensing regulation has been drafted by this consultancy. The existing draft regulation is overly prescriptive especially of enterprises seeking to train their own staff. The commission has found this draft satisfactory, and will be revising it in detail with a committee of relevant stakeholders.

Specific comments on the draft income tax and labor regulations are provided below with comments on proposed sales tax policy for the development zones. The report also sets out good economic zone customs, environmental and building permitting procedures. Appendix One describes the regulations and instructions required under the Law. Appendix Two sets out the new draft vocational training regulation and Appendix Three explains the ASEZA enterprise licensing system.

## INTRODUCTION

The Government of Jordan (GoP) is extending the Aqaba Special Economic Zone (ASEZ) model throughout the Kingdom by permitting the designation and development of special Development Areas (also referred to as Development Zones). The Development Areas Law No. 2 for the Year 2008 establishes a Development Zones Commission (Commission) to regulate such zones and essentially adopts the ASEZ regime for these zones. Economic activity within the zones is subject to a five percent income tax rate and goods and services may enter free of sales tax and customs duties. Existing zones being established in Mafraq, Ma'an and Irbid are deemed to be development areas under the Law.

The main difference between the new Development Areas Law and the ASEZ model is the separation of zone regulation and development – this enables more efficient development and operation of economic zones particularly when the private sector is competing with public sector zone developers and operators<sup>1</sup>. The Commission is the zones regulator. Zone regulators monitor zone enterprise compliance with business regulations and provide government services to zone enterprises. These activities include: plan new zones, approve private zone applications, license enterprises to operate in zones, issue building permits, monitor compliance by enterprises with zone and national environmental, labor, customs and income tax regulations.

Development of zones will be arranged by a master developer who may subcontract development to sub-developers, etc. The Commission will also own any public land upon which a zone is to be developed and shall provide a concession to develop the zone to the master developer. This does confuse zone ownership and regulation – land owners are usually interested to maximize their returns from use of land whereas the regulator has broader social objectives. However, few governments have yet to separate their zone ownership interests from their regulatory obligations.

This report summarizes the results of a consultancy to comment on draft regulations that have been already prepared by two Jordanian law firms and also to provide guidance into the drafting of new regulations and instructions. This report is a snapshot of a work in progress. This report can be extended to comment on more draft regulations and instructions as they are translated into English.

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<sup>1</sup> The Jordan Industrial Estates Corporation and the Free Zones Corporation own, develop and regulate estates and zones in Jordan – competing with privately owned and operated estates and zones. Both organizations intend to merge into one development entity and separate their regulatory functions into a new entity.

## CURRENT STATUS OF REGULATIONS AND INSTRUCTIONS

As of early January, 2009, all regulations except Tendering and Environment have been submitted to the Legislative Bureau for approval.

Whereas the Law cements the main policies and rights and obligations of stakeholders, Council of Minister approved regulations set out more easily amended policies and procedures relating to specific regulatory functions. In turn, the regulations set out more detailed instructions that are required to govern the standard operating procedures of the Commission with respect to its regulatory functions. Instructions are fully under the control of the Board of the Commission and can be amended at any board meeting.

USAID-supported SABEQ is funding the drafting of the instructions and this consultancy as part of a broad capacity building program of support to the Commission. The instructions are being drafted by SANAD Law Firm, a SABEQ subcontractor.

Annex One of this report lists the provisions of the Law requiring regulations and instructions. Table One below shows the progress of drafting and approval by the relevant authority. There are two sets of necessary regulations; the first, the Nidam Assasi, provide internal organizational regulation to the Commission for personnel, finance and procurement. Nidam Assasi adopt fairly standard language among independent official entities of the Jordanian Government. The Telecommunication Regulatory Authority pioneered personnel reform in the late 1990s. ASEZA pioneered procurement reform in 2000. These regulations have yet to be drafted for the Commission. But given their standardized and local customary nature, there is no need for this consultancy to comment

The Law calls for a range of implementing regulations that will define the specific policies of the Development Areas with respect to qualifying economic activities, business registration, employment and labor force issues (hiring, firing, working hours), the issuance of visas and work permits, vocational training, customs procedures, and environmental management. These regulations, in turn, will require the development of detailed instructions that will govern the standard operating procedures of the Commission with respect to its regulatory functions.

To date, three regulations have been approved by the Council of Ministers. Four additional regulations have been drafted but will need some revisions if they are to reflect international practices and meet the development goals envisioned in the Development Areas Law. To date, no instructions have been developed to give effect to the regulations. The Commission has requested the USAID Jordan Economic Development program (SABEQ) for legal assistance in finalizing the remaining draft regulations and to draft the required instructions.

**Table 1. Status of Commission Client-Facing Regulations/Instructions**

<i>Title of Regulation/Instruction</i>	<i>Drafter</i>	<i>Status</i>
<b>Zone Designation Regulation</b>	IBLAW/Khalifeh	Approved by Council of Ministers
Designation Criteria/Process Instruction	SANAD	Drafted – waiting Com comments
<b>Enterprise Registration Regulation</b>	IBLAW/Khalifeh	Approved by Council of Ministers
<b>Investment Climate Regulation</b>	IBLAW/Khalifeh	Approved by Council of Ministers
Regulation of Activities Instruction	SANAD	Drafted – waiting Com comments
One Stop Shop Instruction	SANAD	Drafted – waiting Com comments
Application to Operate Instruction	SANAD	Drafted – waiting Com comments

Application to Operate Form	SANAD	Drafted – waiting Com comments
Inspection Instructions	SANAD	Drafted – waiting Com comments
<b>Work Permit and Labor Regulation</b>	IBLAW/Khalifeh	Drafted – submitted to Leg Bur.
Issuance of Entry Visas Instructions	SANAD	Not Drafted
Issuance of Residency Permits Instr.	SANAD	Not Drafted
Issuance of Work Permits Instructions	SANAD	Not Drafted
Application Forms Instructions	SANAD	Not Drafted
Amendment to Visa and Permit Instr.	SANAD	Not Drafted
Workers Health Instructions	SANAD	Not Drafted
<b>Vocational Training Regulation</b>	IBLAW/Khalifeh	Drafted – requires redrafting
Instructions To Be Determined		
<b>Income Tax Regulation</b>	IBLAW/Khalifeh	Drafted – requires amendment
Self-Assessment Instructions	SANAD	Not Drafted
Service Beneficiary/Provider Residency Instr	SANAD	Not Drafted
Electronic Data-sharing/Payment Instr	SANAD	Not Drafted
Payment Procedures Instruction	SANAD	Not Drafted
<b>Sales Tax Regulation</b>	SANAD	Not Drafted
Definition of Residency Instruction	SANAD	Not Drafted
Record Keeping and Forms Instruction	SANAD	Not Drafted
Electronic Data-sharing and Payment Instr	SANAD	Not Drafted
Registration Exemption Instruction	SANAD	Not Drafted
Registration Instruction	SANAD	Not Drafted
Collection and Payment Instruction	SANAD	Not Drafted
<b>Environment Regulation</b>	SANAD	Not Drafted
Instructions To Be Determined	SANAD	Not Drafted
<b>Land Use and Construction Regulation</b>	SANAD	Not Drafted
Instructions To Be Determined	SANAD	Not Drafted
<b>Customs</b>	SANAD	Not Drafted
Instructions To Be Determined	SANAD	Not Drafted
	SANAD	Not Drafted

## DRAFT INCOME TAX REGULATION

The special 5% income tax rate regime within development zones raises two significant issues for the GoJ. The first is the risk of revenue loss from transfer pricing and income shifting from the higher taxed customs territory to the lower taxed development zones jurisdiction. The second is the ability of the Commission to adequately police this boundary – this is discussed under general comments below.

Tax evasion can be minimized in a number of ways:

- 1) **Limiting the Size of the Tax Base subject to the 5% income tax rate.** Article 22(B) of the Law permits the tax base to be defined in the income tax regulation.
  - a. Limiting the Sectors able to Enjoy the preferential rate. The Law already excludes land transportation, banks, finance and insurance companies from the preferential rate. The width of Paragraph A of Article 22 limits the ability of the Commission to exclude other sectors, e.g. professional services, provided their income is “accruing from its activities within the Development Area”. In practice, the Commission could choose not to license certain sectors to operate in a development area. However, this puts the Commission in the position of arbitrarily picking winners – a no win situation.
  - b. Definition of Assessable Income. The Commission could attempt to exclude certain types of income from the preferential rate, e.g. non-operational income or deny certain deductions, e.g. depreciation or training. The ability of the Commission to narrow assessable income is limited by the existing definition of assessable income in the Income Tax Law and commonly understood by business throughout Jordan. Therefore, the Commission should maintain the same definition of assessable income as used under the Income Tax Law. This is incorporated into the draft regulation through the definition of Registered Entity Income.
  - c. Defining the Development Area Taxing Jurisdiction The tax base can also be limited by narrowing the physical area within which preferential income may be derived, e.g. income earned from exports outside the Kingdom are excluded from the tax base of a development area. However, the Commission is also limited in this respect – it has to maintain a competitive investment climate in the development areas vis-à-vis other economic zones in the region. Foreign investors will expect their export earnings and earnings from transactions fully conducted within a development area to enjoy the preferential rate. Article 7 of the draft income tax regulation adopts this view by only excluding income earned from sales of goods and services into the customs territory from the preferential rate.
  - d. Limiting Legal Entities Eligible to Enjoy the Preferential Rate Article 22 (A) of the clearly extends the preferential rate only to registered enterprises, i.e. firms licensed by the Commission to operate within a development area. Therefore, firms outside an area selling goods or services to a registered enterprise cannot enjoy the preferential rate. This discourages greater linkages between registered enterprises and domestic firms, in particular outsourcing of additional production to unregistered enterprises. However, it is an effective limit to income tax evasion.

## 2) Source Rules to Define the Income Tax Boundary.

The Commission needs to clearly define which income and when the income is considered to be derived outside a development area and inside a development area. Various source rule options are possible for the Commission to apply:

### Option One – Allocate Income by Transaction

Registered enterprises have to separately report income earned from within a development area and income earned from the customs territory. Income derived from sales of goods can be verified through customs transactions; income derived from sale of services will have to be subject to separate reporting of sales in each jurisdiction. Allocating income based on transactions will be fraught with complexity and provide opportunities for evasion. Necessary, anti-avoidance rules will impose additional tax compliance costs on registered enterprises. This source legislation would need to be in concert non-compliance penalties that create the incentive for all businesses to report their income correctly.

### Option Two – Using Proxies for Source of Income

Certain enterprise characteristics can be used to proxy the source of income between taxing jurisdictions, e.g. location of workforce. For example, a large accounting firm has a branch in two development areas, its head office in Amman and another branch in Irbid subject to the 25% income tax rate. Without knowing the income earned by each office, total income could be allocated in proportion to the number of staff working in each office. With a useful proxy and sufficient data this option could work well. This method is used to allocate income between Canadian provinces.

However, at least in the early phases of zone development, domestic firms may have no physical presence within the zone and registered enterprises may have no physical presence outside the zone. In this case income will have to be allocated according to individual transactions.

## **GENERAL COMMENTS ON THE DRAFT INCOME TAX REGULATION**

The Law provides a similar set of fiscal incentives to zone enterprises to those provided by the Aqaba Special Economic Zone Law. Therefore, the draft income tax regulation is almost an exact copy of the Aqaba SEZ Income Tax Regulation No 53 for 2005. In the eight years since the ASEZ opened, the income and sales tax regime has been implemented and revised and naturally provides the best model for the Commission to adopt.

The draft regulation intends that the Commission will administer all income tax within the development areas. This will place a significant administrative burden on the Commission to recruit staff and implement processes to assess, collect and audit income and sales taxes throughout the zones. As the national Income and Sales Tax Department (ISTD) improves its assessment and audit skills and implements improved IT systems there are few reasons why the Commission should develop its own capacity in this area. Moreover, many zone investors will operate inside and outside the zone tax boundary and are best monitored by a national system with access to a national database. The Large Taxpayer section of the ISTD will likely already be handling the tax affairs of potential zone investors.

The Law curiously requires the Commission to “coordinate” with environmental authorities, “agree” with the Ministry of Labor on labor issues, and requires customs to “be applied” by

the national customs authority. however, income and sales tax is impliedly to be collected by the Commission.

It is recommended that the Commission work with the ISTD to develop an efficient and effective tax regime for the development zones.

## **SPECIFIC COMMENTS ON DRAFT INCOME TAX REGULATION**

Article Three - The reference to Article 7(H) of the Law does not make sense here. The ISTD should collect taxes within development zones, rather than Commission staff being authorized to do so by the Minister of Finance.

Article Four – The Law should prevail over the income and sales tax legislation in force if inconsistent.

Article Five – Paragraph (A) – What does “final elements” mean? Any activity along the supply chain that generates income should be assessable. Paragraph (B) – This draft regulation excludes article 4(b) of the Aqaba regulation – why? Export income (from goods and services) should fall under Paragraph A above. If not exempt or subject to other exemptions in force in the Kingdom, then it should be subject to 5%.

Article Six – final sentence in each box, what happens if a zones registered enterprise share of total group costs/revenues does exceed 25%?

Article Seven – the assessable character of income earned from activities conducted in the customs territory is implied from the Law and Article 5 of the regulation. Expressing what is assessable under the ITL may have the unintended effect of limiting this tax base.

Article Eight - Article 22(f) of the Law appears to give the Commission only 25% of the 5% income tax collected on earnings derived within the zone – and no share of income tax collected on sales into the domestic customs territory. However, Article 23(f) gives the commission a share of all sales tax collected by the Commission.

Article Nine - This is copied from Aqaba regulation No 53 Article 9. The Commission has no authority over unregistered enterprises – indeed the Law does not permit developers to lease or sell land to unregistered enterprises. The ISTD is responsible for such enterprises if they exist within areas.

Article Ten - What is real value? The Aqaba regulation article 9 uses the term “actual” which is also vague.

Article Thirteen - This article corresponds to article 12 of the Aqaba regulation. The ASEZ Law Article 34 expressly requires ASEZA to collect income and sales tax within the zone, with the powers of the Minister and DG of income tax. The Development Areas Law is much vaguer. Article 12(c) authorizes the Commission to “assess and collect fees, taxes, and fines levied in accordance with the Law and its regulations”. This would appear to give the Commission the authority to collect income and sales tax. However, it will not have the capacity for this and building such capacity will be resource and time intensive. This should be a matter for the ISTD.

Article Thirteen Paragraph (B) – the MOU with the ISTD should coordinate collection of both Articles 22 (income tax) and 23 (sales tax)

Article Fourteen Paragraph (A)(1) – although also permitted under the ASEZA income tax regulation it is unreasonable to expect a registered enterprise to pay a service fee to the Commission for administering income tax. The Commission could try to charge the Ministry of Finance an administrative fee, but given that it retains 25% of collected revenue this would also appear to be unreasonable.

## INCOME TAX INSTRUCTIONS

As discussed above, the ASEZ income tax instructions have evolved over the past eight years and presumably enable ASEZA to satisfactorily assess, collect and audit income tax. If the Commission will rely upon the ISTD to perform these functions then the Commission should draft its own instructions in cooperation with the ISTD. The Commission and the ISTD should carefully assess the efficiency and effectiveness of tax administration in the ASEZ. As more development zones enter operation, more opportunities for tax evasion arise. It is essential that the instructions clearly distinguish income subject to the preferential zones 5% rate of tax from income subject to the pre-existing income tax regime.

## SALES TAX

The development areas sales tax regime differs from the ASEZ sales tax regime in one important respect. Article 23 (a) states that only goods and services purchased or imported for the purpose of carrying out the economic activity of a registered enterprise within a development area are excluded from sales tax. Such sales are appropriately zero rated so that suppliers resident in the customs territory and registered for sales tax purposes can claim input tax credits on the zero-rated sale. Article 23 (f) cryptically states that “goods consumed within a development area shall be subject to sales tax”. Presumably, the intention of Article 23 (a) and (f) is to zero rate inputs into industry and services located within a development but leave retail sales within development areas subject to sales tax. Therefore, zone residents consuming goods within a zone will not be able to buy tax-free goods in the zone. However, the use of the term “consumed” in 23(f) suggests that a visitor or tourist could purchase a good free of sales tax if the good was not consumed within the zone but carried out of the zone by the visitor.

Article 24 appears to have a similar intention. Imported inputs used by industry and services in development areas are exempt from Customs. However, once goods are imported into a development area duty-free by a registered enterprise, there appears nothing to prevent the enterprise selling the goods duty-free at retail in the area, i.e. the business of the enterprise is duty-free retail sales within a development area. Therefore, goods can be sold into retail duty free but subject to sales tax.

In summary, the development areas sales tax regime is simpler than the ASEZ sales tax regime – all enterprises will be registered for sales tax purposes. Sales of inputs to businesses licensed by the Commission to operate within a zone will be zero-rated – constituting the majority of sales. Sales of goods to non-licensed businesses and individuals within a development area will be subject to sales tax. Visitors can claim a refund of the sales tax upon exit from the development area – although customs territory residents could only claim up the value of any personal travel sales tax exemption permitted under national law. Furthermore, all sales of goods and services to individuals and enterprises resident in the customs territory will be subject to sales tax.

Sales of services within a development area are not subject to sales tax regardless of their purpose or the status of the purchaser. However, in a similar manner to the ASEZ, the sales tax regulation shall list selected services that shall be subject to a special 7% sales tax. The ASEZ sales tax regulation lists three such services – hotel, restaurant and car rental services.

Registering enterprises for sales tax purposes need not be burdensome. If all licensed enterprises are industrial, e.g. garment factories, with no retail sales subject to sales tax then sales tax can be tracked by the inventory control system that will be applied to keep track of duty-free goods.

The ASEZ Sales Tax Regulation and instructions can be adopted with necessary amendments. In particular, Articles 3 to 6 should be amended so that all goods sold for zone consumption are subject to sales tax unless the buyer presents the certificate described in article 5 and only the selected services listed in Annex One are subject to sales tax. Article 7 should be deleted. Further work is needed to consult with ISTD and ASEZA income and sales tax officials to draft the development areas sales tax regulation.

## **BUSINESS LICENSING**

Due to the same legal framework, successful simplification of licensing in the ASEZ and the experience and willingness of the new Chief Commissioner of the Commission, the Commission is adopting the ASEZA licensing system. The two licensing regulations have been approved by the Council of Ministers and the implementing instructions have been drafted by SANAD Law and are being translated into English. The ASEZA licensing system is described in more detail in Annex Three of this report.

## **CUSTOMS**

The design and administration of customs is the most important element of a development zone's operation. Poor design and inefficient administration will deter investors and encourage smuggling. Development areas will generally be large areas of land fully enclosed by Jordanian customs territory.

Article 24 of the Law provides that the total development area will comprise a customs controlled duty-free area. Unlike free zones many development areas will be too large to be fenced so that zone customs will have to rely upon careful documentary and inventory auditing. Large development zones will have their own customs clearance center so that goods arriving at another port of entry in Jordan can be transported under seal and cleared in the zone. Small zones or factory free zones can likely have their goods cleared at their port of entry and transported under seal to the factory gate. Zones customs will have to employ innovative and sophisticated procedures to separate and monitor duty-free goods from duty-paid goods in these unfenced zones. One variation may be to have an industrial or warehousing area within a larger development zone fenced in order to facilitate greater customs control on areas of higher concentrations of duty-free goods.

Development zone customs procedures should be as simple as possible. However, even the simplest customs system requires a significant minimum scale of investment in information technology and capacity building. The objective is to quickly and efficiently facilitate the movement of goods into and out of a development zone. Evidence of smuggling and other customs offences can be gathered from post-entry risk-based audits of the premises of zone end-users. The price for end-users of enjoying rapid entry and exit of goods is the requirement to maintain careful inventories of their goods. Development Area customs should have the authority to inspect premises and inventories at any time, and have the authority to impose significant penalties on violating enterprises.

As with business licensing, the ASEZ provides lessons in zone customs control. However, development areas are more akin to free zones, permitting duty free storage of goods and manufacturing operations. The Commission should review current free zone customs procedures to determine if any improvements can be implemented in the development areas. The main lesson from ASEZ is permitting the national customs authority to administer customs within the development areas, rather than creating a separate development zones customs force. This will permit a coordinated approach by experienced customs officials. Creating a separate force is resource intensive and complicates cross boundary coordination.

## GOOD ZONE CUSTOMS PRACTICE

Zone customs should seek to use the existing national ASYCUDA admission document for admission of goods into a zone. Transmission should be electronic either by the importer or his or her authorized agent. Data and supporting document requirements should be minimized. The commercial invoice, packing list, any import license, bill of lading or transit documents are necessary. Furthermore, enterprises should be able to submit applications for admission and exit in advance of the movement of the goods. There may be a few instances where a zone will have to receive a manifest direct from a ship or aircraft, e.g. a zone incorporating an international airport.

Customs shall use risk management techniques for document review and goods examination which recognize the reduced risk to Customs of goods coming from the controlled conditions and the repetitive nature of operations of the Zone, thus greatly reducing the time needed for document review and the frequency and intensity of goods examination. Zone customs will either immediately release the goods (green channel), or review documentation (yellow channel) or conduct a physical inspection (red channel). Under the GATT agreement customs fees must be related to the cost of service provided and not constitute a hidden tariff. The goods can be inspected at the premises of the consignee enterprise if zone customs agrees.

Enterprises shall enter all goods into their inventory control system and shall undertake, at least once a year, a physical inventory and a reconciliation of inventory and financial accounts for all goods in the Zone. The enterprise shall retain a record of the inventory and reconciliation which shows, for each uniquely-numbered declaration of admission or inventory category, a description of the goods, duty status, quantity on hand at the beginning of the period, cumulative receipts and transfers (by unit), quantity on hand at the end of the year, and cumulative positive and negative adjustments (by unit) made during the period.

Any discrepancies found by the authorized enterprise in the condition or quantity of goods admitted to the Zone shall be reported to Customs. Customs will also conduct risk-based audits of enterprise inventories. If the discrepancy is a shortage, the goods will be presumed to have entered Jordan, and the authorized enterprise shall file an import declaration and pay any applicable duties, taxes and penalties to Customs. If the discrepancy is an overage, the goods will be considered as having never been admitted to the Zone, and the authorized enterprise shall file with Customs a Declaration of Zone Admission for the goods.

Transfers between zone enterprises shall be reported to Customs as a change in responsibility for the goods through the filing of a new zone transfer form by the purchaser. Inventory records of the sending and receiving enterprises shall be adjusted as specified in of this Manual to record the physical transfer of the goods.

Goods leaving a development zone and imported into the customs territory will ideally use the national customs admission document. Duties will be calculated either on the value of foreign components used to manufacture the product or the total value of the product – whichever is lower. Sales taxes will be calculated on the total value of the product.

Goods leaving the country or entering another duty-free zone within Jordan will be processed using zone export and admission documents and transported under seal between the zone of origin and the port of exit or destination zone.

Customs may examine goods leaving a zone to (1) determine if they correspond with the information contained in the respective declaration and supporting documents, (2) determine if they are eligible for removal from the zone and for acceptance under the respective customs regime, and (3) obtain any information needed for proper tariff classification and valuation of the goods and proper determination of duties and taxes owed on the goods

## **RULES OF ORIGIN**

Development zone rules of origin raise another concern for exporters. To the extent that a zone can be regarded as an extraterritorial customs area, i.e. a free zone, then its exports will not receive preferential access to a number of Jordan's trading partners. Members of the Greater Arab Free Trade Agreement will not provide duty free entry to imports manufactured in member country free zones. Free zone exporters have to pay duties on imported components and have their national customs authority certify the exports as meeting the GAFTA rules of origin. The economic council of the Arab League is currently discussing rules of origin and treatment of free zone products.

Under Article 14 of Protocol Three of the Jordanian-European Union Association Agreement, Jordan may not permit "drawback of, or exemption from, customs duties of any kind" on inputs used to produce exports to the EU. The effect of this article is that development area exporters will have to pay a compensating tariff on imported inputs used to produce their exported products.

## **ACTIONABLE SUBSIDIES**

Jordan has until 2015 to remove its income tax exemption of export earnings under its current agreement with WTO members. However, even if such a prohibited export subsidy is no longer available to enterprises within development zones, development zones could still give rise to a cause of action from other WTO members. Any financial benefit (e.g. an income tax preference over national rates of tax) provided by the government that is only available to an enterprise, industry, group of enterprises, or group of industries situated in a designated geographic region in the host country is a subsidy, pursuant to Article 2.2 of the SCM Agreement.

However, the level of exports needs to exceed the *de minimus* threshold and the complaining country has to show that the subsidy has an adverse effect on its interests, i.e. it hurts a domestic industry in the complaining country, or it hurts its exporters in the development zone host country market or competing with host country exporters in third markets. For developing countries the *de minimus* is either the value of the subsidy represents more than two percent of the unit value of the product, or the volume of subsidized exports is four percent or more of total imports of the like product in the complaining country – see Article 27.10 of the SCM Agreement. If the Dispute Settlement Body rules that the subsidy does have an adverse effect, the subsidy must be withdrawn or its adverse effect must be removed. If domestic producers are hurt by imports of subsidized products, a countervailing duty can be imposed. No zone actionable subsidy cases have been brought to the WTO Dispute Settlement Panel.

## **REGULATING CONSTRUCTION IN DEVELOPMENT ZONES**

To ensure that an enterprise's construction plans comply with development area design guidelines and building standards, the Commission will approve such plans. Even though plans may have been certified by reputable architects and engineers, it can save the enterprise considerable time and money if the Commission catches any non-compliance before building commences. However, the Commission Unit should be careful to limit its liability for any injury or damage arising out of the design and construction of structures for which it has issued a building permit. All contractors should be required to be appropriately insured.

In order to accelerate the permit approval process, the Commission will negotiate land-use pre-approvals with key agencies. In particular, defense, civil aviation and civil defense (fire safety) approvals should be prearranged or delegated to the Commission. Approval of plans can be rapid. In Hong Kong, building plans, waste-disposal plans and site development plans that have not been rejected in writing within two days are considered approved. In Singapore, investors submitting site development and construction plans can expect a decision within two to four (2-4) days. Moreover, applications to construct standard factory buildings should be automatically approved.

Once the permit has been issued, the Commission should limit its monitoring inspections to construction stages involving high risk, e.g. laying foundations. These inspections can be delegated by the Commission to professional architecture and engineering associations. Once the structure is complete the Commission should conduct a final inspection before issuing an occupation permit. This evidences that the observable structure meets building code standards and is ready for connection of utilities and installation of plant and machinery.

### **Step 1**

Conceptual Design Approval: The Commission provides "plot plans" to interested developers and enterprises, which show the regulations, zoning requirements, and restrictions for specific pieces of land in the development zone. Developers and enterprises submit a conceptual design for approval by the engineering department of the regulator based on the plot plan, building regulations and design guidelines.

### **Step 2**

Review of Detailed Engineering Design: Developers and enterprises then submit their detailed engineering designs to the engineering department which reviews the drawings for architectural and engineering compliance and safety. The department will notify the applicant whether the drawings are complete or require modification.

### **Step 3**

Construction Phase: Upon approval by the engineering department, a Building Permit is issued upon payment of the relevant fees. The developer or enterprise may then commence construction or modification of the facility. The department may inspect key stages of construction, e.g. laying foundations and completion of internal structures.

### **Step 4**

Certificate of Occupancy: Enterprises must apply for an Occupancy Permit from the engineering department upon completion of the facility. The department will inspect the building premises and issue the Occupancy Permit. The enterprise will then be able to connect to the local utilities and inhabit the premises.

## ENVIRONMENTAL PLANNING AND MANAGEMENT

Careful environmental planning and management of a development zone can reduce operating costs, increase land values and attract foreign investors. Early mainstreaming of environmental concerns would result in enhanced planning and clustering of development activities as well as improved performance. Energy and water efficiency measures and efficient management (including recycling) of waste and treated wastewater, can reduce input cost for activities located in a development zone. This is also an area where the Commission can draw from the experience of ASEZA, with special emphasis on the larger scope of development zones and the magnified ecological fragility in some areas.

Efficiency measures need not be costly to install or maintain. A development zone environmental code is required not just to set limits on air, water, soil and solid waste emissions, but also to require the developer to create and implement a formal environmental management system for the zone. Environmental management can involve simple measures to improve the environment and the environmental performance of development activities that could be tested and applied elsewhere in the country. For example, simple changes to building design such as painting roofs, planting insulating vegetation, building orientation and installing solar heating systems can significantly reduce energy use and cost.

Environmental management starts with development zone site selection and zone design. Environmental site selection and design factors may include:

- Avoiding environmentally-sensitive areas such as wetlands and fertile agricultural land
- Limiting other potential land uses as well as natural processes due to Industrial activities
- Developing on gently sloping land with poor soils and limited vegetation growth
- Building in areas prone to flooding, slippage and earthquakes will require additional expense
- Re-using previously developed sites to help contain urban sprawl and avoid consuming agricultural land and maximize use of existing infrastructure
- Checking for contamination of the site from toxic waste, underground storage tanks, asbestos, and other forms of on-site ground, air and water pollution
- Defining the industrial carrying capacity of the site and potential environmental liabilities and conducting a baseline environmental survey
- Maintaining natural areas and indigenous wildlife species; retaining natural drainage systems; and avoiding the destruction of ecological corridors
- Increasing the density of development while strengthening environmental synergies through industrial clustering.

Feasibility studies for each new zone site should assess the impact of the proposed zone on the local environment. The Commission may need to vary national environmental standards at each zone site to accommodate local environmental sensitivities. The developer should prepare and implement a mitigation plan for both the construction and operation phases of zone life e.g. waste-water treatment, solid waste disposal, worker training and protective clothing requirements, etc. A contingency plan should also be developed in the event of accidents, spills and breaches of standards set out in the operating procedures and monitoring plan.

Investors applying for a business license and seeking to undertake activities with the potential to harm the environment will have to conduct an environmental impact assessment of their proposed activities. The applicant investor may have to implement their own mitigation measures in order to meet zone environmental standards.

Article 7(f) of the Law requires the Commission to monitor and enforce compliance with zone environmental standards in coordination with existing national agencies. Therefore, the Commission needs to discuss resources and procedures with the Ministry of Environment and other concerned entities.

## **VOCATIONAL TRAINING**

The draft vocational training licensing regulation appears overly prescriptive. Enterprises seeking to train their own staff are subject to significant organizational, technical and reporting requirements. Yet student rights were not sufficiently protected. A new regulation has been drafted for this consultancy – see Appendix Two.

The following points highlight the new regulation:

1. The regulation differentiates between Vocational Training Institutes and Vocational Training Centers. Institutes are specialized for-fee entities established to provide vocational training to zone workers. Centers are in-house training facilities established by existing zone enterprises for training their own staff. Criteria for obtaining and holding an institute license are, therefore, much higher than for a center.
2. Training Institutes need not be established within a development area. However, in order to provide vocational training to workers within a development area the Institute shall hold a valid license from the Commission for that development area.
3. Institutes and Centers may operate more than one training facility within the same development area using one license.
4. The Commission will establish a Specialized Unit (Vocational Training Dept) to regulate centers and institutes. A license review board will be established by the Unit from training and industry representatives to review licenses for institutes.
5. The role of the Specialized Unit is to approve license applications and renewals and audit licensed institutes and centers to ensure their compliance with zone policies.
6. The emphasis is on protecting trainee rights. Institutes shall publish a set of training policies and rules, and provide a financial security to the Commission in case of the institute's default to refund tuition and accommodation fees to trainees.
7. The Unit will conduct a manpower study to identify and forecast competency gaps. The Unit will consult with industry advisory groups to conduct the study. The study will comply with the Jordan national Vocational Education and Training Strategy. The Unit will invite vocational training companies to fulfill the identified training gaps.

## WORK PERMITS AND LABOR POLICY

The following are comments on the draft labor regulation that were provided to the Commission on 17 November before the Board was due to consider the draft regulation:

1. Article 9.B - should this refer to a visa that has to be obtained before arrival in the Kingdom?
2. There is no definition or adequate distinction between a work permit and work visa - Article 10 appears to repeat the provisions of article 13 and article 16. such a distinction may be covered in the Labor Law - but will be confusing to an investor based only on this draft regulation.
3. Article 21 A. should "wife" be "spouse"?
4. Clarify that Article 26 means that all applicants for work and residency shall be notified of the decision within 10 days of receipt of the application by the Commission.
5. Why should every worker undergo a lab and radiology test – suggest insert "may" include a blood, lab ..."
6. Article 29 is very burdensome on your investors - and appears to require more than the labor law. Can this be shifted to an instruction - with the regulation saying that all workers shall be provided with access to adequate health care provided either by their employer or the Development Area developer.
7. Article 18 b of the Law appears to give the Commission a golden opportunity to ease employment restrictions in the current national Labor Law. The IFC's Doing Business survey of Jordan states the need to obtain third party approval in order to terminate redundant any workers. I also recall that the Labor Law permitted workers to disappear for up to 20 days in a year without excuse and not be fired.

You may also like to consider the binding impact, if any, that the minimum wage could have on employment within development areas. The regulation could also simplify the criteria and process for firing workers. At the very least investors should seek the approval of the Commission rather than the Ministry of Labor under relevant provisions of the Labor LAW that continue to apply within development areas.

8. I also note the recommendation of the SABEQ Business Process Outsourcing Report that states:

Consider taking advantage of flexibility in Development Areas Law regarding labor policies and amend Labor Regulation to allow for flexible working arrangements, including part-time employment, "at-will" employment, and other forms of employment that offer flexible working arrangements for employers as well as employees.

## **APPENDIX ONE:**

### **REFERENCES TO REGULATIONS AND INSTRUCTIONS IN LAW NO. (2) FOR THE YEAR 2008**

#### **1. Zone Designation Criteria**

Article 4 (a) The criteria, conditions, and procedures required for the approval of establishing, expanding or narrowing the Development Areas shall be determined by a special Regulation issued for this purpose.

Article 33 The Council of Ministers shall issue the Regulations required for the implementation of the provisions of this Law, including:

- a) The standards, conditions and procedures for the establishment of the Development Areas.

#### **2. Customs**

Article 7 (g) Regulating the customs procedures which will be applied by the Ministry of Finance / Customs within the Development Areas under a special Regulation issued for this purpose.

Article 24 (c) The goods whose origin is in the Development Areas and which are sold to the rest of the Kingdom areas shall be subject to the customs duties within the limits of foreign costs and expenses in accordance with the provisions of the applicable legislations, provided that the mechanism of calculating the value of these expenses, and how to bond and pay their fees shall be determined by the Regulation issued for this purpose.

Article 30 The Commission shall have the power to sell, destroy, confiscate, or acquire the ownership of the substances and goods that are abandoned, left unclaimed in the Development Area, provided that the bases and rules and procedures relating to that shall be determined by Instructions issued by the Board for this purpose and published in the Official Gazette.

#### **3. Labor and Residency**

Article 18

- a) The bases for granting residency permits to the Investors and their family members in the Development Areas, and to the employees serving in the management of the projects established therein shall be determined by a Regulation issued for this purpose.
- b) Labor and workers in the Development Area shall be subject to special bases, conditions, and procedures that are determined by a Regulation issued for this purpose, provided such Regulation includes:

#### **4. Business Licensing**

Article 19 (A) Registered Enterprise may conduct in the Development Area the Economic Activity which it has been licensed for in accordance with this Law and the Regulations issued pursuant thereto and the contract concluded with the Master Developer, except that which is prohibited or the carrying on of which is restricted in the Development Area by a

Regulation issued for this purpose, which Regulation shall include the necessary bases and conditions for conducting the Restricted Activity.

Article 33 The Council of Ministers shall issue the Regulations required for the implementation of the provisions of this Law, including:

- a) The standards and conditions for the registration of Registered Enterprises in the Development Area and the bases for carrying on the permissible activities, and the determination of the fees and services charges collected for this purpose.
- b) The regulation of the investment environment in the Development Area and outlining the permissible activities therein.

## **5. Income Tax**

Article 22 (b) The taxable income of the Registered Enterprise accruing from its Economic Activity in the Development Area shall be subject to a 5% income tax. This income, the bases of its calculation, and all other matters relating to the same shall be determined by a Regulation issued for this purpose in coordination with the competent agencies.

## **6. Sales Tax**

Article 23

(d) There shall be collected a tax at the rate of 7% of the value of the sale of such services as specified by the Regulation issued for this purpose where the same is sold for consumption within the Development Area.

(g) Notwithstanding paragraph (e) of this Article, the vehicles sold to the Registered Enterprise for the purpose of carrying employees from and to the work facilities of this Enterprise within the Development Area shall be exempted from the sales tax. The bases and conditions of this exemption shall be determined by the Regulation issued for this purpose.

(h) The rules, procedures and methodology for the collection and refunding of the sales tax in the Development Area stipulated in this Article shall be determined by the Regulation issued for this purpose.

## **7. Environment**

Article 33 The Council of Ministers shall issue the Regulations required for the implementation of the provisions of this Law, including:

- e) Protecting the environment in the Development Areas.

## **8. Zoning and Building**

Article 33 The Council of Ministers shall issue the Regulations required for the implementation of the provisions of this Law, including:

- f) The procedures and rules pertaining to urban, rural and building regulation and zoning and fees collected for this purpose. Such fees will be considered revenues of the Commission.

## **9. Personnel, Finance, Procurement**

Article 33 The Council of Ministers shall issue the Regulations required for the implementation of the provisions of this Law, including:

- g) The affairs of employees and personnel in the Commission.

- h) The affairs of supplies, procurement and works, and the financial regulation in the Commission
- i) Protecting the environment in the Development Areas.
- j) The procedures and rules pertaining to urban, rural and building regulation and zoning and fees collected for this purpose. Such fees will be considered revenues of the Commission.

## **10. Fees**

Article 12 (c) Collecting all kinds of fees, taxes, and fines levied in accordance with the provisions of this Law and the Regulations issued there under, and setting the charges for services and the manner of collecting them.

## APPENDIX TWO –

### DRAFT VOCATIONAL TRAINING REGULATION

#### **Regulation on the Standards, Conditions and Procedures Relating to the Licensing of Vocational Training Centers and Institutes in Development Areas for the year 2008 Issued Pursuant to Article (18/B/5) of the Development Areas Law no (2) for the year 2008**

##### **Article 1**

This Regulation shall be called the Regulation on the Standards, Conditions and Procedures Relating to the Licensing of Vocational Training Centers and Institutes in Development Areas and shall come into effect from the date of its publication in the Official Gazette.

##### **Article 2 Definitions**

The following words and phrases wherever present in this Regulation will have the meanings assigned to them below unless the context otherwise provides, and the words and phrases used in this Regulation will have the same definitions as listed in the Law:

The Law:	Development Areas Law.
Development Area:	Development Area established pursuant to the provisions of the Law.
Commission:	Development Area Commission.
Board:	The Board of Commissioners of the Commission.
Chairman:	Chairman of the Board.
Specialized Unit:	The unit or directorate that is formed within the Commission through a decision of the Chairman for the purpose of exercising the duties and authorities assigned to it by virtue of this Regulation.
Director:	Director of the Specialized Unit
Training Certificate:	The certificate that the Specialized Unit agrees for Vocational Training Centers and Institutes to issue for Trainees in accordance with the provisions of this Regulation.
Training Institute:	The establishment registered or licensed in accordance with the provisions of this Regulation to undertake Vocational Training activities for the benefit of persons employed in a Development Area.
Training Center:	The center that is formed by the registered establishment in accordance with the provisions of this Regulation for the purpose of Vocational Training of its employees in a Development Area.
Vocational Training:	Efforts that are undertaken to transfer knowledge and theoretical or practical skills or both that relate to a Vocation for a limited time period or periods, and academic learning shall not be considered Vocational Training.
Trainee:	Any person who is trained at a Vocational Training Center or Institute.
Vocation:	All work that requires specific skills that can be acquired through theoretical and practical training or experience.

### **Article 3 Purpose**

This Regulation aims at regulating Vocational Training activities that are conducted in Vocational Training Centers and Institutes within Development Areas to achieve the following:

- A. Ensuring availability of a qualified work force that is required by the labor market.
- B. Protecting the rights of vocational trainees.
- C. Raising the standards of Vocational Training through the implementation of modern systems in partnership with the private sector.

### **Article 4**

- A. No person may operate a Training Institute without holding a Training Institute License valid for the Development Area where workers to be trained are employed and issued in accordance with this Regulation.
- B. No enterprise registered by the Commission to conduct an economic activity within a Development Area may operate any Training Centers that issue Training Certificates within such Development Area without holding a valid Training Center License issued in accordance with this Regulation.
- C. A single license is valid to operate more than one Training Institute training workers employed in a single Development Area or more than one Training Center by the licensee within the same Development Area, as the case may be.

### **Article 5 Manpower Study**

- A. The Specialized Unit shall establish an Industry Advisory Group in each Development Area and invite interested representatives of licensed enterprises in each Development Area to be a member of such a Group for that Development Area.
- B. Each Industry Advisory Group shall prepare a manpower demand study for their Development Area and such study shall forecast the labor skills required and the number of workers with such skills.
- C. The Specialized Unit shall publish each manpower demand study in the Official Gazette and one national newspaper.
- D. The Specialized Unit shall invite public and private sector Vocational Training providers to apply for a Vocational Training Institute license.

### **Article 6 Vocational Training Standards**

- A. The Specialized Unit shall ensure that all Vocational Training within a Development Area shall comply with the following training standards:
  - i) standards set by the Jordan Ministry of Labor
  - ii) standards set by the Jordan national Vocational Education and Training Strategy as approved by the Council of Ministers
  - iii) any additional standards that may be set by the Industry Advisory Group for that Development Area.
- B. An Industry Advisory Group may substitute their own training standards for those provided for in subparagraphs (i) and (ii) of Paragraph A of this Article.

## **Article 7 License Applications**

- A. All persons applying to the Commission for a Vocational Training Institute License shall be a company registered in accordance with the provisions of the Companies Law in force.
- B. The following documents shall be attached to an application for a Vocational Training Institute License:
1. The names, addresses and occupations of the owners and principle staff members of the applicant
  2. Registration certificate of the applicant with the Company Controller's Directorate
  3. Signed declaration from the owner of an appropriate area of land stating the location of such land and declaring that such land is available for the applicant to establish a Vocational Training Institute, whether or not within a Development Area.
  4. a cheque or money order payable to the Chief Commissioner in the amount of the application fee;
  5. the security required under Article XXX;
  6. a description of the vocational training and the certificate or diploma to be awarded, including a description of the expected nature, duration, class size, trainee pre-qualifications and the number and qualifications of teaching positions for each course intended to be provided by the applicant;
  7. specific information about the tuition and all other fees that trainees will be charged for the vocational training, including the estimated cost of text books, lesson materials, supplies and equipment that trainees will be required to purchase;
  8. information about any legal claims pending against the applicant;
  9. information respecting the applicant's previous or current ownership of adult vocational training institutions.
- C. An application for a Vocational Training Center shall include a description of the vocational training and the certificate or diploma to be awarded, including a description of the expected nature, duration, class size, trainee prequalifications and the number and qualifications of teaching positions for each course intended to be provided by the applicant.
- D. Each applicant for a license shall swear in a form set by the Director declaring that:
1. the information provided is true and accurate to the best of the applicant's belief, and
  2. the applicant has the financial resources necessary to effectively provide the vocational training.
- E. If before a decision is made under Article 10 there is a change in any of the information provided to the Director under subsections (B), (C) or (D) of this Article the applicant must immediately notify the Director in writing of the change.

## **Article 8      Reviewing Vocational Training Institute License Applications**

- A. The Director shall establish a license review board as the competent licensing body to review each application for a Vocational Training Institute License.
- B. The Chairman shall appoint the following five members to the license review board:
  - 1. a representative from a labor union representing workers in the relevant Development Area;
  - 2. a representative of the Jordanian Vocational Training Center
  - 3. a representative of the Specialized Unit
  - 4. two representatives of enterprises licensed to conduct activities within the development area.
- C. Subject to the provisions of Article 10, the license review board, before issuing a Training Institute licence, shall satisfy itself that the following criteria will be met by the applicant:
  - 1. there are one or more vocations that a graduate of the vocational training would be qualified to enter and that there is a demand in the labour market for persons qualified in those vocations,
  - 2. the curriculum is regarded by the industry as relevant,
  - 3. the admission requirements for trainees are appropriate to the vocational training,
  - 4. the qualifications required for instructors are recognized by industry as being appropriate,
  - 5. the applicant provides evidence that its instructions have received at least (30) hours of training for vocational training instructors,
  - 6. the applicant has adequate financial resources for the effective provision of the vocational training,
  - 7. the applicant describes how it will implement a system to adequately assess the competencies gained by each trainee after completion of training,
  - 8. the applicant has prepared rules and policies which are considered by the license review board as being appropriate, and which the applicant undertakes to provide to trainees, before the vocational training begins and at any time when a trainee requests it, such rules and policies respecting
    - (i) the resolution of complaints made by trainees,
    - (ii) the circumstances under which trainees may be expelled or suspended,
    - (iii) the attendance of trainees,
    - (iv) non-discrimination and harassment, and
    - (iv) the monitoring and reporting of academic progress.
  - 9. Any other criteria as may be required by the License Review Board depending on the circumstances of each application.

## **Article 9      Reviewing Vocational Training Center License Applications**

- A. The Director shall be the competent licensing body to review applications for a Vocational Training Center License.
- B. The Director shall issue a Vocational Training Center license if the applicant enterprise meets all the following criteria:
  - a. The applicant enterprise is in current compliance with the Law, its regulations and instructions issued by the Commission and other standards and rules applicable to the applicant enterprise;
  - b. The applicant enterprise evidences its intention to use premises adequate for training purposes and are in compliance with all applicable occupation safety, health and building standards

- c. The applicant enterprise evidences its intention to provide a vocational training certificate to all employees successfully completing a course that sufficiently describes the nature and duration of training;
  - d. Any other criteria the Board may require.
- C. Any Vocational Training Center licensee intending to train persons who are not employees of the licensee, shall apply for a vocational training institute license.

**Article 10 License Application Process**

- A. The licensing body shall study the application within a period of (30) days commencing on and including the working day next following receipt of the application.
- B. During the said period the licensing body shall be at liberty to make such credit, criminal record and other investigations as it sees fit as part of its evaluation of the application.
- C. At any time during the said period the licensing body shall be at liberty to request the applicant to supply such further information, and within such time, as the licensing body considers appropriate.
- D. The licensing body shall not consider any application for a License until the applicant has fully and fairly disclosed the required information.
- E. If any information supplied to the licensing body gives rise to serious doubts as to the project's financial and technical viability or its conformity with all applicable legislation and rules, the licensing body shall reject the application.
- F. On or before the last day of the study period referred to in paragraph (C) of this article, the licensing body shall notify the applicant in writing of its decision on the application, and such decision shall be one of the following:
  - (a) acceptance
  - (b) acceptance subject to any condition or conditions
  - (c) rejection, with statement of reason or reasons.
- G. In the case of the decisions stated at (b) and (c) of the preceding paragraph, the applicant shall have the right to resubmit its application in amended form within (30) days of notification commencing on and including the working day next following the notification by the licensing body of its decision to the applicant. The licensing body shall on or before the end of a further (30) day period commencing on the working day next following the date of the resubmittal notify the applicant of its decision confirming or amending its earlier decision.
- H. The Specialized Unit may attach any additional terms or conditions to the issuance of a Training Center or Training Institute license to any person, with which the aforesaid person shall comply during the validity of the license, as may be necessary to support the objectives of the Commission under the Law.

**Article 11 License Renewal and Variation**

- A. All licensees shall comply with the Law, this Regulation and any conditions that the Director imposes or may impose on a licence.
- B. Licenses issued in accordance with this Regulation are valid for 12 months from date of issue.
- C. Licensees shall apply to the Specialized Unit no less than 30 days before the expiry date of their license for renewal of the license.
- D. In its application for renewal, the licensee shall state any changes which have occurred in the particulars provided in its original application, or in its immediately preceding application for renewal, whichever is the more recent, and shall also give particulars of any expectation stated therein which has not been realised.

- E. The Director may renew a licence if the Director is satisfied that the licensee is in compliance with the Law, this Regulation and the conditions, if any, imposed on the licence and the premises at which the vocational training are being provided meet all fire and health requirements established by the Law and its regulations.
- F. Subject to the preceding paragraphs of this article, any application to renew or to vary shall be considered and decided upon in accordance with the procedures stated in Article 8 of these regulations.

#### **Article 12 Commission Approves Changes**

- A. A training institute licensee shall advise the Director of any proposed change to any of the following, and must obtain the approval of the Director before making the change:
  - 1. the nature and length of each vocational training course provided under the licence;
  - 2. the qualifications required for instructors;
  - 3. the admission requirements;
  - 4. the premises at which vocational training is provided;
  - 5. the security provided to the Director in respect of the licence;
  - 6. any other matter specified by the Director in writing,
- B. A licensee shall as soon as possible notify the Director in writing of any change in its financial resources that may adversely affect the licensee's ability to effectively provide the vocational training offered under its licence, and
- C. A licensee shall advise the Director of any proposed change in any fee payable for vocational training before the fee is changed.

#### **Article 13 Financial Security**

- A. An applicant for a licence shall provide security to the Commission sufficient to refund trainee tuition and accommodation fees in the event of an unjustified default by the licensee to refund such fees according to the published rules and policies of the licensee.
- B. The security referred to in subsection (1) must be in the form of a guarantee bond, a letter of credit or another form acceptable to the Director and must be in an amount determined by the Director.
- C. If the Director believes that the security provided by a licensee is no longer sufficient, the Director may at any time require the licensee to provide additional security in the form of a guarantee bond, a letter of credit or another form acceptable to the Director in an amount determined by the Director, and the licensee must submit the additional security.
- D. The maximum amount of security that a licensee may be required to submit is 50 000 Jordanian Dinars.
- E. Notwithstanding subsection (4), if in the Chairman's opinion extraordinary circumstances exist, the licensee shall provide additional security requested by the Chairman and in a form acceptable to the Chairman.
- F. The maximum amount of security that the Chairman may require a licensee to provide under subsection (5) is an amount that, together with all other security submitted by the licensee, equals all tuition and accommodation payable by the maximum number of trainees that may be enrolled in programs of instruction provided by the licensee.

- G. The licensee must ensure that any security submitted in respect of a licence remains in force for as long as the licence is in force.

**Article 14 Forfeiture of security**

- A. The Director may declare any security that has been submitted by a licensee under section 10 to be forfeited to the Commission if, in the Director's opinion, the licensee
  - 1. is required under the licensee's published rules and policies or this Regulation to refund tuition and accommodation fees paid by, or on behalf of, any trainee, and
  - 2. is unable or refuses to make the refund.
- B. The Director shall distribute the forfeited security to the person who paid the refundable tuition and accommodation fees.
- C. The Director is responsible for determining the amounts to be distributed and, if the amount of all tuition and accommodation fees to be refunded exceeds the amount of the security, the security must be distributed on a pro rata basis.

**Article 15 Liquidation of Physical Presence**

Subject to the terms of the license and any written contract between the licensee and a developer, operator or the Commission, when a licence has expired or has been revoked, the Specialized Unit shall be at liberty, but not be obligated, to grant the licensee in question such time as the licensing body considers reasonable for the said licensee to liquidate its physical presence in the zone in question.

**Article 16 Challenge to Licensing Body's Decision**

Any decision rendered by the Commission concerning any application for a Training Institute or a Training Center licence or for the renewal or variation thereof or on the revocation of a licence, or any failure of the licensing body to render its decision on any of the aforesaid, may be challenged by submitting a petition in accordance with XXXXXXXXXXXXXXXX, within the [thirty] days next following the date of the notification of the decision.

**Article 17**

By issuing any form of license, the Commission makes no warranties or representations, expressed or implied, relating to the performance, credit worthiness or good standing of the licensees.

**Article 18 Advertising**

- A. A licensee must not, in an advertisement for its vocational training:
  - a. refer to the Commission, the Government of Jordan or any department of the Government of Jordan other than by the use of the words "vocational training licensed under the *Development Areas Vocational Training Regulation*" unless the advertising is approved by the Director,
  - b. guarantee that trainees who graduate will obtain employment, or
  - c. make statements or claims that, in the opinion of the Director, are false or misleading.
- B. If the Director believes that a licensee has contravened subsection (1), the Director may, by written notice to the licensee, require the licensee to stop using the advertisement.
- C. A licensee who receives a notice under subsection (2) must stop using the advertisement specified in the notice.

### **Article 19 Reports**

- A. A licensee must provide the Director with
  - (a) reports that will enable the Director to determine if trainees have met admission requirements,
  - (b) reports respecting the trainee graduation rate and the employment placement rate of its graduates, and
  - (c) any other reports related to compliance with this Regulation on the request of the Director.
- B. The reports must be in the form set by the Director and must be provided at the times specified by the Director in an instruction issue for this purpose.

### **Article 20 Audits**

The Specialized Unit shall use risk-based documentary and physical auditing to ensure the following:

- A. All licensees provide vocational training in compliance with:
  - a. the statements and plans submitted in the licensee applications,
  - b. occupational health and safety, building and other standards and requirements in force under the Law in the Development Area within which the licensee is operating
- B. Training Institute licensees further provide vocational training in compliance with:
  - a. the criteria provided in paragraph C of Article 8 of this Regulation
  - b. the rules and policies prepared and published by the licensee;

### **Article 21 Fees**

The Commission will collect the following service fees:

- A. (----) Dinars for the issuance of a license certificate for the Institute to commence training activities and for its annual renewal.
- B. (----) Dinars for the issuance of a license certificate for the Center to commence training activities and for its annual renewal.
- C. (----) additional Dinars for each month of delay in the renewal of the license.

### **Article 22**

Each owner of an Institute or Center and its manager shall be responsible before the Commission for any activities that violate the provisions of this Regulation.

### **Article 23 License Cancellation**

Without limiting any penalty imposed by the laws in force in the Kingdom including the penalties listed in the Law the Specialized Unit shall have the right to cancel any license for a Training Institute or Center or issue a decision to suspend the training activity at either of them in any of the following cases:

- A. If it is proven that license to establish the Training Institute or Center was based on incorrect information.
- B. If the activities of the Training Institute or Center are halted for more than three months without the approval of the Specialized Unit.
- C. If the management of the Training Institute infringes their published rules and policies on more than one occasion and does not provide the Commission with a satisfactory explanation nor satisfactory compensation to any trainees or instructions involved if considered by the Commission to have been appropriate in the circumstances.
- D. If the management of the Training Institute or Center or any of its employees objects to the entry of a representative of the Specialized Unit or the management of the

- Training Institute or Center refuses to present information thereto or if it presented them with incorrect information.
- E. If the Training Institute or Center committed gross mistakes or violations that caused injury to the Trainees whether medical, physical, educational or training.
  - F. If the Training Institute or Center does not renew its license within one month of the lapse of its term.

**Article 24**

With the exception of the violation listed in paragraph (a) of Article (23) the Specialized Unit will, prior to cancelling the license, provide the Training Institute or Center with a written warning to remove or rectify the situation within a period that it sets for the same.

**Article 25**

The owner of the Training Institute or Center may object to the Board in connection with the decision of the Specialized Unit to cancel the license or suspend the training activity and that is within a period of two weeks of its notification of the same, and the decision of the Board in this regards shall be final.

**Article 26**

If any of the conditions listed in this Regulation are not longer met by the owner of the Institute then the license shall be deemed cancelled.

**Article 27**

The location of the Training Institute or Center may not be used for any activities outside of the framework of the training activities which it is licensed to offer.

**Article 28**

The Training Institutes and Centers that are currently located in the Area will be considered to be licensed for a temporary period and for a period of six months following the effective date of this Regulation provided that they shall during this period complete all the procedure and rectify their position in accordance with the provisions of this Regulation.

**Article 29**

The Board may issue the necessary instructions to implement the provisions of this Regulation.

## ANNEX THREE –

### OVERVIEW OF ASEZ BUSINESS LICENSING SYSTEM<sup>2</sup>

The ASEZ Law (No. 32) 2000 provides ASEZA with broad powers to regulate business activities within the Zone, particularly relating to customs, taxation, environmental protection, health protection at Jordan's borders and building standards. ASEZA enjoys all the powers of the former regional and municipal authorities in Aqaba. ASEZA set out to put in place a system of business registration and licensing that minimized compliance costs while ensuring ongoing compliance with Zone standards of public and environmental health and safety. In summary, ASEZA was able to simplify or eliminate all municipal licensing requirements.

However, much of the national registration and licensing requirements that lie outside the above areas remain in force in the Zone. A rather vague line exists in the Law between which activities the Authority can regulate within the Zone by itself and which activities are still subject to national laws and institutions. The Authority has taken the initiative to have the Council of Ministers approve a list of activities giving the Authority full responsibility to regulate – see Annex 1, Development and Improvement of the Investment Climate for the Aqaba Special Economic Zone Regulation – in the box below. However, the Authority has requested the technical assistance of ministries to ensure that the facilities of Zone enterprises meet appropriate health and safety standards.

A table showing government approvals still considered applicable in Aqaba under various laws and regulations for a long list of activities is available upon request. The table was prepared by TSG and IBLAW for ASEZA at the end of 2000, and is likely to require updating.

Intending Zone investors have to first register with MIT as a company or sole proprietor.<sup>3</sup> Certain activities are prohibited or restricted by legal form or the number of providers subject to Jordan's Schedule of Commitments to the General Agreement on Trade in Services. Furthermore, ASEZA may not permit new investors in activities that are subject to national concessions, i.e. cement, potash, petroleum, tanning and ferry services between Aqaba and Nwaibe.

The Authority has entered into an MOU with the MIT. A representative of the Company Controller works within the Authority to register both companies and sole proprietors and also to register trade names. The experiences of this representative may provide useful lessons to the MIT in combining the functions of the CCD and CRD. The MOU requires the representative to issue certificates within 24 hours. Most importantly, ASEZA and the MIT do not require the pre-approvals of any other government ministry or department to register a company or sole proprietor in Aqaba. Therefore the 44 activities listed in table X are not subject to preapprovals in Aqaba, saving considerable time.

Once registered with ASEZA an enterprise may require an operating permit. Operating Permits take the place of municipal licenses. ASEZA has determined which activities require a permit “necessary for the protection of public health, the environment, public safety and economic interest, investment promotion in public utilities or the protection of security and Public Order.” (Article 3(a) Development and Improvement of the Investment Climate for the Aqaba Special Economic Zone Regulation).

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<sup>2</sup> Extract from *Reforming Business Licensing in Jordan – An Overview of the Issues*, (Draft Report, AMIR Program, June 2003, prepared by Geoff Wright, section 6.1 pp15-18)

<sup>3</sup> Foreign companies may register directly with ASEZA.

Annex I of the Regulation lists activities requiring an Operating Permit that will be issued by the Authority under the powers granted to ASEZA in the Law. The Operating Permit is intended to monitor businesses that by their technical nature place the public or environment at risk. The Authority has 14 days to issue the Permit, excluding time specified in technical instructions for evaluating plans and conducting inspections. ASEZA is preparing technical standards that apply to each activity. It has already prepared a health and safety manual for certain activities.

ASEZA also provides all new enterprises with a one-time Public Safety Certificate (fire safety) and restaurants and cafes, etc. with a basic annual Health Certificate. Renewal of the Health Certificate and the Operating Permit takes about 5 minutes. Renewal is automatic if the enterprise has no outstanding violations.

Given the Authority's limited capacity it has sought assistance from relevant Ministries to determine whether the enterprise meets minimum standards, either existing national standards or new ASEZA standards. The Authority has entered into MOUs with certain Ministries to provide, inter alia, assistance in examining enterprises as part of the process of issuing Operating Permits. The Ministry of Health and Civil Defence Directorate have seconded staff to ASEZA. ASEZA has full authority to license most of the activities formally handled by these agencies.

ASEZA has been developing its institutional capacity and will this year take over inspection functions from the Ministry of Health for low risk food handling activities. Also this year Civil Defence Directorate staff will no longer be seconded to ASEZA but are being subcontracted by ASEZA to conduct fire safety checks on business premises, according to terms and conditions prescribed by ASEZA. ASEZA has established a committee with representatives from the Ministry of Tourism only to classify hotels.

ASEZA is actively moving towards compliance (post-audit in ASEZA parlance) and away from pre-approval (pre-inspection). Only about 20% of activities require preapproval inspection in order to receive an Operating Permit or Certificate. Inspections are being conducted on a risk based program after the enterprise has commenced operating in order to ensure compliance with Zone standards. ASEZA is coordinating inspections from all government agencies: ASEZA Customs and Tax, Civil Defense, Health, to minimize the interruption of enterprise affairs.

ASEZA officials stressed that any national licensing body have sufficient legal powers to license businesses without requiring the approval of other government entities and without having to second staff from these entities. Managing staff who report to an outside entity is very difficult.

<p style="text-align: center;"><b>Annex (1)</b> <i>of the Development and Improvement of the Investment Climate for the Aqaba Special Economic Zone Regulation</i></p> <p>Activities subject to the Permit for performance of business required by the Authority</p> <ul style="list-style-type: none"><li>▪ Distributing medicine and medical, veterinary and pharmaceutical products.</li><li>▪ Distributing fertilizers, growth stimulators and pesticides.</li><li>▪ Distributing hazardous chemical material.</li><li>▪ Hospitals and medical centers.</li><li>▪ Nursing and rehabilitation centers.</li><li>▪ Infirmaries, disabled and natural therapy homes.</li><li>▪ Mineral springs spas.</li><li>▪ Medical and physiotherapy centers.</li><li>▪ Physicians and dentists clinics.</li><li>▪ Optics shops.</li></ul>
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- Medical and dental laboratories.
- Manufacturing and distributing fireworks.
- Hotels and motels.
- All types of recreation cities.
- Scuba diving and water sports clubs.
- Marine and land zoos.
- Tourism and travel offices.
- Nurseries and private childcare centers.
- Driving learning schools.
- Tourist transportation in the Zone.
- Taxi and transportation offices.
- Washing and greasing stations.
- Animal (livestock) and poultry production facilities.
- Aquatic cultivation and fish farms.
- Stables and pet farms ...etc.
- Quarries.
- Water extraction from wells.
- Industrial activities.
- Public utilities the performance of which the Authority grants the public sector.

#### **Annex (2)**

Activities that are granted a Permit by the Authority for performing its business in coordination with the relevant bodies at the Customs Territory

- Marine transportation services.
- Air transportation services.
- Communication services.
- Elementary, secondary and higher education.
- All aero recreational sports and aviation instruction.
- Mining and other extraction industries, except quarries.
- Issuing newspapers and periodicals.
- Programming and radio and television transmission services.
- Public utilities activities the performance of which the Authority grants the public sector.

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