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# Corporate M&A 2023

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**Jordan: Law & Practice**

Yotta Pantoula-Bulmer, Ahmed Khalifeh,  
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# JORDAN

## Law and Practice

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Hammouri & Partners Law Firm is one of the leading multi-practice Jordanian law firms, established in 1994 in Amman. The firm offers its diversified legal services through four departments – litigation, corporate, international, and SMEs and start-ups – with the support of more than 30 legal experts, and a number of other qualified professionals supporting operations. The firm’s client portfolio includes numerous major Jordanian entities and public shareholding companies, as well as governmental institutions and international clients, including Fortune Global 500 companies. Hammouri & Partners offers advice on legal matters related to an array of sectors and industries, including the full spectrum of M&A, banking and finance, cor-

porate and commercial, agency and franchising, international trade, IP, pharmaceuticals, manufacturing, construction and infrastructure, healthcare, information technology, telecoms, and insurance. Furthermore, representation is offered at all levels of Jordanian courts, as well as assistance with enforcement of foreign judgments and arbitral awards, and with arbitration. The Jordan M&A Guide has been compiled under the overall supervision, co-ordination and guidance of Dr Tariq Hammouri, Managing Partner, Hammouri & Partners. The firm would like to thank the following members of the team: Eyas Al Kiswani (associate – corporate dept) and Mohammed Hindawi (associate – international dept).

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## 1. Trends

### 1.1 M&A Market

Jordan has continued recording a gradual improvement in the field of M&A in the past 12 months and that is mostly due to the ease of measures implemented by the relevant authorities in dealing with events such as the COVID-19 pandemic, as well as the increased strengthening of the overall legislative framework in line also with the national economic priorities programme and other reforms. The outlook depends much on reforms being implemented internally, but also on how soon the worldwide socio-economic situation sees an overall improvement.

### 1.2 Key Trends

Some top trends in Jordan during 2022 can be summarised as follows:

- the continuation and development of the digitalised services offered by the Companies Controller Department, at the Ministry of Industry, Trade and Supply, including of the classification of economic activities in accordance with the ISIC4 standard;
- two amendments to the Companies Law (twice during 2021);
- COVID-19 cases in Jordan have dropped significantly due to the increase of vaccination in the country and other preventative measures;
- the establishment of an application called “Sanad”, a gateway to digital government services that allows users (among other things) to access their government digital documents and access their personal records, and provides an update on users’ coronavirus status (ie, infected or not infected with the virus);
- the commencement of digitisation of the judicial services in Jordan;

- the various Orders issued by the Jordanian government as part of the enactment of the Defence Law No 13/1992 in dealing with the aftermath of the COVID-19 pandemic;
- changes in the investment framework and relevant regulations, with the most prominent one the newly enacted Investment Environment Law No 31/2022;
- the significant rise in the set-up of small- and medium-sized enterprises;
- e-commerce;
- hybrid methods of education are in use (attending in person and online attendance); and
- protection from cybersecurity threats.

The aforementioned trends may be considered as driving factors that are expected to move forward the wheels of M&A activity in Jordan; as distressed businesses will have a clearer legal framework for coming out of an adverse financial situation, investors will be more motivated to consider deal-making in Jordan, due to the digitalisation of the relevant company services and the court proceedings.

At the domestic level, undoubtedly the surge of e-commerce transactions in Jordan since 2020 is creating more employment opportunities, more corporate set-ups and, possibly, mergers in the domestic market. In a similar manner, an increasing interest is observed in green energy acquisitions with a cross-border element and there appears to be a comeback in acquisitions in the financial services sector.

On the factors that will contribute and encourage more M&A deals in Jordan, it is considered that:

- the changes towards digitisation of key sectors in Jordan will hopefully ease formalities and thus attract more foreign investment and

- merger interest from foreign companies in Jordan; and
- international movement of people is now reviving the hard-hit sectors of tourism and hospitality, which in turn is envisaged to increase domestic mergers in the areas of tourism, hospitality and food industry.

However, it is worth noting that the foregoing is a perception of the M&A situation in Jordan until the date of publication (20 April 2023) and it has yet to be seen how it will evolve during the remainder of 2023, both in its socio-economic context and the overall situation of the country, the region and the world.

### 1.3 Key Industries

During the past 12 months in Jordan, M&A activity was noticed in sectors such as banking, gaming applications, renewable energy, commodities and foreign investment. Of note is the completion of acquisition in late 2022 by a leading Jordanian bank of the Jordan branches of two top Lebanese lenders. Further, one of the largest acquisition deals in the history of M&A in Jordan took place in late 2022 when Capital Bank Group acquired the Société Générale Bank in Jordan.

Due to the rapid recovery from COVID-19 in Jordan, the most affected sectors such as theatre facilities, kindergarten, wedding halls facilities, cinema facilities and others, have been gradually recovering and are now operating without any COVID-19 related restrictions.

## 2. Overview of Regulatory Field

### 2.1 Acquiring a Company

A company may acquire another company (regardless of its type) in the Hashemite Kingdom of Jordan by following these procedures:

- a decision is issued by the extraordinary general assembly of the buyer company approving the ownership of another company's shareholder shares;
- a decision is issued by the extraordinary general assembly of the seller company approving the selling of its shareholders' shares to another company;
- completion of the stipulated approval, registration and publication procedures to transfer the shares of the shareholders of the company that decided to sell to the acquirer company – that ownership shall not be considered to have reached closure until its registration and authentication are completed, in accordance with the provisions of the Jordanian Companies Law No 22/1997 and its amendments;
- the buyer company shall pay the value of the shares that has been agreed upon to the seller company – the amount will be deposited in a special account in order to be distributed among shareholders registered with it on the date of the general assembly issuing the decision to sell their shares; and
- the company of which the shares have become acquired by new shareholders shall invite the general assembly to realise the necessary amendments to its articles and memorandum of association and to elect a new board of directors.

### 2.2 Primary Regulators

M&A activity in Jordan is underpinned by the Jordanian Companies Law No 22/1997 and

its amendments and the Securities Law No 18/2017. However, there are a few sectors that are distinguished by having special instructions for M&A activity, which is separate from this law, such as the banking and insurance sectors.

Furthermore, the primary regulators for M&A activity in Jordan are limited to the following authorities depending on the type of the company. For a public shareholding company such as a bank, insurance company or a regular company: the Companies Control Department, Ministry of Industry, Trade and Supply; the Competition Directorate, Ministry of Industry, Trade and Supply; the Jordan Securities Commission (JSC); the Amman Stock Exchange (ASE); the Central Bank of Jordan.

The Companies Control Department (CCD) is considered the primary organising authority (regulator) for M&A requests in Jordan. One of its statutory duties is to form committees that supervise and regulate M&A process and contacting this department is the first step to be taken by companies in expressing their will for an M&A transaction, regardless of the type of company. In addition to the CCD, some companies need to check with the Jordan Securities Commission and with the Amman Stock Exchange (if their shares are traded in such market) before submitting the application for an M&A, in which case said companies need to cease trading shares as soon as the merger decision is issued; the reason being that once merged into another company, the company will cease to be a going concern.

In addition to the Companies Control Department, other companies may need to check with other authorities, such as the Central Bank of Jordan, if the requested company for the M&A is an insurance company or a bank, as there are

special instructions for the merger of such companies.

## 2.3 Restrictions on Foreign Investments

Pursuant to the Non-Jordanian Investment Regulation of 2016, restrictions are imposed on foreign investment by means of closed sectors in which a foreign investor is not allowed to own fully or contribute in whole or in part to, such as, but not limited to, bakeries of all kinds, trade in weapons, and investigation and security services. In addition, there are some sectors in which the percentage of the foreign investor contribution shall not exceed 50% of the total capital of the company, such as engineering consulting and services.

## 2.4 Antitrust Regulations

Some examples of antitrust regulation that applies to business combinations in Jordan are as follows:

- the Jordanian Competition Law No 33/2004 and its amendments;
- the Companies Law No 22/1997 and its amendments;
- the Medicines and Pharmacy Law No 12/2014 and its amendments; and
- instructions for rules to encourage competition among investors in the civil aviation sector No 2/2007.

## 2.5 Labour Law Regulations

### Legislation of Interest to Foreign and Domestic Investors

Labour Law No 8/1996 and its amendments state which regulations investors shall primarily be concerned with in Jordan, as follows.

- Employment contracts remain in full effect, regardless of the change of the employer resulting from the sale of the project or its

transfer by way of inheritance or merger of the company, or for any other reason. In all those cases, the original and the new business owner remain jointly responsible, for a period of six months, for the implementation of the obligations resulting from valid employment contracts prior to the date of the change or after the expiry. After the six months have elapsed, the new employer bears the responsibility alone.

- It is not permissible to dismiss an employee during the period of change or in the six months from informing the employees of the decision to sell the company to a new employer, unless the employee has either committed any of the acts mentioned in the Labour Law or the parties have mutually agreed to terminate the employment.
- In addition to the foregoing, the Jordanian Companies Law stipulates that all the rights and obligations of the merging companies shall be automatically transferred to the merging company (or the company resulting from the merger) following the completion of the merger procedures and the registration of the company. That means that the merged company (or the new company resulting from the merger) is the legal successor to the acquired company and it replaces it in all its rights and obligations.

## 2.6 National Security Review

Although there is no direct national security review on the subject of acquisitions in Jordan, there could be an indirect approach to this matter. Acquisitions of Jordanian companies by foreign individuals or companies are limited by the Jordanian Investment Law No 30/2014 and the Non-Jordanian Investments Regulation No 77/2016 and its amendments, pursuant to which any acquisition of foreign ownership requires governmental approval due to national security

concerns. Therefore, it is inferred that the restrictions on foreign ownership of Jordanian companies in Jordan constitute an indirect national security review of acquisitions in Jordan.

## 3. Recent Legal Developments

### 3.1 Significant Court Decisions or Legal Developments

The judicial determinations issued by the Court of Cassation in Jordan (a civil law jurisdiction) play an important role, albeit a persuasive one. Of the few judicial determinations issued recently in connection with M&A transactions, the Court of Cassation Precedent No 3059/2019 dated 16 March 2020 is a notable judicial ruling.

The merging company claimed for refund of the stamp fees it paid on the new capital after the merger. This claim raised a controversial legal issue of whether or not the merging company is exempted from all taxes and fees.

The Appellate Court held that the company is not exempted from paying the stamp duties, since they were not included in the Council of Ministers' Decision that was issued in accordance with the Investment Law No 30/2014.

The Cassation Court overturned the jurisprudence of the Appellate Court and concluded that the Companies Law No 22/1997 should be applied. Furthermore, the Cassation Court determined the scope of tax exemption in Article 224 of the Companies Law through the application of a legal and jurisprudential rule known as: "An unconditional provision shall be so construed unless there is evidence restricting it". Therefore, the Cassation Court held that Article 224 of the Companies Law is an unconditional



provision and, if the legislator meant to exclude certain taxes, it would have stated that explicitly.

The rationale behind the significance of this jurisprudence can be summarised into two points:

- it removed any uncertainty related to the scope of tax exemption; and
- it addressed conflict of laws in M&A disputes and whether or not ministerial decisions can alter the scope of exemption.

Also noteworthy is that the Court of Cassation through precedent No 1360/2021 dated 19 May 2021 held that the successor (the merging company or the company resulting from the merger, along with its shareholders or partners) shall not be exempted from paying any taxes that were due on the merger company before the completion date of the merger procedures. Based on that, where taxes were due on the merger company and were not paid, those taxes shall be deemed as a debt on the successor.

### 3.2 Significant Changes to Takeover Law

The takeover law in Jordan is mainly governed by the Companies Law No 22/1997 (and its amendments), the Securities Law No 18/2017, and the Instructions for Issuing Companies Disclosure, Accounting and Auditing Standards for the Year 2017. Furthermore, the responsible authorities overseeing this area of law are the Jordan Securities Commission (JSC) and the Competition Directorate at the Ministry of Industry, Trade and Supply.

Despite the Companies Law being amended twice, none of the changes affected the takeover provisions and the general legislation has not undergone any review in a way that can result in significant changes, thus no change is anticipated in the coming 12 months. On the same note,

it is worth mentioning that the Instructions for the Year 2017 have been amended as adopted by the decision of the Board of Commissioners of the Jordan Securities Commission No 19/2019 on 28 January 2019. However, that was a minor amendment that has not affected the takeover law.

It is worth noting that the issuance of the Instructions for Private Limited Companies' Redeemable Shares 2020 added in Article 4 an obligation on Private Limited Companies "Ltd". The instructions obliged such limited companies to stipulate in their articles of association provisions to regulate by whom redemption rights would be exercised in the event of sale or otherwise dispose of any shares in limited companies.

Moving on, in light of the COVID-19 pandemic, however, the Jordanian Defence Law No 13/1992 has been activated in order to mitigate the effects on contracts that have been affected by the pandemic. Finally, it should be noted that Jordan has in place a general legal framework to abide by, but, in conjunction, it has adopted a self-regulatory approach for companies to govern themselves by way of their articles of association, memoranda of association, and shareholders' agreements.

## 4. Stakebuilding

### 4.1 Principal Stakebuilding Strategies

The principal stakebuilding strategy used in Jordan is the concept of Block Trade and it is governed by the Directives of Trading with Securities at the Amman Stock Exchange for the Year 2018, issued by virtue of the provisions of Article A/70 of the Securities Law No 18/2017 and Article 8 of the articles of association of the Amman Stock Exchange company, as adopted by the

decision of the Board of Commissioners of the Jordan Securities Commission No 224/2018 on 5 July 2018, and as amended by the Board of Commissioners' Decision No 262/2022 dated 23 August 2022.

## 4.2 Material Shareholding Disclosure Threshold

A material shareholding under Jordanian laws is commonly referred to as “acquiring a substantial block of shares”. Article 13 of the Instructions for the Year 2017 by the Securities Commission states that investors seeking to acquire a substantial block of shares surpassing the 5% threshold are under an obligation to disclose the transaction before the Competition Directorate within seven days of doing so. The reasoning behind this is that, once an investor acquires more than 5%, they are deemed to be an insider; thus, any such acquisition must be made known to the competent authority. Further, the Article also states that if the investor is acquiring more than 10%, an obligation also to disclose the motive behind the decision is imposed. It is important to note, however, that there is no requirement to disclose the transaction in question either in a local newspaper or in the official gazette.

## 4.3 Hurdles to Stakebuilding

Under Jordanian laws, a company is free to introduce different rules as long as they do not contradict the relevant laws; as such, a company is free to introduce lower disclosure thresholds in the articles of incorporation or its by-laws, as it provides more transparency and imposes stricter rules than that which the law dictates. However, companies cannot increase the disclosure thresholds, as that can be seen to contradict the relevant laws. Thus, for example, the 10% threshold stipulated in Article 13 of the Instructions for the Year 2017 can be changed in the

articles of incorporation, obliging investors to disclose at 9%; however, it cannot be raised as high as 15%, as that would be deemed unlawful by the JSC.

## 4.4 Dealings in Derivatives

The term used in the Jordanian Financial Market is “securities” and their use is permissible as long as it has been approved by the Board of Commissioners of the Commission. Article 3 of the Securities Law stipulates what the term “securities” shall include: for example, spot contracts and forward contracts, as well as bonds issued by companies. However, Article 4 of the aforementioned law sets out what are deemed not to be securities, thus making their use impermissible, such as commercial papers, insurance policies, and documentary instruments exclusively traded among banks.

## 4.5 Filing/Reporting Obligations

Article 5 of the Securities Law states that every issuer of a security must submit an application to the JSC to register the securities in accordance with the relevant instructions issued by the Board of Commissioners of the Commission.

## 4.6 Transparency

The Shareholders' General Assembly, pursuant to Article 34 of the Securities Law, must file a prospectus with the JSC, explaining the reasoning that allowed them to reach the decision to make an investment, in addition to all the relevant information and data used. This only applies to Public Offers and Public Takeover Offers, defined in Article 2(20) and Article 2(21) of the Securities Law, respectively. However, Article 36 of the same law sets out specific situations which allow the investor to be exempt from submitting a prospectus, such as “if the monies intended to be raised by the offer are limited”, for example. It is crucial to note, however, that when

an acquisition concerns banks, the purpose and intention must always be made known.

## 5. Negotiation Phase

### 5.1 Requirement to Disclose a Deal

Experience shows that a deal is required to be disclosed when definitive agreements are signed, whereby the disclosure of the deal shall affect many rights and obligations, such as employment contracts and lease contracts.

### 5.2 Market Practice on Timing The Right Time of Disclosure

As per market practice, the disclosure of the legal requirements will take place prior to any other disclosure in order to proceed with a due diligence. That will enable the buyer to conduct a study on the company's contracts, agreements and financial matters of the company to be merged, for the purposes of evaluating the acquisition process of the company and determining whether or not to proceed with the transaction.

### 5.3 Scope of Due Diligence

The scope of due diligence in the Hashemite Kingdom of Jordan is as follows:

- checks on corporate records and laws and regulations such as articles and memoranda of association of the target company and all amendments thereto, the company's certificate of registration, shares certificates and board of directors' authorities, a list of all subsidiaries and other entities (including partnerships) in which the company has an equity interest, an organisational chart showing the ownership of such entities, and any agreements relating to the company's interest

- in any such entity, resolutions of the general assembly and board of directors and others;
- material corporate agreements/documents such as agreements to which the company is a party, general agreements, documents relating to operations and insurance policies, if any;
- property (real property and intellectual property);
- employees (information relating to employees, compensation and benefits); and
- litigation and arbitration, such as copies of any pleadings or correspondence for pending or prior lawsuits involving the company, whether plaintiff or defendant, copies of all licences, permits, certificates, authorisations, registrations, concessions, approvals, exemptions and other operating authorities from all governmental authorities and any applications thereof, and a description of any pending contemplated or threatened changes in the foregoing, summary of disputes with suppliers, competitors, or customers, decrees, orders or judgments of courts or governmental agencies, settlement documentation, any reports or correspondence related to the infringement by the company or a third party of intellectual property rights.

The scope of the due diligence has not been impacted by the pandemic, however; since there have been periods of lockdown in Jordan, the verification process in due diligence has become electronic in some cases, by placing the required documents in an electronic data room, made accessible via login with username and password credentials.

### 5.4 Standstills or Exclusivity

The Jordanian Law and legal framework do not negate the existence of standstill agreements; hence, they are permissible.

However, for exclusivity, it is to be noted that Article 5 of the Competition Law No 33/2004, as amended by Law No 18/2011, prohibits “anti-competitive practices” which would hinder competition in Jordan. It should be noted that there is an exception on the foregoing, under Article 5(B) of the same law, as it shall not apply to “agreements with weak effect wherein the total share of the Enterprises party thereto shall not exceed a rate to be set by instructions issued by the Minister, and which shall not exceed 10% of total transactions in the market, provided that such agreements do not include procedures that fix price levels and market sharing”.

## 5.5 Definitive Agreements

Definitive agreements are permissible and common practice in Jordan; however, in practice, the parties tend not to disclose the details, terms and conditions contained in such agreements.

## 6. Structuring

### 6.1 Length of Process for Acquisition/Sale

#### The Actual Period for the Acquisition/Sale of a Business, Routinely and During the Pandemic

The process generally for acquiring/selling a business in Jordan depends on the due diligence process, and experience shows that it is estimated to take between one to six months to complete. In addition, the duration of the merger process is estimated to be a period not exceeding 90 days from the date of submitting the merger application to the Companies Controller Department, where the Minister of the Ministry of Industry, Trade and Supply may extend this period for a similar period if it is deemed necessary.

Previously, during 2020, as a result of the COVID-19 pandemic, the aforementioned period became somewhat longer than in the past, due to the governmental measures that were implemented to deal with the pandemic in Jordan. Examples of pandemic-induced factors that contributed to major delays in practice and were an impediment to the deal-closing process are: having in place a lockdown system for several weeks; and closure of a number of facilities for the purpose of sterilisation in the event that a number of employees were infected with COVID-19.

The year 2022 has seen a rapid improvement in the procedures of M&A agreements, as employees at government establishments are back to work in full force. This has also reflected on the timeframe for completing such M&A deals. In practice, any such deal would be finalised within no more than 90 days, save for completion time and preparing the due diligence reports, which are factors (inter alia) that affect the time of finalisation of M&A deals.

### 6.2 Mandatory Offer Threshold

There is no mandatory threshold for the offer in Jordan, whereby the offer is subject only to the parties’ decision.

### 6.3 Consideration

Both cash and shares are used as a consideration in Jordan; however, cash is more common than shares.

With regard to the common tools that are used to bridge the value gap between parties where there is uncertainty in a high valuation, and, since this is not addressed in the Companies Law, it becomes a commercial element subject to the agreement of both parties. Examples of such tools include the following.

- Warrants – issuing warrants means that the buyer agrees to the price requested by the owner on the condition that the buyer has a warrant to buy more shares in the company. The warrant can be used whenever the buyer company does not achieve the agreed-upon conditions.
- Escrow arrangement – this is used in situations where a buyer may have identified risks that can have a financial impact on the value of the target company (such as pending court cases). The buyer can agree to deposit a portion of the price in an escrow account and to pay the remaining amount upon the resolution of the risk, without financial damage.

## 6.4 Common Conditions for a Takeover Offer

The Jordanian regulator has not restricted the use of offer conditions, which is subject to the mutual agreement of the parties. However, there are some common conditions for a takeover offer, as follows:

- the offered price;
- the type of consideration (cash or shares);
- the number of target shares;
- the minimum quota for shareholder approval;
- the condition that no event has occurred or will occur between the announcement of the offer or the signing of a merger agreement and the time at which the bidder is to purchase the shares or complete the transaction that might have a negative impact on the purchased shares;
- the condition that the company must comply with its representations, guarantees, warranties or conditions in the merger agreement; and
- the condition that all required regulatory approvals must be obtained for the merger to be completed.

## 6.5 Minimum Acceptance Conditions

There are no minimum acceptance conditions (ie, the relevant control thresholds) for tender offers under Jordanian law. That leaves the minimum requirements open to the interpretation of the will of both parties, which allows for flexibility of offer conditions, as well as the enforcement of the will of both parties to its utmost extent.

## 6.6 Requirement to Obtain Financing

The legal framework governing this area of law does not impose an obligation on the bidder to obtain proof of financing prior to the merger agreement; however, the law does not prohibit including any such obligation in an arrangement. Therefore, parties can opt to add an obligation to obtain financing.

## 6.7 Types of Deal Security Measures

Match rights, non-solicitation provisions, and letters of intent are permissible and are often sought out within deals in Jordan. Break-up fees are often implemented in the case of rejection or refusal by the competent authority. Regarding contractual considerations as a result of the COVID-19 pandemic, no explicit tools concerning mergers and acquisitions have been put in place; however, Article 11 of the Defence Law No 13/1992 allows for affected ongoing contracts to be suspended if they have become impossible to execute, and the defaulting party shall not be deemed to be in breach. The suspension shall be considered a valid defence in any suit against the defaulting party, as it was upheld in the Court of Cassation Decision No 1473/2016.

There are no new contractual considerations or tools for managing “pandemic risk” in the interim period and, while there has been a change to the regulatory framework (with the Companies Law being amended twice in the year 2021), there have been no changes to the regulatory envi-

ronment that would have impacted the length of interim periods, as both amendments to the Companies Law did not affect the acquisition/selling/merging of companies in any manner.

## 6.8 Additional Governance Rights

In a private shareholding company, the company may issue various types and classes of shares, which differ in their terms of nominal value, voting force and method of profit-and-loss distribution among shareholders. Those shares also differ in respect of their rights and priorities upon liquidation and their aptitude to be converted into other types of shares besides their related rights, advantages, priorities and other restrictions. Therefore, the opinion of this firm is that the bidder must seek to own a good type of shares such as gold or silver shares that would grant them the ability to attend or vote at the general assembly meeting and the ability to be considered for membership of the board of directors.

In a limited liability company, the bidder may seek corporate governance rights, such as membership of the board of directors and/or a general manager position or to be included in the authorised signatories of the company.

## 6.9 Voting by Proxy

In accordance with Articles 64, 79 bis, 179 of the Companies Law, shareholders can vote by proxy in Jordan, as long as the shareholder is going to submit a written proxy.

## 6.10 Squeeze-Out Mechanisms

While drag-along rights are common practice in Jordan, the law awards a great deal of protection to minority shareholders from being discriminated against by the majority shareholders. This is seen in various areas of different legislation; however, the most prominent is Article 235(b) of

the Companies Law. This Article allows minority shareholders and the Board of Directors to contest a deal before the Court of First Instance in cases where the deal involves an arbitrary use of rights or a direct personal interest of the majority shareholders at the expense of the minority.

## 6.11 Irrevocable Commitments

In Jordan, it is very rare to obtain irrevocable commitments to tender or vote by principal shareholders of the target company, especially as evidenced by the prohibiting approach of anti-competitive practices. Furthermore, Article 173(b) of the Companies Law states that the legal quorum of the extraordinary general assembly meeting for Public Shareholding Companies, wherein decisions to carry out a merger or an acquisition take place, is 75% of the subscribed shares; if such quorum is not present the meeting will be cancelled, thus a vote by principal shareholders is not feasible. Negotiations normally commence and are undertaken before the deal is finalised. Moreover, it is not common market practice for the principal shareholder to be provided with “an out”, should a better offer be made.

## 7. Disclosure

### 7.1 Making a Bid Public

In the case of a takeover of a company listed on the Amman Stock Exchange, a bid is made public in two scenarios, namely, a Public Offer and a Public Takeover Offer. A Public Offer is “an offer for the sale of any security to more than thirty persons of the public, including public issuance and public subscription”, whereas the Public Takeover Offer is when a bid to purchase exceeds the 40% threshold. Both scenarios require a prospectus, as previously discussed, to be filed before the competent authority, and

must be addressed to all owners of such securities.

With regard to the merger of companies, an application must be submitted to the Companies General Controller; however, it will only be referred to the Minister of Industry, Trade and Supply if the merger pertains to a Public Shareholding Company or will result in one, as stated in Article 227 of the Companies Law. Furthermore, Article 226 of the Companies Law states that the board of directors must notify the Controller, the Commission, the Market, and the Depository Centre within ten days of the date of issuing the merger decision.

## 7.2 Type of Disclosure Required

When two companies have decided to combine their businesses, also known as a merger under the Jordanian Companies Law, the requirements of the application are set out in Article 225 of the Companies Law. Those requirements shall include the decision of the extraordinary general assembly or a unanimous resolution by shareholders of each company approving the merger and the terms set out in the merger agreement.

## 7.3 Producing Financial Statements

The Corporate Governance Code for Shareholding Companies states that produced financial statements must be prepared in accordance with the International Financial Reporting Standards (IFRS). Each company wishing to merge must submit audited financial statements of the last two fiscal years, in addition to an audited financial position statement, and, finally, a preliminary evaluation of the assets and liabilities at market value and/or any other document deemed necessary by the Company Controller, as per Article 225 of the Companies Law.

## 7.4 Transaction Documents

Parties must produce their audited financial statements in full, in accordance with Article 225 of the Companies Law.

# 8. Duties of Directors

## 8.1 Principal Directors' Duties

The principal directors' duties in a business combination, pursuant to the Companies Law, are:

- inviting the company's shareholders to an extraordinary general assembly meeting to discuss and approve the decision of the merger;
- notifying the Controller, the Commission, the Amman Stock Exchange, and the Depository Centre within ten days of the date of issuing the merger decision;
- the Minister of Ministry of Industry, Trade and Supply shall form an executive committee from the chairpersons and members of the boards of directors of the companies wishing to merge, or of their managers, as the case may be, and the companies' auditors, in order to realise the executive procedures for the merger and in particular the following:
  - (a) determining the shares of the shareholders, or the partners' interests in the merged companies based on the evaluation made by the Evaluation Committee stipulated in the Companies Law;
  - (b) amending the articles and memorandum of association of the merging company if that is an existing company, or preparing the memorandum and articles of association for the new company emerging from the merger;
  - (c) inviting a shareholders' extraordinary general assembly for each of the companies

entering the merger, in order to approve the following, provided that decisions are taken with a majority of 75% of the shares represented for each company separately:

- (i) the articles and memorandum of association of the new company (or the amended articles and memorandum of association of the merging company, as applicable);
- (ii) the results of the re-evaluation of the assets and liabilities of the companies, and the opening balance sheet for the new company resulting from the merger;
- (iii) the final approval on the merger; and
- (d) furnishing the Controller with the minutes of the meeting of the general assembly of each company, within seven days from the date of the meeting.

Based on the foregoing, the understanding is that the directors' duties are owed to all stakeholders and not only to the shareholders.

## 8.2 Special or Ad Hoc Committees

Jordanian laws permit boards of directors to establish special or ad hoc committees in business combinations for the purpose of implementing the company's work, such as the Procurement Committee for the purchase of materials and goods. However, the general rule of prohibitions imposed on members of the board of directors states that the chairman of the board of directors of any company, and its members, may not have a direct or an indirect interest in the contracts, projects and relationships which are concluded by the company or on its behalf. Therefore, no such committees are formed when a director has a conflict of interest, as that is prohibited, in accordance with the Companies Law.

## 8.3 Business Judgement Rule

Although there is no provision in the law that prevents the courts from deferring to the judgment of the board of directors in takeover situations, this is not a mandatory approach to be followed by the Jordanian courts. The courts will examine each lawsuit on a case-by-case basis, with no presumption or requirement to abide by this doctrine.

It should be noted that contesting the legality of the merger shall not suspend the continuation thereof until the issuance of a final judicial decision deeming the merger invalid. The court, when considering a claim of invalidity for the merger, may determine, at its sole discretion, a certain period for the party concerned to take the necessary procedures to correct the causes that led to the invalidity being contested. Further, the court may dismiss the claim for invalidity should the concerned party adjust its position prior to the court issuing the judgment, in accordance with the Companies Law.

## 8.4 Independent Outside Advice

Financial advisers, legal advisers and consulting firms are considered to be examples of sources of independent outside advice that is commonly given to directors in a business combination in Jordan.

## 8.5 Conflicts of Interest

Conflicts of interest of directors, managers, shareholders or advisers have been the subject of judicial or other scrutiny in Jordan and the Court of Cassation has issued a number of decisions on this matter. For example, the Jordanian Court of Cassation Decision No 4202/2010 of 27 April 2011, ordered the defendant (former employee) to pay a fair compensation to the company (the plaintiff) in which the defendant used to occupy the post of company director.



The case entailed the defendant taking a commission from the company for the purpose of exporting raw materials, without the plaintiff's knowledge and without any authorisation by the company. The aforementioned indicated that the defendant had a direct interest in the plaintiff, despite the Companies Law expressly prohibiting such action. The court found that the defendant's action had severely damaged the plaintiff's reputation and business relations and thus ruled for the payment of compensation by the defendant to the company.

## 9. Defensive Measures

### 9.1 Hostile Tender Offers

Article 5 of the Competition Law No 33/2004, as amended by law No 18/2011, prohibits "anti-competitive practices" which would hinder competition in Jordan. Particular attention is drawn to Article 5(A)(5) of the Competition Law, which states that "collusion in tenders or bids, whether in overbidding or underbidding" shall amount to anti-competitive practice.

It should be noted that there is an exception to the foregoing under Article 5(B) of the same law, as mentioned in **5.4 Standstills or Exclusivity**.

### 9.2 Directors' Use of Defensive Measures

Article 175 of the Companies Law states that any matter related to the company, including the sale of shares, merger and acquisition of the company, is a matter to be discussed and decided upon in the general assembly's extraordinary meeting. However, it is important to note that the board of directors is still expected to act in good faith and in the interest of the company, as seen in the Jordanian Corporate Governance Codes published as guidance for companies.

### 9.3 Common Defensive Measures

Due to these matters falling within the jurisdiction of the general assembly, the board of directors does not have the authority to use defensive measures against a tender offer.

### 9.4 Directors' Duties

Due to these matters falling within the jurisdiction of the general assembly, duties owed by the board of directors to the company when enacting defensive measures are not applicable in Jordan.

### 9.5 Directors' Ability to "Just Say No"

In a business combination in Jordan, directors do not have the authority to "say no" per se. Nevertheless, Article 37 of the Securities Law states that if the company is a shareholding company, both public and/or private, the prospectus mentioned previously, which must be submitted for the approval of the JSC, must be signed by the majority of the members of the board of directors of the issuing company. Thus, if the majority refused to sign the prospectus, it would lack one of the requirements that must be fulfilled before the JSC is able to assess the prospectus to make a decision. As such, it can be inferred that the board of directors possesses an indirect power to "just say no" to a business combination.

## 10. Litigation

### 10.1 Frequency of Litigation

Undoubtedly, M&A deals, whether in Jordan or elsewhere, do not please all parties and may in turn lead to disputes. However, litigation (as a type of dispute resolution) in connection with M&A deals is not common in Jordan. This can be attributed to several reasons, including the parties' preference to settle disputes amicably

and the various legal mechanisms stipulated in the law.

## Legal Mechanisms

The law states several legal mechanisms that enable parties to voice their objection and to challenge the validity of M&A deals. On one hand, it recognises the right to object administratively to the Minister. Where objections were not settled within a certain time, the objector has the right to contest the merger before the court. Through an examination of M&A-related rulings, it can be said that most objections are settled and are not litigated. On the other hand, it is possible to challenge the validity of the merger directly before the court if it contradicts public order or the law.

## 10.2 Stage of Deal

Notwithstanding that litigation in connection with M&A transactions is not common in Jordan, the litigated disputes are brought at two stages of the deal.

### Before the Completion of the Merger

This occurs only if the objections to the Minister were not settled within the stipulated period. Hardly any rulings could be found for disputes at this stage.

### After the Completion of the Merger

Litigation is commonly brought at this stage, as the law only allows cases to be filed after the announcement of the final merger, except for cases filed when the administrative objection is not settled. Through an analysis of published judicial rulings issued in relation to M&A disputes, the main disputes can be divided into the following categories:

- incompleteness of the legal procedures;

- disputes related to the evaluation committee, such as:
  - (a) not including specialised and experienced persons;
  - (b) not submitting its report within the stipulated period;
  - (c) an essential and clear discrepancy in the evaluation of the shareholder's equity;
- disputes related to the rights and obligations of the companies, such as:
  - (a) the rights of the merger company's employees – courts ruled that the merger does not affect employment contracts;
  - (b) continuation/termination of tenancy contracts – courts tended to terminate these contracts;
  - (c) the outcome of trade-mark applications submitted by the merger company; and
- refund of taxes.

## 10.3 “Broken-Deal” Disputes

The COVID-19 pandemic has affected the economy as a whole and impeded the completion of many transactions. However, due to the ease in the measures taken by the government during 2021, in 2022 M&A transactions have started to resume.

Nevertheless, and in light of the absence of any published material about disputes relating to pending transactions, it can be said that companies most likely have learned to expect or/and provide for the occurrence of unusual events that might affect their deals and interfere with the settlement of their disputes.

## 11. Activism

### 11.1 Shareholder Activism

Shareholder activism as a term is not broadly known in Jordan, and accordingly it cannot be

classified as an important force. What is understood by this term, through the knowledge of the relevant comparative legislations, is that it refers to the shareholders' efforts to make a change in the operation of the company or to influence its decisions.

The foreignness of this concept does not ultimately mean that it cannot be practised or that shareholders in Jordan cannot exert pressure on companies. Conversely, shareholders in Jordan enjoy a wide variety of rights (particularly the right to vote and to approve fundamental matters), protected by several legislative tools, which enable them to do so.

It should be highlighted that the Jordanian Corporate Governance Code protects minority rights and ensures equitable treatment of shareholders, including an equal opportunity to participate in the assembly meetings, and fair voting rights. Additionally, it emphasises the taking of all necessary measures to ensure the involvement and effective participation of shareholders.

## 11.2 Aims of Activists

As previously stated, "shareholder activists" do not exist in Jordan. However, shareholders as members of the general assembly can still encourage companies to enter into various transactions, including M&A transactions, spin-offs or major divestitures. Furthermore, the boards of directors of those companies take the advice of legal and auditing consultants who might encourage M&A.

In fact, under Jordanian laws the discussion and approval of such fundamental matters are only permissible:

- in an extraordinary general assembly meeting; and

- if such matters were stated in the agenda/ invitation for the meeting.

## The Impact of the Pandemic

The pandemic affected the meetings of the general assembly, as the Jordanian Government imposed a comprehensive lockdown and issued Defence Order No 5, which suspended the provisions of the law regulating these meetings during the imposition of the Defence Law.

In early April 2020, the Minister of Industry, Trade and Supply issued procedures (by way of the Procedures for the Regulation of the Meetings of the General Assembly and Board of Directors for Public Shareholding, Private Shareholding and Limited Liability Companies) that cancelled all scheduled meetings, as well as regulated and allowed such meetings to be held during the lockdown period through visual and electronic communication only if the need arose and/or where the interest of the national economy so required.

This has since changed in 2021, as meetings are now permitted to be held via non-electronic means (if so desired) as long as the number of attendees does not exceed that of 20 members. Should the number exceed that of 20 members, it is obligatory to hold the meeting through visual and electronic communication.

The Procedures for the Regulation of the Meetings of the General Assembly and Board of Directors for Public Shareholding, Private Shareholding and Limited Liability Companies were also amended in 2021, with only one provision on the legal quota for meetings being revised.

## 11.3 Interference With Completion

As previously stated, the term "shareholder activists" is not in use in Jordan. However, it

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can be said that dissenting shareholders seek to interfere with the completion of M&A transactions, especially since the law does not regulate the submittal of an exit request nor does it oblige the company to buy their shares. Also, others such as corporate bond-holders and the creditors of the merger or the merging companies are most likely to interfere to avoid any possible damages caused by the merger.

Accordingly, the law grants all the aforementioned parties the right to object to the Minister within 30 days of the date of the announcement of the merger in the local newspapers. This provides them with the opportunity to interfere with the completion of announced transactions through an administrative objection.

Nevertheless, it should be noted that neither objections nor court cases suspend the decision to merge or the continuation of the merger, but rather a final judicial decision deeming the merger invalid may do so.

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