

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

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Investor Road Map- Company Registration

Final Report

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International Best Practice and Company Registration: Key Aspects for Consideration in Jordan

This paper summarizes several key elements of best practice international related to company registration.

Purpose of Company Registration

The two most important functions of registration under the best practice model are: 1) to enter information deemed to be important into the public record; and 2) to provide the Registrant with a legal identity or personality. For corporations and commercial enterprises, advantages of the latter would normally include the right to establish as an entity with limited liability, and to benefit from the protection of limited liability status in law suits or when entering into contracts.

The best practice approach is based on the assumption that bringing corporations and commercial enterprises into the domain of legality in a timely manner, through the inscription of its key documents is, in and of itself, a social good of the very highest order of importance. In consequence, it should be in the interest of Government to make the process of obtaining legality as simple and transparent and condition-free as possible. Commercial registration is often the first process an investor will undertake, and will create a lasting perception of the operating environment in Jordan.

Best practice models give Registrants the right to a legal identity without imposing extensive preconditions or qualifications, such as satisfying high standards of proof, ex ante, that all information provided is truthful or that all documents registered comply fully with the law.

Role the Company Registrar

The best practice model for the registration of corporations and commercial enterprises is based on the simple inscription of clearly defined kinds of information that the Registrant, by the act of inscription itself, declares to be true. The Registry's role is to confirm that the Registrant has indeed provided the range of information required, and that such information has been properly formatted and duly notarized. There should be no role, however, for the Registry to authenticate or certify or otherwise seek proof that the information provided is true in substance, or that the Registrant is in compliance with any or all other laws. If the information or legal standing of a Registrant is challenged by third parties, Registrants have recourse to the law to defend themselves. If Registrants fail to defend themselves, they should be subject to legal sanctions.

The Use of Flexibility to Facilitate Registration

Registrars must choose the appropriate minimum data required to duly register a private entity, but the specific format required of companies need not be specified by a Registrar. Articles of incorporation or constitution generally permit flexibility. Rather than issuing a standard format and forcing all companies to use the same, company authorities should only specify minimum information requirements,

allowing firms to draft their own articles in a manner appropriate for their activity and needs.

Best practice company registration also demonstrates flexibility by making registration with chambers of commerce is voluntary, not mandatory. This provides private sector with more choice to choose the professional affiliation that is most appropriate for them while simplifying the official process of becoming licensed and registered. Further, these registrations should take place after and distinct from company registration.

International best practice allows no minimum capital requirements for incorporation. Normally, monetary deposits are not required as part of the business registration process. For creditor protection, creditors are allowed to request audited financial statements directly from investors before providing credit, or they may obtain a secured interest in the goods or equipment they supply, allowing repossession upon default (and before liquidation). In most U.S. jurisdictions, personal liability is usually imposed upon promoters if business commenced before the company's memorandum was filed. In the interests of creditors and other third parties, a notice to that effect should be placed on the application form (e.g., "promoters may be held personally liable if the applicant commences business before the memorandum is filed with the Companies Authority").

Private lawyers handle majority of incorporation for clients, registering investment with a singular state or federal government agency, such as a Commercial Registry. The role of public notaries is enhanced (authorized private individuals who certify signatures). Registry's routinely accept notarized documents and signatures, and allow authorized agents to represent partners in official transactions. The personal presence of investors and partners to sign documents in person is thus rendered unnecessary.

Registration as a Simple, Separate, and Automatic Process

Best practice company registration procedures suggest that security checks and licensing requirements are unbundled from the incorporation process. The information generated from the incorporation process may be passed on to security and licensing agencies, but these agencies should conduct their investigations in parallel, and not hold up business registration. If a business does not meet sectoral licensing requirements, then it should not be allowed to operate until satisfying regulatory requirements. The simple, initial act of registration, however, should proceed as a separate and distinct process. If a security agency detects credible evidence that the firm or one or more of its partners is involved in illicit activities after registering, security agencies typically have the mandate and power to suspend or close down an investor's operations and apply other appropriate measures.

Effective government systems ensure that the information collected during the company registration process is readily available for and forwarded to other government agencies that require such information. Tax and licensing authorities for example, may receive copies of registration documents and thus simplify the amount of information that they need to collect directly. In many countries, tax registration is combined with company registration, thereby eliminating an entire process required

of investors. When registering with tax authorities, a single point of contact, involving a single application form, allows all tax-related registrations (income tax, social security taxes, customs, etc.) to be completed at the same time as a company receives its registration documents.

Law and Institutional Structure are Clear and Coherent

Company law tends to be conceived of as a single law or body of laws, wherein several different types of corporate entities are described and the rules for each one are delineated. The public institution charged with regulation and oversight tends also to be unitary within a given jurisdiction. In the U.S., for example, each State manages its own legal and institutional framework for business incorporation. One agency should have the sole and comprehensive authority over business registration.

Conclusion

Perhaps the main advantage associated with the best practice model is its potential for **efficiency**. For countries that follow this model, registration can be completed in a matter of hours, or possibly a couple days at most if the registry does not have automated data entry and retrieval systems.

COMPANY REGISTRATION UNDER JORDANIAN LEGISLATION

The aim of this paper is to define the purpose and parameters of company registration under Jordanian Law, and to identify the legal basis, or lack of, for the overlap and inter-dependency in practice between registration and licensing. It also seeks to clarify the relationship between licensing and registration, and to identify licenses required by law before a final company registration is issued.

I- Legal Definition of Registration under Company Law and the Civil Code:

Jordanian Law does not provide an explicit definition of company registration. Instead, - and perhaps more usefully- it defines clearly the effect and role of registration. Article (4) of Companies Law states that “every company formed and registered under this Law shall be considered a Jordanian Juridical entity with its head office in the Kingdom.” Likewise, the Civil Code provides that the company is considered a legal person as soon as it is formed,¹ but that such a legal personality shall not be effective viz.-a-viz. third parties except after the registration and publication. As such, the prime function of registration under Jordanian law is the creation of a juridical person, which, according to the Civil Code, enjoys an independent financial patrimony, the right to adjudicate, an independent domicile, a representative and *capacity within the limits prescribed by the founding instrument or by law.*²

II- The Relationship between Company Registration and Licensing:

On the basis of the foregoing, it becomes clear that Jordanian Law distinguishes between the role of registration and that of licensing. Company registration creates a legal person with *Capacity* to act, while company licensing pertains to regulating practice by specific entities at a given time or place. Licensing a juridical entity to carry an activity within its domain of capacity is, generally speaking, *extrinsic* to the aims of company registration. This is also indicated by the required submissions for company registration under the Companies Law, which pertain most only to the constituent elements of a company, and not to a specific business entity at given time or place.

Whereas registration’s role is distinct from that of licensing, registration and licensing are legally related in other significant respects. This is mainly due to the requirement under the Companies Law, that a registered company must have definite objective(s).³ Companies Law does not allow for creation of abstract or content-less legal persons. Owing to this feature of the Companies Law, the Controller of Companies may not make decisions regarding applications for registration on the basis of the Company Law alone, and in isolation from sectoral laws. The Controller is under obligation to ensure conformity with other laws, especially the parts of the “sectoral licensing laws” and other legislation relevant to the *constituent features of a company (i.e. registration)*. It is for this reason, that the Controller may not, for example, register a limited liability company whose objective are to provide auditing services, or a commercial services company with more than 50% foreign equity. Similarly, the Controller would have to turn down applications to register branches of

¹ The Jordanian Civil Code, article 583/1.

² The Jordanian Civil Code Article 583/2&3

³ See required submissions for all company forms.

foreign companies as agent companies, since agent companies have to be locally constituted.

By ensuring that the registered company conforms in its constituent elements to the requirements of other legislation, the Controller also ensures that it enjoys the capacity, *under the law*, to carry on activities in the area(s) of its stated objectives, also an aim of registration. Evidently, if the Companies Law allowed for registration of companies as abstract legal persons with no stated objectives, the responsibility of ensuring that a company conforms to sectoral licensing requirements and to other law would pass almost entirely to the investor and sectoral licensing authorities.

III- Ministries and Agencies Involved in Registration

The preceding discussion of the role of registration accounts for some, but not all the overlap and interdependency in practice between role of licensing authorities and the controller's office. To understand accurately the relationship between the Controller's office and licensing authority, under the law, it is important to emphasize the following: The Controller is the government office in charge of registration with all its attendant responsibilities. Moreover, the Controller may reject registration applications only if the company does not conform to the Companies Law and other Laws in its constituent elements. Thus, the Controller need pay deference to licensing laws only in so far as they are relevant to registration. Moreover, licensing authorities may not instruct the Controller to withhold registration until company/business fulfills licensing requirements, unless such requirements are relevant to registration. This reading is supported by law as well as jurisprudence. Article 59 of the Companies Law states that the Controller "may refuse an application" for registration if he finds that the company's Memorandum or Articles of Association contain provisions contrary to legislation in force including the companies legislation." Also, the High Court of Justice (286/95) affirmed that the Controller may reject registration *if and only if* the last condition is not fulfilled. In this decision, the Court stated that the Controller's decision to refuse registration of a company merely because it has not been approved by the Minister of Interior, is not justified, since the company's Articles and Memorandum of Association conformed to the law. Therefore, the Controller need observe licensing requirements, and defer to instructions of licensing authorities, only in so far as they pertain to company registration as defined amply above.

Jordanian law accounts partly for the *linkage* between the Companies Law and sectoral laws, especially licensing laws. However, it does not provide for unconditional interdependency between Controller's office and other licensing authorities. While some aspects of the so called "provisional system" of pre-approval involved in licensing currently in place are validly supported by the law, many of the existing interdependencies are not. The Controller need not be responsive to sectoral licensing laws and communications from licensing authorities, unless those are founded in the Law, and are relevant to registration *qua* registration. Accordingly, the following would be examples of practices that are invalid legally:

1-Any instructions by the licensing authorities that a business may not be registered by the Controller unless it obtains preliminary or definite licensing from a licensing authority. Such instruction would be invalid unless it is stipulated explicitly in the

relevant sector law that licensing is a prerequisite for registration, as is the case in Banking and Construction Contracting.⁴

2- Instructions from licensing authority to the MOIT to withhold registration of companies whose objectives fall in domain of activities allowed by law, but for which licenses are temporarily frozen by decision of licensing authority (*e.g.* Ministry of Labor, Ministry of Interior, Council of Higher Education). Such communications may be valid from a the prudential view point, in so far as they spare the investor the risk of committing capital in registering a company to no avail. However, they need not be binding on the MOIT, which has no authority under any law to attach the company formation to aspects of licensing relating to regulation of market size. If investment in a sector is not closed to private investors by a valid legal instrument, investors should have the right to register companies with objectives of carrying out activities in that sector, if they meet other requirements pertaining to registration.

IV. Conclusion

In summary then, the Companies Law results in some intersection between the legal requirements of registration and licensing. The Controller is responsible to ensure conformity with sectoral laws and other laws, with respect to constitutive elements of companies being registered. The Controller however need not and may not attach registration to licensing requirements, unless these are relevant to registration, or to the approval of sectoral authorities, unless this is specifically provided for by the law. Therefore, under the current laws, the Central Banks and the Ministry of Public Works, are the only two authorities **validly entitled**, by their own laws, to impose licensing of companies as a registration requirement. All other practices to this effect have no valid legal bases. It goes without saying then, that licensing requirements by municipal authorities or other authorities, whether for pertaining to site development, public health, environmental matters, standards and measures or security clearance are extrinsic to registration.. The process of industrial licensing and regulation may be plagued with bureaucratic tape, excessive approvals and licensing requirements. However, if such requirements have no bearing on registration, registration of industrial companies should be a simple and automatic process.

Attempts to bring the process of Companies registration more in line with International Best Practices, may not require radical overhaul of the legal regime pertinent to Companies Registration. One could go a long way by taking measures to ensure that practice conforms more strictly to the existing Laws. That is not to say that the existing legal regime is flawless. However, it might be reassuring to realize that the fundamental features of the Companies Law are not entirely dissonant with the reforms sought..

⁴ See Licensing Authorities in Issue Paper.

Table of Required Pre-registration Licensing for a Private Limited Companies

Name of Ministry in Charge of Registration	Legal Authorities	Name of Ministry(s)/ Agency(s) with which there is overlap	Legal Basis	Fees charged	Criteria for disapproval	Appeal Process	Other useful information
Ministry of Industry and Trade -Controller of Companies	Companies Law, article 59.	-Ministry of Public Works	Construction Contractors Law No. 13 of 1987, article 3.	- 2 /1000 of the value of the registered capital for companies whose capital does not exceed (10) m JD's. -2/10,000 of the value of the registered capital, plus the previous fee, for companies whose capital exceeds 10m JD's, but is less than 50 m JD's. -2/1000 of the registered capital for companies with a capital exceeding 50m JD's. -Memorandum of Association form-3JD's - Publication fee /15JD's.	Company Memorandum and Articles of Association must conform to the Companies Law, and to the Provisions of any other Laws in force	-Minister of Industry and Trade -Court of High Justice	

**Investor Roadmap Implementation:
Company Registration Process Improvement Workshop**

**Sponsored by the Investment Promotion Corporation and AMIR Program
Funded by the U.S. Agency for International Development**

**Movenpick Hotel – Dead Sea
April 26-27, 1999**

Actual Guest List

Total=36(M=31, F=5)

Ministry of Industry and Trade

- Dr. Mohammad Halaiqa, Secretary General 🇳🇪
- Mr. Lo'uai Mismar 🇳🇪
- Mr. Mohammad Khriesat 🇳🇪
- Dr. Ahmad Hindawi 🇳🇪
- Mr. Ghassan Damre 🇳🇪
- Mrs. Abeer Al Zuhairi 🇳🇪
- Dr. Bassel Hindawi 🇳🇪

Ministry of Interior

- Mr. Atef Hashem 🇳🇪
- Mr. Adel Al Rousan 🇳🇪
- Mr. Mukaimer Abu Gamous 🇳🇪

Ministry of Labour

- Mr. Omar Al Khoumash 🇳🇪

Ministry of Information

- Mr. Hasan Othman 🇳🇪

Ministry of Health

- Dr. Fu'ad Al Ayed 🇳🇪
- Dr. Adnan Al Rashdan 🇳🇪

Ministry of Tourism

- Mr. Azmi Khliefat 🇳🇪

Ministry of Municipal Affairs

- Mr. Abdel Latif Al Hadidi 🇳🇪

Amman Great Municipality

- Mr. Sameer Khattab 🇳🇪

Free Zone Corporation

- Mr. Marwan Al Qudah 🇯🇴

Authority of Natural Resources

- Eng. Munther Akroush 🇯🇴

Income Tax Department

- Mr. Ahmad Hamaid 🇯🇴

Central Bank of Jordan

- Dr. Tayseer Smadi 🇯🇴

Customs Department

- Mr. Omar Al-Harasees 🇯🇴
- Mr. Tayseer Salame 🇯🇴

Investment Promotion Corporation (IPC)

- Dr. Montaser Okla, Director General 🇯🇴
- Eng. Mar'I Ibdah 🇯🇴
- Mr. Imad Ababneh 🇯🇴
- Mr. Shabeeb Al. Zaben 🇯🇴
- Mr. Ahmad Qaseer 🇯🇴
- Mr. Khaldoun Salman 🇯🇴
- Ms. Sara Harpending 🇯🇴
- Ms. Suzanne Saba 🇯🇴

Chemonics International

- Mr. Richard Dreiman, Chemonics International 🇯🇴

AMIR Program

- Dr. Khalil Elian, Senior Economist 🇯🇴
- Mr. Farahat Farahat, Policy Reform Component Leader 🇯🇴
- Ms. Barbara Zadina, AMIR Program Consultant 🇯🇴
- Mrs. Sameera Qadoura, Public Awareness and Training Manager 🇯🇴
- Mrs. Rawan Tell, Training Assistant 🇯🇴

**Action Plan resulting from the Workshop on Company Registration
Movenpick, Dead Sea, April 26-27, 1999**

The current legal environment governing company registration in Jordan is to a certain extent in line with international practices. However, a number of implementation and administrative related reforms will (i) bring the current regime in line with international best practices (procedural efficiency, customer-focused), (ii)

facilitate entry to the market by investors, (iii) increase transparency, (iv) ensure consistency, and (v) speed up further the process of registration.

The following table discusses registration rather than licensing. Licensing will be treated at a later point in the near future.

Action	Goal	Actor	Type of reform	Completion Date
1. Prepare a business guideline (English/Arabic) outlining registration requirements, procedures, competent authority in charge of registration, registration locations, time limit for registration, fees, and administrative and judicial appeals. The guideline should also include a copy of all required forms and a list of all relevant laws and internal regulations.	Ensure transparency and consistency in the process of company registration	Controller of Companies at the Ministry of Industry and Trade (MIT)	Informational	August 1999
2. Publish officially by the Ministry of Industry and Trade the aforementioned guideline and disseminate it through the following vehicles: <ul style="list-style-type: none"> • The Investment Promotion Corporation (IPC) • The local offices of the Ministry of Industry and trade • Business associations • Municipalities • Public libraries • Points of entry (e.g. airports, hotels) • Jordanian embassies and trade representations • MIT website The first release should be published in local newspapers	Make available information regarding registration to local investors and businesses in every region of the country and to international investors worldwide	Controller of Companies and the IPC	Informational	September-October 1999
3. Develop other means to prove that capital requirements are met (e.g. certified check; or bank agreeing to open an account for a company under formation without a letter from the MIT)	Eliminate the need for the MIT to issue a letter to the bank and the need for the applicant to have extra step and trip to the MIT	Controller of Companies	Administrative	June 1999
4. Allow applicants to obtain MIT registration forms from any sources other than the MIT and lawyers (e.g. MIT	Eliminate a step and trip to MIT from the current process	Controller of Companies	Administrative	May 1999

Action	Goal	Actor	Type of reform	Completion Date
website and guidelines)				
5. Eliminate the need for the investor to make a payment at the Cashier in order to obtain registration forms at the MIT	Eliminate two unnecessary steps from the current process	Controller of Companies	Administrative	May 1999
6. Study the legality of including the company registration in the Central Registry established through the administrative regulations of the MIT and implement, if needed, amendments to relevant legislation	Ensure the legality, autonomy, and integrity of company registration in Jordan.	Minister of Industry and Trade	Legal	June 1999
7. Authorize one person to perform final signing and stamping of registration certificate	Eliminate one unnecessary step from the current process	Controller of Companies	Administrative	May 1999
8. Lump together the following two fees (cost of forms and registration fees) into one cumulative payment to be paid at the time of receiving the certificate of registration.	Merge two separate submissions and payments into one	Controller of Companies	Administrative	May 1999
9. Eliminate the requirement for industrial registration prior to company registration.	Eliminate an unnecessary dependency	Controller of Companies and Industrial Development Directorate	Administrative	May 1999
10. Establish a One Stop Office (OSO) at the MIT. Applicants should go to the OSO to: <ul style="list-style-type: none"> • Submit all required documents; • Pick up registration certificate; and • Make all payments upon receipt of registration certificate The registration officer in the OSO, upon submission of all required documents and the presence of the applicant, should: <ul style="list-style-type: none"> • Review the application for completeness; • Provide the applicant with an application number, and a date to return; and • Provide a bill for payments. 	Eliminate the need for applicants to visit several offices within the MIT	Controller of Companies	Administrative Structural	August 1999
11. Review and update the internal guidelines regarding all necessary legal	Facilitate and speed up the review process by	Controller of Companies at the MIT	Administrative	October 1999

Action	Goal	Actor	Type of reform	Completion Date
requirements relating to company registration to carry certain activities (e.g. foreign equity, capital requirements in certain industries, access to land)	officials of the MIT			
12. Adopt a ministerial decision instructing the Controller of Companies not to condition registration on prior approvals of any other authorities except as stipulated in the law	Eliminate the practice of requiring prior approvals not based on laws	Minister of Industry and Trade	Legal – Decision by the Minister of Industry and Trade	May 1999
13. Consider significant reduction in the capital requirements for Limited Liability Companies	Encourage small and medium business development in Jordan	MIT	Legal – Amendments to the Company law	December 1999
14. Attach industrial registration to specific projects rather than companies and simplify the form for industrial registration to contain essential information for the purpose of classification	Eliminate unnecessary requirement	Industrial Development Directorate, IPC, and the Income Tax Department and the Customs Department of the Ministry of Finance	Administrative or legal (regulation)	September 1999
15. Conduct a feasibility study for further automation of the company registration process and interface with other ministries—especially licensing ministries, tax authority, and the Investment Promotion Corporation	Speed up the process of registration	Controller of Companies	Potential Technological and Legal	September 1999
16. Conduct a feasibility study regarding electronic commerce (including registering through internet)	Speed up the process of registration	Controller of Companies	Potential Technological and legal	September 1999
17. Have all forms available in English and Arabic. Official submission, however, must be in Arabic.	Customer focused facilitation of non-Arab speaking foreign investors	Controller of Companies	Administrative	June 1999

Issue Paper: Company Registration
Prepared by The Services Group
May 2, 1999

I. Introduction

When compared to others within the region, Jordan's company registration process can be described as fairly efficient. Nevertheless, the process today is plagued by several problems. Confusion exists about a legal regime that allows licensing requirements to create dependencies and delays in the process. Various submission requirements are onerous and excessive, and there is a general lack of coordination and clarity among all of the actors involved.

Some specific issues are detailed below:

- Two sector specific laws other than the Companies Law create licensing procedures that impede a company from receiving final registration until licensing requirements have been met. In these two cases (banking and construction contracting companies) there exists a legal basis—otherwise licensing is seen to be an illegal dependency. In many cases where there is no legal dependency on licensing, companies are advised by MOIT staff to satisfy often cumbersome licensing requirements prior to registration. Owing largely to developments in practice, without a valid legal basis, the registration process can be more complicated and inter-linked to other agencies than it should be.
- The submission requirements for certain types of companies are fairly detailed and in some cases repetitive. Further, the manner in which company information is submitted is reported to be cumbersome, in part because of the way the law is implemented.
- In general, transparency is lacking as communication and coordination among the various agencies involved is not codified. No uniform guide to the process exists and the Companies Law, although available in both Arabic and English, does not adequately guide investors through the process in its entirety. Also, the official English translation of the Companies Law contains some differences in language, creating misleading meaning in some cases.
- Part of the confusion stems from the fact that the company registration function is divided among a Controller of Companies, a Department of Industrial Development, and the Trade and Commercial Registry—each of which focuses on a different type of company. Company registration at MOIT is assumed by the Controller of Companies, in law and in practice. The Department of Industrial Development is not involved in company registration *per se*. It simply maintains records of potential industrial investors for statistical and for regulatory purposes. This is reported by Ministry officials and indicated by the “registration” forms issued by this Department. This internal structure adds unnecessary steps and double checks to the process.

These issues are presented in greater detail in the “Analysis” section of this paper.

II. The Process Today

Company registration in Jordan is governed by Law no. 22 of 1997, the Companies Law. All companies (domestic and foreign-owned) that want to acquire a “full” and “binding” juridical status in Jordan must register under Jordanian Law.

According to the Companies Law (CL: 6), companies may be organized in five forms (General Partnership; Limited Partnership; Limited Liability Company; Limited Partnership in Shares; and Public Shareholding Company [including forms such as Holding Companies (CL: 204), Mutual Fund/Joint Investment Companies (CL: 209), and Offshore/Exempt Companies (public shareholding companies, or private limited companies, limited partnership in shares, CL: 204-205). Most businesses are organized along the first three of these forms. Requirements applied to the Limited Partnership and Limited Partnership in Shares are the same, except for the minimum capital requirement (JD 30,000 for to private limited companies, CL: 54, and JD 100,000, respectively, CL: 78).

Article 7(b) of the Companies Law dictates that “companies operating in the Free Zones shall be registered with the Free Zones Corporation [under the Ministry of Finance] and in the registers prepared by it for that purpose in coordination with the Controller. The laws and regulations in force in this Corporation shall be applied hereto provided that the Corporation send a copy of the registration of these companies to the Controller in order for him to document the registration of investors in the free zones with the Ministry.” The Industrial Estates Corporation, under the Ministry of Industry and Trade, also has the right to separately register companies.

A. Approval by the Controller of Companies

Except for companies operating in free zones, companies established by treaties, and those established by privatizing a public sector entity (CL: 7&8), all companies must first have the approval of the Controller of Companies.

The Controller of Companies is required to obtain from investors all the information required by the Companies Law; to verify that they meet all the conditions set by the Law; and, after registration, to continue to monitor the companies’ compliance with the Law.

The registration procedures, as detailed in Article 11 of the Companies Law, are similar for all forms of corporation, although the extent of documentation required may differ from one form to another.

As shown in figure 1.1, registration for all companies takes two steps: approval by the Controller of Companies, and registry with the Department of Commercial Registration and Protection of Industrial Property, both at the Ministry of Industry and Trade (MOIT). Company registration is independent of registration of trade name with the Department of Commercial Registration (CL: 5). Company Registration applicants may need to verify with Department of Commercial Registration that the same or deceptively similar company name is already in use. Registration of a trade name for companies, a step that follows company registration, is optional (Trade

Name Registration Law No. 30 of 1953: 3&5). For companies operating in banking and construction contracting, other agencies' licensing approvals must be completed prior to receiving a certificate of company registration.

General or Limited Partnership (11/a&48)

To form a general or Limited Partnership, applicants should submit:

1. An application form (the form is free);
2. Memorandum of Association;
3. The original partnership agreement signed by all the partners "and with a statement signed by each of them before the Controller or the person authorized by him in writing. This statement may be signed before the notary public or a licensed lawyer." Any company with capital exceeding JD 5,000 must have an attorney co-sign the submitted documents (Jordan Bar Association Law No. 11 of 1972, article 42). According to Article 11(a) of the Companies Law, "the partnership agreement must include the following:
 - a) Title of the Partnership and its trade name, if any.
 - b) Names of the partners, nationality, age and address of each of them (this requirement is not stated in the law).
 - c) Head office of the partnership.
 - d) The Partnership's capital and each partners share therein.
 - e) Objectives of the Partnership.
 - f) Duration of the Partnership, if limited.
 - g) Name of the partner or names of the partners authorized to manage and sign on behalf of the Partnership and their powers.
 - h) The position of the Partnership in event of the death of any or all of its partners, and his bankruptcy or if he is declared incompetent."

According to MOIT official, an applicant must prepare this partnership agreement based on the model provided by the Controller of Companies. This Partnership agreement must be submitted to the Controller of Companies for "filing" purposes.

According to MOIT officials, the applicant must also fill out another application form, called *Bayan*, which provides exactly the same information contained in the contract. This form must be approved and signed by three official reviewers. The first reviewer testifies to inspection of the documents and that they are in compliance with the law, and attests to the signing of all documents in his presence. The second one (supervisor) testifies to the legality of all documents. Finally, the Controller signs the *Bayan* to give his approval. The Controller's approval is published in the *Official Gazette*. The *Bayan* form is also free.

Article 11(b) states that the Controller must issue "his decision approving the registration of the Partnership within fifteen days of the date of submission of the registration application. The Controller may, however, reject the said application if there is evidence in the Partnership agreement or in the Memorandum of a violation of this Law, public order, or the provisions of all legislation in force and if the partners do not take action to rectify the said violation within the period determined by the Controller."

Disputes related to the rejection of a registration can be brought to the Minister of Industry and Trade within 30 days of receiving notification of the rejection. If the Minister also rejects the application, the partners may appeal to the High Court of Justice within 30 days of the Minister's notification of rejection (CL: 11/b).

Limited Liability Company

Procedures for establishing a Limited Liability Company are similar to those for partnership companies. The Companies Law requires the following submissions of a Limited Liability Company:

An application form (the form is free) that must be "signed before the Controller, before any person delegated in writing by the Controller, before a notary public or before a licensed lawyer" (see Article 57(a)); Memorandum of Association, which, according to Article 57(b) must include the following:

1. "Name of the Company, its objective and its head office.
2. Names of the shareholders, their nationalities, and address of each of them.
3. Amount of capital and the shares of each shareholder therein.
4. Statement of the share or shares in kind, name of the shareholder who presented such shares and their estimated value.
5. Any other additional data which the shareholders may submit or which the controller may request in implementation of the provisions of the Law."
6. Articles of Association, which must include the information noted above in the Memorandum of Association, as well as:
 - a) "The manner of managing the Company, the number of members in the Management Committee, their powers and limits of the powers of the Management Committee in borrowing, mortgaging the real estate owned by the Company and presenting guarantees in its name.
 - b) Conditions for transferring the shares in the Company and the procedures to be followed in that respect and the form of writing the transfer.
 - c) The manner of distributing the Company's profits and losses on shareholders.
 - d) Meetings of the Company's General Assembly, its legal quorum, and the quorum needed for taking decision thereby and procedures to be followed for holding the said meetings.
 - e) Rules and procedures pertaining to the liquidation of the Company.
 - f) Any other additional information furnished by the shareholders or requested by the Controller."

In preparing the Partnership agreement, based on a model provided by the Controller, applicants must include detailed information on the capital structure (this requirement is not stipulated by Law). Applicants must also commit to a minimum capital of JD 30,000, of which 50 percent will be paid in full at the time of registration and the balance within two years of the registration date (CL: 54/a and 59/b). The contract must list the names, age (the age requirement is not stipulated by the CL), and nationality of all shareholders, and the amount of their respective capital

contributions, whether in cash or in kind, and the total value of shares held by each shareholder (CL: 57/b/2-4). Although not explicit in the Companies Law, it is stipulated in this contract that the company must have the authority's approval before it may sell its shares to others, increase its capital, borrow money through subscription, or issue stocks or debenture notes. Furthermore, the applicant must attach to this contract a copy of the company's by-laws, which regulate in detail the management of the company. The by-laws must follow the model provided by the Controller.

According to Article 59(a) the Controller must "issue his resolution approving the registration of the company within fifteen days from the date the application is submitted and signed by the shareholders. He may refuse the application if and only if he finds that the Company's Memorandum of Articles of Association contain a provision contrary to the provision stipulated in this Law and the regulations promulgated in accordance therewith and contrary to any other legislation in force in the Kingdom and the shareholders have not remedied the violation within a period specified by the Controller."

Disputes related to the rejection of a registration can be brought to the Minister of Industry and Trade within 30 days of receiving notification of the rejection. If the Minister also rejects the application, the partners may appeal to the High Court of Justice within 30 days of the Minister's notification of rejection (CL: 59/a).

Joint Ventures, Limited Partnerships, and Limited Partnerships in Shares

The Companies Law does not specify what submissions are required for these types of companies. Article 49(b) says that "a Joint Venture is not a separate legal entity, and is not subject to the provisions and procedures of registration and licensing. (Note: in a legal sense, the term "joint venture" is misleading in this context.⁵)

Article 48 says "A Limited Partnership shall be subject to the provisions governing the General Partnership, which are stipulated in the Law in all matters and cases which are not provided in this part." Article 80 states that "The registration of the Limited Partnerships in Shares shall be subject to the approval of the Controller," and Article 89 states "The provisions for public shareholding companies stipulated in this Law shall apply to limited Partnerships in shares in all issues that are not provided for in this section. See also Article, 43.

No dispute resolution mechanism related to company registration is specified for Joint Ventures, which are not legally registerable and do not have a juridical status. Limited Partnerships are governed by same rules as General Partnerships (CL: 48) and Limited Partnerships in Shares are governed by same rules as Public Shareholding Companies in whatever is otherwise not specifically provided for under relevant section (CL: 98&94).

⁵ The company form referred to in article 49, the *mahassa* company is not a joint venture as commonly understood by law. *Mahassa* is a company with a partner who is not visible to the public, and may not be held liable by third parties. This form of company is not a juridical entity. Joint ventures, on the other hand, have been considered as juridical entities by the Jordanian Court of Cassation Decision No.93/1487.

Public Shareholding Companies

Only Public Shareholding Companies can conduct banking, financial institution, and insurance activities, and activities resulting from being awarded concessions by the government (CL: 93).

Public Shareholding Companies must submit the following in accordance with Article 92(a) and

(b):

1. An application form;
2. Names of the promoters of the company;
3. “Names of the members of the promoters’ committee which shall conduct reformation procedures.”
4. Memorandum of Association and Articles of Association, both of which shall contain:
 - a) “Name of the Company.
 - b) Company’s head office.
 - c) Objectives of the Company.
 - d) Names of the company’s promoters, their nationalities, domicile, and the number of shares subscribed for.
 - e) The authorized capital of the Company and the subscribed part thereof.
 - f) A statement of the shares in kind in the Company, if any, and the value thereof.
 - g) Whether the shareholders and the holders of convertible bonds hold preemptive right to subscribe for any new issues to be made by the Company.
 - h) The manner in which the Company is managed and the authorized signatories during the period between its formation and the first General Assembly meeting which shall be held within sixty days of the date of formation of the Company.”

The Articles and Memorandum of Association must be signed by each promoter “before the Controller or any one delegated by him in writing or before the notary public or a licensed lawyer.”

Unlike other companies, for Public Shareholding Companies the Controller recommends approval to the Minister (within 30 days of receipt of the application), and the Minister is to issue a decision within 30 days of receiving the Controller’s recommendation. Article 94(a) states that “should the Minister fail to issue his resolution during such period, the application shall be deemed approved.”

The Minister’s decision can be appealed to the High Court of Justice; no timeframe is specified in the Companies Law.

B. Commercial Registration

The following procedures are not explicitly expressed in the Companies Law because they do not pertain to company registration per se, but rather to trade name registration. According to MOIT officials, once the Controller of Companies

approves registration of the company, he transfers the file to either the Department of Trade and Commercial Registration or Industrial Development, also with MOIT. Procedures depend on the type of applicant. For example, industrial applications go to the Department of Industrial Development reportedly for routine statistical registration rather than for obtaining prior approval or licensing. This is also indicated by registration forms issued for this purpose. Pre-registration licensing for industrial purposes is not required by law. Sole proprietor applications go to Trade and Commercial Registration and do not interact with the Controller because they are not incorporated entities.

Although the High Court recently ruled that no agency other than the MOIT should directly influence the company registration process, the IPC suggests that compliance with this legal directive is inconsistent. As a result, the IPC asserts, a *de facto* system of provisional registration pending approval from a line ministry exists in some sectors and in regard to some activities. In practice, it seems that because certain licensing procedures can be onerous, MOIT staff may advise investors to see to licensing before bothering to register. An analysis of the law, however, reveals that all but two of the agencies cited have a legal mandate related to post-registration licensing only. The following agencies were reported by IPC to either request that businesses obtain a license prior to registering or were among those where confusion about their role exists; our legal analysis describes these agencies' prerogatives and responsibilities under the law.

Ministry of Interior – The Ministry of Interior is in charge, *inter alia*, of maintaining order and public safety, and preventing crime, see article 3/a of Administrative Regulation No. 22 of 1996. This mandate does not justify making security checks a registration requirement, as they are more pertinent to licensing, and are irrelevant to creation of juridical entity.

Ministry of Energy and Minerals, Natural Resources Authority - Both entities are involved in licensing, but law does not provide that licensing should not precede registration.

Ministry of Labor – Labor Law No. 8 of 1996, Article, 11 provides that personnel and employment agency services may not be provided by other than competent public sector entities and private sector entities licensed by the Ministry. It is not provided specifically that licensing is a prerequisite of registration. Reportedly, the Ministry of Industry and Trade apparently turns down applications for registration of companies in this field, on the basis of its knowledge that the Ministry of Labor does not yet grant licenses to private sector entities to provide this service. In this light, MOIT's practice may be prudent in so far as it is intended to spare investor unnecessary effort, but it is nonetheless not valid legally.

Central Bank of Jordan – Article 4 of the Banks Law No. 24 of 1971, states that any company which seeks to provide banking services in Jordan needs to be licensed by Central Bank. Article 4(b) states that any group of persons who wish to establish a company to provide banking services must be licensed by Central Bank before registering such a company under the Companies Law. Article 3 of Currency Exchange Law No. 26 of 1992 states that the Central Bank's prior written approval is a prerequisite for registration of companies providing currency exchange services. In

most countries, financial institutions are subject to more involved registration and licensing conditions than other industries.

Ministry of Information – License by Minister of Information is needed to operate a press or publishing house or to carry out any of the activities defined in article, 15, of the Press and Publications Law No. 8 of 1998. However, it is not stipulated that licensing is a prerequisite for registration of companies in this field. In fact, the Press and Publications Law presumes that license applicants may be established and registered companies (e.g. Article 21).

Ministry of Finance, Department of Customs – According to Article 166/a of Customs law No. 20 of 1998, natural or juridical persons must be licensed by the Minister in order to practice customs clearance. Licensing is not a prerequisite for registration, according to the Law. Licensing does not seem to be a prerequisite for registration for freight forwarders either. The Ministry of Transport’s most recent “Instructions for Licensing Freight Forwarders,” presume that license applicants must be registered companies and that registration should precede licensing in the case of companies.

Ministry of Municipal and Rural Affairs and the Environment – The laws that govern the Greater Amman Municipality allow for post-registration licensing for the purposes of taxation and urban organization.

Ministry of Public Works - Pre-registration licensing is required in the case of construction contractor companies. Article 3(c) of the Construction Contractors Law No. 13 of 1987 provides that “after obtaining license provided for in paragraph (b) of this Article, the Construction Contractor shall register the Company or Establishment or Office at the Ministry of Industry and Trade.”

Commercial Agency of Foreign Companies

Commercial agencies representing foreign companies require special registry, which involves the approval of the Minister of MOIT. The applicant completes an application form provided by the Registrar, with a copy of the contract between the two parties, a Commercial Registration Certificate, and a Certificate of Registration with the Chamber of Commerce. The Registrar submits these documents to the Minister for approval. If approval is granted, the applicant pays a fee of JD 25 and is issued a certificate of Commercial Agency. Registration of a company with the Ministry of Industry and Trade requires no pre-approval, and is not to be confused with the registration of agents, whether natural or juridical persons, in the register of Commercial Agents as a requirement for practice, and for the aim of protecting agents’ rights (see Commercial Agents and Intermediaries Law of 1985, articles 4-6).

III. Analysis

Despite recent efforts of the government to simplify the company registration process, the procedures are still more complicated than necessary. It also provides a notice to the public of the nature of companies as legal entities.

- Several steps in the current process seem unnecessarily drawn out and could probably be combined. For example, documents are passed from a clerk, to a Registrar, to the Assistant Controller, and then to the Controller of Companies for approval and signature, and it is unclear what unique purpose each review serves. In some instances, final approvals indicated by stamping and signing documents are separate steps, even when done by the same office.
- Investors are asked to provide the same information several times, and in many cases the information required of investors is more detailed than required to meet the minimum goals of an efficient registration process. Particularly in industrial registration, companies are asked to provide detailed project and financial information at the initial registration phase. Based on interviews with MOIT staff, there is confusion about what documents are required and if the *Bayan* form is repetitive of the Articles and Memorandum of Association.
- It is unclear why the Commercial and Trade Registry, Controller of Companies, and Department of Industrial Development are organized into distinct offices and have separate procedures. It seems that the internal structure of the MOIT adds unnecessary steps and hand-offs to the process of company registration. At present, an investor is required to physically take his documents from room to room and also to a bank and wait for an official to review a document, issue a stamp, or sign a form. Reorganization within MOIT is ongoing, and it is hoped that a more customer friendly and organizationally efficient structure will emerge.
- The overall company registration procedure is unclear, and no comprehensive, detailed guidelines exist to cover the company registration and dependency licensing process. While the MOIT website has some procedures available, they do not adequately describe the process, mention fees and timeframes, or refer to other requirements, such as *de facto* or *de jure* conditionalities arising from other GOJ agencies. As a result, investors are occasionally misled into believing that the company registration process is simpler and quicker than it might be, and due to a lack of information companies are not able to as efficiently and speedily comply with Jordanian company and licensing regulations. Further, little information is available in English or other languages.
- What information is available is not easily accessible outside of Amman. At present, local and foreign investors who are conducting business in other parts of the country will need to take a trip to the MOIT in Amman to pick up the information about and forms required to register a business.
- The required use of model contracts and company by-laws does not seem consistent with the government's intention to allow investors the maximum freedom to design and manage their own businesses. In most countries, company contracts and by-laws are internal documents, subject to agreements among shareholders only. Rather than issuing a standard format and forcing all companies to use the same model, government

authorities only specify minimum information requirements, allowing firms to draft their own articles in a manner appropriate for their activities and needs. It is the responsibility of the firms, not the government, to ensure that their articles of association and by-laws conform to commercial laws, and it is their responsibility to provide accurate and truthful information to the public. Any violations of the legal and ethical standards established by law are punishable and can be adjudicated through the court system.

- Company registry in most market economies involves a simple and speedy process. A single and simple form application is used, and one incorporator, usually an attorney, can sign the incorporation papers on behalf of the principals, often in the presence of a notary public. This right, enshrined in the Companies Law, should be allowed as standard practice, yet some businesses have complained that all of the company partners were requested to sign documents in person in front of MOIT staff. Only in special cases, such as organizing a bank, must incorporators sign the Memorandum of Incorporation together.
- In countries where the system is equipped with a computerized database, the company incorporation process takes no more than a few hours. Further, in many countries company registration information is automatically transferred electronically to other concerned agencies, including the tax and licensing authorities, thereby quickly and efficiently coordinating information flow among government entities and lessening the burden on the investor to complete an allocation form at every agency. Increased use of information technology in the company registration process can also help the government quickly produce meaningful statistical data and reports on business trends in the country.
- Although some countries used minimum capital requirements in the past, increasingly they are removing such requirements in the interest of making investment an easier process and encouraging smaller firms to enter the formal sector. Jordan's minimum capital requirement, which varies based on the type of business, is altogether arbitrary and doesn't seem to correspond with any economic rationale. For foreign investors, the Companies Law says JD 50,000 (US \$70,000) or 50 percent of the company's capital should be deposited must be transferred to a bank in Jordan to incorporate. This forces businesses to commit a large sum of money for a mere formality before they engage in business. Some officials note that once an investor shows proof that this money has been transferred, there is no way to ensure that it will stay in the country. For many companies, the minimum, capital requirement is JD 30,000. At worst, the minimum capital requirement discourages small business start-up and at best it encourages small investors to incorporate as sole proprietors. Where minimum capital requirements are maintained, they are usually applied only to publicly traded companies or companies engaged in certain sectors such as banking and finance. Capital deposit requirements are seldom used around the world, except among a few developing countries, particularly in the Middle East. In a market

economy, protecting the interest of creditors from default by a borrower is primarily the responsibility of the creditors themselves, who are allowed to request audited financial statements directly from investors before providing credits.

- MOIT officials suggest that delays in the registration process are due in part to the Amman municipality and the Ministry of Interior. According to the MOIT officials, the Amman municipality routinely asks for clarifications from the Controller and the Ministry of Interior's review process often takes three months. If there is a question of security, clearance may be obtained from the appropriate security authority. Some businesspeople also suggest that complying with other agencies' licensing requirements can be time-consuming and complicated. While licensing is legally distinct from company registration in most instances, in practice the lines between the two can become blurred, and complicated and time-consuming licensing requirements undermine the impact of having a quick and efficient company registration process.
- It is not entirely clear why the decision of the Minister of MOIT is required for the appointment of local agents by foreign companies or the registration of agencies in Jordan.

Recommendations

To improve the process of company registration on the basis of best international practice, the government of Jordan may consider the following steps:

- ***Reduce the number of steps in the process.*** The current company registration process within the MOIT seems to include unnecessary steps. It is recommended that several steps be combined, eliminated, or otherwise changed to streamline the process. Specifically, efficiency could be gained if submissions could be submitted at once, stamping and signing could be combined, having to get a 100 *fi*ls stamp on documents, and if obtaining a bank form were eliminated.
- ***Simplify the submissions required of investors.*** The submissions required of investors to incorporate and forms should be simplified so that only necessary information needed to register a business is asked for. Specifically, information required in the Articles and Memorandum of Association should not be repeated in the *Bayan* forms, and the form required to register an industry should only ask for information needed to record the basic data of an incipient company.
- ***Continue efforts at centralizing the Controller of Companies, the Industrial and the Commercial Registrar.*** Only one office (using a simple process and form) is needed to collect all basic information from companies desiring incorporation. Centralizing departments should be completed with an eye toward how unnecessary double checks and steps in the process may be eliminated.

- ***Produce a comprehensive guide for company registration that clarifies each agency's role, fees, and internal response time.*** This would clarify responsibilities among agencies and help the private sector receive an authoritative account of the steps that it must take to legally register a company in Jordan. Although the Companies Law states some of the requirements related to company registration, it does not sufficiently describe the process that investors must endure. The MOIT, in consultation with the other agencies that have an impact on the registration process, should produce a comprehensive, step-by-step guide for company. This guide should also be produced in English and possibly other languages where investment is sought.
- ***These guidelines should be disseminated to increase public access.*** To allow domestic investors outside of Amman and foreign investors worldwide the official guide to company registration should be disseminated in local municipal and MOIT offices as well as the official MOIT website and IPC. The registration forms should also be posted on the website, allowing investors to prepare the form and documents in advance of coming to MOIT. This would also shift the cost of reproducing the forms to the private sector.
- ***Cease demanding that business use model contracts.*** The approval required for company contracts and by-laws should be abandoned. Further, if all of the information required is included in a company's documents and contracts it should not be required to reproduce a new document solely for the registration process.
- ***A needs assessment of automation should be conducted.*** The possible gains of efficiency through increased use of information technology should be explored within the company registration process. The electronic transfer of information from the Controller of Companies to other government agencies should be explored, as should the possibilities of interdicting electronic commercial interaction between the private sector and government.
- ***Reduce or eliminate the minimum capital requirements.*** The capital deposit requirement is not necessary for most companies, except perhaps those that will be publicly traded. Similarly, the minimum capital requirement should be eliminated, or at least substantially reduced, to encourage the investment by small and medium sized enterprises.
- ***De-link company registration from licensing approvals from other GOJ agencies.*** Although Jordan may wish to keep companies from operating prior to receiving approvals from line ministries and the Amman Municipality, the simple act of registering a company should not be dependent on approval from these other agencies. In line with a 1996 ruling by the High Court, the Ministry of Industry and Trade should have sole authority to register businesses regardless of and prior to whatever licensing requirements are required (except in the case of the banking and

construction industries). Further, greater coordination among the various licensing agencies should help quicken and clarify the entire process.

- ***Cease requiring the Minister to approve of local agents.*** Approving of agents of foreign company agents is an administrative function that can be readily handled by lower level staff within the MOIT and should not require the intervention of the Minister.

ANNEX A

Power Point Presentation