

REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)

Corporate Governance Country Assessment

JORDAN

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This Corporate Governance Assessment was completed as part of the joint World Bank-IMF program of Reports on the Observance of Standards and Codes (ROSC). It benchmarks the country's observance of corporate governance against the OECD Principles of Corporate Governance. This assessment was prepared by Alexander Berg and Tatiana Nenova of the Investment Climate Unit (CICIC) of the World Bank. The ROSC assessment was cleared for publication by the Jordan Securities Commission on February 3, 2005.

EXECUTIVE SUMMARY

This report provides an assessment of Jordan's corporate governance policy framework, enforcement and compliance practices. Strengths and weaknesses are highlighted and policy recommendations are made where appropriate. Much progress was made in the regulatory environment in the 1990s, since the creation of the Jordan Securities Commission, the Amman Stock Exchange, and the Securities Depository Center. The powers of each of the three bodies were strengthened with the Securities Law of 2002 and subsequent regulation. The Controller of Companies also plays an important role by enforcing many basic corporate governance provisions of the Company Law. In general, the assessment found little evidence of corporate governance scandal, and relatively good disclosure practices. The development of modern board practices is at an earlier stage, although Jordan is advanced in its early adoption of the institution of the audit committee. The report identifies a number of areas where basic shareholder rights can be improved.

The report identifies several key next steps that focus on implementation, including: (i) developing a Code of Corporate Governance that focuses on the role, duties, and functions of the board; (ii) focused enforcement of the disclosure provisions, with continued emphasis on a review of content; (iii) revision of the Company Law to bring the policy framework into greater compliance with the OECD Principles, and (iv) a review of the regulatory jurisdictions of the three main regulatory bodies that oversee corporate governance. Together, these measures will bring Jordan into the mainstream of the worldwide corporate governance reform movement and provide new opportunities for issuers to implement international good practice.

I. CAPITAL MARKETS AND INSTITUTIONAL FRAMEWORK

At end-April 2004, Jordan's equity market capitalization was USD 11.3 billion, or 113 percent of 2003 GDP,¹ making Jordan one of the largest emerging equity markets relative to GDP in the world. 161 companies were listed on the Amman Stock Exchange (ASE). The ten largest companies account for 67.3 percent of market capitalization, and the ten most traded companies represent about 50 percent of trading volume. The listed sector is dominated by banks and insurance companies, led by Arab Bank, one of the Arab world's five largest banks. All banks and insurance companies are listed, and together comprise over 55 percent of market capitalization. Delisting pressure is not a major issue in Jordan.²

Ownership appears to be less highly concentrated than in many emerging markets; average free float (as measured by the ASE) is about 40 percent.³ This figure includes blocks of about 5 percent that may be part of the majority group and are held separately or indirectly.⁴ Family-owned business groups, centered around a bank, and including an insurance, industrial, and tourism firms, are typical. The average control position for the top 48 listed companies is about 30 percent of shares.⁵ Control is reinforced by cross-shareholdings, and inter-locking directorships. Around 70 firms are supermajority owned, i.e. fundamental corporate decisions

¹Source: Amman Stock Exchange Monthly Statistical Bulletin, May 2004.

² The number of listed companies has increased from 150 to 161 over the past five years. A few companies have delisted, mostly due to bankruptcy.

³ Free float is defined by subtracting the holdings of directors and their families, owners of 5 percent or more, shares owned by affiliated companies, and treasury stock.

⁴ There are about 520,000 investors registered with the SDC.

⁵ Calculations by Prof. Ghassan Omet, University of Jordan.

can be taken without the consent of minority shareholders.⁶ Private institutional investors are of limited importance, although the Social Security Corporation (a public pension fund) has substantial shareholdings.⁷ Foreign ownership – mostly from Arab countries - is 40 percent of market capitalization.

The corporate legal framework has its origins in French civil law. Law 22 of 1997 (most recently amended in 2002) provides basic Company Law (CL).⁸ The public shareholding company (PSC) is the dominant legal form for large and listed companies. All PSCs must be listed by law.⁹ A new legal form, private shareholding companies (PrSCs), was created in 2002, as part of the CL amendments. PrSCs are designed to appeal to foreign investors, and have very flexible capital-voting and governance rules; they can also be listed. The Securities Law (SL) regulates the capital market and provides the framework and supervision of ASE, SDC, and market intermediaries. The Jordan Securities Commission (JSC) can draft new secondary regulations (instructions). New instructions have been issued to implement the law, including an Instruction on Disclosure.

JSC is the securities market regulator. As part of its mandate, it must protect investors, as well as ensure fairness and transparency. The Commission (the Chairman, the Deputy Chairman and three commissioners) is appointed by the Council of Ministers, and reports to the Prime Minister. Commissioners can be removed without cause. It is self-financing, and has returned excess revenues to the government budget in recent years. The budget must be approved by the Prime Minister. JSC has a staff of 90, including ten in the enforcement department. Salaries are lower than in the private sector or Central Bank.¹⁰ JSC's powers and authority increased significantly with the SL amendment in 2002. JSC can now impose fines,¹¹ suspend trading or delist issuers (the latter has never been done in practice). JSC also has strong investigative powers, including powers to subpoena non-registrants and obtain phone records. Appeals of JSC decisions are made first to the JSC board, and then at court. In 2003, JSC took 356 enforcement actions, including 145 against issuers, mostly for lack of proper disclosure (See Principle IVA below).¹²

The ASE is Jordan's only stock exchange and is regulated by the SL, the Listing Rules 2003, the Trading Rules 2003, and other internal bylaws. To date, the ASE has not played a major role in regulating listed companies. However, ASE's powers were significantly strengthened on April 1, 2004. It can now issue warnings and fines, and suspend and de-list issuers. There will be two

⁶ HSBC estimate.

⁷ There are three (open-ended) mutual funds registered with the JSC. Funds remain a small player (JD 5 million (USD 7.1 million) in equity), for several reasons. First, there is a tax advantage to holding shares directly rather than through funds (avoidance of dividend and capital gains tax of 10 percent). Second, there is a culture of direct involvement in one's investment, and mistrust of "other people's" management. Collective investment schemes are lightly regulated. Some private voluntary pension funds are organized by company for large firms (e.g. Royal Jordanian Pension Fund), as well as by professional association (engineering and bar association pension funds). Pension funds do not have a regulator.

⁸ Official Gazette 4204 dated 15/5/1997.

⁹ Article 72b of SL 76 of 2002. As of April 1, 2004, there were 213 PSCs registered with JSC, of which 201 were operating and registered in the Securities Depository Center (SDC). There were also 40 private shareholding companies, 8,771 limited liability firms, and more than 80,000 partnerships and other firms. PSCs have a minimum capital requirement of JD 500,000 (USD 705,000). There are also provisions for mandatory and voluntary reserves, and at least 20 percent of authorized capital must be paid in, or a minimum of JD 100,000 (USD 141,000).

¹⁰ The JSC is not subject to the civil pay scale, and can offer higher salaries, subject to its Internal Personnel Regulation. The pay scale of the Chairman, Deputy Chairman and the commissioners is decided by the Council of Ministers.

¹¹ Up to JD50,000 / about USD 70,500.

¹² JSC, 2003 Annual Report, Table 1. Total fines imposed were JD 29,550 (USD 41,665).

tiers on the ASE as of July 1, 2004.¹³ The SDC provides online settlement, clearance, and registry services for all PSCs. SDC is linked with ASE and JSC. All trades in listed shares must be executed through the SDC.

The Controller of Companies, under the Ministry of Industry and Trade, also plays a key corporate governance enforcement role.¹⁴ The Controller has wide information and recourse rights, is present at general shareholder meetings (GMs), and can dissolve a company's board or revoke its registration. However, it cannot impose fines and must bring cases in court following investigation or use "moral suasion." A proposed amendment to the CL, currently under discussion, will give the Controller the power to issue fines.

The banking supervision department of the Central Bank is moving to make corporate governance an important component of its regulatory effort. Early in 2004, a handbook for bank directors was published, and training sessions are planned to instill corporate governance principles in the banking community. Coordination among regulators (e.g. between JSC, Controller, and Central Bank) is a concern. The Central Bank and JSC have only recently resolved some conflicts over disclosure requirements.¹⁵

There is no voluntary code of corporate governance. A nascent corporate governance initiative, for now aimed at raising awareness, has been recently undertaken by private companies.

II. REVIEW OF CORPORATE GOVERNANCE PRINCIPLES

This section assesses Jordan's compliance with each of the OECD Principles of Corporate Governance. Policy recommendations may be offered if a Principle is less than fully observed.¹⁶ Note that the OECD Principles and the following recommendations apply to all PSCs.

Section I: The Rights of Shareholders

Principle IA: The corporate governance framework should protect shareholders' rights. Basic shareholder rights include the right to: (1) secure methods of ownership registration; (2) convey or transfer shares; (3) obtain relevant information on the corporation on a timely and regular basis; (4) participate and vote in general shareholder meetings; (5) elect members of the board; and (6) share in the profits of the corporation.

Assessment: Largely observed

Description of practice: Secure methods of ownership registration. Registration with the company's shareholder registry provides formal legal proof of ownership for PSCs. However, the responsibility for shareholder record-keeping rests with the SDC, which acts as a de-facto central

¹³ The two new tiers replace the three-tiered structure that existed prior to July 1, 2004. The listing conditions for the first tier are: (i) continuous listing on the second tier for at least a year; (ii) 100 percent paid-in equity; (iii) a positive corporate net income during at least two of the last three years, and (iv) a free float of at least 5 percent for companies with a capital of above JD 50 million (USD 70.5 million), and of 10 percent for smaller firms. At least 10 percent of the free float should have been traded in the past year for listing on the first tier. Once a year ASE checks whether firms on the first tier comply with these requirements, and moves issuers to the second tier as necessary. Firms on the first tier must file quarterly reports as of July 1, 2004. About 75 firms are expected to qualify for listing on the first tier.

¹⁴ Its authority is laid out in the Company Law.

¹⁵ The Central Bank has insisted on approving annual reports of banks before those are filed with JSC and made public, thus delaying the publication of bank financials beyond the deadline set by the JSC.

¹⁶ **Observed** means that all essential criteria are met without significant deficiencies. **Largely observed** means only minor shortcomings are observed, which do not raise questions about the authorities' ability and intent to achieve full observance in the short term. **Partially observed** means that while the legal and regulatory framework complies with the Principle, practices, and enforcement diverge. **Materially not observed** means that, despite progress, shortcomings are sufficient to raise doubts about the authorities' ability to achieve observance. **Not observed** means no substantive progress toward observance has been achieved.

registry and tracks beneficial ownership.¹⁷ All records are maintained at the direct owner level. Nominee ownership is not available. There are some foreign ownership restrictions.¹⁸

Convey or transfer shares. Listed shares are freely transferable.¹⁹ Shares must be “authenticated” before they can trade at the SDC; to date, 87 percent of issued shares have been authenticated, representing 27 percent of all shareholders.²⁰ Clearing and settlement is handled by the SDC. Share and cash settlement is T+3 or T+4. The SDC is planning to move to DVP settlement in late 2004.

Obtain relevant information on the corporation on a timely and regular basis. Periodic reports are filed with JSC and the Controller and are public - annual audited reports, and semi-annual reports reviewed by an auditor.²¹ Material facts are disclosed upon occurrence.

Participate and vote in general shareholder meetings. Shareholders have the right to participate and vote at general meetings.

Elect members of the board. Directors are elected by secret ballot.²² The law provides that board representation for government and corporate shareholders be proportional to ownership; these directors are not elected, but appointed.²³ There are no cumulative voting provisions.²⁴ Removing directors from the board is difficult; it requires an extraordinary shareholders meeting (EGM) called by at least 30 percent of shareholders and a 75 percent majority. Directors appointed by proportional representation by the government cannot be removed by the GM.²⁵

Share in the profits of the corporation. The AGM approves dividend distribution. Dividends are paid 45 days after the AGM, or thereafter within six months with interest.²⁶

Policy recommendations: The Controller should ensure that directors are elected by secret ballot. Proportional representation provisions should not differentiate between legal and natural persons. The JDC should consider imposing regulations that encourage the share authentication process,

¹⁷Company share registers are maintained as mirror images of the SDC database. Article 82 of SL 76 of 2002 requires SDC registration for listed companies. Twelve PSCs remain unregistered due to ongoing bankruptcies. There are about 520,000 investors. Issuers not registered with the SDC cannot trade at the ASE. The SDC plans to assume full legal responsibility for all PSC central registries in early 2005, which will end any responsibility for companies to maintain their own registries.

¹⁸ Foreigners cannot own more than 50 percent of firms in certain sectors (including general commerce/retail, railway, construction – see Article 2, Regulations governing Investments of non-Jordanians 54 of 2000). Financial companies and banks cannot own over 50 percent of capital in listed firms, and at most 10 percent of other banks.

¹⁹There are three exceptions. According to Article 100 of the CL 22 of 1997, founders’ shares are non-transferable for two years. In addition, Article 133 of the same law states that most board members must be shareholders. Finally, the government can (and does) own a golden share with a veto over any AGM or board decision, per Article 14 of Privatization Law 25 of 2000.

²⁰ To authenticate shares, shareholders must present certain identification information. Many unauthenticated shares are held by small shareholders who live on the West Bank or have moved abroad.

²¹ A summary of the annual report is published in two newspapers. While semi-annual reports should be audited by law, in practice they are merely reviewed by an auditor. Companies listed on the First Market must file quarterly reports with the ASE, which also must be reviewed by an external auditor.

²² Articles 132a, 171 of CL 22 of 1997.

²³ Article 135a1 of CL 22 of 1997.

²⁴Cumulative voting allows minority shareholders to cast all their votes for a single candidate. Suppose that a publicly traded company has two shareholders, one holding 80 percent of the votes and another with 20 percent. Five directors need to be elected. If there is no cumulative voting rule in place, each shareholder will have to vote separately for each director. The majority shareholder will get all five seats, since he will outvote the minority shareholder each time by 80:20. With cumulative voting, the minority shareholder can decide how to place his votes. The optimal strategy would be to take all his votes (five times 20 percent) and cast them for one board member. The minority shareholder will then win that seat.

²⁵ Article 165 of CL 22 of 1997.

²⁶ Article 191 of CL 22 of 1997.

including dividend restrictions on unauthenticated shares.

Principle IB: Shareholders have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes, such as: (i) amendments to the governing documents of the company; (ii) the authorization of additional shares; and (iii) extraordinary transactions that in effect result in the sale of the company.

Assessment: Largely observed

Description of practice: Fundamental decisions are made by the EGM. These are held at the request of 25 percent of share capital.²⁷ A 75 percent supermajority of those present is required to modify the memorandum and articles of association, approve mergers, sell all company assets, dismiss directors, and for liquidations, changes in capital, buy-backs and convertible bonds.²⁸ Share buy backs are allowed, and treasury shares must be immediately cancelled.²⁹ The sale of substantial assets does not require shareholder approval unless it involves substantially all assets. There are no statutory pre-emptive rights.³⁰ This may be problematic in view of recent and expected future share issues due to increases in bank and insurance firm capital requirements.³¹

Policy recommendations: Large transactions should require shareholder approval, even if they do not lead to a reduction of capital.³² Mandate pre-emptive rights. EGM calling procedures should be clarified – a single threshold should be fixed as opposed to the current ones of 30 and 25 percent, respectively. Also, the threshold should be lowered to 5-10 percent (e.g. Egypt).

Principle IC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures that govern them. (i) Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting. (ii) Opportunity should be provided for shareholders to ask questions of the board and to place items on the agenda at general meetings, subject to reasonable limitations. (iii) Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.

Assessment: Largely observed

Description of practice: The AGM meets within four months of the financial year's end.³³ In practice, some companies hold meetings up to six months late. Meetings are usually convened by the board Chairman.³⁴ The Controller attends all AGMs; JSC and the external auditor may also attend.³⁵ The notice is mailed to shareholders at least 15 days prior to AGM, and should include the date, time and place of the meeting, as well as an agenda, Chairman's statement, financials, and auditor's report; the date and time must also be published in two local papers, and must be advertised within three days on the radio or TV.³⁶ The supporting materials, except the agenda,

²⁷ Article 171a of CL 22 of 1997. The Controller of Companies can also call an EGM; this happened 15 times in calendar year 2003. Note that Article 165 of CL 22 of 1997 requires 30 percent of capital to call an EGM to vote on director removal (directors appointed by government or by a corporate body cannot be removed). Quorum is 50 percent for the first meeting and 40 percent for the second meeting, except in decisions on merger or liquidation, where quorum is 67 percent. If there is no quorum at the second meeting, no further meeting is held. The second EGM can be convened only after notifications, or no sooner than three days following the unsuccessful first meeting (Article 173 of CL 22 of 1997).

²⁸ Article 175 of CL 22 of 1997.

²⁹ Article 114 of CL 22 of 1997.

³⁰ Pre-emptive rights give existing stockholders the opportunity to purchase shares of a new issue before it is offered to others. The purpose of these rights are to protect shareholders from dilution of value and control when new shares are issued. Pre-emptive rights are defined for a limited liability company (article 74 of CL 22 of 1997), but not for a PSC.

³¹ Minimum bank capital was doubled to JD 40 million (USD 56.4 million). Insurance firms' capital requirement will be increased soon, too.

³² The OECD Principles recommend that shareholders approve large transactions, although shareholder approval thresholds vary from country to country. In Chile, for example, shareholders vote on decisions to dispose of 50 percent or more of the assets.

³³ Article 169 of CL 22 of 1997.

³⁴ Shareholders do not have an explicit power by law to call an AGM when the board fails to do so.

³⁵ Article 182 of CL 22 of 1997.

³⁶ Articles 144, 145 of CL 22 of 1997.

are not mailed in practice. The quorum is 50 percent.³⁷ Shareholders representing 10 percent of capital may propose additional items for a vote at the meeting, with no prior notice.³⁸ Shareholders have the right to ask questions, and do so in practice, but there is little dissent. The Controller plays a constructive role in promoting shareholder rights, by e.g. ensuring that questions are answered by the board.

The record date is as of three days prior to the AGM.³⁹ Trading is not allowed on the day of the meeting. Voting is allowed in person or by proxy. Shareholders can give the proxy to another shareholder or a notarized power of attorney to any third party. Proxies are company-specific.⁴⁰ Postal voting is unavailable.

Policy recommendations: The controller should put emphasis on monitoring and enforcing AGM procedures, including the date of the AGM, the information sent to shareholders and the election of directors. Policymakers should consider extending the meeting notice period to 30 days.⁴¹ International good practice suggests that only items on the agenda should be put to a vote. Generic agenda items, like “other issues,” should not be allowed. Shareholders should be able to add items to the agenda before the meeting and the revised agenda should be circulated at company expense. Proxies should be standard, not requiring notarization. Postal voting should be allowed.

Principle ID: Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

Assessment: Partially observed

Description of practice: PSCs have only one class of shares in practice, although the 2002 amendment of the CL abolished the 1997 legal requirement for one share/one vote capital structures for PSCs. PrSCs can issue any type of shares (including bearer shares), with any voting rights and dividend provisions. PrSCs have no rules on board structure, election, and independence. No PrSC has applied for listing since the creation of this corporate form in 2002, but 40 have been created and potentially, PrSCs could be listed.

Information about share classes is in the prospectus or the company statutes, which are available at the Controller’s offices.⁴² Shareholder agreements need not be disclosed.⁴³ The annual report contains a list of 5 percent owners and the holdings of directors in issuer and affiliated firms.⁴⁴ There are no requirements for significant shareholders to disclose ownership. By law, any shareholder can access the corporate shareholder register, and obtain a copy for a “reasonable” fee; however, in practice, companies do not provide access to the register.⁴⁵

Policy recommendations: Shareholders should disclose when their direct and indirect ownership crosses specific thresholds.⁴⁶ The thresholds should take into consideration shares held by third parties but under the control of the disclosing shareholder, including shares covered by

³⁷ Article 170 of CL 22 of 1997. There is no quorum on second call. The second AGM can be convened only after notifications, or no sooner than three days following the unsuccessful first meeting.

³⁸ Article 171 of CL 22 of 1997.

³⁹ Article 178 of CL 22 of 1997.

⁴⁰ Article 179 of CL 22 of 1997.

⁴¹ See e.g. Institute of International Finance, “Policies for Corporate Governance and Transparency in Emerging Markets,” 2002.

⁴² For a fee of JD 5, or about USD 7.

⁴³ Shareholder agreements typically cover rights of first refusal and other restrictions on share transfers, approval of related-party transactions, and director nominations.

⁴⁴ Articles 3a6, 3a7, 14, 15 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

⁴⁵ Article 98d of CL 22 of 1997.

⁴⁶ For example, in Slovakia: 5, 10, 20, 33, 50 and 60 percent of their share of voting rights.

shareholder agreements which should also be disclosed. Ownership disclosure requirements should be phrased in terms of “controlling” or “large” shareholder, not in terms of founders. PrSCs should not be allowed to list.

Principle IE: Markets for corporate control should be allowed to function in an efficient and transparent manner.

Assessment: Partially observed

Description of practice: Given the ownership structure, there is little acquisition activity.⁴⁷ The SL provides few tender offer rules. Any person intending to acquire at least 40 percent of capital must do so in a public tender offer to all shareholders, at the highest price offered. If tendered shares exceed those demanded, allotment is made on a pro rata basis. The existing tender rules are recognized by the market and regulators as insufficiently detailed. Listing Instructions of the ASE govern delisting; there are no requirements for shareholder approval or buyouts. JSC has made it a medium-term priority to develop additional regulations.⁴⁸

Policy recommendations: To maximize transparency and avoid surprises to investors, JSC should clearly state its tender offer rules in the medium term. Policymakers should review recent international experience in takeover policy and the recent EU recommendations for squeeze-out and sell-out rights, as well as price regulations on those.⁴⁹ The tender offer regulations should be expressed as a threshold upon the crossing of which the offer is triggered. The price should be held to equal the highest price during a given limited period of time in the past.

Principle IF: Shareholders, including institutional investors, should consider the costs and benefits of exercising their voting rights.

Assessment: Partially observed

Description of practice: Institutional investors - banks, insurance companies, and pension funds - are either passive, or related to the controlling family. Investment funds do not vote at AGMs. The inactivity of institutional investors is particularly detrimental, since there is a wide contingent of passive retail investors who rarely trade their shares. There are seven licensed custodians.

Policy recommendations: Revisions to the investment funds laws could include provisions on the roles and responsibilities of investors acting in a fiduciary capacity. In some countries (including the US and the UK), mutual funds and pension funds are obliged to disclose their voting policy.

Section II: The Equitable Treatment of Shareholders

Principle IIA: The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights. All shareholders of the same class should be treated equally. (i) Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights attached to all classes of shares before they purchase. Any changes in voting rights should be subject to shareholder vote. (ii) Votes should be cast by custodians or nominees in a manner agreed upon with the share’s beneficial owner.

Assessment: Partially observed

Description of practice: Shareholders have a direct action for redress that is not typical for emerging markets (see Principle VB). Any shareholder can examine unpublished corporate

⁴⁷ Arab Bank and Humitec cases.

⁴⁸ Article 45 of SL 76 of 2002, and 226, 228, 229 of CL 22 of 1997. Disclosure, deadlines, and other rules are not yet in place. The Controller approves acquisitions. Trading is suspended, and a set of audited financials is prepared in view of assessing the fairness of the acquisition terms and conditions.

⁴⁹The squeeze-out right (sometimes called a “freeze-out”) is the right of a majority shareholder in a company to compel the minority shareholders to sell their shares to him. The sell-out right is the mirror image of the squeeze-out right: a minority shareholder may compel the majority shareholder to purchase his shares.

information through a court order; shareholders holding 15 percent of capital can request the Controller to audit the company.⁵⁰ Court redress against AGM resolutions is available as well.⁵¹ Shareholders have a direct action against directors, the general manager and the auditors, in the case of acquisition claims (including inadequate disclosure).⁵² There is no concept of a derivative or class-action suit in Jordanian law.

Shareholders can seek redress with the Controller, who has wide investigative and intervention powers.⁵³ The enforcement powers of the Controller are distributed to the extremes: for example, it can remove directors but cannot impose administrative penalties or fines, which can only be imposed by a court. In the first five months of 2004, the shareholders of ten listed companies filed complaints with the Controller. In 2003, the Controller received 15 requests to remove board members of listed companies.

The civil court makes the pursuit of shareholder redress burdensome in requiring tight proof, and the law makes it more difficult by defining the duties and charges vaguely. Further, the court lacks experience in commercial matters and is slow. An average case lasts two-three years. Expeditious status can be requested in certain cases to shorten the procedure.⁵⁴ Due to the slow and uncertain legal process, the Controller rarely sends cases to court.

Policy recommendations: Policymakers should consider introducing withdrawal rights for shareholders, as a redress mechanism.⁵⁵ The Controller should have the power to issue fines and other administrative sanctions.

Principle IIB: Insider trading and abusive self-dealing should be prohibited.

Assessment: Largely observed

Description of practice: Directors, the general manager and employees are forbidden to trade on insider information, or to reveal it to others with an aim of manipulating the price.⁵⁶ The deal is voided, and the insider is subject to a fine and is liable for damages to the company, shareholders, and third parties.⁵⁷ JSC monitors insider deals electronically, and matches trades with its database of insiders.

Directors and management disclose to the JSC, the board and the Controller their family holdings in the issuer and in companies where the issuer holds shares. They do this upon becoming insiders, and thereafter upon any change in holdings, within a week to the JSC, 15 days to the board and within 21 days to the Controller.⁵⁸ JSC believes that the majority of insiders comply with disclosure requirements. In 2003, JSC fined 23 violators of the insider trading disclosure rules, and publicly identified them.⁵⁹ Market opinion considers JSC monitoring of insider trading to be adequate.

⁵⁰ Articles 274, 275 of CL 22 of 1997.

⁵¹ Article 183 of CL 22 of 1997.

⁵² Articles 234, 237 of CL 22 of 1997.

⁵³ It has wide information and recourse rights, is present at GMs, can dissolve the board of a company or revoke its registration, and can (as a last resort) bring cases to court following investigation. The Controller filed 80 court cases in 2003. A proposed amendment to the CL, currently in discussion, will give the Controller the power to issue fines as well.

⁵⁴ Article 284 of CL 22 of 1997.

⁵⁵ Withdrawal rights (sometimes referred to as the “oppressed minority,” “appraisal,” or “buy-out” remedy) give shareholders the right to have the company buy their shares upon the occurrence of certain fundamental changes in the company.

⁵⁶ The auditor is also prohibited from speculating with company shares (Article 203 of CL 22 of 1997).

⁵⁷ Articles 166, 282 of CL 22 of 1997.

⁵⁸ Article 138 of CL 22 of 1997, and Article 14 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

⁵⁹ Jordan Securities Commission, 2003 Annual Report. Table 1.

The CL prohibits related party transactions (RPTs) between directors, the general manager, or any other employees, and the company, including indirect participation, but excluding family members.⁶⁰ In practice, RPTs require board approval. Transactions between affiliated firms, controlled by the same family, are legal and frequent. In fact, one of the main functions of a holding by law⁶¹ is to lend to subsidiaries. The audit committee ensures there is no conflict of interest stemming from RPTs.⁶² Loans to directors are forbidden.⁶³ Directors can be employed by the company with 67 percent board approval; they cannot sit on the board of competitors, and cannot compete with the issuer.

Policy recommendations: The definition of related party should be clarified, and should include major shareholders and directors' families. RPTs should not be prohibited by law, but policymakers should clearly define the disclosure and approval processes in order to make sure that minority shareholders do not get expropriated. The party concerned should reclude itself from voting at board and shareholder meetings. Policymakers should consider requiring AGM approval for large RPTs. Per international good practice, audit committees composed of independent directors pre-vet RPTs.

Principle IIC: Members of the board and managers should be required to disclose any material interests in transactions or matters affecting the corporation.

Assessment: Largely observed

Description of practice: IFRS require related parties to disclose any material interest in transactions or other matters affecting the company, in the notes to the financial statements.

Policy recommendations: Enforcement of disclosure rules on RPTs should become a top JSC priority.

Section III: Role of Stakeholders in Corporate Governance

Principle IIIA: The corporate governance framework should recognize the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises. The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected.

Assessment: Observed

Description of practice: Employee rights are specified in the Labor Code and the CL. Employees have the right to join unions, but unions in general are not active.⁶⁴ There is a minimum wage of JD 85 (USD 120) per month, but it is not fully enforced.⁶⁵ In bankruptcy, employees have priority over creditors.⁶⁶

Creditors can veto capital reductions, and have other rights in line with similar income countries in the region.⁶⁷ The bankruptcy framework exhibits heavy court involvement, with both weak creditor and debtor rights, and significant delays, however, outcomes in this area are quite

⁶⁰ Article 148 of CL 22 of 1997. A violation causes the removal of the violator. Except in competitive offers, where the board can approve a RPT with 67 percent, should the related party have presented the best offer. Construction operations are also excepted, with no obvious logic to this rule.

⁶¹ A holding is defined as control over the board or over 50 percent of the capital. A subsidiary cannot hold the shares of the holding. Article 204 of CL 22 of 1997. Article 205 of CL 22 of 1997.

⁶² Article 17d9 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

⁶³ Except by banks in ordinary course of business. Article 139 of CL 22 of 1997.

⁶⁴ Also, e.g. unions have no right to strike.

⁶⁵ Article 52 of the Labor Law 8 of 1996, Official Gazette 4113 of April 16, 1996. The latest minimum wage figure was set on August 7, 2002, and was effective as of January 1, 2003 (Official Gazette 4561 of August 28, 2002).

⁶⁶ Article 256 of CL 22 of 1997.

⁶⁷ Article 115 of CL 22 of 1997. Doing Business Indicators 2004 – Creditor rights; <http://rru.worldbank.org/DoingBusiness/>.

consistent with other economies of the region at similar levels of development.⁶⁸ The CL provides bondholders with special protections. They form a bondholders assembly, which safeguards the rights of bondholders. The assembly has the right to appoint, at the expense of the company, an issue trustee who protects their rights and represents them in court.

There are no voluntary codes of practice or recommendations on relations with stakeholders. There is an article in the CL stating that the board of directors will exert their efforts to maximize the wealth and the profit of the company.

Principle IIIB: Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

Assessment: Observed

Description of practice: Bondholders, creditors, and shareholders can object to the Controller within 30 days and claim damages.⁶⁹ Stakeholders have a direct action against directors for violations of the law and the articles of association, and for errors in management.⁷⁰ No mechanisms exist for employees to seek redress in case of violation of their rights, in practice.

Principle IIIC: The corporate governance framework should permit performance-enhancement mechanisms for stakeholder participation.

Assessment: Observed

Description of practice: Companies can set up an employee savings fund, and some have done so.⁷¹ Employee share ownership plans⁷² are also used, although their popularity is limited due to employee preferences for cash pay. Option compensation and other incentive mechanisms are unregulated and uncommon.

Principle IIID: Where stakeholders participate in the corporate governance process, they should have access to relevant information.

Assessment: Observed

Description of practice: Stakeholders have no specific right to access information or take part in corporate decision making processes. In their annual report, companies must disclose their organizational structure, hiring policy, number of employees, qualification categories, turn-over ratio, and training programs.⁷³ Bondholder association rights to information are only vaguely defined in the law.⁷⁴ Changes in firm creditor rating are announced promptly as material facts.⁷⁵

Section IV: Disclosure and Transparency

Principle IVA: The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and the governance of the company. Disclosure should include, but not be limited to, material information on: (1) The financial and operating results of the company. (2) Company objectives. (3) Major share ownership and voting rights. (4) Members of the board and key executives, and their remuneration. (5) Material foreseeable risk factors. (6) Material issues regarding employees and other stakeholders. (7) Governance structures and policies.

Assessment: Largely observed

Description of practice: (1) Audited consolidated annual accounts are sent to JSC within 90 days of fiscal year end, and to the Controller at least 21 days prior to the AGM.⁷⁶ Annual accounts and

⁶⁸ Doing Business Indicators 2004 – Closing of a Business; <http://rru.worldbank.org/DoingBusiness/>.

⁶⁹ Article 234 of CL 22 of 1997.

⁷⁰ Article 157a of CL 22 of 1997.

⁷¹ Article 190 of CL 22 of 1997.

⁷² Article 95e of CL 22 of 1997.

⁷³ Article 6b19 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

⁷⁴ Article 129 of CL 22 of 1997.

⁷⁵ Article 10a4 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

⁷⁶ Articles 208, 140 of CL 22 of 1997, and 43a1 of SL 76 of 2002. The AGM is held within 120 days of fiscal year end.

a detailed summary of the annual report are published within 30 days of the AGM.⁷⁷ Audited annual accounts include directors' discussion of activities and plans for the following year, balance sheet, profit and loss account, cash flow statement, and notes. Reviewed consolidated semi-annual accounts are sent to the Controller within 60 days of mid-year,⁷⁸ and to JSC within 30 days of mid-year.⁷⁹ Quarterly statements should be filed by first market companies as of July 1, 2004.⁸⁰ PSCs are required to inform JSC and publicly announce the occurrence of any events that could affect the company's profitability, financial status, or share price.⁸¹ In practice, material facts disclosure can be limited to a narrow set of major events. (2) Company objectives must be stated in founding documents prior to registration.⁸² The annual report also contains a management discussion and analysis section.⁸³ The board report, which is public, contains company plans for the coming three years.⁸⁴ (3) Holdings of 5 percent shareholders are also disclosed.⁸⁵ (4) Companies must place for inspection at headquarters three days prior to the AGM, a report containing director compensation and benefits, a list of company donations and their recipients, a list of directors, number of shares held, and duration of membership. Directors are liable for the veracity of this disclosure.⁸⁶ In practice, some companies disclose aggregate compensation of the board only. (5) Foreseeable risk factors are reported.⁸⁷ (6) Employee and environmental policies are disclosed in the annual report.⁸⁸ (7) There is no disclosure of governance structures and policies. The annual report should include the statement that a system of internal controls is maintained.⁸⁹

JSC is responsible for disclosure enforcement. Its monitoring team, with a staff of eight, follows the quality of disclosure, but does not extensively review the quality of financial statements. Compliance with filing and disclosure standards is generally good. About 40 percent of listed firms make a high-quality disclosure, and all listed firms file their audited financials.⁹⁰ JSC began issuing fines in 2003 and is moving toward full enforcement of the law. However, for some listed companies, the timeliness of periodic disclosure remains an issue.

Policy recommendations: Annual accounts, in practice, should be available more promptly to the public. JSC should continue to build on its capability to review disclosure content. Immediate attention should be paid to disclosure of ownership and RPTs.

⁷⁷ Article 141 of CL 22 of 1997. Articles 7, 24 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

⁷⁸ Article 142 of CL 22 of 1997, and 43a2 of SL 76 of 2002. In practice, accounts are reviewed by an auditor, but not certified.

⁷⁹ The annual reports are also required to include 24 additional disclosure items.

⁸⁰ ASE Listing Rules 2003.

⁸¹ The following material facts are disclosed to JSC in real time, and are made public: major changes in the company assets, capital structure; credit rating; board composition; director holdings in issuer and affiliated firm shares; major deals concluded or cancelled; unusual ventures; unexpected material losses; major board resolutions. Articles 3a6, 10, 13, 14 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

⁸² Article 92b3 of CL 22 of 1997.

⁸³ Articles 6b1-9 and 6b20 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

⁸⁴ Article 3a5 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

⁸⁵ Articles 3a7, 15 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

⁸⁶ Article 143 of CL 22 of 1997.

⁸⁷ Article 6b10 of the JSC Directives of Disclosure and Auditing and Accounting Standards of 2004. Per Article 6h1 of the same regulation, the annual report also needs to state whether there is a serious possibility that the company may not continue trading as a going concern during the coming year.

⁸⁸ Articles 6b19 and 6b20 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

⁸⁹ Article 6h2 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

⁹⁰ JSC data. For 2003, 73 companies came close to complying with the regulation (between nine and 15 of the items required by the Instruction on Disclosure), 63 had a lower level of compliance (up to eight of the required items in the regulation), and 25 of the companies provided no information beyond the basic financial statements. The punishment of issuers that failed to file annual financials, a fine of JD 500-1,000 (USD 705-1,410), is being decided by JSC (as of June 1, following the deadline of April 31).

Principle IVB: Information should be prepared, audited, and disclosed in accordance with high quality standards of accounting, financial and non-financial disclosure, and audit.

Assessment: Observed

Description of practice: Jordan has fully adopted IFRS and ISA.⁹¹ The auditor report should state whether the auditor obtained all information needed, that the company conforms to IFRS, that financial statements comply with company records, and should list any violations of the law or articles of association. The auditor can give approval, qualified opinion, or rejection.⁹²

Principle IVC: An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented.

Assessment: Partially observed

Description of practice: Annual statements are audited and semi-annual statements are reviewed by the auditor.⁹³ The AGM appoints the auditor upon the nomination by the audit committee.⁹⁴ In practice, the board appoints auditors, and sets their compensation. The auditor is invited to the AGM, and provides clarifications to shareholders.⁹⁵ Auditor fees are disclosed in the annual report.⁹⁶ The external auditor cannot be a director or their partner/employee, large shareholder, or permanent employee.⁹⁷

The auditor is liable for failure to immediately notify the board, the Controller, JSC, and ASE, upon discovering a violation, abuse, fraud, and any issues adversely affecting the financial and administrative position of the company.⁹⁸ Auditor liability has not recently been tested in court. Auditor insurance is not used.

The big four accounting firms, as well as half a dozen domestic ones, dominate the market, and have issued qualified opinions in the past. There are 300-400 smaller auditing companies, of lower quality. Auditors obtain a university degree, and are licensed by the Higher Auditing Commission,⁹⁹ but are not regulated in practice. The Commission has no staff to enforce high auditor standards. The Association of External Auditors, created in 1991, also does not have enforcement capacity. The draft reform proposal to the Accounting Law envisions the adoption of peer monitoring.¹⁰⁰

Listed companies (including all commercial banks) have been required since 1997 to form audit committees.¹⁰¹ The committee must be composed of three non-executive directors. The audit committee has a number of responsibilities under the law: To nominate an external auditor and

⁹¹ Article 16 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004. Article 184 of CL 22 of 1997 posits internationally accepted standards for listed firms. Similar articles exist in the banking and the insurance laws.

⁹² Article 195 of CL 22 of 1997.

⁹³ Articles 140, 142 of CL 22 of 1997. Article 43 of SL 76 of 2002.

⁹⁴ Article 171 of CL 22 of 1997. Article 17d of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004. The audit committee can delegate the auditor compensation decision to the board as a whole.

⁹⁵ Articles 182, 199b of CL 22 of 1997.

⁹⁶ Article 6b11 of JSC Directives of Disclosure and Auditing and Accounting Standards 2004. Fees for all services are disclosed.

⁹⁷ Article 197 of CL 22 of 1997.

⁹⁸ Articles 168a, 200, 201 237 of CL 22 of 1997 (article 237 deals with liability for improper disclosure during acquisition).

⁹⁹ The Higher Auditing Commission under the Ministry of Trade and Industry was created in March 2004. Chaired by the Minister of Trade and Industry, and composed of the Minister of Finance, the Chief of the Audit Bureau, the Chairman of the JSC, the Central Bank Governor, the Company Controller, the General Director of the Insurance Regulatory Commission, the Chairman of the Association of External Auditors, a professor in accounting, an expert chosen by the Chairman of the Higher Commission, and three auditor firm representatives selected by the Association of External Auditors.

¹⁰⁰ Law 73 of 2003.

¹⁰¹ Article 17 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004. The Banking Law of 2000 (Articles 32, 33) also mandates audit committees, with the same size and composition requirements as those for listed companies.

ensure that he fulfills the requirements of JSC, and that he is independent; to monitor corporate compliance with SL and other regulations; to examine the periodic financial reports;¹⁰² to study the action plan presented by the auditor, and to ensure that all information needed by the latter is available; to review the internal control procedures;¹⁰³ and finally, to prevent conflicts of interest by related parties. In practice, about 80 percent of listed firms have audit committees.¹⁰⁴

Policy recommendations: Creating an effective audit oversight mechanism with real enforcement powers should be a top priority.

Principle IVD: Channels for disseminating information should provide for fair, timely, and cost-effective access to relevant information by users.

Assessment: Largely observed

Description of practice: Information is available through four main channels: (i) Shareholders can examine any published information kept with the Controller (including company statutes, and meeting minutes), and have a court right to a certified copy of any unpublished information;¹⁰⁵ (ii) Periodic and material disclosure made to JSC is public. This information is available at the Library of JSC and the Investor's Gallery in the financial center building.¹⁰⁶ Summaries of listed company annual report information are also available on a CD published by the ASE on an annual basis; (iii) The shareholder registry is by law, but not in practice, available at the company headquarters; (iv) There is some information on company websites, including some annual reports.¹⁰⁷ Enhanced electronic filing systems are under development at JSC and at the ASE. Board minutes are not available.

Policy recommendations: High priority should be placed on finalizing the development of an Internet-based electronic filing and data retrieval system to improve information dissemination. ASE, SDC and JSC should coordinate system development planning to avoid duplication of effort. SDC should assume responsibility for ownership disclosure dissemination.

Section V: The Responsibility of the Board

Principle VA: The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

Assessment: Largely observed

Description of practice: PSCs have single tier boards comprised of an odd number of members, with a minimum of three and a maximum of 13.¹⁰⁸ Directors must be shareholders; each company can select its own specific requirement.¹⁰⁹ The AGM elects directors for renewable terms of four years and can remove them before the expiration of their term; however, the procedure for removal requires a high threshold (see Principle IB). Any director can be elected as

¹⁰² Focusing on and presenting recommendations as to any changes in accounting policies, and any modifications to firms accounts due to auditor reports or recommendations.

¹⁰³ It examines internal auditor reports, focusing on violations uncovered during internal audits. It makes recommendations to the board on internal audit procedures.

¹⁰⁴ JSC data.

¹⁰⁵ Article 274a of CL 22 of 1997.

¹⁰⁶ Article 38 of SL 76 of 2002.

¹⁰⁷ JSC is planning to post company filings on its website within several months, including material facts, the number of shareholders, issued shares, deposited shares, government, private, foreign ownership, and 5 percent owners and their holdings.

¹⁰⁸ Article 132a of CL 22 of 1997.

¹⁰⁹ Article 133a of CL 22 of 1997. The minimum requirement is specified in the articles of association, and is typically around 10,000 shares. Shares cannot be under any lien that will prevent their sale.

general manager.¹¹⁰ Legal persons can serve as directors,¹¹¹ and some 30-40 percent of directors are legal persons. This introduces concerns over who bears director liability.¹¹² In practice, both boards and management are frequently dominated by the controlling family. The Central Bank has issued detailed provisions for bank boards, e.g. a ban on overlapping directorships.¹¹³

Policy recommendations: Policymakers should consider removing the share ownership requirement in order to encourage independent technical and professional know-how on boards.

A wide range of stakeholders, regulators, and international experts should draft a Code of Corporate Governance. The Code should provide a detailed guidance for boards in Jordan, including duties, legal responsibilities, functions, and independence requirements. (The Code process could also result in recommendations for CL and SL modifications). A director training program should also be made available, with support from government and the private sector. Training will give directors an understanding of their role and duties and educate them in financial, business, and industry practices.

Principle VB: Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.

Assessment: Partially observed

Description of practice: The Civil Code provides a basic duty of care for directors to act in the best interest of the company, by dint of directors as “caretakers of the company.”¹¹⁴ Directors are liable to the company for damages.¹¹⁵ Directors are liable for violating the law and company articles, for company default, negligence, for disclosing insider information, for position abuse, and for fraud.¹¹⁶ The AGM can discharge the board from accountability for some actions.¹¹⁷ In practice, lawsuits against directors are rare or non-existent.

Policy recommendations: Policymakers should consider defining more explicitly the fiduciary duties of directors. As the liability of directors is made more explicit, the notion of a business judgment rule could be introduced in order to protect board members from being held liable for good faith business decisions. The AGM should not be able to discharge the board from liability.

Principle VC: The board should ensure compliance with applicable law and take into account the interests of stakeholders.

Assessment: Largely observed

Description of practice: The board ensures compliance with applicable law and is liable in the alternative.¹¹⁸ There are no board duties related to stakeholders by law.

Policy recommendations: A Code of Corporate Governance may be the best way to address stakeholder issues at the board level.

Principle VD: The board should fulfill certain key functions, including (1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance and overseeing major capital expenditures, acquisitions and divestitures. (2) Selecting, compensating, monitoring and, when necessary, replacing key executives

¹¹⁰ Article 152 of CL 22 of 1997. The concerned party does not vote. A decision is taken by 67 percent.

¹¹¹ Article 136 of CL 22 of 1997.

¹¹² The liability could belong to the legal persons or the physical person representing it on the board. The lack of clarity on who is liable introduces the threat of director duties abuse. In the opinion of practitioners, criminal liability can be pursued in this case with the physical representative, and civil liability with the corporate body. However, this is not clarified in the law.

¹¹³ Banks' Directors Handbook issued by that law.

¹¹⁴ Article 841 of the Civil Law.

¹¹⁵ Article 156a of CL 22 of 1997.

¹¹⁶ Articles 157, 158, 159, 257b of CL 22 of 1997.

¹¹⁷ Article 161 of CL 22 of 1997.

¹¹⁸ Article 157a of CL 22 of 1997.

and overseeing succession planning. (3) Reviewing key executive and board remunerations, and ensuring a formal and transparent board nomination process. (4) Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related-party transactions. (5) Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law. (6) Monitoring the effectiveness of the governance practices under which it operates and making changes as needed. (7) Overseeing the process of disclosure and communications.

Assessment: Largely observed

Description of practice: (1) The board is the ultimate body governing the corporation and is responsible for monitoring the implementation of company objectives set by the AGM. (2) The general manager is appointed, compensated, monitored, and replaced by the board. Appointments and replacements are publicly announced, immediately.¹¹⁹ (3) Director compensation is fixed by law at 10 percent net profits, up to a maximum of JD 5,000/year (USD 7,050).¹²⁰ (4) The audit committee ensures there is no conflict of interest stemming from RPTs.¹²¹ (5) The board submits financial statements, reviewed by the audit committee. For banks, specific internal control mechanisms are provided for.¹²² (6) Boards do not have responsibility for monitoring corporate governance practices. (7) Boards are responsible for overseeing disclosure, and are liable for its accuracy. The annual report is signed by the chairman, the CEO and the CFO.¹²³

Policy recommendations: Minimum basic standards are laid out in law and regulation. The Code of Corporate Governance should include best practice recommendations for board functionality (including board responsibility for monitoring corporate governance practices).

Principle VE: The board should be able to exercise objective judgment on corporate affairs independent, in particular, from management: (1) boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination, and executive and board remuneration. (2) board members should devote sufficient time to their responsibilities.

Assessment: Materially not observed

Description of practice: There are only limited independence requirements for board members; at least three members must be non-executives, to comply with the audit committee requirements (see Principle IVC). Except among a few companies, such as Arab Bank, board committees - other than audit - are uncommon. Non-executive directors can accept employment with the issuer with the approval of 67 percent of the board.¹²⁴ In practice, the boards of most companies lack independence from controlling shareholders and from management. Directors can sit on up to three boards as natural persons, and up to three boards as representatives of a corporate entity, but on up to five boards in total.¹²⁵ Director pay and removal depend on board meeting attendance, but there is practically no enforcement due to the lack of disclosure of attendance.¹²⁶

Policy recommendations: The Code of Corporate Governance should develop the concept of an “independent director.” Financial sector regulators (banks and insurance companies) should

¹¹⁹ Article 153 of CL 22 of 1997.

¹²⁰ Article 162 of CL 2 of 1997. Pay is affected by meeting attendance and by corporate profit history. Start-ups that have not yet made a profit can only pay up to JD 1,000 (USD 1,410), and firms that have reversed their past profits into losses, only up to JD 600/year (USD 846).

¹²¹ Article 17d9 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004.

¹²² Banking Law 28 of 2000, Banks' Directors Handbook issued by that law, Bank Circular 10/4794 of 27/3/2002.

¹²³ Article 6c2 of JSC Directives of Disclosure and Auditing and Accounting Standards of 2004. The prospectus is also signed by the COO and half of the directors, in addition to the signatories above (Article 37a2 of SL 76 of 2002).

¹²⁴ Article 153 of CL 22 of 1997.

¹²⁵ Article 146a of CL 22 of 1997. Controller is notified by directors of all their directorships.

¹²⁶ Article 164a of CL 22 of 1997. If 4 consecutive meetings are missed, or for 6 months missed.

consider incorporating independence requirements directly into the law.

Principle VF: In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.

Assessment: Observed

Description of practice: Directors have full access to relevant information, by law. The audit committee has access to any information from any employee of the company.¹²⁷

III. SUMMARY OF POLICY RECOMMENDATIONS

This section sets out recommendations to improve Jordanian listed companies' compliance with the OECD Principles. Annex B details the above policy recommendations. Several key themes that focus on implementation are prioritized as follows:

Priority 1: Voluntary / private initiatives: A multidisciplinary working group (including members from the JSC, Central Bank, the Controller of Companies, the ASE, and the private sector) should develop a Code of Corporate Governance for Jordan. The process of developing a Code can help build a national consensus on the role, duties, and functions of the board, and on the importance of minority shareholder rights. The Code could also provide input into the proposed CL amendments. Issuers could be required to "comply or explain" their adherence to the Code. The working group should also plan the development of a director training program.

Priority 2: Institutional strengthening: Experience around the world suggests that enforcement of corporate governance rules remains the key challenge. The assessment recommends continued enforcement of the disclosure provisions, with a greater emphasis on a review of content. JSC should strengthen its capacity to monitor disclosure. Staff should be trained to gain awareness of corporate governance issues and possible abuses. New emphasis should be placed on the disclosure of ownership, and related-party transactions.

The assessment also revealed overlaps in regulatory jurisdiction in the area of corporate governance. The report recommends that a high-level strategic review be carried out of the different functions of JSC and the Controller, in order to propose a rational alignment of functional responsibility, that minimizes duplication of regulatory effort and minimizes the regulatory burden on companies. In resolving this issue, policymakers should keep in mind that best practice suggests the need for independence of the regulatory agency. The review could also identify conflicts between the disclosure requirements of JSC and Central Bank, discuss the international experience on handling them, and propose recommendations.

Priority 3: Legislative reform: This report identifies several areas where changes to the CL would improve compliance with the OECD Principles; these are catalogued in Annex B. Some of the recommendations will reverse changes that were made in 2002 (including allowing the AGM to discharge directors from accountability, and the creation of private shareholding companies with weaker minority shareholder rights that could potentially be listed). The current process is a good opportunity for reform, but presents a number of technical challenges; this is an area where carefully targeted technical assistance (in the form of workshops or legal reviews) could help.

¹²⁷ Article 17c of SEC regulations on Directives of Disclosure and Auditing and Accounting Standards of 2004.

Annex A: Summary of Observance of OECD Corporate Governance Principles

PRINCIPLE	O	LO	PO	MO	NO	Comment
I. THE RIGHTS OF SHAREHOLDERS						
IA Basic shareholder rights		X				<ul style="list-style-type: none"> Basic rights observed. Some compliance gaps in share authentication and settlement. Proportional representation available only to certain shareholders.
IB Rights to participate in fundamental decisions.		X				<ul style="list-style-type: none"> Shareholders participate in most fundamental decisions, except large asset sales. Burdensome rules to call an EGM.
IC Shareholders AGM rights		X				<ul style="list-style-type: none"> AGM rights observed. Notice period 14 days. No postal voting.
ID Disproportionate control disclosure			X			<ul style="list-style-type: none"> Companies disclose at 5 percent level, direct ownership only.
IE Control arrangements should be allowed to function.			X			<ul style="list-style-type: none"> Very limited takeover rules.
IF Cost/benefit to voting			X			<ul style="list-style-type: none"> At present, uncommon for institutional investors to have voting policies, and investment funds don't vote.
II. EQUITABLE TREATMENT OF SHAREHOLDERS						
IIA All shareholders should be treated equally			X			<ul style="list-style-type: none"> Controller provides some redress, but lacks adequate tools. Slow court system. No withdrawal rights.
IIB Prohibit insider trading		X				<ul style="list-style-type: none"> Solid insider trading regulations. Weak / unclear related-party transaction rules – no shareholder approval of large deals.
IIC Board/Mgrs. disclose interests		X				<ul style="list-style-type: none"> Accounting standards follow IFRS. First steps in enforcement.
III. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE						
IIIA Stakeholder rights respected	X					<ul style="list-style-type: none"> Stakeholders have a number of legal protections.
IIIB Redress for violation of rights	X					<ul style="list-style-type: none"> Stakeholder have access to legal process to obtain redress.
IIIC Performance enhancement	X					<ul style="list-style-type: none"> Employee savings funds typical. Employee share ownership in some companies. Options unregulated and not common.
IIID Access to information	X					<ul style="list-style-type: none"> Annual report contains stakeholder information.
IV. DISCLOSURE AND TRANSPARENCY						
IVA Disclosure standards		X				<ul style="list-style-type: none"> Annual and semi-annual reports. Quarterly reports for 1st tier firms. Monitoring limited to quantity rather than quality of disclosure. No corporate governance disclosure.
IVB Standards of accounting & audit	X					<ul style="list-style-type: none"> Fully adopted IFRS and ISA. Quality of compliance not monitored.
IVC Independent audit annually			X			<ul style="list-style-type: none"> Weak audit oversight body and no enforcement (in the process of being set up). Audit committees mandatory.
IVD Fair & timely dissemination		X				<ul style="list-style-type: none"> Many channels of information. Problematic access to company ownership information.
V. RESPONSIBILITIES OF THE BOARD						
VA Acts with due diligence, care		X				<ul style="list-style-type: none"> Single tier boards. Frequently, Chairman and CEO are same person. Insider-dominated boards.
VB Treat all shareholders fairly			X			<ul style="list-style-type: none"> Director liability provisions weak and never used. AGM can discharge the board from liability.
VC Ensure compliance w/ law		X				<ul style="list-style-type: none"> Board liable for ensuring compliance with law. No board duties related to stakeholders, by law.
VD The board should fulfill certain key functions		X				<ul style="list-style-type: none"> Minimum basic standards are laid out in law and regulation. In practice, boards are not clearly different from management.
VE The board should be able to exercise objective judgment				X		<ul style="list-style-type: none"> No rules that govern independence. Audit committee members must be non-executive.
VF Access to information	X					<ul style="list-style-type: none"> Directors have full access to relevant information, by law. The audit committee has access to any information from any employee of the company.

Annex B: Summary of Policy Recommendations

I. THE RIGHTS OF SHAREHOLDERS		
IA	Basic shareholder rights	Introduce proportional representation for all shareholders. JDC should approve SDC by-laws and regulations that allow the move to DVP share settlement. Encourage the share authentication process, e.g. via dividend restrictions on unauthenticated shares.
IB	Rights to participate in fundamental decisions.	Introduce AGM approval for large asset sales. Mandate pre-emptive rights. Lower percentage required to call an EGM.
IC	Shareholders AGM rights	Consider extending the meeting notice period to 30 days. Forbid ad-hoc item decisions at AGM with no prior notice, as well as generic agenda items. Standardize proxies. Allow postal voting.
ID	Disproportionate control disclosure	Enforce direct and indirect ownership disclosure, including of shares covered by shareholder agreements. Re-phrase ownership disclosure rules in terms of "owners" not "founders." Private shareholding companies should not be allowed to list.
IE	Control arrangements should be allowed to function.	JSC should clearly state its tender offer rules in the medium term, including squeeze-out and sell-out rights. Express rules as a threshold upon the crossing of which the offer is triggered. Specify a limited period in the definition offer price.
IF	Cost/benefit to voting	Facilitate voting by funds. Introduce provisions on the roles and responsibilities of investors acting in a fiduciary capacity. Consider rules on disclosure of voting policy.
II. EQUITABLE TREATMENT OF SHAREHOLDERS		
IIA	All shareholders should be treated equally	Consider introducing withdrawal rights. Give the Controller the power to issue fines. Empower one supervisor with authority to provide administrative shareholder redress.
IIB	Prohibit insider trading	Clarify the definition of related parties, which should include major shareholders. Consider requiring AGM approval for large RPTs. Independent audit committees should pre-vet RPTs.
IIC	Board/Mgrs. disclose interests	Enforcement of disclosure rules on RPTs should become a top JSC and ASE priority.
III. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE		
IIIA	Stakeholder rights respected	NA
IIIB	Redress for violation of rights	NA
IIIC	Performance enhancement	NA
IIID	Access to information	NA
IV. DISCLOSURE AND TRANSPARENCY		
IVA	Disclosure standards	Improve promptness of publication of annual reports. JSC should continue to build on its capability to review disclosure content, especially disclosure of ownership and RPTs. Mandate issuers to "comply or explain" following the creation of a Code.
IVB	Standards of accounting & audit	NA
IVC	Independent audit annually	Creating an independent accounting oversight board with real enforcement powers should be a top priority.
IVD	Fair & timely dissemination	Finalize the development of an Internet-based electronic filing and data retrieval system. ASE, SDC and JSC should coordinate system development planning. SDC should assume responsibility for ownership disclosure dissemination.
V. RESPONSIBILITIES OF THE BOARD		
VA	Acts with due diligence, care	Consider removing the share ownership requirement for directors. Draft a Code of Corporate Governance, providing board powers and duties. Create a director training program with support from JSC, government, and private sector.
VB	Treat all shareholders fairly	Consider defining more explicitly the fiduciary duties of directors. Remove the 2002 change of the law that allowed the AGM to discharge the board from liability.
VC	Ensure compliance w/ law	A Code of Corporate Governance may be the best way to address stakeholder issues at the board level.
VD	The board should fulfill certain key functions	Set best practice recommendations for board functionality (including board responsibility for monitoring corporate governance practices) in the Code.
VE	The board should be able to exercise objective judgment	Develop the concept of an "independent director." Consider incorporating independence requirements directly into the law for financial sector companies.
VF	Access to information	NA