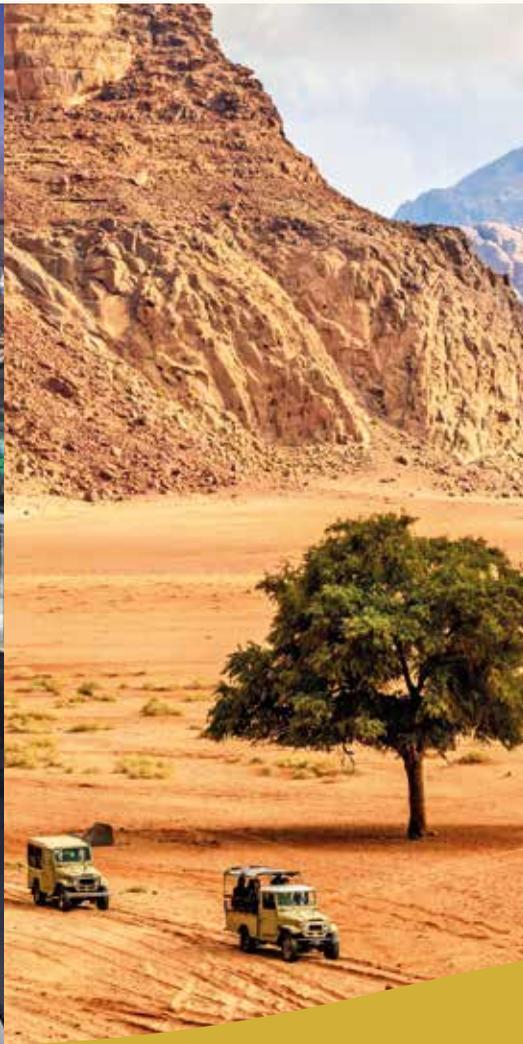


Enhancing the Legal Framework for Sustainable Investment

Lessons from Jordan



Project Insights

Enhancing the legal framework for sustainable investment: Lessons from Jordan

Jordan Competitiveness and Investment Project



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Foreword

Jordan has faced unprecedented geopolitical and economic challenges in recent years, starting with the slowdown of the global economy triggered by the 2008 financial crisis, then the 2011 uprisings in several countries of the region, and continuing with the Iraq and Syrian crises. Today Jordan hosts approximately 1.3 million Syrian refugees. Despite these challenges, the Jordanian authorities have moved forward with reforms, building the path towards greater and more inclusive growth, including strengthening the investment climate.

Enhancing private investment is key for supporting Jordan's economy and achieving the sustained economic growth and stability required to benefit the whole population. In recent years, Jordan has set an ambitious reform agenda to strengthen its position as an open, safe and attractive investment destination in order to further mobilise investment. In 2014, it adopted a modernised investment law (Law No. 30 of October 2014) and launched a revamped investment promotion agency.

It is against this background that the Jordan Competitiveness and Investment Project (JCIP) was initiated. Implemented jointly by the OECD and the World Bank, and funded under the Middle East and North Africa (MENA) Transition Fund of the G8 Deauville Partnership, it ran for three years (September 2014 - December 2017). Its aim was to support the Government of Jordan in implementing investment reforms and building the capacities of the institutions responsible for investment policy, promotion and services, with the ultimate goal of attracting higher quality investment to generate growth and jobs.

The project follows on from the OECD's Investment Policy Review of Jordan and the country's adherence to the OECD Declaration on International Investment and Multinational Enterprises in 2013. It continues a long-standing and active policy dialogue between the OECD and Jordan, in particular within the framework of the MENA-OECD Competitiveness Programme, which supports the country in its efforts to reach OECD standards and good practices.

This report documents the work undertaken by the OECD during the project to improve the investment policy framework and reform implementation by assisting the Jordanian authorities through both policy and capacity support. Its goal is to build awareness about the reformed investment regime and share lessons learnt on improving the legal and institutional framework, despite a difficult environment. It presents policy recommendations developed throughout the project for strengthening investment rules and regulations, at national and international levels, and demonstrates the project's tangible outcomes in improving the investment climate and mitigating the economic and political risks for investors by strengthening the investment framework.

This project paves the way for future co-operation with Jordan in the context of the regional dialogue on investment reforms, alongside support adapted to fragile contexts, in order to address Jordan's specific development needs, which include dealing with the Syrian refugee crisis.

Acknowledgments

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Acronyms and abbreviations

ASEAN	Association of Southeast Asian Nations
BIT	Bilateral investment treaty
CETA	Comprehensive Economic and Trade Agreement
EU	European Union
FDI	Foreign direct investment
FET	Fair and equitable treatment
ICSID	International Centre for Settlement of Investment Disputes
IIA	International Investment Agreement
IPA	Investment Promotion Agency
ISDS	Investor-State Dispute Settlement
JIC	Jordan Investment Commission
JOD	Jordanian Dinars
MENA	Middle East and North Africa
MFN	Most-favoured nation treatment
MST	Minimum standard of treatment
NCP	National Contact Point
NGO	Non-government organisation
OECD	Organisation for Economic Co-operation and Development
OIC	Organization of Islamic Cooperation
RBC	Responsible Business Conduct
SME	Small and medium-sized enterprise
TPP	Trans-Pacific Partnership
UNCITRAL	The UN Commission on International Trade Law

Executive summary

Attracting and retaining foreign and domestic investment plays a significant role in responding to the pressing economic and social challenges faced by Jordan and is the primary focus of the government's strategy. Reviving investment is also pivotal for coping with the Syrian refugee crisis.

Since the 2008 global financial crisis and the regional unrest of 2011, Jordan has experienced falling investment flows and escalating fiscal deficit. Between 2008 and 2011, foreign direct investment (FDI) inflows dropped by more than 30%, and have continued to decline ever since, despite a brief upturn in 2014. Foreign investors' relatively low confidence in the region in recent years has also affected Jordan. Regional instability, ongoing conflicts in Syria and Iraq, and unprecedented migration flows are piling new pressure on the country.

Against this backdrop, the Jordanian Government has undertaken major regulatory reforms in recent years in order to strengthen its legal investment environment and revive investment. Establishing a sound and conducive business climate became pivotal to mitigating the economic and political risks for investors. In 2014, the government enacted a modernised Investment Law (Law No. 30 of October 2014) and established a unified investment promotion agency, the Jordan Investment Commission, resulting from the merger of three institutions. The enactment of the Investment Law and its subsequent implementing regulations set the foundations for a streamlined, strengthened and more transparent institutional and legal framework for both foreign and domestic investment. Though important challenges remain, this modernised legislation constitutes a welcome step towards creating a sound investment policy and an enabling investment climate and reflects the government's efforts to meet investors' expectations. It is part of a comprehensive policy of structural reforms designed for promoting private sector activity and enhancing the country's potential for growth.

To ensure the sustainability of the reform process, improve the legal investment framework, foster investment and generate jobs, the OECD supported the Jordanian Government between 2014 and 2017 through the MENA Transition Fund Jordan Competitiveness and Investment Project. Its support involved policy advice based on international best practices, technical assistance, and training to build local capacities.

The project was implemented jointly with the World Bank, and in close collaboration with the Jordan Investment Commission (JIC), the Ministry of Planning and International Cooperation and the Ministry of Trade and Industry.

The OECD intervention focused on supporting the Jordanian authorities in strengthening the national and international legal investment frameworks, both of which influence investment. Particular attention was given to investment protection standards and to restrictions to foreign direct investment, which play an important role in decisions by prospective foreign investors. The World Bank support aimed to strengthen investment service provision and capacities, particularly through the establishment of a new one-stop-

shop for investment to streamline investment procedures and facilitate FDI entry, and to strengthen investor services through a tracking mechanism and after care. The project also had a sectoral component involving an OECD assessment of the enabling conditions for investment in the renewable energy sector – the recommendations are presented in the OECD report “Clean Energy Investment Policy Review of Jordan”, launched in December 2016 in Amman.

While conducting these activities, the project sought to co-ordinate donors’ initiatives and leverage the work by other projects on competitiveness and investment at the national and sector-specific levels. The OECD worked particularly closely with the United States Agency for International Development (USAID) through its Jordan Competitiveness Program.

The OECD’s activities included (1) drafting **three policy advice papers** on the national and international legal and institutional investment framework, developed and discussed over the course of the project with the Government of Jordan and key stakeholders; and (2) conducting **six capacity-building workshops** organised in co-operation with the Jordan Investment Commission (JIC), with a focus on investment protection, restrictions to FDI, international investment treaties, responsible business conduct, and investor-state dispute settlement and prevention. The project had the following outcomes:

- **Recommendations to strengthen the investment legal regime and ensure proper implementation of reforms over time**, through a general assessment of the 2014 Investment Law, with a particular focus on the protection provisions, and capacity-building for officials.
- **Greater awareness of the new investment legal regime** through enhanced communication and several activities to disseminate its contents among key stakeholders (government officials and private sector representatives).
- **The adoption of Regulation No. 77 of 2016 on non-Jordanian investments which eases restrictions on foreign investments**. This was achieved through advisory assistance and a capacity-building workshop on the content and drafting of the bylaw, in line with Jordan’s development objectives and investment strategies.
- **Greater capacity among Jordanian policy makers in making the most of Jordan’s international investment treaty policy**, including the use of Investment State Dispute Settlement (ISDS) and prevention policies. This was achieved through two technical workshops and a policy paper.
- **Greater awareness of responsible business conduct (RBC) standards and the reviving of the Jordanian National Contact Point (NCP)** tasked with ensuring implementation of the OECD Guidelines for Multinational Enterprises. This was achieved through a capacity-building seminar on RBC with authorities and interested stakeholders.
- **Better reform co-ordination** among the relevant authorities and **participation of the private sector in the reform process**, by promoting the use of public-private dialogue, so as to increase the chance of the reforms being implemented.

In addition to these concrete results, the project has yielded important **lessons on investment reforms and reform implementation**, which could serve as a foundation for further work at both a regional and a country level. The project identified factors and conditions which facilitate reform and successful implementation, such as coherence and

anticipation, as well as the capacity and engagement of all stakeholders. It also highlighted the role played by the law within the investment process.

The project was well aligned with the Jordanian government priorities set during the London Conference “Supporting Syria and the Region” on 4 February 2016 which responded to the Syria refugees’ crisis and as laid out in the “Jordan Compact”, which calls for support for Jordan through a sustainable approach based on attracting investment and stimulating growth.

The report starts with a **Introductory Chapter (Chapter 1)**, which gives an **overview of the economic situation in Jordan**, and presents the **context and objectives of the project**. It explains why investment reforms are important and how a proper regulatory framework can help attract more and better investments and contribute to achieving governments’ economic policy objectives. It offers **lessons to address key investment reforms challenges** learnt from implementing the project in Jordan.

The report is then divided into three main chapters:

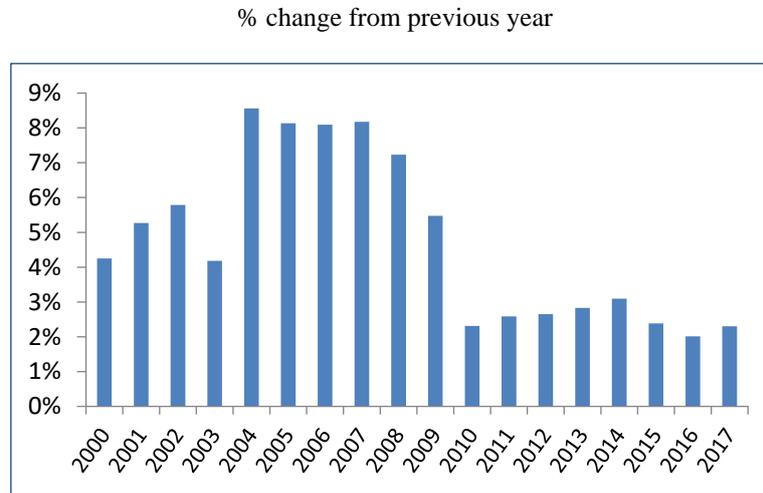
- **Chapter 2** looks at the **2014 Investment Law reform, with a focus on the protection of investment**. It shows the improvements brought by the enactment of the law, and assesses its protection provisions, based on a comparison with international good practices and OECD standards. It identifies possible gaps and provides policy options for optimising the legal and regulatory environment in Jordan.
- **Chapter 3** turns to the implementation of the law and the **revision of the restrictions to foreign direct investment in Jordan with the adoption of the 2016 Regulation on Non-Jordanian Investments**. This includes important liberalising changes in comparison to previous legislation, taking into consideration OECD policy advice.
- **Chapter 4** considers Jordan’s international investment policy, and discusses **Jordan’s international investment agreements (IIAs) and ISDS mechanisms** and identifies policy options for improving the country’s IIA policy.

1. Introduction

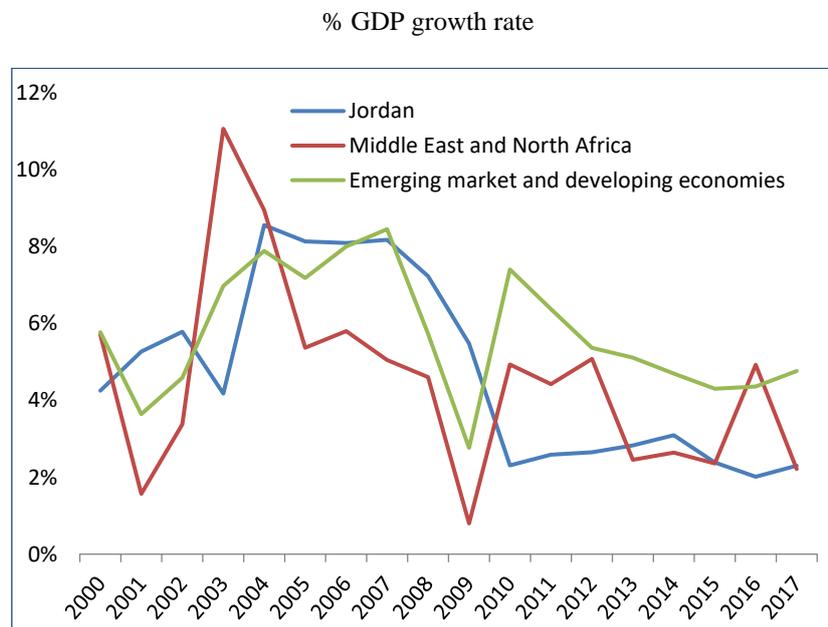
1.1. Jordan's recent economic development and challenges

The first decade of the 2000s saw Jordan's economy grow strongly, at around 8% on average between 2004 and 2008 (Figure 1.1), reflecting a broad policy of economic modernisation and structural reforms, accompanied by social and political improvements initiated at the end of the previous century. The government has improved its management of the public sector, expanded foreign trade exchanges and international economic integration, and conducted a wide-scale liberalisation and privatisation campaign, all of which have positively contributed to the strong inflow of foreign direct investment. This evolution took place against a background of important economic expansion in the Middle East and North Africa (MENA) region in general – an expansion that has translated into high levels of growth (Figure 1.2), decreasing unemployment and greater openness to international markets.

The 2008 global financial crisis slowed down this progress, reducing the demand for exports, remittances from Jordanians expatriates, tourism revenues, and foreign direct investment, thus threatening the country's social and economic stability. Growth in gross domestic product (GDP) dropped to 2.6% in 2011 from 5% in 2009. The instability resulting from the 2011 uprisings in neighbouring countries, including Egypt – one of Jordan's major trade partners – and adverse regional developments in Syria and Iraq – one of Jordan's key export markets – had additional negative effects on the country. Between 2010 and 2016 the country's annual GDP growth averaged just 2.5%.

Figure 1.1. Jordan's GDP growth, 2000-2017

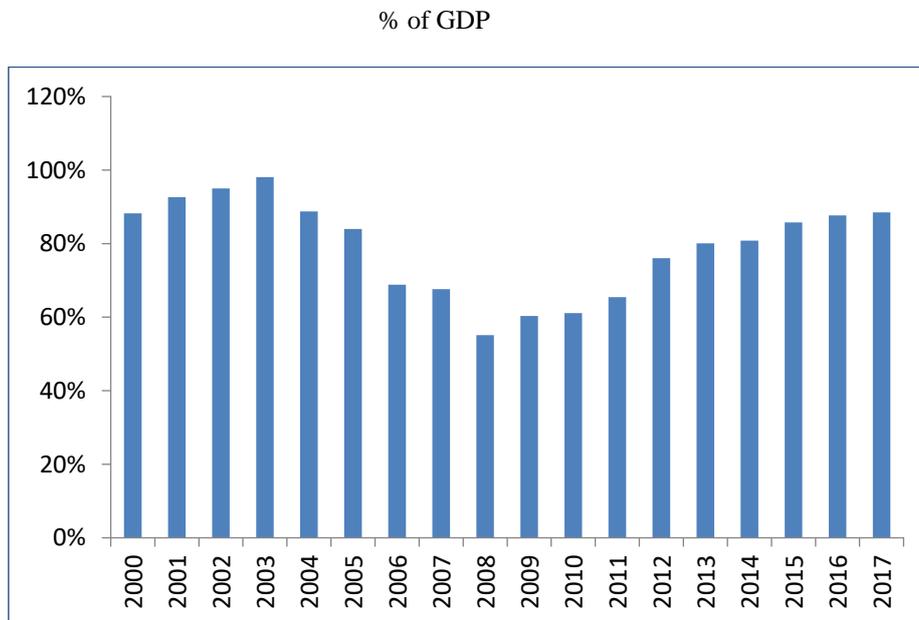
Source: International Monetary Fund (2018), *World Economic Outlook Database*, <http://bit.ly/2IWmqgR> (accessed 29 May 2018).

Figure 1.2. Jordan's growth in the regional and global context, 2000-2017

Source: International Monetary Fund (2018) *World Economic Outlook Database*, <http://bit.ly/2J0cnas> and <http://bit.ly/2IWmqgR>, (accessed 29 May 2018)

Furthermore, Jordan's total public debt has increased faster than economic growth. This resulted in a debt-to-GDP ratio of approximately 95% at the end of 2016 and early 2017, compared to 61% in 2010 (Figure 1.3).

Figure 1.3. Jordan's general government net debt, 2000-2017



Source: International Monetary Fund (2018), *World Economic Outlook Database*, <http://bit.ly/2IWeBla>, (accessed 29 May 2018).

The Syrian refugee crisis has had a particularly strong impact on the economy. It led to an unprecedented refugee influx into Jordan, disrupted trade routes, and reduced investment and tourism inflows (World Bank Group, 2016). Jordan hosts about 1.3 million Syrians, 83% of whom live outside refugee camps. Around 650 000 are registered with the UN Refugee Agency (UNHCR). The refugee influx has had a profound impact on Jordan and Lebanon, both high-middle-income but heavily indebted countries (Ruaudel and Morrison-Métois, 2017). The increase in labour supply has put pressure “on the already fragile labour markets, increasing unemployment, with considerable impact on youth and unskilled workers, putting pressure on wages and increasing informal employment” (World Bank, 2016).

In this context, a new approach to dealing with the Syria refugee crisis was agreed at the London Conference of 4 February 2016, embodied in the Jordan Compact (Box 1.1).

Box 1.1. The Jordan Compact

The Jordan Compact is a new holistic approach between the Hashemite Kingdom of Jordan and the international community which aims to deal with the Syrian refugee crisis.

The Jordan Compact was presented at the London conference “Supporting Syria and the Region” on 4 February 2016, during which compacts were also agreed for Lebanon and Turkey. This new tool aims to support Jordan in dealing with the Syrian crisis and provide economic opportunities to refugees by issuing them with work permits and allowing them to formalise their existing businesses. The Jordan Compact emphasises the need to turn “the Syrian refugee crisis into a development opportunity that attracts new investments [...]. The Government of Jordan is committed to improving the business and investment environment and is taking forward a detailed plan on what measures, changes to regulation, structural reforms and incentives can be offered to domestic and international businesses” (Government of Jordan, 2016).

An important element of the compact is to facilitate access to European markets. The European Union (EU) allowed a temporary relaxation of its Rules of Origin for products in 52 industrial categories manufactured with a 15% percentage contribution by Syrian refugee labour. Jordan and the EU work together on implementing this scheme, especially promoting the advantages of this initiative among potential European and international investors. The initiative was designed to last ten years, with a mid-term revision to allow the parties to make adjustments in light of experience (EU, 2016). Another component is to promote the development of five special economic zones which would benefit from specific incentives to create jobs.

One year later, the Brussels conference “Supporting the Future of Syria and the Region” (4-5 April 2017), aimed to assess progress towards these commitments, allowing recognition for results achieved in Jordan. It reported that several measures have been implemented to create economic opportunities for Syrian refugees and host communities. Six factories have obtained authorisation under the relaxed Rules of Origin regime; four employment centres have been created across the country, issuing 45 000 work permits for Syrian refugees; and vocational skills programmes have been provided to 2 600 people. According to a recent report by the International Rescue Committee, the Jordan Compact provides an “innovative and meaningful way for the Government of Jordan and development actors to generate an agreed pathway for job creation”. However “so far its implementation has not matched its potential” (IRC, 2017).

The impact of the crisis has underlined the structural challenges that were already impeding Jordan from achieving its development goals, including fiscal and external vulnerability, high unemployment rates, low female economic participation and a large informal labour sector. Unemployment, especially among youth and graduates, is a persistent problem in the country, with rates reaching an “unprecedented” level of 18% in the first quarter of 2017.¹ Jordan also remains highly dependent on foreign aid, grants and remittances from the Arabian Gulf. Another major challenge facing Jordan is the continued pressure on natural resources, particularly the problem of water scarcity.

¹ Latest figures from the Jordanian Department of Statistics (DoS) (<http://dosweb.dos.gov.jo/>).

Even so, in this regional environment marked by successive crises, Jordan's economy has remained relatively resilient. The government has adopted an important reform agenda that has helped to narrow its fiscal and current account deficits, strengthen international reserves and ensure that the macroeconomic situation remains relatively stable (IMF, 2015). Some sectors, including financial services, have proven to be particularly resilient (Economist Intelligence Unit, 2016). Economic growth is expected to marginally improve over 2017-2019, anticipating improvements in tourism, exports, and the impact of investment climate reforms (World Bank, 2017a).

In 2016, Jordan entered into a three-year arrangement with the International Monetary Fund (IMF) under its Extended Fund Facility (EFF) to support the country's economic and financial reform programme. Jordan will receive USD 723 million for the period 2016-19, which may be increased to USD 900 million. This IMF programme requires an important fiscal consolidation effort and a rigid monetary policy to lower public debt and support broad structural reforms to enhance the conditions for more inclusive growth. In parallel, Jordan also benefited from a three-year USD 300 million loan agreement with the World Bank in 2016, in the context of the World Bank's Country Partnership Framework Agreement for Jordan for 2017-22 (World Bank Group, 2016b).

1.2. Evolution of FDI in Jordan

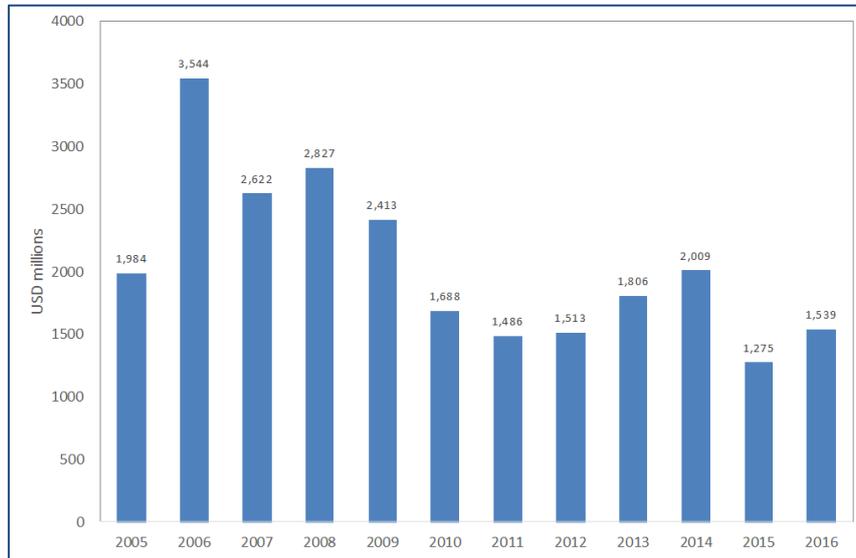
From 2001 to 2008, foreign direct investment (FDI) inflows reached particularly high levels in Jordan, as a result of its economic modernisation and openness. A programme of privatisation launched in the mid-1990s has been a major attractor of foreign investors into Jordan. The initial economic integration seen at the regional and global level has also helped to accelerate economic growth and attract a few foreign investors who are particularly interested in the benefits brought by the international agreements signed by Jordan in the late 1990s and early 2000s (OECD, 2012). Levels of FDI increased consistently in this period, albeit with some yearly fluctuations, peaking at USD 3.5 billion in 2006, equivalent to 23.5% of GDP (Figure 1.4). In comparison to other oil-importing MENA countries, Jordan has performed relatively well in attracting FDI during the 2000s, benefiting strongly from its links with Gulf Co-operation Council (GCC) countries. The preferential US market access given to Jordanian exports under the Qualifying Industrial Zones also led to a significant increase of FDI in the garment industry up to the mid-2000s.

Yet, as with most other developing economies, levels of FDI declined in the aftermath of the global financial crisis. Between 2008 and 2011, the deceleration of global markets, especially of the EU – the region's main economic partner – contributed to a drop of FDI inflows to the country, and to the MENA region in general. They subsequently hit an all-time low in 2011 following the political upheavals in several countries of the region. These events have had a negative spillover effect on the investment attractiveness of the entire region, with some investors suspending their operations, downscaling their commitments or withdrawing their investments altogether in some countries (OECD, 2014).

In 2014, FDI inflows recovered slightly in Jordan, but decreased again in 2015 due to the persistence of political and macroeconomic instability in the region and the far-reaching consequences of Syrian crisis. In addition, the country suffered from the impact of low oil prices on inward investment from traditional Gulf investors. In 2015, inflows dropped to USD 1.27 billion, their lowest level in a decade. The reduced confidence of foreign investors in the region and, to some extent in Jordan, in spite of its positive real GDP growth in recent periods (IMF, 2015), is particularly reflected in the declining stock of FDI as a

percentage of GDP in Jordan. However, a slight rebound in FDI inflows to Jordan has been observed in 2016 (Figure 1.4).

Figure 1.4. Jordan FDI inflows, 2005–2016

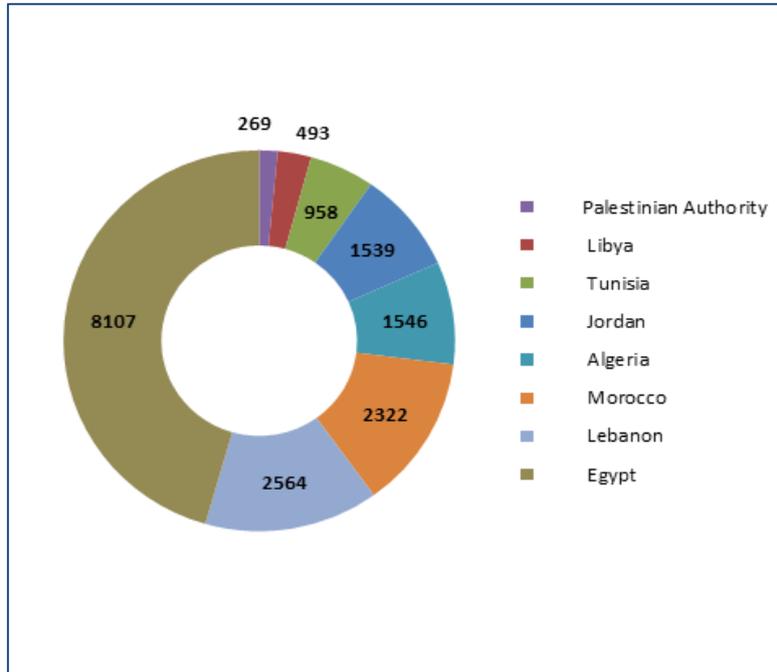


Source: OECD Foreign Direct Investment statistics database, IMF Balance of Payments database, and OECD staff calculations

Nevertheless, FDI inflows have remained relatively high in comparison with the average for MENA economies (Figure 1.5). At 3.4% of Jordan's GDP, they remained considerably higher than the average for the MENA region (1.6%) (Figure 1.6).

Figure 1.5. Jordan’s FDI inflows compared to other MENA economies, 2016

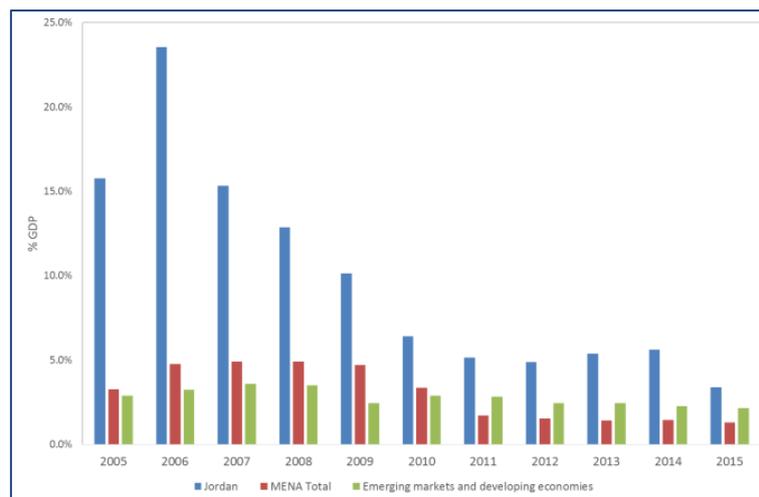
Million US dollars at current prices



Source: UNCTAD (2017a), *World Investment Report 2017 Foreign direct investment flows and stock (database)*, http://unctadstat.unctad.org/wds/ReportFolders/reportFolders.aspx?sCS_ChosenLang=en.

Figure 1.6. Jordan’s FDI inflows in the regional and global context, 2005-2015

% GDP



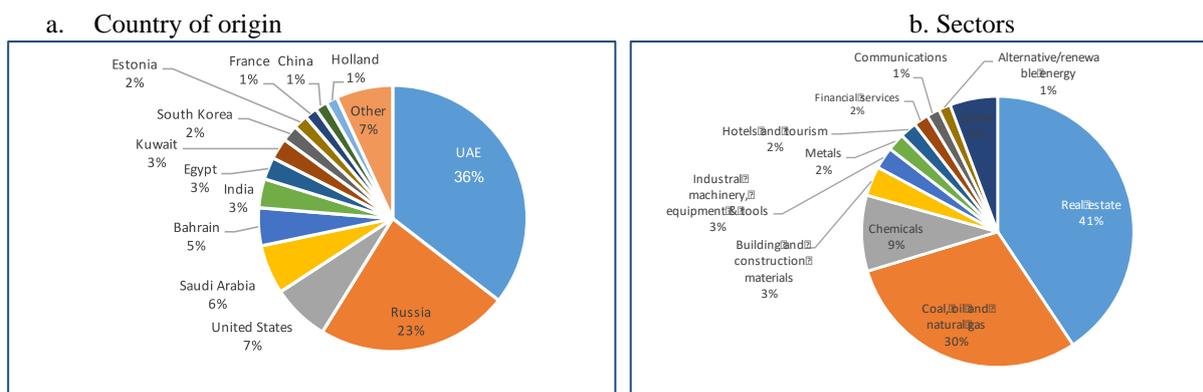
Source: OECD calculations based on OECD Foreign Direct Investment statistics database and IMF Balance of Payments database

The quality of investment has also been an issue. Jordan has been unsuccessful in receiving sufficient investment of the right quality in its productive sectors. In recent years investment into Jordan has been largely market and asset-seeking in non-productive sectors dominated by financial services, retail and real estate. This type of investment has not sufficiently contributed to the technological spillovers needed for the higher value-added production of goods and services and associated employment.

In terms of greenfield FDI investment, large fluctuations have been observed in recent years. Following their two mega-projects,² the United Arab Emirates and Russia are the top sources in Jordan, accounting for 36% and 23% of its greenfield FDI respectively (Figure 1.7). Jordan's major investors also include Saudi Arabia, Kuwait, and the United States. Overall, investors from the GCC account for a dominant 50% of total greenfield FDI in Jordan (Ruadel and Morrison-Métois, 2017).

In terms of leading sectors, real estate (41%) and energy (30%) attract the most of greenfield FDI.

Figure 1.7. Distribution of greenfield FDI in Jordan, 2003-2015



Source: The Arab Investment and Export Credit Guarantee Corporation and fDi Markets.

Furthermore, Jordan has recently been successful in attracting foreign investment to the electricity sector, particularly in renewable power generation. Investment in solar and wind power has significantly increased in Jordan since 2013³ (OECD, 2016).

More private investment is needed, however, including international investment. In order to increase FDI flows into the country, the government has planned large-scale infrastructure projects (water, transportation, nuclear energy) which will rely on private sector funding. Reduced reliance on imported oil and gas is another key policy goal, to be achieved through greater exploration of hydrocarbons and energy diversification towards shale oil, nuclear power and renewable energy, particularly solar power. Jordan also seeks

² In 2008, Al Maabar International, an Abu Dhabi-based company, realised a USD 10 billion investment in a massive real estate development in Aqaba on the Red Sea. In 2013, the Jordan Atomic Energy Commission (JAEC) announced an agreement with Russian state-owned nuclear power company, Rosatom, to supply and operate a nuclear power station at a cost of USD 10 billion.

³ Between 2013 and 2016, a total of nearly USD 1.4 billion was invested in over 500 MW of renewable energy generation capacity, including 12 solar power projects and three wind power projects. Foreign investors contributed the majority of this investment.

to improve its water supply (water deals were signed with Saudi Arabia and Israel in 2015) and increase the housing stock.

Jordan also needs to focus on attracting investments that will yield domestic economic activities which add value, increase the quality of Jordanian goods and services, transfer knowledge and strengthen connections with existing economic sectors and clusters. The right type of investment in productive sectors would also bring new technologies and processes that could be transferred to locally hired staff and domestic firms. New investors and more competitive and innovative companies would create more high-quality jobs for the local labour force and help to improve living conditions.

To better mobilise the potential of private sector investment, it is crucial to strengthen the investment policy framework, improve the conditions for foreign and domestic investment and create a level playing field for all investors. Better investment policies can substantially facilitate and attract more foreign and local investment for fostering growth and creating jobs.

1.3. Strengthening the investment framework to maintain investor confidence and revive investment

Over the last decade, Jordan has shown strong commitment to reforms to promote the development of the private sector and increase the country's competitiveness.

In 2009, Jordan released the 2020 National Investment Strategy (NIS), designed as the key vehicle to achieve the country's goals for creating a favourable environment for foreign and domestic investment. It focused on three priorities – easing the path for investors, building a base of core competencies, and targeting the long-run success of high-performance investments – with a view to providing local income-generating opportunities and improving the quality of life for all Jordanians.⁴ In 2015, the Government of Jordan published its ten-year economic and social blueprint: “Jordan 2025: A national vision and strategy” (Government of Jordan, 2015). The document sets out goals for economic development and competitiveness, governance and the environment in order to tackle persistent issues of poverty, unemployment and fiscal deficit. It represents a long-term national vision, which includes more than 400 policies or procedures that should be implemented by 2025 through a participatory approach between the government, business sector and civil society.

Furthermore, the government recently adopted the five-year Jordan Economic Growth Plan (JEGP) to be implemented by the Economic Policies Council (2018-2022). This plan includes a set of economic reforms to relaunch Jordan's growth and address the main economic, political and social challenges the country is facing. It covers four main areas: 1) economic stability through financial policies; 2) competitiveness and investment through investment policies, ICT and public sector development; 3) infrastructure, including water, energy, and transport; and 4) social development. “Promoting and stimulating the business and investment environment, increasing its competitiveness and maximizing investment opportunities” are identified as key objectives of the strategy (Government of Jordan, 2018). The document highlights the importance of enhancing the doing-business

⁴ See Ministry of Planning and International Cooperation website, <http://inform.gov.jo/en-us/By-Date/Report-Details/ArticleID/52>.

environment to attract and retain investment, and recalls the measures that have been taken in that regard. It announces further reforms to upgrade the investment legislation, such as new bankruptcy and insolvency laws and company law, and the setting up of specialised chambers for economic cases.

Alongside macroeconomic measures, and as part of this comprehensive policy to strengthen economic growth and employment generation, the government has taken further steps to improve the regulatory environment for investment, with a view to restoring investors' confidence. The authorities recognised that the investment legal framework needed to be clarified and unified, and acknowledged the need to improve the conditions for foreign and domestic investment, including better investor protection and regulations.

Prior to the adoption of the 2014 Investment Law (described below), Jordan's investment legal regime suffered from deficiencies in terms of legal coherence, transparency and predictability for investors, with a corpus of laws which were not easily accessible, sometimes overlapping and sometimes temporary. One major issue was the serious legal loophole caused by the lack of applicable implementing regulations and the delay in repealing obsolete regulations.

In addition, Jordan applied a large number of restrictions on foreign investment and limitations on foreign ownership, which were significantly above the average for those countries adhering to the OECD Declaration on International Investment (OECD, 2012). Jordan's investment framework suffered from other drawbacks too, including an emphasis on providing fiscal and financial incentives, which have failed to achieve Jordan's national priorities in terms of human development, job creation, regional development and the promotion of value-added industries (OECD and World Bank, 2014). Other disadvantages were the complex and time-consuming procedures facing potential investors governed by multiple entities which retained broad discretionary powers. All these elements constituted important barriers to investment.

The main constraint to private sector growth is a business environment characterised by complexity, uncertainty, and the unequal treatment of investors. Investors look for transparency and legal predictability in areas such as entry regulations, investor guarantees, and administrative and legal procedures; as well as legal coherence among all regulations composing the investment framework. Sound domestic investment regulations, together with international investment instruments, can reassure foreign investors that basic rights, protection and administrative treatment are in line with international standards (OECD, 2015).

Thus, despite the security and political challenges in the region, establishing a sound and conducive business climate for investors is a priority for Jordan. The regulatory environment has a direct impact on investment, growth and jobs. To trigger investment, the regulatory framework, which includes both the national legal framework of the host country and the international legal framework (consisting of international treaties), needs to be clear and coherent, open to foreign direct investment and provide for effective investment protection standards and legal stability.

In this regard, adopting a modern and sound investment law can help increase legal security and transparency by clearly providing the entry requirements for foreign investors, as well as their rights, guarantees and obligations when operating within the host country. The establishment of a stable and consistent legal framework is in itself an incentive and a signal to investors (World Bank, 2010). For these reasons an improved regulatory framework will have a significantly positive impact on the investment climate.

In October 2014, Jordan enacted a unified Investment Law (Law No. 30 of 2014) after several years of consultations. It also restructured the institutional investment framework, establishing the Jordan Investment Commission.

The 2014 Investment Law aimed at improving the investment environment in Jordan and reducing key barriers to investment – both foreign and domestic. It marked a welcome step towards creating a sound investment policy and an enabling investment climate and was an integral part of the country’s overall economic reform, in line with the *Jordan 2025 Vision*, which was in its final conception stages at the time of the adoption of the law.

Several by-laws to support the implementation of the law have since been adopted, in particular Regulation No. 32 of 2015 on the Investment Window, and Regulation No. 77 of 2016 governing non-Jordanian investment, which addresses the issue of restrictions to foreign investment and includes important liberalising changes in comparison to previous legislation.

Other major affiliated legislative reforms have included the adoption of a new income tax law (Law No.34 of 2014), a public-private partnership law (Law No 31 of 2014), and later on the enactment of the Integrity and Anti-Corruption Commission (Law No. 13 of 2016). Jordan has also put in place a robust legal framework for investment in the renewable energy sector, with the enactment of a Renewable Energy and Energy Efficiency Law in 2012 and the introduction of strong incentives and tax exemptions for renewable energy systems and equipment (OECD, 2016).

Despite these positive steps, Jordan still faces numerous challenges in attracting investment and making it easy for new businesses to become established. Further progress is needed to ensure a sound regulatory framework that will have a real impact on the investment climate and on the country’s attractiveness as an investment destination. The country ranks 103 out of 190 economies globally in the 2018 *Doing Business* report (World Bank Group, 2017). At the regional level, it ranks 10th, coming after the UAE, Bahrain, Morocco, and Tunisia, Saudi Arabia and Kuwait. However, it does perform better than a number of economies, including the Palestinian Authority, Egypt, Lebanon and Algeria. However, Jordan’s rank has improved, rising to 103 in 2017 from 118 in 2016, in particular due to easier access to credit through the establishment of the country’s first Credit Information Bureau. The Ease of Doing Business Indicator in Jordan averaged 108 from 2008 until 2017.

Nonetheless, all the regulatory reforms undertaken in recent years demonstrate strong political will to create a better business and investment climate by enhancing the legal and institutional investment framework, and improving legal coherence. More importantly, they contribute to a global and long-term strategy designed for achieving higher growth and helping the country meet its potential for development.

1.4. Implementing the Jordan Investment and Competitiveness Project

Jordan is fully involved in multilateral co-operation and adopts a multilateral approach to economic reform, taking into account international good practices and standards, and benefiting from peer-learning and exchange of experiences. The country works closely with international and regional organisations, including the OECD, the World Bank and the

European Union, in implementing its reforms. Jordan is also a key player in the G8 Deauville Partnership⁵, under which this project took place.

In 2014, as the investment law reform was being discussed and adopted, the Government of Jordan called for support for implementing its investment reform.

In response, the three-year MENA Transition Fund Jordan Investment and Competitiveness Project (2014-2017), implemented jointly by the OECD and the World Bank, was launched to support the authorities in implementing the new legal and institutional framework for investment, while paving the way for the strategic steering of the reform thereafter.

The project has worked closely with the investment institutions – the Jordan Investment Commission, the Ministry of Trade and Industry, and the Ministry of Planning and International Cooperation – to improve the investment climate and overall business environment with a view to generating growth and jobs.

The project is a continuation of longstanding co-operation on investment climate reforms between Jordan and the OECD. Since 2005, the OECD has continuously supported Jordan in its efforts to mobilise investment and promote private sector development reforms for inclusive growth and job creation. This has mainly occurred through the MENA-OECD Initiative on Governance and Competitiveness for Development. Jordan was the first co-chair of the initiative, which promotes broad reforms to enhance the investment climate, modernise governance structures and operations, and promote sustainable economic growth throughout the MENA region, and has been actively engaged in the regional activities of the initiative since its inception. Jordan is also the current co-chair of the regional Working Group on Investment and Trade of the MENA-OECD Competitiveness Programme and plays a leading role in this regional platform, which supports the efforts of the MENA countries in reforming their investment and trade policy frameworks.

On a bilateral level, prior to the implementation of this project, the OECD had already conducted a number of analytical reviews of the investment climate and sector performance in order to inform the reform process in Jordan, including the OECD Investment Policy Review of Jordan (OECD, 2013), which supports the country's adherence to the OECD Declaration on International Investment and Multinational Enterprises. On 24 November 2013, Jordan became the 46th country to adhere to the OECD Declaration on International Investment and Multinational Enterprises and has since participated in the work of the OECD Investment Committee, as well as of the Freedom of Investment Roundtable.

Now that this project has ended, the new EU-OECD Regional Programme on Promoting Investment in the Mediterranean, launched in 2016 in Tunis, will continue the support to Jordan's efforts in its investment policy reforms. The programme aims to support the implementation of sound investment policies and effective institutions in the Southern Mediterranean region. The OECD also works with regional and international partners to strengthen resilience and stability in fragile context, and will continue supporting investment and inclusive growth in Jordan.

1.4.1. The project's activities and outcomes

Through the Jordan Investment and Competitiveness Project, the OECD has offered tailored reform implementation assistance to enable the Government of Jordan to develop

⁵ <https://www.menatransitionfund.org/overview>

investment rules and institutions according to best practices, and benefit from international experiences to build local capacity. Over the three years of the project (2014-2017), the OECD provided specific technical assistance and policy advice and conducted a series of capacity-building workshops focusing on the improvement of the domestic and the international legal frameworks, both of which play a role in the investment process (see Annex A for a detailed timeline of the OECD's activities during the project):

- 1) At a national level, OECD support centred on two main aspects of the investment legislation: (a) **investment protection standards**, including providing a clear definition of foreign versus domestic investment in the law; and (b) **regulatory restrictions to foreign direct investment**. The rules and regulations pertaining to the entry and operations of foreign investors were identified as a key element of an enabling environment for investment.
- 2) At an international level, OECD support focused on Jordan's international investment policy and ways to modernise Jordan's approach to **investment treaties and investment dispute settlement mechanisms**. While the substantive provisions of investment treaties protect covered investors against government misconduct, such as expropriation without compensation or discrimination, investment dispute settlement mechanisms allow investors to bring claims against the government. Both substantive provisions of investment treaties and their dispute mechanisms are therefore key elements of investment policy.

Concrete outcomes of this work include:

- **Recommendations to improve and strengthen the legal investment reform, in particular its protection provisions, and ensure proper implementation over time.** These were developed through a general assessment of the 2014 Investment Law and capacity building for targeted Jordanian officials. Technical assistance was provided to aid the drafting of a new, clarified definition of the nationality of investors, in order to determine the scope of FDI restrictions. The new definition was subsequently adopted in the implementing regulation (Regulation No. 77 of 2016), which also includes a new list of restricted sectors.
- **Increased awareness of the reformed investment legal regime, through improving communication** and conducting several activities to disseminate its contents **among various stakeholders** (government officials, private sector representatives, the business community). Activities included organising an important conference on recent investment reforms and the remaining challenges for creating an enabling regulatory framework to boost Jordan's competitiveness as an investment destination.
- **The adoption of Regulation No. 77 of 2016 on non-Jordanian investments.** This **lifted some of the FDI restrictions** that the OECD had identified as hindering the overall investment climate, and **reinforced legal predictability** by introducing a definition of foreign investment following OECD guidance. The OECD provided advice and organised a capacity-building workshop on the content and drafting of Regulation No.77 governing FDI restrictions, helping to ensure it was in line with Jordan's development objectives and investment strategies. Thanks to this new regulation, the OECD has updated Jordan's ranking in the OECD FDI Regulatory Restrictiveness Index.

- **Recommendations on modernising Jordan’s international investment policy and support to develop future negotiation strategy and skills.** This involved policy analysis of Jordan’s investment treaties, including Investment State Dispute Settlement (ISDS) provisions, and capacity building for Jordanian policy makers. The OECD conducted a technical workshop on International Investment Agreements (IIA) substantive provision and negotiation which included a strong peer-learning dimension. It also held a workshop on dispute prevention policies so as to foster the expertise and knowledge of Jordanian policy makers and treaty negotiators.
- **Raising awareness of the Responsible Business Conduct (RBC) standards and providing ideas for how the government can improve the behaviour of enterprises through a capacity-building seminar on RBC for stakeholders from the private sector, NGOs, civil society and relevant governmental agencies.** The project also helped Jordan establish a National Contact Point (NCP) in charge of implementing and promoting the OECD’s RBC principles. Establishing the NCP was an international obligation for Jordan following its adherence to the OECD Declaration on Multinational and Enterprises in 2013. Capacity-building, awareness-raising and peer-learning activities were held to guide the Jordanian authorities through the process of setting up the NCP institution.
- **Improving reform co-ordination and institutional co-operation among the relevant authorities, as well as enabling the private sector to be strongly engaged in the reform process.** This was achieved by encouraging regular public-private dialogue so as to reduce the likelihood of the reforms not being implemented.

The project thus helped to strengthen the investment regulatory framework and to improve Jordan’s investment climate, in collaboration with all the key stakeholders. This should help Jordan attract higher quality domestic and foreign direct investment for greater growth and job creation.

1.4.2. Key challenges and lessons learned

A sound, transparent and predictable legal framework regulating and protecting investment is instrumental for fostering investment, especially in Jordan’s challenging environment, marked by political and economic instability.

A comprehensive and modernised investment law can help to attract high-quality investment, and can serve as a communication tool for potential investors. However, a unified legislation and a rationalised institutional framework, as in Jordan, does not in itself ensure an enabling legal landscape for attracting and retaining inclusive investment.

The experience of working in Jordan has identified additional key challenges and important factors for the successful implementation of reforms, and in particular the specific legislative reforms for investment. These are listed below, and summarised in Box 1.2 (they are also reflected in the OECD principles):

- **There needs to be political commitment to reform:** A high level of political commitment is needed to sustain the regulatory reform processes (OECD, 2010). Every reform requires sustained support from top-level decision makers and buy-in from the participating public authorities. From a concrete point of view, this also

implies **stability and continuity** within the authorities in charge of implementing reforms.

During the project, the Jordanian authorities conveyed strong political will to boost investment in the country, to strengthen the investment framework in line with international best practices and to overcome the challenges and difficulties faced by investors. In addition, despite some turnover in the Jordan Investment Commission at director level, the stability of staff in charge of implementing the legal reform helped to ensure the effective and continued implementation of the project.

- **Institutional co-ordination is needed** among the institutions involved in investment policies: strengthening the co-ordination mechanisms among officials in the various ministries and institutions involved in investment policy is critical for the sound implementation of investment legal reforms which concern multiple governmental actors.

While the Jordan Investment Commission is the leading agency in charge of investment policy and strategies, other institutions and ministries are also involved in the reform process and implementing these regulations, ranging from the Ministry of Trade and Industry to the Ministry of Justice. The project's various workshops and consultations on law reform brought together implementation policy makers from different ministries and government agencies (Jordan Investment Commission; Ministry of Planning and International Co-operation, Ministry of Trade, Industry and Supply; and the Ministry of Foreign Affairs) and encouraged greater co-ordination and sharing of information among them.

- **Many stakeholders need to be engaged in the reform process and its implementation, especially the private sector:** A key challenge is to engage all stakeholders – not only those from the government, but also from the private sector, the business community including multinational enterprises, and civil society. Stakeholder engagement is a central and fundamental pillar of regulatory policy (OECD, 2015).

Seminars organised by the OECD throughout the project were a venue for public-private dialogue, allowing government officials and private sector representatives to exchange views on the implementation and challenges of the reform.

However the project found that the reform process could include **more systematic and earlier consultation of the private sector**, and that the government needed a better understanding of the role of the private sector in policy advocacy. The private sector also needs to be involved in negotiating international investment and trade agreements. Considering the variety of private sector stakeholders in Jordan, the private sector is encouraged to be represented by one body in order to speak with one voice and make itself heard.

- **The people in charge of implementing legal reforms need the right skills.** Another fundamental challenge in implementing legislative reforms relates to the capacity of administrations, which may lack enough skilled personnel and human resources. There is a need to enhance technical expertise through training and capacity-building activities. A lack of financial resources also has a direct impact on the capacity of administrations.

- **The quality and timeliness of implementing regulations are critical** to the success of legal reforms, as was demonstrated in Jordan. From a general perspective, a law and its by-laws form a unique legislative block which must be implemented and issued in a coherent manner. Implementing regulations provide an opportunity to complement the provisions contained in the law. However, for the sake of transparency and predictability, implementing regulations should be issued without delay, and then be made easily accessible to the public and to economic operators.

The Jordanian Government took advantage of the opportunity to further fine-tune and improve the investment regime. Some loopholes in the 2014 Investment Law reforms have been removed by implementing Regulation 77 of 2016 on Non-Jordanian Investments.

- **Coherence and consistency are needed in investment legislation.** Coherence across the different levels – domestic and international – of investment regulation is key. Foreign investors will look both at the domestic and the international investment legal frameworks before making a decision to invest. Efforts towards FDI liberalisation and promotion at the domestic level need to be complemented by efforts at the bilateral, regional and multilateral levels. Besides, the protection provisions contained in the domestic Investment Law should be aligned and consistent with those contained in Jordan’s international treaties.
- **A holistic approach to the investment legal framework is important.** In order to attract investors and investment, a whole-of-government approach to investment and a coherent investment policy are needed. This implies also modernising and reforming the general framework for doing business as investment-related laws (notably on trade, business and competition) have a direct impact on investment. Thus, in their efforts to strengthen the protection dimension of laws and regulations pertaining to investment, governments might need to engage in an informed revision of the broader legal regime governing business activities, so as to improve transparency, predictability and openness.

**Box 1.2. Challenges and factors for successful investment legal reforms –
Key take-aways**

The following key elements are required to ensure the success of legislative reforms:

- Political commitment to reform
- Mobilisation and co-operation of all stakeholders
- Systematic and early consultation of the private sector in the reform process
- High-quality implementing regulations
- Capacity of people in charge of implementing reforms
- Accountability and transparency
- Coherence and consistency in the different layers of investment rules and regulations
- A holistic approach to investment and business legislation

The remainder of this report describes: (i) the reformed investment legal regime, the innovations brought by the 2014 Investment Law and the areas for improvement, with a particular focus on provisions to protect investors (**Chapter 2**); (ii) the revision of the FDI restrictions regime resulting from the 2016 Regulation on Non-Jordanian investments adopted during the project following OECD policy advice (**Chapter 3**); and (iii) the Jordanian international investment framework, and an outline of the policy options for improving the country's investment treaty policy (**Chapter 4**).

The report aims to support the authorities' continued efforts to reform Jordan's investment climate by reviewing the achievements already realised, and identifying the remaining challenges and future steps to build a sound investment framework to attract more and better investment. Another major objective is to build awareness amongst local and international stakeholders, including high-level policymakers and donors, on the important investment reforms undertaken by Jordan's government, despite its challenging environment.

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2. Reforming the investment legal regime while protecting investors

Key takeaways

- *Jordan's investment framework is now supported by modern legislation: the 2014 Investment Law.*
- *The new law sets the foundations for a streamlined, stronger and more transparent institutional and legal framework for both foreign and domestic investment. In particular, it has created a unique investment promotion agency, the Jordan Investment Commission.*
- *The 2014 law contains the basic provisions for protecting investors.*
- *Further efforts might be needed to maximise the positive impact of the reform.*
- *Investment incentives are still too widespread – Jordan could monitor the composition and generosity of its incentive regimes to understand which have the greatest economic and social benefits. It should adopt a cautious approach towards the expansion of Economic Zones.*
- *An investment guide to the relevant laws and regulations in force would be useful for clarification and promotion purposes.*
- *Jordan should consider clarifying dispute prevention policies and mechanisms.*

2.1. Introduction

A fair, transparent, clear and predictable legal and regulatory framework for investment is a critical determinant of investment decisions and their contribution to development. Uncertainty surrounding legal rights and obligations raises risks for investors, thereby affecting their cost of capital and reducing investment opportunities. It is particularly important for foreign investors, who may have to function with regulatory systems, cultures and administrative frameworks which are very different from their own (OECD, 2015).

In addition, the way that investment policy is developed and translated into legislation is a key consideration when it comes to investment decisions. Investors will avoid or withdraw from investment destinations where policies are modified at short notice, and where laws, regulations and procedures are not clear, readily available or predictable.

Investment policy is sometimes embodied in a stand-alone investment law, although this is neither a guarantee of, nor a prerequisite for, a sound investment policy framework. The investment law may cover both foreign and domestic investors, or there may be separate laws for each. While there is no absolute need for a separate investment law – investment issues can be embodied in other legislation (e.g., the Constitution, laws regulating the behaviour of companies or sector-specific legislation) – an all-encompassing investment law may add transparency to the investment regime. It may also help promote investment by signalling to investors that a number of protection guarantees are assured by the government and that the country is thus a safe investment destination. While a specific

investment law can add clarity on investment protection and market opportunities, it can also create uncertainty if it is inconsistent with other laws.

In October 2014, after several years of consultation, Jordan enacted a unified investment law (Law No. 30 of 2014), which aimed to set the foundations for a streamlined, strengthened and more transparent institutional and legal framework for both foreign and domestic investment. This reform sent a positive signal that the government was willing to clarify the existing regulatory framework by bringing all investment-related laws and regulations under the umbrella of this new piece of legislation, which covers both domestic and foreign investments. The 2014 Investment Law provides for a rationalised institutional framework for investment, merging existing institutions involved in investment protection into one umbrella body – the Investment Commission – and establishing a one-stop-shop investment window within the commission, with authority to grant licenses. It contains lengthy provisions on incentives and advantages, as well as a chapter entitled “General Provisions” which provides for investment protection and guarantees (although it is not very detailed, as discussed below).

The core message to investors is that Jordan’s investment framework is supported by modern legislation. The 2014 Investment Law is thus an integral part of the country’s overall efforts to attract investment, and has been followed by a number of additional economic reforms.

As a first substantive output of the project, the OECD conducted a general analysis of the 2014 Investment Law reform with a focus on its protection provisions. This analysis, which was discussed with Jordanian stakeholders during a technical workshop organised in March 2015 in Amman, aimed to assist the Government of Jordan in implementing the reform, disseminate the contents of the law and build awareness among various stakeholders. The workshop resulted in recommendations to improve and strengthen the legal investment reforms over time. Based on these recommendations, certain clarifications and adjustments have been introduced in the regulations implementing the law, as explained below.

Building on this work and on further analysis, this chapter presents the main features and improvements of the 2014 Investment Law. It also assesses the investment guarantees and protections provided in the law, based on a comparison with international good practices and OECD standards. It identifies possible gaps in the law and provides policy options for optimising its implementation and further strengthening the legal and regulatory environment in Jordan.

2.2. Key features of the reformed investment legal regime

2.2.1. A unified corpus of rules governing investment

One of the announced goals of the 2014 Investment Law was to further clarify and unify the legal investment regime – something that had repeatedly been called for by many stakeholders before its adoption. The law created a unified corpus of rules, assembling the main provisions governing foreign and domestic investment, and repealed parts of the previous fragmented legislation.

Prior to the enactment of the 2014 Investment Law, the legal investment regime was quite complex, composed of several laws and regulations related to investment, not all of which were easily accessible, while some were temporary and overlapping (Box 2.1). This rather

complex and confusing regime was a significant impediment to the transparency and predictability which are essential for an enabling investment climate.

Box 2.1. Jordan's investment legal regime prior to the unified 2014 Investment Law

Prior to the 2014 Investment Law, Jordan's legal investment was concurrently governed by:

- the interim Investment Law No. 68 of 2003, which contains general provisions for treating and protecting investment and describes procedures to benefit from incentives and obtain licences
- the provisions on sectors, incentives and exemptions of the Investment Promotion Law No. 16 of 1995 (all the other provisions of this law having been repealed by the law No. 68 of 2003)
- Regulation No. 54 of 2000, which lists the sectors that are restricted to foreign investment and which was subsequently repealed by Regulation No. 77 of 2016 governing non-Jordanian investment
- The interim Law No. 67 of 2003, which deals with the organisation of the Jordan Investment Board, the former agency in charge of investment policy and promotion
- The Development Areas and Free Zones Law No. 2 of 2008.

The co-existence of the 2003 temporary laws and Law No. 16 of 1995, alongside other related regulations, resulted in legal loopholes and inconsistencies in the institutional and legal landscape for investment.

The 2014 Investment Law assembled the provisions contained in the various regulations, and repealed these existing laws. It is applicable to Jordan as a whole.⁶

The law covers a wide spectrum of issues. It starts with a definitional section (Articles 1 and 2) and then addresses the following subjects:

- Incentives and privileges outside and within the Development Zones and Free Zones (respectively Chapter 1 and 2)
- Establishment of the one-stop shop investment window and licensing rules (Chapter 3, Articles 15-18)
- Establishment of an Investment Council and an Investment Commission (Chapter 4, Articles 19-27)
- Regulatory framework for the Development Areas and Free Zones (Chapter 5, Articles 28-40)
- General provisions (Chapter 5), including investors' protections and guarantees (Articles 41-44).

⁶ The only exclusion to the scope of the 2014 Investment Law is the Aqaba Special Economic Zone (ASEZ), governed by distinct legislation, mainly ASEZ Law No. 32 of 2000.

More than 20 by-laws to support the implementation of the reform have since been adopted (Box 2.2), in particular Regulation 77 of 2016 on non-Jordanian investors, which lifts some restrictions on the sectors and activities open to foreign investors, taking into account OECD recommendations provided within the course of the project. These are further described below.

Box 2.2. By-laws adopted to implement the 2014 Investment Law

The following regulations have been adopted in the wake of the 2014 Investment Law reform:

- Income tax in the Development Zones No. 125 of 2016
- Recovery of Land in Development and Free Zones No. 92 of 2016
- Residence and Labor Regulations in Development and Free Zones No. 80 of 2016
- Non-Jordanian Investments No.77 of 2016
- Income Tax Reduction in Less Developed Regions No. 44 of 2016
- Establishment of Development and Free Zones No. 31 of 2016
- Organisation of customs procedures in the Development Zones No. 12 of 2016
- Investment Climate and registration of enterprises in the Development Zones and Free Zones No. 129 of 2015
- Sales tax in the Development and Free Zones No. 120 of 2015
- Works and Procurement Regulation No. 110 of 2015
- The financial system of the Investment Commission of 2015
- Works and supplies system of the Investment Commission of 2015
- Administrative organisation system of the Investment Commission No. 31 of 2015
- Investment incentives system No. 33 of 2015
- Investment window system No. 32 of 2015
- Organisation of the investment environment recording system and institutions in the development of free zones of 2015

The establishment of a unified piece of legislation is a laudable step towards further rationalising the legal environment for investment. However, gathering the institutional framework, the incentives regime, the regime for special zones and the general protection provisions within a single law may water down the core provisions for investor protection. As stated earlier, the law covers a wide spectrum of issues and focuses on the institutional infrastructure and the incentives. The risk therefore is that the unified legal regime overlooks the importance of its protection dimension and of standards of treatment, which are essential elements of sound investment legislation.

Moreover, further efforts might be needed to maximise, over time, the positive impact of the reform. It addresses a wide range of issues and has been followed by a substantial number of implementing regulations as listed above. It therefore remains a fairly complex piece of legislation which may lack clarity and accessibility for investors.

For clarification and promotion purposes, Jordan's authorities may consider drafting a compendium of the relevant laws and regulations in force, in the form of an investment guide. This would provide exhaustive, clear and easily accessible information, including investment protections. It could gather in a single document, with no legal value in itself, the law's relevant provisions and its subsequent regulations, as well as, if applicable, the relevant Licensing Manual to be prepared by the Commission in accordance with Article 17.

2.2.2. A clarified yet extensive investment incentives regime

The primary focus of the 2014 Investment Law is to provide investors with an extensive and clear incentives regime, the practical modalities of which have since been determined by implementing regulations.

Prior to the enactment of the law, investment incentives were governed by several provisions contained in different laws, which resulted in a rather confusing incentives regime. Under the former regime, the incentives provisions in the 1995 Investment Promotion Law were still in force, whereas all the other provisions of this law had been repealed and replaced by the 2003 Investment Law. The 1995 law specified the sectors and zones benefitting from exemptions and defined the existing categories of incentives. Yet, the 2003 temporary investment law also partially dealt with incentives and replicated some of the provisions of the 1995 Investment Law. Meanwhile the Development Zones and Free Zones Law No. 2 of 2008 also provided new incentives.

The 2014 Investment Law, completed by Regulation No. 33 of 2015, clarified the incentives regime, so as to give more predictability to investors. It focused on revamping the provisions governing Jordan's Development Areas and Free Zones, along with the accompanying incentives, and contains three series of detailed tax incentives, respectively applicable to 1) outside the Free Zones and Development Zones; 2) within Development Zones; and 3) within the Free Zones (Table 2.1).

Table 2.1. Tax incentives under the 2014 Investment Law

	Custom Duties	General Sales Tax	Income Tax
Development Zones	Exempt (most goods)	Zero-rated (goods) 7% (services offered in Zone)	5% on profits
Free Zones		Zero-rated (goods) Zero-rated (services offered in Zone)	0% on profits 0% income tax on foreign workers
Other activities outside Development and Free Zones listed in*			
Schedule 1/A	Exempt	Zero-rated (production inputs)	
Schedules 1/B, 1/C, 1/D	Exempt	Zero-rated (production inputs, production requirements and fixed assets)	
Schedule 2	Exempt	Zero-rated (services)	
Schedule 3**	Exempt	Zero-rated (production goods)	
Investments in less developed areas***			
Group A			100% reduction of tax for 20 to 30 years
Group B			80% reduction of tax for 20 to 30 years
Group C			60% reduction of tax for 20 to 30 years
Group D			40% reduction of tax for 20 to 30 years
Tourism industry****	Exempt	7% (services) Zero-rated (goods)	5% for 10 years
Projects falling under the Jordan National Employment Strategy (JNES)	Exempt	Zero-rated (goods and services)	5%
Information and technology services****	Exempt	Zero-rated (good and services)	5%

* Other activities are those defined in Tables contained in Regulation 33 of 2015 and are located outside Development and free Zones** Goods used in the following sectors: agriculture and livestock; hospitals and specialized medical centers; hotels and tourist facilities entertainment and tourist recreation cities; communication centers; scientific research centers and scientific laboratories; artistic and media production; conference and exhibition centers; transport and/or distribution and/or extraction of water, gas and oil derivatives using pipelines; air transport, sea transport and railways.*** Except for establishments registered in Development or Free Zones; mining; electricity generation from non-renewable resources; exempt activity under the Income Tax Law and any activity benefitting from tax incentives under previous legislation. Group A includes the Northern Jordan Valley district, Deir Alla district, Southern Shunah district, Southern Jordan Valley district, Ruwayshid district, Northern Badiyah district, Northwestern Badiyah district, Azraq subdistrict, Jizah district excluding the boundaries of the municipality of New Jizah, Muwaqqar district excluding the boundaries of the municipality of Muwaqqar, and the Governorate of Aqaba excluding the Aqaba Special Economic Zone. Group B includes the Ma'an governorate, Tafilah governorate, Karak governorate, and Ajloun governorate. Group C includes Jerash governorate, Mafraq governorate, and Irbid governorate excluding the boundaries of the municipality of Greater Irbid. Group D includes Madaba governorate, Balqa governorate, the governorate of the capital excluding the Secretariat of Greater Amman, Zarqa governorate excluding the boundaries of the municipality of Zarqa and the boundaries of the municipality of Rusaifah**** These incentives are granted to hotels, tourist restaurants, theme parks and convention centres having economic activities in the following regions: Tafileh, Karak, Balqa, Jerash, Madaba, Ajloun, Irbid, Mafraq, Maan, Al Azraq, Ruseifa, Birin, Duleil, in addition to the capital's Jizah, Muwaqqar, Qweismeh, Marka, Naur and Sahab. The list of tourist restaurants benefitting from these incentives will be identified based on standards to be jointly agreed upon between the Ministry of Tourism and the Jordan Investment Commission.***** Comprising software development; mobile apps; website portals; digital content and electronic games; data processing; and IT learning and e-trainings..

Source: Fenochietto, R. and G. Ménard (2016), "The Hashemite Kingdom of Jordan. Improving the design of the general sales tax, customs duties, and tax incentives for investments".

While the 2014 Investment Law reduced the number of laws under which tax incentives are granted, and created a more cohesive set of measures, investment incentives have still become widespread in Jordan, despite analysis indicating limited investment response to a lower tax burden relative to revenue foregone (OECD, 2015, see Box 2.3 below). In addition, in the revised law, as in the previous legislation, the Cabinet has the mandate to grant additional incentives to any economic activities, including small and medium enterprises, or any economic activities in a specific geographic area within the Kingdom, provided that the decision determines the conditions and procedures of the grant and is published in the Official Gazette.⁷ Furthermore, the 2016 Investment Fund Law (Law No. 16 of 2016) provides for new tax exemptions for investments planned in Jordan by the Saudi Public Investment Fund.

Box 2.3. Investment incentives

Tax and financial incentives are routinely chosen by governments to attract investment in general, and FDI in particular. However experiences with the use of incentives, in particular fiscal incentives, have been mixed. Studies suggest that investors consider tax incentives as a less important motive for choosing a particular location for their investment compared to other motivations, such as market size and business environment. When administered by a non-transparent screening and approval procedure, tax incentives can even discourage investment, since they tend to increase uncertainty and therefore project costs. Administrative discretion and transparency are key challenges of managing an incentive regime.

Furthermore, the effectiveness of tax incentives depends on the specific situation of a given economy, including the question of what immediate competing economies are providing in terms of investment incentives. Assessing benefits and costs of tax incentives on a continued basis is an important requirement for any successful tax incentives regime. OECD good practice discourages the use of special tax incentives to attract FDI, and instead argues in favour of a reduced statutory corporate income tax rate, accompanied by a broadened tax base.

In any case, all tax incentives, along with their eligibility criteria, should be consolidated in the main body of taxation law, rather than in the investment law. This is not the case in Jordan. Implementing this good practice principle would not only increase the transparency of the system, it would also provide more means for the revenue authority to effectively administer the tax incentives regime. The investment law can include a reference to the tax law where incentives are detailed.

⁷ Article 8 of the 2014 Investment Law.

Monitoring the composition and generosity of Jordan's incentive regimes would allow for a better assessment of what types of incentives have the potential for positive economic and social spillovers.

Overall, Jordan should adopt a cautious approach towards the expansion of Economic Zones. While economic zones have played an important role in Jordan's economic development, they are not an alternative to an overall sound investment policy framework. Development of such zones should not be achieved at the expense of the local population and should not undermine core labour standards, nor deviate from commonly accepted social, health and environmental principles.

2.2.3. A rationalised institutional framework for investment

The main innovation of the 2014 Investment Law is the creation of a single umbrella body⁸ – the Jordan Investment Commission (JIC) – through the merger of the Jordan Investment Board, formerly in charge of investment promotion activities; the Development and Free Zone Commission, which dealt with economic zones; and JEDCO – a sub-body of the small and medium-sized enterprises (SME) agency which dealt with export promotion. The aim of this unified institutional framework is to streamline investment and licensing procedures. The resulting institutional rationalisation should help eliminate hidden costs and accelerate administrative procedures. In particular, JIC now hosts a one-stop-shop investment window (Box 2.4).

The JIC, which enjoys legal personality as well as administrative and financial independence, has been placed under the auspices of the Investment Council, a new oversight body created by the 2014 Investment Law (Articles 20 and *seq.*). The council is a public-private board headed by the Prime Minister, and is in charge of submitting recommendations on draft investment legislation as well as national policies and strategies. It is also mandated to approve JIC's annual financial statement. The commission shall report to the prime minister (Article 20).

In addition to its primary promotional functions, the JIC is also in charge of the preparation and annual update of a "Licensing Manual": "the main reference" on the requirements, procedure and timeframe for the granting of licenses (Article 17).

⁸ This was first approved in March 2014 in the Restructuring of Public Institutions and Departments Law no. 17, which provides among other things, for the restructuring of the institutional investment framework.

Box 2.4. Establishing an investment window

In order to rationalise and simplify investment licensing procedures, an investment window was established within the Investment Commission (Chapter 3, Articles 15 to 18). It aims to centralise those units or departments which license the relevant economic activities into a one-stop licensing service, supported by the provision of online services implemented by the Investment Commission (Article 15). To this end, a delegation of power is provided by the “Official Bodies” which are responsible for issuing the licences for the economic activities covered by the Investment Window’s services, and shall nominate its original and alternative representative delegate to the Investment Window. These Authorised Representatives have the power to issue a license according to the effective legislation applied by the Official Body it represents (Article 16). The establishment of an investment window is a welcome step to address the complex and time-consuming procedures affecting investors.

2.3. Investment protection under the reformed investment regime

The 2014 Investment Law contains all the basic investor protection provisions, though they are drafted in a succinct manner. It provides for a standard of national treatment; a dispute settlement provision that gives foreign investors access to arbitration in the event of a dispute with the Jordanian authorities; protection from expropriation; as well as a guarantee of free transfer of capital and profits rights, including currency convertibility and profit repatriation rights. The implementing regulations, in particular Regulation No. 77 of 2016, have developed these provisions, especially by introducing a definition of non-Jordanian investors following OECD advice (discussed further in Chapter 3). However, investors’ guarantees could be strengthened further. The sections which follow discuss these issues in more detail.

2.3.1. The introduction of a definition of the nationality of investors

Jordan’s 2014 Investment Law covers both domestic and foreign investment, which is commonly considered as good practice as it limits the risk of being perceived as favouring either foreign or domestic investors. It is likely to send a positive signal that the government treats foreign and domestic investors equally, with an underlying principle of non-discrimination. However, this type of law requires a clearly defined typology of the investments covered. Rules that apply only to foreign investors, such as profit repatriation and access to international arbitration to resolve investor-state disputes, are included along with provisions that apply to domestic investors only, such as those applying to sectors that are not open to foreign investment. There are also provisions that apply to both foreign and domestic investors. It is therefore crucial to provide for a clear definition of domestic versus foreign investor within the law, or, if not possible, within a regulation attached to the law.

Although Jordan’s 2014 Investment Law starts with a definitional section, it does not define “non-Jordanian investors”. As many provisions of the law refer to “non-Jordanian investors”, it is important to provide a clear definition of the term. The lack of definition at

the time the law was published led to uncertainty for companies over whether not they were covered by some of the law's provisions.

OECD input

Following recommendations made by the OECD throughout the project, a definition of “non-Jordanian investor” was eventually inserted into the 2016 Regulation on Non Jordanian Investments to remedy this loophole. This defines a “non-Jordanian investor” as “a natural person holding a non-Jordanian nationality or a juridical person incorporated and registered outside the Kingdom”.⁹ However, this very general and concise definition still leaves room for interpretation, and it is still uncertain whether the definition of Jordanian investors includes indirect ownership of Jordanian companies. Therefore, a clear definition of “Jordanian investor” is also needed to create an unambiguous and predictable legislative framework for investment.

2.3.2. The principle of non-discrimination could be clearer

Non-discrimination is a central tenet of an attractive investment climate. The non-discrimination principle provides for equal treatment of all investors in like circumstances, irrespective of their nationality or ownership. It can feature as a general principle in the constitution or at lower regulatory levels, such as in the investment law, and may vary greatly in its scope of application. One of the expressions of the principle of non-discrimination in the context of foreign investment is the concept of “national treatment”, which ensures that a government treats enterprises controlled by the nationals or residents of another country no less favourably than domestic enterprises in like situations. National treatment often features in investment laws, as well as in bilateral investment treaties, as one of the core standards of protection provided to foreign investors. The standard of national treatment is a core principle of protection that is found in the majority of investment laws around the world, as well as in the vast majority of investment treaties.

The standard of national treatment is provided in two different sections of Jordan's 2014 Investment Law:¹⁰

- 1) Under Article 10 (B) of the chapter on the incentives and exemptions granted outside the Development Areas and Free Zones, which stipulates that: “The non-Jordanian investor shall be treated as the Jordanian investor”.
- 2) Under Article 41 on General Provisions.

However, the language used in Article 41 differs quite substantially from the phrasing of Article 10 (B), and seems to provide for a guarantee of “equal treatment” of Jordanian and non-Jordanian investors, rather than for a standard of national treatment. This variation in the language used sends a quite ambiguous message and might raise questions. Thus, inconsistencies in the language used to provide national treatment guarantees should be avoided.

⁹ Regulation No. (77) for the Year 2016, Art. 2.

¹⁰ Non-Jordanian investors already benefited from the same treatment as Jordanian investors under the former regime (Article 12 A 2 of the 2003 Investment Law).

2.3.3. Exceptions to the principle of national treatment have been reduced

No government applies national treatment unequivocally, even in OECD member countries, where restrictions on foreign investment tend, on average, to be fewer than in other parts of the world (see Chapter 3).

As is the case in Jordan, exceptions to national treatment are often enshrined in a negative list attached to the investment law. In the absence of such a list, foreign investors would have to look to sectoral legislation for guidance. The main types of restrictions faced by foreign investors generally are listed below:

- Approval mechanisms for foreign investors
- Foreign equity limits
- Key personnel (foreign managers, technical experts and board members)
- Profit and capital repatriation
- Land ownership for business purposes
- Branching limitations
- Reciprocity requirements
- Minimum capital requirements that differ from those for local companies
- Local content requirements
- Access to local finance
- Government procurement that favour locally-owned over foreign-established companies.

According to Article 10 (B) of the 2014 Investment Law, “A. Any non-Jordanian person shall have the right to invest in the Kingdom by possession, participation or contribution according to grounds and conditions to be determined in accordance with a regulation issued for this purpose, provided that the economic activities and the percentage of participation or contribution permitted to the non-Jordanian investor should be provided for in such regulation.”

OECD input

Following OECD advice, and after a two-year delay, Jordan revised its exceptions to national treatment by adopting Regulation No. 77 in 2016. This new regulation reduces the list of restricted activities to foreign direct investments provided for by former Regulation No. 54 on non-Jordanian investments (see Chapter 3 of this report for more details).

2.3.4. Access to alternative dispute resolution needs further clarification

Investors require an effective and transparent legal system to carry out their contracts and settle disputes involving their investments. Arbitration plays a primary role as an alternative mechanism to settle disputes between foreign investors and host states. Although it remains costly and therefore not easily accessible by smaller businesses, arbitration is often favoured by the business community to bypass difficulties commonly faced when bringing dispute cases before domestic courts, in particular delays in the resolution of cases.

The 2014 Investment Law gives foreign investors access to arbitration in the event of a dispute arising between a foreign capital investor and government authorities. According to the law, parties must first try to settle investment disputes amicably. If amicable settlement has not been reached after a cooling-off period of six months, the dispute can then be brought before international arbitration. Article 43 of the 2014 Investment Law provides that investment disputes may be settled through arbitration in accordance with the provision of the Arbitration Law, or be brought before an international centre for the settlement of investment dispute.¹¹

Article 43 does not seem to constitute the unilateral consent of the state to go to arbitration, which would grant investors an automatic right to bring any investor-state dispute before international arbitration. As in most countries around the world, it merely opens the possibility for the parties to mutually agree to arbitration, but an agreement between the disputing parties remains necessary. If such mutual agreement can not be reached, the dispute will have to be resolved by the Jordanian Courts. It is a cautious approach, as it takes a pro-arbitration stance, often needed to reassure foreign investors, without overcommitting or surrendering too much regulatory leeway. However, the language used is vague and quite ambiguous, and would benefit from being further clarified to avoid any difficulties in interpretation. If the authorities do not intend to give unilateral consent to international arbitration, then this should be clearly stated in the law.

Jordan could also consider including a "fork in the road" provision stipulating that if the investor chooses to submit a dispute to the courts of the host state or to any other agreed dispute resolution procedure, the investor will lose the right to submit the same claim to an international centre for settling investment disputes arbitration.

¹¹ Article 43 reads as follows: “Any investment disputes arising out between a foreign capital Investor and the governmental bodies shall be settled amicably between parties to dispute. If such dispute has not been solved amicably within no more six months, the parties may settle the dispute through arbitration in accordance with provisions of Jordan Arbitration Law or refer the dispute to an international center for settlement of investment disputes according to the conventions on settlement of investment disputes between countries and citizens of another country signed by the Kingdom. In case of not resorting to the alternative means for settlement of disputes, either party may resort to the competent court”.

OECD input

This issue was thoroughly discussed with Jordanian policymakers during a workshop on investment dispute mechanisms.¹² During the workshop the OECD provided recommendations for revising this provision so as to clarify the language and to ensure consistency with the provisions in bilateral investment treaties, notably in terms of the duration of the cooling-off period and range of available arbitration tribunals.

More generally, while access to investor state dispute settlement mechanisms can make an important contribution to the confidence of investors, Jordan should consider developing dispute prevention policies and mechanisms, as recommended by the OECD throughout the project, in order to prevent or efficiently deal with potential investment disputes and avoid costly and lengthy international arbitration claims being initiated against the state. A workshop for Jordanian policymakers and legal experts was held by the OECD in December 2016 to build capacities and raise awareness on the establishment of policies and mechanisms for the prevention of investment disputes, to avoid their escalation into judicial or arbitration cases.

2.3.5. Strong guarantees against expropriation could be further harmonised

Expropriation (defined below) is perceived as a major political risk for investors, therefore clear and complete provisions regulating expropriation are a key element in a safe investment environment. A government retains the sovereign right to expropriate property for public purposes and in a non-discriminatory way. When it does so, compensation should be timely, adequate and effective. The right to fair compensation and due process in the event of an expropriation is usually enshrined in the Constitution, domestic legislation, and international investment agreements.

Expropriation can take different forms. It can be direct, where an investment is nationalised or otherwise expropriated through formal transfer of title or outright physical seizure. It can also be indirect, when it occurs through interference by a state in the use of that property or in the enjoyment of the benefits even where the property is not seized and the legal title to the property is not affected. The determination, in judicial and arbitral awards, of whether government interference with an investor's economic activity constitutes an indirect expropriation for which compensation should be paid is made on a case-by-case basis. Some recent agreements and legislation in other countries provide that, except in rare circumstances, non-discriminatory regulatory actions to protect legitimate public welfare objectives, such as public health, safety and the environment, are not considered to constitute expropriation.

Jordan's Constitution already contains a general expropriation provision, to the effect that "[n]o property of any person or any part thereof may be expropriated except for purposes of public utility and in consideration of a just compensation, as may be prescribed by law."

¹²Workshop held in Amman in December 2016.

The Land Acquisition Law No. 12 of 1987 provides for more detailed provisions on land expropriation.

The expropriation provision (Article 42) of the 2014 Investment Law grants prompt and fair compensation in the case of expropriation measures taken for public interest purposes. It applies to the expropriation of “economic activity”. Although it covers indirect expropriation, it makes no reference to the right to a judicial review of the expropriation. It states that expropriation is not allowed unless it is for public benefit, and that fair compensation is paid in a convertible currency and without delay.¹³

It is important, however, that the scope of indirect expropriation is clearly defined in order to clarify the degree of protection. Although the risk of expropriation is considered to be relatively low in Jordan, the expropriation provision contained in the Investment Law could be clearer about the scope of protection that it provides, especially with regards to indirect expropriation. Indirect expropriation can be compatible with legitimate public policy measures, if they encompass non-discriminatory actions or measures in the public interest.

It is also important to ensure that the relevant domestic legislation, including the 2014 Investment Law, incorporates expropriation protection provisions that are consistent with international standards of protection, so as to avoid creating legal gaps between the levels of protection granted in these laws and that provided through bilateral investment treaties (BITs). While it is legitimate to preserve the non-discriminatory exercise of their regulatory power, the authorities should provide for explicit limits on their ability to expropriate.

Another good practice under domestic law would be to automatically allow investors the right of appeal if a dispute arises over the amount of compensation offered.

2.3.6. The free transfer of capital and profits is guaranteed

The free transfer of funds across borders is a key element for investors and the operation of their investments. To the investor, the right to make such transfers improves the feasibility, implementation and profitability of the project. In contrast, unlimited transfer rights may raise some concerns for host countries, such as foreign exchange availability and massive capital flight during times of economic difficulty. Thus, a government should maintain some control over administering its monetary and financial policy. Exceptions may be provided where necessary, such as in bankruptcy cases, protection of the rights of creditors, or to satisfy judgements in adjudicatory proceedings.

Article 41 of the 2014 Investment Law grants non-Jordanian investors the following rights as regards currency convertibility and profit repatriation:

- repatriation of all or part of the invested foreign capital, in a convertible currency, that was brought into Jordan for the purposes of investment, in accordance with the relevant laws and regulations;
- transfer of revenues and profits outside of Jordan, in a convertible currency;

¹³ According to Article 42 of the Investment Law: “Any economic activity may not be expropriated nor be subjected to any procedures that lead to this end unless being appropriated for the purpose of the public interest, provided, however, fair compensation should be promptly paid to the investor by convertible currency”.

- liquidation or sale of the whole, or the investor's share of the economic project or undertaking, as well as the ability to act with the proceeds without delay; and
- transfer of salaries and compensations of non-Jordanian workers.

“Invested foreign capital” is considered to be any monetary investment in Jordan by a non-Jordanian, whether in cash or in kind, or any rights with a monetary value, which are deemed to include:

- the amounts transferred into Jordan;
- the imported in-kind assets;
- the intellectual property rights registered for use by the economic activity;
- profits, returns and reserves resulting from foreign capital invested in an economic activity, and which are used to increase the capital or which are invested in another economic activity; and the revenues of liquidation of the investment or the sale of the economic activity, shares or stocks; and
- shares in an economic project resulting from capitalising and swapping the investor's debts.

The right to transfer foreign currencies and profits is also listed amongst the incentives offered to the establishments that practise economic activities within the Free Zones (Article 14; Table 2.1).

In addition, the vast majority of Jordan's bilateral investment agreements provide for a right to free transfer of funds, and the funds covered are broadly defined and in a manner consistent with the provisions of the 2014 Investment Law.

2.3.7. Rules surrounding expatriate personnel are not fully formed yet

In recent years, efforts have been made by the Jordanian Government to increase employment. The legal and institutional framework for job creation has been reinforced, an ambitious national strategy has been launched, and programmes supported by international organisations have had an impact. However, several challenges remain. The Jordanian authorities have yet to find a balance between creating the quality jobs needed for Jordanians and ensuring rights to work for all workers in Jordan, including low-skilled migrant workers and skilled foreign workers.

The 2014 Investment Law states that foreign investors shall “enjoy the right to make contracts with the employee and workers pursuant to provisions of this Law and the regulations and instructions issued by its virtue” (Article 29, 3).

While there is no express provision for the employment of expatriate labour, Article 41 stipulates that non-Jordanian investors have the right to manage their economic activities as they deem appropriate and through the persons they choose. It also refers to the right granted to non-Jordanian workers employed in any economic activity to transfer their salaries and remunerations outside of Jordan. Meanwhile, Jordanian legislation prohibits foreign personnel from managing positions in several sectors.

The granting of residence to foreign investors and their family members and those who manage projects within the Development Zones and Free Zones is yet to be determined through a specific regulation. It should consider the share of Jordanians employed (Article 31). This regulation should make clear provisions for the modalities of the employment of foreign labour, including the conditions and procedures for granting a work permit.

More generally, specific provisions for the employment of foreign labour could be expressly developed that align with the provisions relating to Jordanian labour conditions for granting tax incentives (which are also yet to be developed further in a future regulation).¹⁴

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¹⁴ An innovative provision in the law stipulates that a specific additional tax advantage can be granted to investment establishments whose workforce is at least 30% female.

3. Liberalising Jordan's FDI restrictions regime

Key takeaways

- *In June 2016, the Government of Jordan adopted a new regulation to govern non-Jordanian investment (the “2016 Regulation”), which has reduced the level of restrictions on FDI.*
- *The 2016 Regulation has introduced a definition of “non-Jordanian investor”.*
- *It has also removed the discriminatory minimum capital requirement for foreign investors, which is another key improvement.*
- *Since adopting the 2016 Regulation, Jordan's position has improved slightly in the OECD FDI Regulatory Restrictiveness Index.*
- *Jordan still remains fairly restrictive compared to other countries that have adhered to the OECD Declaration on International Investment and Multinational Enterprises.*

3.1. Introduction

This chapter provides an overview of the FDI restrictions in Jordan, and highlights the main improvements brought by the 2016 regulation compared to the former regime. It also outlines the remaining challenges, in order to help Jordan assess ways to further strengthen its investment regime. The chapter begins by outlining the OECD's internationally accepted principles and instruments, alongside international good practices for an enabling investment environment with regards to reducing barriers to foreign investment, and increasing predictability and transparency. It also analyses the reasons why countries impose discriminatory restrictions on foreign direct investors, and their potential costs.

3.2. The OECD's framework for an open and non-discriminatory investment regime

The OECD has long acknowledged the long-term benefits of an open and non-discriminatory international investment environment. Investment is a critical requirement for spurring growth and sustainable development. It expands the productive capacity of an economy, driving job creation and income growth. While investment is mostly undertaken by domestic firms, international investment can sometimes provide additional advantages. Beyond bringing additional capital to a host economy, evidence suggests that FDI can help to improve resource allocation and production capabilities; act as a conduit for the local diffusion of technological and managerial expertise, such as through the creation of local supplier linkages; and can improve access to international markets (Moran, Graham and Blomström, 2005).

The potential benefits of FDI are now generally accepted across governments, and attracting FDI has become an important policy tool to finance development in many countries. Nonetheless, concerns over the loss of national sovereignty in certain situations and the protection of national industries continue to lead governments to impose restrictions on such capital flows. While manufacturing industries have seen greater liberalisation efforts as governments have more easily accepted the benefits of FDI in these industries, service sectors and primary industries are still relatively more restrictive to foreign investors, although this may vary greatly across countries.

At the OECD, the challenge of setting up an enabling framework for investment that works in the public interest has been treated prominently within its investment policy community. The OECD Investment Committee is a forum for intergovernmental dialogue on how governments can reconcile the need to preserve and expand an open international investment environment with their duty to safeguard the essential security interests of their people. As the custodian of key international investment instruments – the *Code of Liberalisation of Capital Movements* and the *Declaration on International Investment and Multinational Enterprises* – the organisation has overseen progress in liberalisation for more than 40 years.¹⁵

More recently, discussions held under the *Freedom of Investment Roundtables*¹⁶ have confirmed that the basic principles – transparency, liberalisation and non-discrimination – underpinning these instruments and the work of the OECD Investment Committee over the years are still relevant in the current context. In 2009, OECD members and other roundtable participants developed additional guidance for the one exception to the non-discriminatory investment policies provided for in these instruments – that governments may take measures they “consider necessary to protect essential security interests” and to maintain “public order or the protection of public health, morals and safety”. The discussions have revealed strong support for three additional principles for investment policy measures addressing essential security interests: 1) transparency and predictability, 2) proportionality;¹⁷ and 3) accountability (Box 3.1).

¹⁵ In 2013, Jordan became the 46th country to adhere to the OECD *Declaration on International Investment and Multinational Enterprises*. All OECD member countries and 12 non-OECD adhering countries have adhered to the declaration.

¹⁶ An intergovernmental forum for the exchange of information and experiences on investment policies hosted at the OECD Investment Committee since early 2006.

¹⁷ Proportionality means that restrictions on investment, or conditions on transactions, should not be greater than needed to protect identified risks; they should be avoided when other existing measures are adequate and appropriate.

Box 3.1. OECD investment policy principles and guidelines for recipient country investment policies relating to national security

Non-discrimination: Governments should be guided by the principle of non-discrimination. In general governments should rely on measures of general application which treat similarly situated investors in a similar fashion. Where such measures are deemed inadequate to protect national security, specific measures taken with respect to individual investments should be based on the specific circumstances of the individual investment which pose a risk to national security.

Transparency/predictability: Information on restrictions on foreign investment should be comprehensive and accessible to everyone. While it is in investors' and governments' interests to maintain confidentiality of sensitive information, regulatory objectives and practices should be made as transparent as possible so as to increase the predictability of outcomes.

Codification and publication: Primary and subordinate laws should be codified and made available to the public in a convenient form (e.g. in a public register; on internet). In particular, evaluation criteria used in reviews should be made available to the public.

Prior notification and consultation: Governments should take steps to notify interested parties about plans to change investment policies. Governments should seek the views of interested parties when they are considering changing investment policies.

Procedural fairness and predictability: Strict time limits should be applied to review procedures for foreign investments. Commercially-sensitive information provided by the investor should be protected. Where possible, rules providing for approval of transactions if action is not taken to restrict or condition a transaction within a specified time frame should be considered.

Disclosure of investment policy actions is the first step in assuring accountability. Governments should ensure that they adequately disclose investment policy actions (e.g. through press releases, annual reports or reports to parliament), while also protecting commercially-sensitive and classified information.

Regulatory proportionality: restrictions on investment, or conditions on transactions, should not be greater than needed to protect national security and they should be avoided when other existing measures are adequate and appropriate to address a national security concern.

Essential security concerns are self-judging: OECD investment instruments recognise that each country has a right to determine what is necessary to protect its national security. This determination should be made using risk assessment techniques that are rigorous and reflect the country's circumstances, institutions and resources. The relationship between investment restrictions and the national security risks identified should be clear.

Narrow focus: Investment restrictions should be narrowly focused on concerns related to national security.

Appropriate expertise: Security-related investment measures should be designed so that they benefit from adequate national security expertise as well as expertise necessary to weigh the implications of actions with respect to the benefits of open investment policies and the impact of restrictions.

Tailored responses: If used at all, restrictive investment measures should be tailored to the specific risks posed by specific investment proposals. This would include providing for policy measures (especially risk mitigation agreements) that address security concerns, but fall short of blocking investments.

Last resort: Restrictive investment measures should be used, if at all, as a last resort when other policies (e.g. sectoral licensing, competition policy, financial market regulations) cannot be used to eliminate security-related concerns.

Accountability: procedures for parliamentary oversight, judicial review, periodic regulatory impact assessments, and requirements that decisions to block an investment should be taken at high government levels should be considered to ensure the accountability of the implementing authorities.

Source: OECD (2008), “Freedom of investment, national security and ‘strategic’ industries: progress report by the OECD Investment Committee”, <https://www.oecd.org/investment/investment-policy/40473798.pdf>

The recent update of the OECD *Policy Framework for Investment* (PFI; OECD, 2015) also confirms the validity of these principles as a sound framework for countries to assess and implement investment policies that serve the public interest. The PFI addresses the issue of discrimination in many policy areas, pointing out the potential costs in terms of foregone investment and efficiency gains, but without questioning the right of governments to favour some investors over others in order to achieve other social, economic or environmental goals. The PFI recommends that governments evaluate exceptions to national treatment with a view to determining whether the original motivation behind an exception remains valid, supported by an evaluation of the costs and benefits, including an assessment of the proportionality of the measure. It also stresses the importance of having a transparent and predictable regulatory framework to minimise uncertainty for investors.

3.3. Common reasons for imposing discriminatory restrictions on foreign direct investors, and their potential costs

Almost all governments discriminate among investors in one way or another, sometimes deliberately, sometimes unwittingly. Foreign investors, for example, commonly face restrictions on their ownership of a local company, particularly in key sectors. This is the case even in OECD member countries where restrictions on foreign investment tend, on average, to be lower than in other parts of the world. While restrictions on FDI have been found to result in less FDI overall, when other attributes of the investment climate are favourable, investors may still come even if they face some operational restrictions once established. But this is not likely to occur without costs. Any policy that favours some firms

over others involves a cost, notably less competition and hence lower firm-level efficiency (OECD, 2015).

In the past, one common reason for imposing restrictions on capital flows, including on FDI, was the concern over its potential effects on macroeconomic stability, notably over reconciling free capital movements, exchange rate targeting policies and independent monetary policy. As countries moved towards greater exchange rate flexibility, and greater use of market-based instruments for monetary policy, the tensions were reduced, allowing countries to undertake greater liberalisation of capital movements, including of FDI (OECD, 2011; Kalinova et al., 2010).

Nowadays, restrictions on foreign investment are sometimes motivated by countries' concerns over the loss of national sovereignty to "protect essential security interests" and to maintain "public order or the protection of public health, morals and safety". They serve to safeguard national defence systems, including, for instance, against threats of leakage of technology and expertise to foreign-controlled entities that can be used in a harmful manner against the host country; and risks of infiltration, surveillance and sabotage by foreign investors; or to secure the proper functioning of the economy against threats of denial or disruption of the supply of critical goods and services to the economy (Moran, 2009).

However, most countries participating in the OECD *Freedom of Investment Roundtables* recognise only a limited role for investment policies in addressing national security concerns and protecting critical infrastructure. Most countries have confined the use of investment policy for addressing national security concerns to a narrow range of activities, for instance through restrictions on foreign investment in weapons and military equipment-related industries. In protecting critical infrastructure, some countries see no real value-added of investment policy measures compared to alternative non-discriminatory measures. Others note, however, that investment policy can be effectively used to address a few specific risks, notably those related to national security, but should only be used as a measure of last resort (*i.e.* if other, less restrictive and non-discriminatory measures cannot adequately mitigate the identified risks). To put it simply, countries agree that national security is a legitimate concern but that it should not be a cover for protectionist policies (OECD, 2008).

Nonetheless, a number of countries still impose restrictions on FDI for broad economic reasons (e.g. protecting an infant industry, employment, technology transfer etc.). The right of governments to favour some investors over others in order to achieve social, economic or environmental goals is without question, but discriminatory measures only serve the broader public interest if their potential costs in terms of foregone investment and efficiency gains are compensated for by broader economic and social benefits. For this reason, exceptions to non-discrimination need to be evaluated to determine whether the original motivation behind an exception (e.g. protecting an infant industry) remains valid. This should be supported by an evaluation of the costs and benefits, including an assessment of the proportionality of the measure, to ensure they are not greater than needed to address specific concerns. Broad consideration of the costs and benefits is especially important in service sectors that support a wide range of economic activities across the economy (OECD, 2015).

In most countries, FDI restrictions are dominated by foreign equity limits (see the *OECD FDI Regulatory Restrictiveness Index*¹⁸, and Box 3.3 below). Foreign equity restrictions are usually a sector-based measure limiting the extent of foreign ownership allowed in companies or in the aggregate of companies in a particular sector. Sometimes the scope is limited to acquisitions, and sometimes to both acquisitions and greenfield projects; sometimes it applies only to listed companies or to investments in a specific company, most notably in former state monopoly holders; sometimes there is an overall cap of foreign investment in the entire sector, stimulating competition only among foreign investors when the limited is reached. In addition to legitimate national security concerns, the rationale for imposing any sort of equity restriction or joint-venture requirement is usually to protect domestic investors from foreign competition, based on the infant industry argument, or to push domestic investors to upgrade by forcing linkages between foreign investors and the domestic economy.

However, such policies may not necessarily achieve their intended purpose. The exercise of control over operations is one key underlying characteristic of foreign investment by multinational firms (Hymer, 1960; Grossman and Hart, 1986). Foreign ownership restrictions limit investors' ability to exercise this control and influence the distribution of a project's *ex-post* surplus, affecting investors' *ex-ante* investment decisions (Karabay, 2010). As such, FDI restrictions may diminish a country's relative competitiveness to attract FDI in the first place by limiting market reach or raising transaction costs relative to competing locations – both to firms in the particularly restrictive sector and to firms in downstream industries.

Evidence also suggests that when restrictions do not totally preclude a project's viability for the foreign investor, they may decrease the potential overall surplus of a project, for instance by inducing the inefficient use of local resources in some situations or by limiting the potential spillovers from such investments. When faced with ownership restrictions or joint-venture requirements, investors may tend, for instance, to deploy older technologies and production techniques than those used at the frontier in international industry (Moran, Graham and Blomström, 2005). Moreover, the empirical literature suggests that equity restrictions or joint-venture requirements may actually have the opposite effect of their initial purpose. While compared to domestically-owned investors, foreign-owned investors do tend overall to have fewer linkages with the local economy in terms of use of domestic inputs and workers, larger shares of foreign ownership are sometimes found to be associated with greater use of locally-sourced inputs and greater FDI spillover potential (Winkler, 2013).

Therefore, while the concerns are legitimate, discriminatory policies may not always be optimal for tackling identified risks (see example in Box 3.2). As noted above, restrictions on foreign investment are likely to involve economic costs, potentially affecting the people, the government and the domestic private sector (e.g. lower competition, lower productivity and higher prices; foregone government revenues; and loss of business/partnership and technology transfer opportunities for local companies). In addressing a number of concerns, for instance, in relation to public health, workers' rights and the environment, the nationality of the investor is likely to be irrelevant and thus not a sufficient condition to justify discriminatory treatment. In such situations, alternative non-discriminatory measures (e.g., non-distortionary taxation and redistribution of rents, social and

¹⁸ <http://www.oecd.org/investment/fdiindex.htm>

environmental regulations) may be available and adequate to address the identified risks to the national interest. At the end of the day, governments remain the regulatory authority in their jurisdictions, and can deploy laws and regulations to regulate investments and address specific concerns (Forneris, 2013).

Box 3.2. To what extent do foreign investors pose a genuine threat to the proper functioning of the economy?

A paper presented at the OECD Global Forum on International Investment explores the link between foreign acquisitions and national security (Moran, 2009). It takes the example of the acquisition in 2006 of a steel company from the United States by a Russian company with a potentially close relationship with the Russian government, and asks if this constitutes a credible threat to the economy of the United States. The hypothesis is that this investment would make the US economy dependent on a foreign-controlled supplier of a good crucial to the functioning of the economy. Steel is a critical input to more than 4 000 kinds of military equipment, and the uninterrupted supply of steel is critical for the day-to-day functioning of the US civilian economy. Hence, any delay, denial or conditions imposed by the foreign-controlled company in the supply of steel could be potentially disruptive to the economy.

The credibility of the threat, however, depends on a few factors, notably the extent to which: a) the industry is tightly concentrated, which would give a particular leverage for the investor if it decided to impose conditions for the supply of steel to the US economy; b) whether the number of close substitutes is limited; and c) whether the costs of switching to available alternative suppliers/products are high.

The author concludes that in this particular case it is unlikely that one foreign-controlled supplier would be able to withhold steel from US purchasers or place conditions on delivery. Steel suppliers are spread around the world, with the top four steel exporters accounting for no more than 40% of the global steel trade. Hence, there are a number of alternative potential suppliers with relatively large volume potential that could substitute for the foreign-controlled investor. The credibility of the potential threat to the proper functioning of the economy posed by a foreign-controlled investment depends not only on the degree of foreign ownership and control, but also on whether the costs to the economy of substituting to an alternative good/supplier are high. This case does not suggest that investment policies will always be ineffective for addressing national security concerns and national development strategies. Instead, it suggests that governments must carefully evaluate their adequacy for addressing specific concerns with a view to minimising any potential negative impact on investment flows and avoid them acting as a cover for protectionist policies.

Source: based on Moran, T.H. (2009), "Foreign acquisitions and national security: what are genuine threats? What are implausible worries?", <http://www.oecd.org/investment/globalforum/44231367.pdf>.

3.4. Reforming Jordan's restrictions to foreign direct investment

In 2012, Jordan adhered to the OECD *Declaration on International Investment and Multinational Enterprises*, committing it to treating foreign-controlled enterprises in its territory no less favourably than domestic enterprises in like situations. In adhering to the OECD declaration, Jordan is also committed to establishing a list of all measures constituting exceptions to the national treatment and to notify OECD members promptly of any changes or new measures having a bearing on national treatment.¹⁹

Investment laws often include a list of sectors in which restrictions are in force. This list may be included in the body of the law, in its regulations, or in a separate decree. This so-called “negative list” may include the following: sectors in which all private investment is subject to restrictions or prohibited, sectors confined to small and medium-sized enterprises (SMEs), and sectors in which foreign investors face restrictions.

Jordan adopted the negative list approach a long time ago. Under the 2014 Investment Law, which mirrors the 2003 Investment Law, all foreign investment projects are authorised, unless otherwise specified in the negative list.

OECD input

Throughout the project, the OECD has actively provided Jordan with assistance to revise any barriers to FDI. As part of the project, the OECD analysed the former investment regime, including Regulation 54 of 2000, which imposed numerous discriminatory restrictions on FDI. It shared good practice from successful policy reforms in other countries, and provided concrete policy advice for revising the regulation, a country comparative overview of Jordan's main regulatory restrictions to FDI, a preliminary assessment of the potential effects of such measures, and guidance on defining foreign investors in the regulation to increase legal predictability. The study and its recommendations were discussed thoroughly during a workshop held in 2015 with key Jordanian stakeholders.²⁰

In June 2016, the Government of Jordan revised its negative list, and adopted a new regulation to govern non-Jordanian investment²¹ (the “2016 Regulation”), taking into account some of the OECD recommendations. The 2016 Regulation, attached to the 2014 Investment Law, reaffirms the principle of non-discrimination with regard to foreign investors while reforming the exceptions to national treatment to create a more open and

¹⁹ The list of exceptions to National Treatment provided by the Jordanian authorities is available on the OECD website alongside the list of 46 other adhering countries at: www.oecd.org/investment/investment-policy/nationaltreatmentinstrument.htm.

²⁰ Capacity-building workshop on the revision of the Regulation on Non-Jordanian Investors held on 20 May 2015 in Amman, Jordan.

²¹ Regulation No. 77 of 2016 governing non-Jordanian investment, published in the Official Gazette on 16/6/2016.

predictable investment regime. It includes important liberalising changes to Regulation No. 54 of 2000. The key improvements are discussed below.

Before the adoption of the 2016 Regulation, non-Jordanian investors benefited from the same treatment as Jordanian investors according to the law. They were all subject to a large number of discriminatory measures, contained in particular in Regulation No. 54 of 2000.

3.4.1. Defining non-Jordanian investors

As recommended by the OECD, the 2016 Regulation has introduced a definition of “non-Jordanian investor”. Although these were not defined in the 2014 Investment Law, a clear definition is key to clarify the scope of restrictions that apply to “non-Jordanian investments” (see Chapter 2).

3.4.2. Removing the minimum share capital requirement

Another key improvement introduced by the 2016 Regulation was the removal of the discriminatory minimum capital requirement of JOD 50 000 (Jordanian Dinars) that had been imposed on foreign investors.

According to the 2000 Regulation (Article 7), in order to register a company in Jordan, non-Jordanian investors should have capital of at least 50 000 Jordanian Dinars (around USD 70 000). This measure placed foreign investors at a disadvantage, notably in low-capital industries such as knowledge-based sectors, and probably diminished Jordan's competitiveness vis-à-vis other economies where discriminatory capital requirements are mostly non-existent or where non-discriminatory capital requirements are much less burdensome. This minimum capital requirement in limited liability companies was substantially greater than capital requirements for both domestic and foreign investors in OECD countries and large developing economies alike, such as China, Indonesia, India and Russia. While the Middle East and North Africa (MENA) is the region with the highest percentage of countries applying minimum capital requirements according to the World Bank's Investing Across Borders database, only eight countries worldwide discriminate between foreign and domestic investors. Jordan was the only country within the MENA region to discriminate in this way.

3.4.3. Extending the ownership possibilities for non-Jordanians

The list of exceptions included in the 2000 Regulation has been reduced, extending the sectors in which full ownership by non-Jordanians is allowed.

According to Article 3 of the 2016 Regulation, a non-Jordanian investor may own any project in any economic activity in whole or in part, provided that they do not contravene national security, public order and morals, and public health, and so long as they are not prohibited by current legislation. In particular full ownership of railway services by non-Jordanians is permitted under the new regulation, whereas this sector was previously confined to local firms.

The following activities or sectors are still listed as exceptions to this ruling in the 2016 Regulation, divided into three groups:

- 1) Sectors that require 50% local ownership, listed in Article 4 of the 2016 Regulation. This adds new activities to the previous list, including maritime maintenance and maritime health services. Regulation No. 77 also removed the previous threshold of 50% foreign ownership on rail transport auxiliary services,

as well as the ban on foreign investment in passenger and freight road transport services, which are now allowed up to 49%.

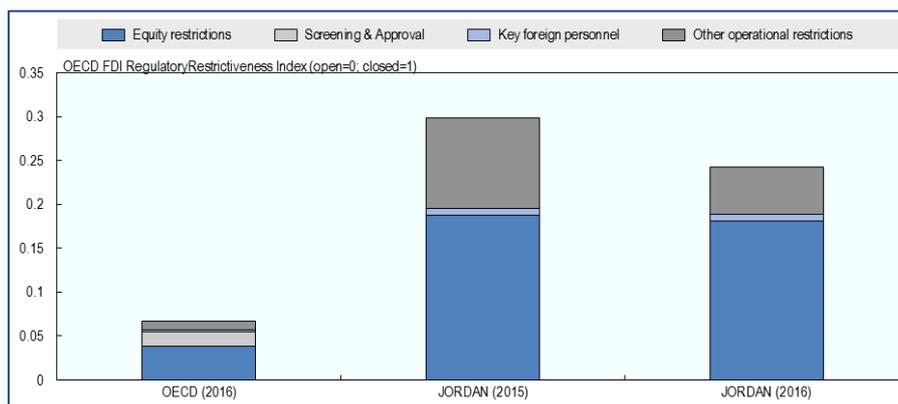
- 2) Sectors where a maximum of 49% foreign ownership is allowed, i.e., that require 51% local ownership (Article 5). The new regulation reduces the allowed participation of non-Jordanians from 50% to 49% in several activities, such as the maintenance of road transport; the maintenance of radio and television broadcasting equipment; and land purchased for construction, sale or rental of residential apartments.
- 3) Restricted activities, where foreign investment is totally prohibited, which includes activities relating to security services (Article 6).

In addition, according to Article 9 of the 2016 Regulation, in the case of large development projects of special importance, the Council of Ministers may increase the permitted percentage of foreign ownership of companies based on a recommendation from the Head of the Investment Commission and subject to special conditions and procedures determined by instructions.

The adoption of the 2016 Regulation marks a welcome step towards a more open and predictable investment framework for foreign companies, as can be observed by Jordan's improved position under the OECD *FDI Regulatory Restrictiveness Index* (Figure 3.1). The regulatory restrictiveness index indicator compares statutory barriers to foreign investment across more than 60 economies worldwide, and also tracks reforms over time (Box 3.3).

However, while the reforms have contributed somewhat to reducing the level of restrictions on FDI, Jordan still remains fairly restrictive in comparison to other countries that have adhered to the OECD *Declaration on International Investment and Multinational Enterprises*.

Figure 3.1. Jordan's FDI reforms reflected in its OECD FDI Regulatory Restrictiveness Index



Source: OECD FDI Regulatory Restrictiveness Index database, www.oecd.org/investment/fdiindex.htm (accessed 1st February 2018).

Box 3.3. Calculating the OECD FDI Regulatory Restrictiveness Index

The OECD's *FDI Regulatory Restrictiveness Index* seeks to gauge the restrictiveness of a country's FDI rules. The index is currently available for all 35 OECD countries and various other non-OECD countries, including all G20 members and adherents to the OECD *Declaration on International Investment and Multinational Enterprises*. It is used on a standalone basis to assess the restrictiveness of FDI policies as part of reviews of candidates for OECD accession and in OECD *Investment Policy Reviews*, including reviews of new adherent countries to the above OECD declaration.

The index does not provide a full measure of a country's investment climate, however, as it does not score the actual implementation of formal restrictions and does not take into account other aspects of the investment regulatory framework, such as the extent of state ownership, and other institutional and informal restrictions which may also impinge on the FDI climate. Nonetheless, FDI rules are a critical determinant of a country's attractiveness to foreign investors – in combination with other indicators of various aspects of the FDI climate, the index helps to assess countries' international investment policies and to explain variations among countries in their ability to attract FDI.

The index covers 22 sectors, including agriculture, mining, electricity, manufacturing and main services (transport, construction, distribution, communications, real estate, financial and professional services).

For each sector, the scoring is based on the following elements:

- the level of foreign equity ownership permitted;
- the screening and approval procedures applied to inward foreign direct investment;
- restrictions on key foreign personnel; and
- other restrictions such as on land ownership, corporate organisation (e.g. branching).

Restrictions are evaluated on a 0 (open) to 1 (closed) scale. The overall restrictiveness index is the average of individual sectoral scores. The measures taken into account by the index are limited to statutory regulatory restrictions on FDI as reflected in the countries' lists of exceptions to national treatment and measures notified for transparency under OECD instruments, without assessing their actual enforcement. The discriminatory nature of measures, *i.e.* when they apply to foreign investors only, is the central criterion for scoring a measure. State ownership and state monopolies, to the extent they are not discriminatory towards foreigners, are not scored.

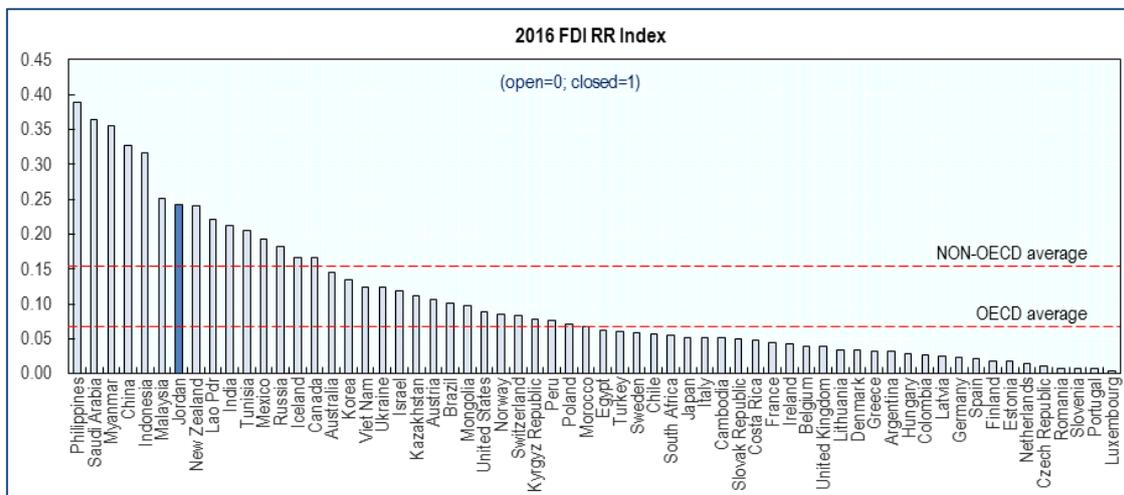
Source: Kalinova, B., A. Palerm and S. Thomsen (2010), "OECD's FDI Restrictiveness Index: 2010 update", <http://dx.doi.org/10.1787/5km91p02zj7g-en>

For the latest scores, see: www.oecd.org/investment/index

3.5. Jordan's FDI regime remains very restrictive

Despite the reforms implemented in 2016, Jordan still remains among the most restrictive countries covered by the index (Figure 3.2). Barriers to FDI in Jordan continue to be greater than in the average OECD and non-OECD country. Jordan also remains more restrictive to FDI than the other three MENA countries (Egypt, Morocco and Tunisia) that have also adhered to the OECD declaration. While Tunisia is only slightly less restrictive than Jordan, Egypt and Morocco have placed many fewer statutory restrictions on FDI.

Figure 3.2. Jordan's performance in the OECD FDI Regulatory Restrictiveness Index, 2016



Note: Restrictions are evaluated on a 0 (open) to 1 (closed) scale.

Source: OECD FDI Regulatory Restrictiveness Index Database, <http://www.oecd.org/investment/fdiindex.htm> (accessed 1st February 2018)

Although the 2016 regulation removed restrictions on non-Jordanians fully owning companies in certain sectors, such as railway services, many service sectors remain partly off limits to foreign investors, limiting potential economy-wide productivity gains. Jordan has also maintained FDI restrictions in some service sectors where the practice is rather unusual, such as in the distribution sector (Figure 3.3). The overall productivity of manufacturing firms is substantially affected by FDI restrictions and stringent product market regulations limiting competition and contestability in service sectors. These may increase service input costs, such as financing and logistics, for other economic sectors.

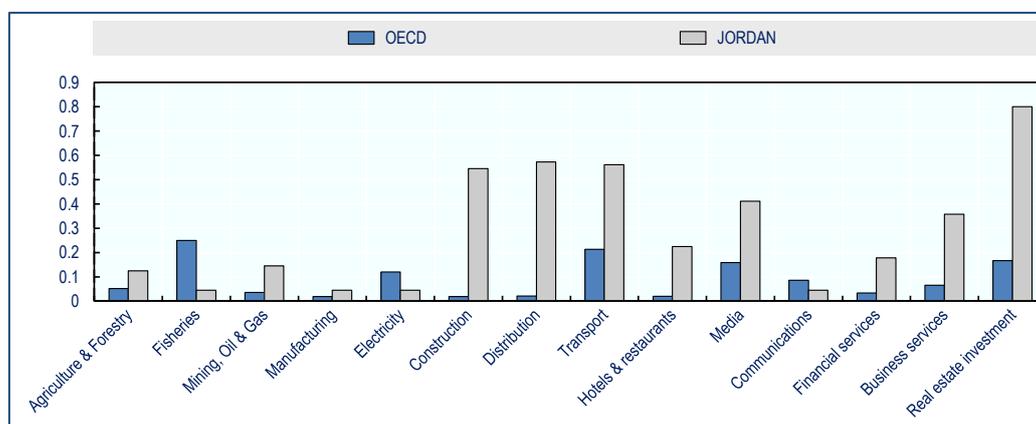
Indeed, according to the World Bank (2014), this partial protection from foreign competition has led to lower growth in productivity for service firms in Jordan. As it notes, “Jordanian firms appear to be relatively well-placed to benefit from FDI spillovers in the form of foreign technology transfers that increase productivity and ultimately job growth. Jordan has some of the highest shares of foreign investment in its total investments: almost half of total investment in Jordan is of foreign origin, according to the World Development Indicators in 2009” (World Bank, 2004). The benefits of greater foreign participation are mainly through job creation amongst domestic service providers and young firms. FDI would likely lead to a partial crowding-out of old and small domestic firms producing the same product or service as foreign firms, but would overall contribute to enhancing productivity and employment generation among domestic firms (World Bank, 2004).

Other discriminatory restrictions apply horizontally across sectors and are contained in sectoral laws. First, regarding access to land, non-Jordanian investors require an approval for land ownership even for business purposes.²² Lease of land by non-Jordanian legal persons for more than three years also requires Cabinet approval. The purchase or lease of state-owned land is restricted to Jordanian nationals. And foreign investment is prohibited in real-estate services according to the same legislation. The preferential treatment in government procurement²³ towards Jordanian-owned firms also contributes to a more restrictive investment environment for foreigners.

Finally, the requirement of Jordanian nationality for key personnel in certain sectors such as professional services (auditing, architecture, engineering, and construction), banking and medical services, although not discriminatory, adds to the overall level of restrictions under the index as it is more burdensome for foreign investors.

Figure 3.3. OECD FDI Regulatory Restrictiveness Index: Jordan vs OECD, by sector, 2016

(open = 0; closed=1)



Source: OECD FDI Regulatory Restrictiveness Index database, <http://www.oecd.org/investment/fdiindex.htm> (accessed 1st February 2018).

The profile of Jordan's restrictions on FDI matches, to a limited extent, the incidence of restrictions among OECD countries. In both Jordan and OECD member countries restrictions tend to be greater in transport, media and real-estate sectors (Figure 3.3).²⁴ These sectors are often deemed strategic and/or have often been subject to state ownership in the past. It is therefore not unusual for foreign investors to face higher restrictions in these sectors. But Jordan also maintains important restrictions in other sectors which are typically open to FDI elsewhere.

²² Leasing land by non-Jordanian legal persons for more than three years also requires Cabinet approval (Law No. 47 of 2006 on renting and selling immovable properties to non-Jordanians and to legal entities and its amendments).

²³ A 10% price preference is granted to domestic providers.

²⁴ In general, FDI in manufacturing sectors is allowed without restrictions in most countries in the sample, except when a horizontal measure applying across the board is in place, such as screening requirements or restrictions on the acquisition of land for business purposes by foreign investors.

In addition, regulations tend to be altogether more stringent in Jordan. Overall, the level of restrictions observed in Jordan are on a par with those in some of the largest economies in the sample, as well as economies endowed with natural resources. Among the non-OECD member countries in the sample, many of the countries with the highest scores are also the largest economies, namely China, India and Indonesia. Market size is also negatively correlated with openness in terms of trade. While there are many possible elements behind this correlation, it suggests that larger economies do not need to be as open to trade or investment since the size of their market potentially allows both for economies of scale and sufficient consumer choice.

Larger developing economies may have greater means of and interest in sustaining the development of national players and implementing a more subtle transition to FDI openness. This is particularly the case for the service industry, where most of the remaining restrictions are found. Those countries exporting a high share of raw materials also tend to be more restrictive. Ten of the 20 most restrictive economies in the index are also among the top 20 raw material exporters. Governments in resource-rich economies may feel a greater need to intervene in foreign investment, whether out of a sense of resource nationalism or simply the need to manage strategic assets. The part of this strategy which involves government control through state-owned enterprises is not captured by the index however. Lastly, as might be expected, the most open economies to trade tend to have the fewest restrictions on foreign investment.

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4. Modernising Jordan's international investment framework

Key takeaways

- *Jordan has signed over 50 bi- and multilateral investment treaties.*
- *Jordan's investment treaties in force cover over 70 economic relations.*
- *The provisions of Jordan's treaties are broadly similar to those found in "first generation" investment treaties worldwide.*
- *The language of key protection provisions in many of Jordan's investment treaties is relatively vague, giving investment arbitrators broad discretion to interpret and thereby determine the scope of protection these treaties provide.*
- *Jordan might wish to consider reviewing the country's investment treaty policy and existing treaties to ensure that government exposure is clearly delineated and reflects Jordan's investment policy priorities.*

4.1. Introduction

In addition to solid domestic regulations, a sound international legal framework to govern investment is critical for ensuring an attractive climate for international investment. In many countries, the domestic regulatory investment framework is thus complemented by another layer of rules and protections stemming from binding international instruments, in particular international investment agreements (IIAs).

IIAs are entered into by two or more countries and provide rights to certain foreign investors that typically go beyond those offered by the national legal framework. While domestic investment law often covers domestic and foreign investors alike, as in Jordan, IIAs formally benefit only foreign investors. Depending on the purpose of the agreements, these treaties usually address issues related to investment admission, protection, distortion and promotion, among others. IIAs are thus crucial in providing a predictable and stable framework for investment by reassuring investors that they will enjoy key protections in line with international standards and be protected against political risks.

Jordan is an active signatory of several IIAs (listed in Annex 4.A), and these constitute a building block of the regulatory landscape for investment in the country. One of the policy responses to the challenges faced by Jordan in repositioning itself as a safe and attractive investment destination is to improve its investment treaty policy, including its investor-state dispute settlement (ISDS) mechanisms. Indeed, there has been an increasing number of international arbitration claims brought by foreign investors against Jordan based on ISDS provisions in IIAs in recent years, and this raises a number of concerns for the state.

Acknowledging the importance of these legal instruments, the Jordanian authorities have expressed their willingness to modernise their approach to IIAs in future treaty negotiations, and to develop their knowledge of investor-state dispute mechanisms and their capacities to manage and prevent these disputes.

OECD input

The OECD conducted two capacity-building workshops for Jordanian treaty negotiators and other policymakers, which focused on international investment agreements and investor-state dispute settlement mechanisms. The workshops led to a series of recommendations, including to improve mechanisms for dispute management and prevention, and to develop a negotiating position in international investment agreements.

The OECD has also prepared an (unpublished) policy advice paper on Jordan's IIAs and ISDS mechanisms to inform future improvements to its IIAs.

Building on the work outlined above, this chapter presents Jordan's international investment agreements in context, and gives an overview of the provisions commonly found in Jordan's treaties. It also suggests improvements for the country's IIA policy and highlights arrangements which may not be in the best interests of the country.

4.2. Jordan's international investment agreements in context

Globally, there are over 3 000 bilateral IIAs and several dozen pluri- or multilateral IIAs. The first treaty was signed in 1959 (between Germany and Pakistan), and the frequency of these treaty developments picked up significantly in the early 1990s.

The large majority of IIAs concern investments that have already been implemented in the host country (post-establishment). Only a few treaties also cover market access for foreign investment (pre-establishment). They typically grant foreign investors, among others, the right to transfer capital in and out of the country and the right to have foreign personnel work in the host country, and may also prohibit certain conduct by host governments which could damage investor interests. In the case of an alleged breach, almost all IIAs give investors access to ISDS mechanisms under which the investors can claim damages against the host country.

Jordan has a broad network of IIAs or investment treaties.²⁵ It signed its first bilateral investment treaty (BIT) in 1974 (with Germany). By 2015, it had signed BITs with over 50 economies (Annex 4.A). An interesting feature is that Jordan has signed all its BITs (except those with France and the United Kingdom) in the last 20 years, while many countries signed the bulk of their BITs between the 1970s and the 1990s. Jordan's increasing trend of signing investment agreements goes hand in hand with its liberalisation policies and the

²⁵ The terms "investment treaties" and "IIAs" refer to both stand-alone investment treaties and investment provisions in broader free-trade agreements.

implementation of major economic reforms adopted after the macroeconomic crisis of the 1990s (OECD, 2013).

Furthermore, at the regional level, Jordan signed two investment-related agreements within the framework of the League of Arab States (LAS) and the Organisation of the Islamic Conference (OIC). Jordan is party to the 1980 Arab League Unified Agreement for the Investment of Arab Capital in the Arab States. The agreement contains traditional investment protection provisions and sets up the Arab Investment Court. The treaty has given rise to two publicly known investment cases, including a case brought by a Qatari investor against Jordan in 2015.²⁶ This agreement was amended in 2013,²⁷ and according to the LAS Secretariat, Jordan ratified the amendment in 2014.²⁸ Jordan is also party to the 1981 Agreement on Promotion, Protection and Guarantee of Investments among Member States of the Organization of Islamic Cooperation (OIC) (57 members),²⁹ which has been ratified by 27 OIC states. It sets out the minimum standards applicable to incoming capital and investment between member states. While this instrument has been underused and has been poorly known by investors for a long time, investors are starting to become aware of the options available to them (McClure, 2015) and it has recently seen a number of cases brought under it.

In total, these agreements cover bilateral relationships with 118 economies, about half of the world's jurisdictions (for a list of these agreements see Annex 4.A). In international comparison, Jordan has established treaty relations with a relatively large number of countries.

Not all of the agreements signed by Jordan have come into force: of the 118 treaty relations that Jordan has concluded, only 71 are known to be in force (Figure 4.1).³⁰ Two treaties – with Germany and Switzerland – have been replaced with new ones. In February 2018, Jordan's investment treaties were not publicly available; the data presented here are thus preliminary and subject to correction by the Jordanian authorities.³¹

²⁶ *Ali Alyafei v. Hashemite Kingdom of Jordan*, ICSID Case No. ARB/15/24 (discontinued)

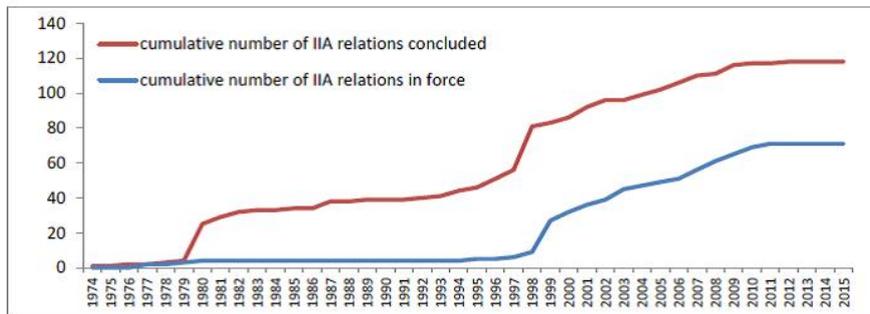
²⁷ The Amendment was adopted by the LAS Economic and Social Council during its 3rd Summit in Riyadh on 21-22 January 2013.

²⁸ Iraq, Jordan, Kuwait, Oman, and Palestine have ratified the Amended Agreement, which entered into force in these five states on April 24, 2016. More recently, Qatar also ratified the Amendment. The Arab Investment Agreement (as unamended) still governs investment guarantees and protections in the territories of its other signatories.

²⁹ Jordan signed the agreement on February 10th, 1992 and ratified it on December 21st, 1998.

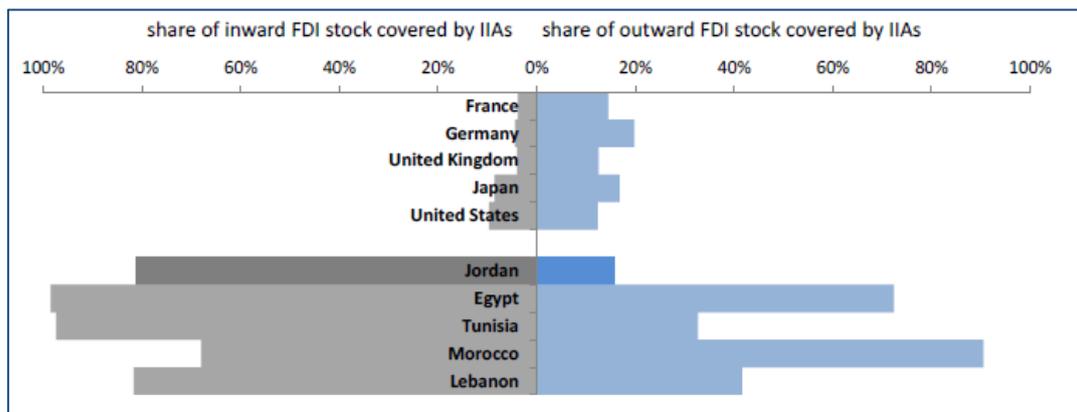
³⁰ There is uncertainty as to what extent and among which countries the Unified Agreement for the Investment of Arab Capital in the Arab States has come into force. An often-cited date (7 September 1981) is most likely incorrect, given the treaty's provisions on the entry into force of the agreement for individual states parties.

³¹ Jordan's treaties had been available on JEDCO's website until recently, but are no longer available from the site. The texts of some treaties are however available to the OECD; also, UNCTAD makes treaty texts available at <http://investmentpolicyhub.unctad.org/IIA/CountryBits/106#iiaInnerMenu>, but the authenticity of the treaty texts that UNCTAD publishes cannot be verified.

Figure 4.1. Development of Jordan's IIAs – treaty relations signed and in force, 1974 to 2015

Source: OECD investment treaty database.

Jordan's treaty network covers a large proportion of its inward FDI stock – about 80% – and a smaller fraction, just short of 20%, of its outward FDI stock. The significant coverage of inward FDI stock is in line with comparable economies in the region, and much higher than the proportion of inward FDI stock covered by advanced economies (Figure 4.2).

Figure 4.2. Jordan's share of IIA-covered inward and outward FDI stock in total FDI stock

Source: OECD investment treaty database.

4.2.1. Other investment-related international obligations

In addition to bilateral and regional agreements relating only to investment, Jordan has also concluded other economic and trade agreements that include investment-related provisions.

Jordan has ratified free trade agreements (FTAs) with the United States (2001) Sudan (2003), Singapore (2004), Turkey (2011) and Canada (2012). At the regional level, Jordan signed a free trade agreement with Morocco and Tunisia in February 2004, known as the Agadir Agreement.³² This has also included Egypt, Lebanon and the Palestinian Authority since 2016. The free trade agreements do not contain substantive investment protection

³² The Agadir Agreement entered into force in 2006.

provisions, though some address investment promotion measures. BITs with the United States, Singapore and Canada have been negotiated or signed simultaneously with the FTAs (see below). This practice should be handled with care to avoid inconsistencies between trade and investment treaties.

Jordan also signed an Association Agreement with the European Union in 2002. It contains an article on the promotion and protection of investments (Article 67), which calls for the creation of a favourable and stable climate for investment, through: (1) harmonised and simplified administrative procedures, co-investment machinery (especially for small and medium-sized enterprises); information channels; and means of identifying investment opportunities; (2) a legal environment conducive to investment through the conclusion of BITs and double taxation treaties (DTTs); (3) access to the capital market for financing of productive investments; and (4) joint ventures.

In 2011, the Council of the European Union adopted negotiating directives for a Deep and Comprehensive Free Trade Area (DCFTA) with Jordan. This would build on the existing Association Agreement, notably in regulatory areas, and address important issues not presently covered, such as trade in services, government procurement and investment protection. It would aim to support economic reforms in Jordan, bring Jordanian legislation closer to that of the EU in trade-related areas, and generate additional trade and investment opportunities by integrating Jordan more closely into the EU single market. The preparatory process for a DCFTA is ongoing.³³

Furthermore, in July 2016, the EU and Jordan agreed to simplify the rules of origin that Jordanian exporters use in their trade with the EU. This initiative forms part of the broader EU support for Jordan in the context of the Syrian refugee crisis and is intended to make it easier for Jordan to export to the EU, encourage investment and create jobs both for Jordanians and for Syrian refugees.

4.3. Overview of Jordan's international investment agreement provisions

Although the content of the thousands of IIAs that exist is by and large relatively similar, treaty design has evolved over time. Treaties are often classified in generations: later generation treaties refine, specify or limit the rights they accord; first generation treaties typically offer broader rights and protections to investors. Not all countries have significantly changed their treaty practice over time, and many countries still conclude what would be considered first generation treaties today.

The overwhelming majority of Jordan's IIAs would be classified as first generation treaties; only some treaties, such as the one concluded with Canada, would be considered a second generation IIA. The following sections describe briefly nine of the main clauses contained in IIAs; the descriptions apply to most Jordanian treaties and to the overwhelming majority of IIAs globally.

4.3.1. Definition of investments and investors

The definition of the terms "investor" and "investment" is a crucial aspect of investment treaties because typically only investors and investments that satisfy the criteria set out in

³³See the following webpage: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/jordan/>.

the treaty benefit from the rights the treaty accords. The definition of investor and investment are typically very broad. For the nationality of the investor, the criterion is most often determined by the place of incorporation, which can be chosen relatively freely.

Under certain circumstances and depending on the exact treaty text, investments may not qualify for the protections of the treaty, for instance if the investment was not authorised, or made in breach of host state law (for details see Section 4.4.5 on sustainable development and responsible business conduct).

4.3.2. Protection against expropriation

Virtually all Jordanian treaties contain provisions that prohibit the expropriation of investments without compensation.

4.3.3. Fair and equitable treatment

Jordan's investment treaties typically provide for fair and equitable treatment (FET) of foreign investors that benefit from treaty protections (covered investors). The exact scope of what "fair and equitable treatment" encompasses is uncertain. The FET provision has been among the most frequently invoked clauses in disputes in recent years.

4.3.4. National treatment

National treatment (NT) provisions, contained in the vast majority of Jordan's investment treaties, guarantee that covered foreign investors will be treated no less favourably than investors from the host state, i.e. that they will not be discriminated against (Chapter 3). NT provisions may also concern market access to foreign investment (pre-establishment); in this role, NT provisions clear barriers to foreign investment and have a role in liberalising foreign investment.

4.3.5. Most-favoured nation treatment

Most-favoured nation treatment (MFN) provisions – also present in the vast majority of Jordan's investment treaties – oblige the host state to treat the investor covered by an IIA at least as favourably as an investor from third states. MFN provisions thus enable the investor – within certain limits – to choose from among all the IIAs that the host country has concluded the one that best suits their interests. Large treaty arsenals, especially if they contain treaties with diverse arrangements, enable investors to obtain more advantageous rights than those contained in the treaty that the host country has chosen with its home country.

MFN provisions can also undermine the effectiveness of reform efforts undertaken to confine investor rights more closely, because investors may continue to rely on other treaties that do not contain the same limitations. In cases where countries have concluded a large number of treaties, reform efforts can only become effective once all treaties contain the desired feature.

4.3.6. Umbrella clauses

Umbrella clauses elevate some breaches of government undertakings (contractual, but potentially also other obligations) to a breach of the investment treaty, thereby widening the scope of application of certain treaty provisions to these breaches. A number of

Jordanian treaties contain such clauses.³⁴ Umbrella clauses can have important policy implications because they increase the exposure of host governments to treaty claims: where an investor would typically only have recourse to national courts or arbitration as agreed upon by the parties of an investment contract, for example, an umbrella clause could give investors access to investment treaty remedies.

4.3.7. Transfer of funds

Jordan's investment treaties typically include provisions on the transfer of funds. These clauses reduce or eliminate restrictions on the repatriation of capital and profits. Some treaties, such as those that Jordan has concluded with Canada and the United States, provide exceptions to the free transfer of funds. Exceptions may be necessary for governments to ensure that they can administer their monetary and financial policies.

4.3.8. Exceptions clauses

Exceptions clauses, discussed in the section on sustainable development and responsible business conduct considerations below, are increasingly used in international treaties as one way to seek an adequate balance between investor protection and governments' right to regulate. Jordan's current treaties only exceptionally contain such clauses.

4.3.9. Dispute settlement mechanisms

Most IIAs contain two different dispute settlement mechanisms: investor-state dispute settlement (ISDS) and state-state dispute settlement (SSDS). SSDS is designed to solve disputes between the countries that have concluded the treaty and is rarely used. ISDS in turn gives investors access to a dispute settlement mechanism against the host state.

Since the 1990s, ISDS mechanisms have become a very frequent feature of investment treaties. OECD research shows that around 96% of the global IIA stock provides access to ISDS (Pohl et al., 2012). It appears that all of the investment treaties to which Jordan is a party now contain ISDS provisions.³⁵

Until recently, ISDS provisions in investment treaties provided for investor-state arbitration using ad hoc arbitration tribunals selected for each case.³⁶ This dispute settlement mechanism was derived from international commercial arbitration and partly applies the same or similar rules. Proponents of investor-state arbitration (ISA) contend that it provides a forum to settle disputes that is independent from both the host state and the investor, a view that is increasingly challenged. Issues raised in the debate include the characteristics of investment arbitrators, conflicts of interest, and lack of transparency (Gaukrodger and Gordon, 2012; see also Box 4.1).

³⁴ See for example 9, Austria-Jordan IIA (2001): "Each Contracting Party shall observe any obligation it may have entered into with regard to specific investments by investors of the other Contracting Party."

³⁵ Two treaties, concluded between Jordan and Switzerland and between Jordan and Germany, did not initially contain an ISDS mechanism. Both treaties have since been replaced by IIAs that contain such a mechanism.

³⁶ The *Unified Agreement for the Investment of Arab Capital in the Arab States* also offers access to the Arab Investment Court, which has however not yet heard many cases.

Treaties typically offer investors a choice among a diverse set of rules associated with specific arbitral tribunals. There are two tribunals most frequently offered in treaties. One is the International Centre for Settlement of Investment Disputes (ICSID) – named after the *1965 Convention on the Settlement of Investment Disputes between States and Nationals of other States* (ICSID Convention) which has over 150 state parties, including Jordan. The others are ad-hoc tribunals applying UNCITRAL³⁷ rules.

The enforcement of arbitral awards is carried out under specific institutions and rules that seek to render arbitral justice effective. The most important set of rules in this regard is the *1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, also known as the “New York Convention”, to which Jordan has adhered. The New York Convention requires national courts of contracting parties to the convention to recognise arbitration awards rendered in other contracting parties, subject to narrow exceptions, and enforce the awards in accordance with their rules of procedure.

The ICSID Convention addresses both the arbitral proceedings and the enforcement of awards rendered under proceedings of the International Centre for Settlement of Investment Disputes. The recognition and enforcement of ICSID awards is governed by the ICSID Convention itself rather than the New York Convention. In particular, ICSID awards cannot be reviewed by national courts of the country in which their enforcement is sought. In contrast, the New York Convention permits national courts to refuse the enforcement of awards for, inter alia, reasons of public policy.

ISDS proceedings are at times at least partly confidential, which makes it difficult to establish the precise number and status of investment claims. As of January 2018, eight claims brought by foreign investors against Jordan, and six claims brought by Jordanian investors against other countries have become known (see Annex 4.C and 4.D respectively).³⁸

³⁷ The UN Commission on International Trade Law.

³⁸ Information from UNCTAD's *Investment Dispute Settlement Navigator*, <http://investmentpolicyhub.unctad.org/ISDS>.

Box 4.1. Dispute prevention policies: a response to the proliferation of international arbitration claims

Since the late 1990s we have seen an increase in international arbitration for the resolution of disputes between foreign investors and the state. This is due in part to the proliferation of bilateral investment treaties. In 2018, Jordan has been a respondent in eight known cases before the ICSID. These claims raise concerns for the state in terms of financial impact, business climate and reputation as an investment destination.

Therefore, several countries have started putting in place policies and practices to prevent and better manage such disputes, known as “dispute prevention policies” (DPPs). DPPs have been developed to prevent or efficiently deal with potential investment disputes, in order to prevent controversy between the state and the investor from escalating to an international arbitration claim.

These policies have been thoroughly discussed throughout the project with experts, taking experience from other countries into account, during various workshops. Here are some basic principles for preventing disputes as a roadmap for reforms:

- Clarification: establish a strong, transparent and predictable legal environment for investors, including the provision of more conducive wording in domestic regulations, investment contracts and IIAs.
- Anticipation: map past and on-going disputes and monitor sensitive sectors and complex contracts (e.g. PPP) through data compilation and analysis.
- Communication and awareness building: establish early alert mechanisms.
- Institutional co-ordination and at all levels and branches of government for identifying and solving disputes at an early stage and creating an institutional mechanism for dispute management, i.e. a specialised unit in the government. For example, a grievance unit in the Jordan's Investment Commission could be set up to be in charge of managing disputes.

Box 4.2. Public scrutiny and reform of international investment agreements

IAs have come under increasing scrutiny by a variety of stakeholders, including civil society and academia, but also by contracting parties to IAs themselves. Critics argue that international investment agreements unduly restrict governments' "right to regulate" and that arbitral proceedings are subject to important flaws. In this process, a number of core assumptions have been challenged. Econometric studies, for example, have failed to demonstrate conclusively that IAs actually lead to increased FDI flows – a policy goal commonly associated with the investment protection regime (Sauvant and Sachs, 2009). Furthermore, while it has been contended that IAs advance the international rule of law and good governance in host states by providing mechanisms to hold governments accountable, critics argue that opaque legal proceedings and potential conflicts of interest of arbitrators are contrary to rule of law standards (Van Harten, 2008). Moreover, the availability of international investment arbitration to investors has been seen by some as an instrument that could circumvent, and thereby weaken domestic legal and governance institutions instead of strengthening them (Ginsburg, 2005). Many governments are engaged in reviewing their investment treaty policy and the field has been marked by significant reforms in recent years.

4.4. Why treaty design matters

While the 3 000 investment treaties signed globally are largely similar, there are important differences in language. The differences in treaty design can affect the extent of rights that individual treaties offer to investors and, correspondingly, determine the obligations and exposure they create for governments that have concluded them. A treaty with broad definitions of rights may increase the likelihood of claims against the government or increase the chances that investors prevail in these disputes. Also, treaties with ambiguous and unclear provisions – particularly prevalent in earlier treaties – may increase legal uncertainty, which is detrimental to all concerned parties, and gives broad leeway for interpretation to arbitrators in case of dispute.

Inasmuch as IAs offer rights to foreign investors, they are widely considered a tool to attract foreign investment as they suggest a reliable investment climate and offer remedies for instances in which investors' expectations are not met.

While IAs may thus help Jordan attract foreign investment, it should also ensure that the level of rights and protection offered to foreign investors is not overly high so as to leave its government the possibility to regulate in the public interest without being exposed to claims for damages. Jordan may want to assess to what extent its treaties strike the right balance, and where adjustments are warranted.

This section gives three examples of design features and their consequences for governments' obligations vis-à-vis foreign investors that Jordan may want to consider in

its efforts to adjust its IIAs. Section 4.5 then explains how adjustments can be implemented in practice.

4.4.1. Direct and indirect expropriation

Jordan's IIAs require host states not to expropriate unless the measures are taken in the public interest, on a non-discriminatory basis and under due process of law, with prompt, adequate and effective compensation (see also Section 2.3.5).³⁹ The relevant provisions typically also address the determination and modalities of paying compensation. Jordan's treaties typically also distinguish between and cover both direct and indirect expropriation.⁴⁰ Direct expropriation generally refers to actually taking of the legal title to property or a physical seizure of property by a government. As a result, the host state is enriched by, and the investor is deprived of, the value of the expropriated property. Indirect expropriation is a more complex and sensitive issue. Regulatory action or other behaviour by a government can sometimes have a dramatic effect on an investment, without involving a formal transfer of title or outright seizure. At the same time, provisions on indirect expropriation can affect the host state's policy space because regulatory action can give rise to claims for compensation. Because most policy issues relating to expropriation concern indirect expropriation, this section focuses on Jordan's policy in that area.

While many Jordanian IIAs explicitly cover indirect expropriation, they typically do not clarify the circumstances under which regulatory measures do not amount to expropriation and where therefore no compensation has to be paid. This gives arbitrators discretion to draw the line between indirect expropriations that entitle the covered investor to compensation, and legitimate regulation that has a significant economic impact on the investor without obliging the government to pay compensation. Under treaties that refer only generally to indirect expropriation, ISDS tribunals have used varying approaches to determine whether indirect expropriation has occurred (UNCTAD, 2012a).

More recently, treaty negotiators have started to include specifications on indirect expropriation, aiming to ensure that non-discriminatory measures designed and applied to protect legitimate public welfare objectives – such as public health, safety and the environment – do not constitute an expropriation. The treaty with Canada, signed and ratified in 2009, appears to be the only Jordanian treaty containing a clarification on indirect expropriation (Box 4.3). Internationally, these clarifications are increasingly found. A large number of treaties concluded in the ASEAN region, as well as the Trans-Pacific Partnership agreement (TPP) and the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union, contain such clarifications, which are also reflected in many countries' model investment treaties.

³⁹ In line with the French model treaty, Article 4(2) of the France-Jordan BIT (1978) adds that an expropriation is only lawful if it does not violate a specific commitment of the state ("*ni contraires à un engagement particulier*").

⁴⁰ The Egypt-Jordan BIT signed in 1996 does not explicitly refer to indirect expropriation, for example (see Article 4).

Box 4.3. An example of a clarification on indirect expropriation

Canada-Jordan IIA, Annex B.13 (1) - Expropriation

The Parties confirm their shared understanding that:

- a. Indirect expropriation results from a measure or series of measures of a Party that have an effect equivalent to direct expropriation without formal transfer of title or outright seizure;
- b. The determination of whether a measure or series of measures of a Party constitute an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:
 - i. the economic impact of the measure or series of measures, although the sole fact that a measure or series of measures of a Party has an adverse effect on the economic value of an investment does not establish that an indirect expropriation has occurred,
 - ii. the extent to which the measure or series of measures interfere with distinct, reasonable investment-backed expectations, and
 - iii. the character of the measure or series of measures;
- c. Except in rare circumstances, such as when a measure or series of measures are so severe in the light of their purpose that they cannot be reasonably viewed as having been adopted and applied in good faith, non-discriminatory measures of a Party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment, do not constitute indirect expropriation.

4.4.2. Fair and equitable treatment and the international minimum standard of treatment of aliens

Fair and equitable treatment (FET) is another standard at the centre of investment treaty claims and treaty policy. Since 1997, investors worldwide have invoked the standard in 341 claims – out of roughly 800 known cases in total – and tribunals have found a breach in 129 of the cases.⁴¹ Jordan's IIAs typically grant FET to covered investors, but often merely state that foreign investors shall be accorded FET without providing further specification.⁴² The treaty with Austria, for example, states that “[e]ach Contracting Party shall accord to

⁴¹ The numbers are based on the UNCTAD ISDS database (available at: investmentpolicyhub.unctad.org/ISDS/), which refers to 668 cases. Data on alleged breaches are available for 425 of them.

⁴² The OIC agreement does *not* include a reference to fair and equitable treatment.

investments by investors of the other Contracting Party fair and equitable treatment...”.⁴³ Some of Jordan’s treaties refer to principles of international law in their FET provisions.⁴⁴ Overall, the references to FET in Jordan’s treaties remain relatively vague. Such vague FET provisions have been considered or applied by tribunals in a broad range of claims worldwide (Dolzer and Schreuer, 2012). Broad FET provisions may therefore create wide exposure for the government because they may allow investors to successfully challenge a broad range of government measures.

The agreement that Jordan has concluded with Canada appears to be an exception to the other Jordanian treaties: it specifies, for example, that FET does not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment (MST) of aliens.⁴⁵ A FET provision limited to MST has been repeatedly interpreted under the North American Free Trade Agreement (NAFTA). It has been interpreted more narrowly than FET provisions under other treaties, and NAFTA governments have had much greater success than other governments in defending FET claims (UNCTAD, 2012).

As reflected in Jordan’s agreement with Canada, there is a growing trend of defining fair and equitable treatment provisions to give more direction to arbitrators by clarifying the original intent of the contracting parties. Two approaches are outlined in Box 4.4 below.

More specific language in FET provisions, clearly delineating the exposure of governments, could improve predictability for both governments and investors. It could also help ensure that Jordan’s investment policy priorities are well reflected in its investment treaties.

⁴³ See Article 3(1), Austria-Jordan BIT (2001).

⁴⁴ See Article 3, France-Jordan BIT (1978).

⁴⁵ See Article 5(2), Canada-Jordan BIT (2009).

Box 4.4 Two approaches to specifying and limiting the FET provision

Two important approaches to further specifying the scope of fair and equitable treatment have emerged:

- 1) **Limitation to the minimum standard of treatment (MST) under customary international law:** This approach has been used in a number of major recent treaties in Asia and the Americas. ASEAN-Korea IIA (Art. 5), ASEAN-India IIA (Art. 7) and the ASEAN IIA with Australia and New Zealand (Art. 6). In addition to the limitation to MST, the Trans-Pacific Partnership agreement (TPP), which is largely built on US practice, specifies that the mere fact that government action is not consistent with an investor's expectation does not constitute a breach of FET. Art. 9.6(4). Art. 9.6(3) and (5) contain further specifications.
- 2) **Defined lists of elements of FET:** The EU's proposal for the Transatlantic Trade and Investment Partnership (TTIP) contains a defined list of elements of the FET provision, i.e. the elements that can constitute a breach of the standard, namely denial of justice, fundamental breach of due process, targeted discrimination on manifestly wrongful grounds, and abusive treatment of investors. While it is a closed list, this approach is broader than some interpretations of MST. Under this emerging EU policy, the parties may agree to add further elements to the list. The article also provides that the tribunal "may take into account" (or "will take into account", in EU-Viet Nam FTA) specific representations that created legitimate expectations. Other defined list approaches are also used. For example, the ASEAN-China Investment Agreement (2009) limits the application of its FET provision to cases of denial of justice (Art. 7).

Both options are more specific than the broad language of treaties that only refer to "fair and equitable" treatment. This does not mean, however, that issues of interpretation might not arise. The content of the minimum standard of treatment, for example, is subject to important debates, as are a number of elements in the defined EU lists.

4.4.3. Specifications of treaty language reflect policy choices

For Jordan's investment treaty policymakers, it is important to bear in mind that specifications of treaty language also reflect policy choices. In some cases, the specifications may affect the degree of protection for covered foreign investors. Policymakers need to carefully consider the costs and benefits of these choices, and their potential impact on foreign and domestic investors, as well as on the host state's legitimate regulatory interests and its exposure to investment claims.

4.4.4. IIAs leave many important issues in ISDS proceedings unaddressed

OECD research suggests that many issues regarding ISDS mechanisms and their use by investors are not addressed in investment treaties (Pohl et al., 2012: 39; Gaukrodger and Gordon, 2012). Some issues are addressed by the arbitration rules, but as rules designed for

commercial disputes between private parties, they may need adjustment in light of the nature of investment claims. Other issues remain unregulated if the treaties refrain from doing so. The available data suggest that in Jordan's treaties many issues are left to the discretion of the parties and/or the arbitrators.⁴⁶

For example, Jordan's treaties typically do not specify time limits for claims. The Canada agreement is once again an exception in this regard.⁴⁷ It allows for a claim to be submitted if no more than three years have elapsed from the date on which the enterprise first acquired, or should have first acquired, knowledge of the alleged breach and knowledge that the enterprise had incurred loss or damage.⁴⁸

Jordan's IIAs typically also do not address the issue of transparency of arbitral proceedings. The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, addressed at the workshop, could be one way for Jordan to improve transparency (see Box 4.5).

⁴⁶ Assessment based on the OECD investment treaty data base and the analysis of selected treaties.

⁴⁷ The agreement also contains exceptions and specifications regarding disputes brought by financial services institutions and related investments, see Article 21, limiting access to ISDS to alleged breaches of Articles 13, 14 and 18.

⁴⁸ See Article 26(2)c, Canada-Jordan IIA (2009).

Box 4.5. Transparency of dispute settlement under international investment agreements

The lack of transparency of arbitral proceedings features high on the list of concerns about the IIA regime. Investor-state proceedings usually involve issues of public interest: it is at stake when the investor challenges regulatory measures ostensibly or actually taken in the public interest, or when the host state, i.e. the taxpayer, has to pay compensation. Transparency in arbitral proceedings is an important means to shed light on these questions and how they are dealt with. In general, the argument in favour of confidentiality is less convincing than in private proceedings, between two companies, for example.

Beyond regulations in IIAs, regulations on transparency are sometimes provided by arbitration rules. More important consequences for the transparency of arbitral proceedings are to be expected from the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, which came into effect in 2014. Under these rules, basic information about the dispute has to be made public through UNCITRAL's Transparency Registry; written submissions by the disputing parties, non-disputing parties and third parties have to be made publicly available; the oral hearings are open to the public and transcripts of those hearings have to be made publicly available; finally, all orders, decisions and awards are made publicly available. The requirements are subject to certain requirements regarding confidential and protected information.

In principle, the rules apply to any UNCITRAL arbitration under an IIA that was concluded on or after 1 April 2014. (This is not the case when contracting parties to the IIA exclude the application of the rules; or when the IIA allows for excluding the application and both disputing parties agree to do so). For IIAs concluded before that date, the rules only apply if the disputing parties agree to the application, or the contracting parties provide for their application on or after 1 April 2014. By signing and ratifying the UN Convention on Transparency in Treaty-Based Investor-State Arbitration, open for signature since 17 March 2015, a country makes the rules applicable to its IIAs concluded before 1 April 2014.

As part of the government's drive to foster the country's investment climate, Jordan could seek to ensure that important issues are addressed in the treaties themselves, providing an adequate framework for this important pillar of investment treaties.

Box 4.6. New approaches to investor protection and dispute settlement: the EU's Investment Court System

Competence for FDI was transferred from EU Member states to the EU in the 2009 Lisbon treaty. The EU development of the Investment Court System (ICS) provisions as part of its investment treaty policy follows the outcome of a 2014-15 EU public consultation on the investment provisions in the Transatlantic Trade and Investment Partnership (TTIP), extended public debates about ISDS, and input from the European Parliament and national parliaments in Europe. The European Commission has explained the ICS as a response to “a fundamental and widespread lack of trust by the public in the fairness and impartiality of the old ISDS model” of ad-hoc investment arbitration, and a way to help “enshrine government’s right to regulate” (Malmström, 2015).

The ICS continues to allow for claims against governments by individual covered foreign investors, but seeks to address legitimacy issues associated with such claims in investment arbitration by “introducing the same elements that lead citizens to trust their domestic courts”. These include judges publicly appointed in advance by governments, removal of certain perceived economic incentives and conflicts of interest among adjudicators and appointing authorities, transparency of dispute settlement, and elimination of foreign investor input into the selection of judges in individual cases. The ICS also contains innovative provisions to help investors by accelerating the treatment of claims and facilitating access to dispute settlement for SMEs. Aspects of the system that have attracted interest and commentary include its approach to the enforcement of awards, the selection of judges and appellate members, and the functioning in light of the expected flow of cases.

The EU has proposed negotiations for a permanent multilateral International Investment Court and appellate tribunal. Canada and Viet Nam have expressed support for this work in their treaties with the EU. Questions remain about how individual treaty versions of the ICS could evolve into or be superseded by a multilateral ICS that would apply to many treaties.

4.4.5. Sustainable development and responsible business conduct considerations

A new emphasis in recent treaty making has been on sustainable development and responsible business conduct. Some of these innovations are also found in Jordan’s existing investment treaties and they play an even more prominent role in recent and current negotiations of international agreements, such as TPP or CETA.

While specific investor obligations are so far not encountered in treaty practice, treaties often make investment protection conditional on compliance with host state law. Jordan’s treaties use different methods to ensure that only investments that do not violate host state law are covered and protected. These include making legality a condition for application of the treaties or by defining covered investments as those made in accordance with host

state law.⁴⁹ Such requirements serve as a filter mechanism and can potentially encourage investors to be more mindful of their obligations under host state law.

In order to protect certain types of regulation from challenge, some Jordanian IIAs have used other tools, often apparently inspired by international trade law, such as general exceptions clauses. The rationale for these clauses is to ensure that the host state will not be prevented from implementing measures that pursue specific regulatory goals providing certain requirements are satisfied. Unlike clarifications limited to a particular provision, as for indirect expropriation addressed above, these provisions can protect from challenge measures that satisfy their criteria under most if not all treaty provisions. The Canada-Jordan IIA of 2009 contains such a general exceptions clause (see Box 4.7). These general exceptions clauses are occasionally also complemented by more targeted provisions relating to measures addressing security issues, the stability of the financial system, or efforts to safeguard the balance of payments.

⁴⁹ See for example Malaysia-Jordan IIA (1994).

Box 4.7. General exceptions clauses - Article 10, Canada-Jordan IIA

1. Subject to the requirement that such measures are not applied in a manner that would constitute arbitrary or unjustifiable discrimination between investments or between investors, or a disguised restriction on international trade or investment, nothing in this Agreement shall be construed to prevent a Party from adopting or enforcing measures necessary:

- (a) to protect human, animal or plant life or health;
- (b) to ensure compliance with laws and regulations that are not inconsistent with the provisions of this Agreement; or
- (c) for the conservation of living or non-living exhaustible natural resources.

2. Nothing in this Agreement shall be construed to prevent a Party from adopting or maintaining reasonable measures for prudential reasons, such as:

- (a) the protection of investors, depositors, financial market participants, policy-holders, policy-claimants, or persons to whom a fiduciary duty is owed by a financial institution;
- (b) the maintenance of the safety, soundness, integrity or financial responsibility of financial institutions; and
- (c) ensuring the integrity and stability of a Party's financial system.

3. Nothing in this Agreement shall apply to non-discriminatory measures of general application taken by any public entity in pursuit of monetary and related credit policies or exchange rate policies. This paragraph shall not affect a Party's obligations under Article 7 or Article 14.

4. Nothing in this Agreement shall be construed:

- (a) to require any Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;
- (b) to prevent any Party from taking any actions that it considers necessary for the protection of its essential security interests
 - (i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,
 - (ii) taken in time of war or other emergency in international relations, or
 - (iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
- (c) to prevent any Party from taking action in pursuance of its obligations under the *Charter of the United Nations* for the maintenance of international peace and security.

5. Nothing in this Agreement shall be construed to require a Party to furnish or allow access to information the disclosure of which would impede law enforcement or would be contrary to the Party's law protecting Cabinet confidences, personal privacy or the confidentiality of the financial affairs and accounts of individual customers of financial institutions.

6. The provisions of this Agreement shall not apply to investments in cultural industries.

7. Any measure adopted by a Party in conformity with a decision adopted by the World Trade Organization pursuant to Article IX:3 or IX:4 of the WTO Agreement shall be deemed to be also in conformity with this Agreement. An investor purporting to act pursuant to Section C of this Agreement may not claim that such a conforming measure is in breach of this Agreement.”.

Some provisions seek to influence the actions of governments themselves. Here again, the Canada-Jordan IIA can serve as an example: both countries recognise that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures.⁵⁰ In the preamble to Jordan's treaty with the United States, signed in 1997, contains a reference to not lowering such standards. Since then, the United States' treaty practice has evolved, as is the case with other Jordan treaty partners, and contains a clause similar to the one found in the Canada-Jordan IIA in its model treaty. Some treaties worldwide are also used to commit treaty partners to specific reform efforts. In a bilateral side instrument to the TPP with the United States, Viet Nam, for example, will commit to having specific features in its labour laws.⁵¹ Practice suggests that contracting parties have rarely sought to enforce this type of commitment, which is subject to state-to-state dispute settlement mechanisms (United States Government Accountability Office, 2009).⁵² The absence of a venue for other stakeholders to enforce those provisions is seen as a weakness by some civil society organisations.⁵³

While the focus in this section has been on exceptions clauses, it is important to bear in mind that all investment treaty provisions potentially affect sustainable development and responsible business conduct considerations because they affect which government measures – including those fostering the above mentioned considerations – may constitute a violation of a government's investment treaty obligations.

⁵⁰ Article 10, Canada-Jordan IIA (2009). Similar clauses have emerged more broadly in more recent treaty practice.

⁵¹ The draft of the side instrument is available at: <https://ustr.gov/sites/default/files/TPP-Final-Text-Labour-US-VN-Plan-for-Enhancement-of-Trade-and-Labor-Relations.pdf>.

⁵² In 2014, the US brought a claim against Guatemala for an alleged breach of obligations regarding labour rights under the Dominican Republic–Central America Free Trade Agreement (CAFTA-DR).

⁵³ See Human Rights Watch, Q&A: The Trans-Pacific Partnership, 12 January 2016, available at: <https://www.hrw.org/news/2016/01/12/qa-trans-pacific-partnership>

4.5. Options to adjust Jordan's investment treaty obligations

The analysis of its investment treaties suggests that Jordan might wish to consider reviewing its treaty policy to ensure that it reflects government investment policy and that the treaties provide for adequate levels of investment protection and government exposure.

4.5.1. Implementing adjusted policies in Jordan's investment treaty network

Jordan has expressed interest in developing a new model investment treaty, which would help shape its future treaty policy.

A new model treaty alone, however, will only have limited impact on Jordan's obligations under investment treaties:

- 1) It will only be effective to the extent that Jordan succeeds in establishing it as a basis in future negotiations.
- 2) Even where future treaties reflect adjustments, investors may still seek to circumvent these new provisions by invoking more favourable provisions under other existing treaties through MFN provisions. One option to address this issue would be to only provide for prospective MFN clauses, ensuring that investors cannot invoke existing treaties which do not reflect the new investment treaty policy.

In order to reflect improved policies in its existing treaties, Jordan might wish to review these treaties together with its treaty partners. Here again, the modifications can only be effective if they cannot be circumvented through MFN provisions. (In some treaties, Jordan has excluded ISDS mechanisms from the scope of MFN provisions, for example⁵⁴). While some partner countries might be interested in reviewing existing bilateral investment treaties, consensus in other relations can be more difficult to achieve, particularly when there are a number of contracting parties, such as in the OIC agreement.

4.5.2. Allowing enough time for treaty review and renegotiation

Jordan's treaties vary in their duration and mechanisms for renewal and termination. Bilateral investment treaties generally contain, in the final provisions, the definition of an initial validity period; at the end of this period, treaties are often extended tacitly either for an indefinite period or for another fixed term. Denunciation is possible at certain points in time, but requires advance notice. Most treaties define an additional period during which the treaty has effect for existing investments following termination (Pohl, 2013).

Review and renegotiation of investment treaties takes time. It may be more easily conducted without the time pressure of either an imminent tacit renewal for an extended period or its denunciation, with the attendant publicity. Jordan should accordingly monitor the temporal validity of its treaties so it has sufficient time to approach treaty partners where appropriate.

Treaties that renew for fixed terms require more monitoring, as they limit the possibilities to update or unilaterally end the agreement. The temporal validity of Jordan's treaties can also inform discussions on possible joint interpretations of treaty provisions with treaty partners. Joint interpretations can be issued at any time and can be a simpler and faster device than renegotiation to address some aspects of treaty policy, providing that the existing treaty text allows sufficient scope to achieve the jointly-desired interpretation. This

⁵⁴ Article 4(4), UAE-Jordan BIT (2009).

may often be the case in older treaties with vague provisions. Discussions and exchanges of views with treaty partners about proposed joint interpretations in advance of treaty renewal dates can also help inform future negotiations and decisions about treaties.

4.5.3. Ensuring full consistency between treaty provisions and domestic regulations

Jordan must make sure that its treaty provisions form a legal framework that is coherent with its domestic legislation.

When reviewing existing treaties or negotiating future investment agreements, it will be crucial to ensure consistency between the content of protection standards given to investors through treaty provisions and those contained in domestic laws, in particular the 2014 Investment Law.

However, the 2014 Investment Law contains no cross-reference to Jordan's international obligations to ensure coherence between the basic provisions of the law and the protection and guarantees granted by BITs and other IIAs. However, the 2016 Regulation does include a cross-reference, as follows: "The provisions of international agreements and treaties for the promotion and protection of investments, to which the Kingdom is party to or acceded to, shall be taken into account when applying this Regulation" (Article 11).

Care needs to be taken to ensure coherence between IIA obligations and domestic policies, and to achieve consistency between IIAs and other international obligations of the IIA contracting parties.

To ensure this degree of co-ordination, Jordanian policy makers need to be well-informed and have an in-depth knowledge of their country's international obligations. The project conducted some capacity-building activities to achieve this, in particular a seminar in 2016 with international experts and peers for Jordanian policymakers and treaty negotiators.

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Annex 4.A. Jordan's International Investment Agreements

	Treaty partner	Status	Date of signature	Date of entry into force
Bilateral Agreements				
1	Algeria - Jordan BIT (1996)	In force	01-08-1996	05-06-1997
2	Armenia - Jordan BIT (2014)	In force	29-10-2014	22-11-2017
3	Austria - Jordan BIT (2001)	In force	23-01-2001	25-11-2001
4	Azerbaijan - Jordan BIT (2008)	In force	05-05-2008	25-12-2008
5	Bahrain - Jordan BIT (2000)	In force	08-02-2000	05-06-2000
6	Belarus - Jordan BIT (2002)	In force	20-12-2002	22-12-2005
7	Bosnia and Herzegovina - Jordan BIT (2006)	In force	02-07-2006	25-11-2011
8	Bulgaria - Jordan BIT (2002)	In force	07-08-2002	19-04-2003
9	Canada - Jordan BIT (2009)	In force	28-06-2009	14-12-2009
10	China - Jordan BIT (2001)	Signed	15-11-2001	
11	Congo, Democratic Republic of the - Jordan BIT (2004)	Signed	23-06-2004	
12	Croatia - Jordan BIT (1999)	In force	10-10-1999	27-04-2000
13	Cyprus - Jordan BIT (2009)	In force	20-12-2009	19-07-2010
14	Czech Republic - Jordan BIT (1997)	In force	20-09-1997	25-04-2001
15	Egypt - Jordan BIT (1996)	In force	08-05-1996	11-04-1998
16	Estonia - Jordan BIT (2010)	In force	10-05-2010	23-03 -2011
17	Finland - Jordan BIT (2006)	In force	01-11-2006	18-12-2007
18	France - Jordan BIT (1978)	In force	23-02-1978	18-10-1979
19	Germany - Jordan BIT (2007)	In force	13-11-2007	28-08-2010
20	Germany - Jordan BIT (1974)	Terminated	15-07-1974	10-10-1977

21	Greece - Jordan BIT (2005)	In force	21-02-2005	08-02-2007
22	Hungary - Jordan BIT (2007)	In force	14-06-2007	09-03-2008
23	India - Jordan BIT (2006)	In force	30-11-2006	22-01-2009
24	Indonesia - Jordan BIT (1996)	In force	12-11-1996	09-02-1999
25	Jordan - Iraq BIT (2013)	In force	25-12-2013	10-02-2017
26	Italy - Jordan BIT (1996)	In force	21-07-1996	17-01-2000
27	Jordan - Kazakhstan BIT (2006)	In force	29-11-2006	01-07-2008
28	Jordan - Korea, Republic of BIT (2004)	In force	24-07-2004	25-12-2004
29	Jordan - Kuwait BIT (2001)	In force	21-05-2001	19-03-2004
30	Jordan - Lebanon BIT (2002)	In force	31-10-2002	30-08-2003
31	Jordan - Lithuania BIT (2002)	In force	13-10-2002	05-05-2003
32	Jordan - Malaysia BIT (1994)	In force	02-10-1994	03-03-1995
33	Jordan - Morocco BIT (1998)	In force	16-06-1998	07-02-2000
34	Jordan - Netherlands BIT (1997)	In force	17-11-1997	01-08-1998
35	Jordan - Occupied Palestinian territory BIT (2012)	In force	04-10-2012	31-05-2013
36	Jordan - Oman BIT (2007)	In force	09-04-2007	05-09-2008
37	Jordan - Poland BIT (1997)	In force	04-10-1997	14-08-1999
38	Jordan - Portugal BIT (2009)	In force	17-03-2009	06-01-2015
39	Jordan - Qatar BIT (2009)	In force	28-01-2009	28-05-2009
40	Jordan - Romania BIT (1992)	In force	02-07-1992	16-03-1999
41	Jordan - Russian Federation BIT (2007)	In force	13-02-2007	17-06-2009
42	Jordan - Saudi Arabia BIT (2017)	In force	27-03-2017	08/05/2018
43	Jordan - Singapore BIT (2004)	In force	16-05-2004	22-08-2005
44	Jordan - Slovakia BIT (2008)	In force	21-02-2008	09-06-2010

45	Jordan - Spain BIT (1999)	In force	20-10-1999	13-12-2000
46	Jordan - Sudan BIT (2000)	In force	30-03-2000	03-02-2001
47	Jordan - Switzerland BIT (1976)	Terminated	11-11-1976	02-03-1977
48	Jordan - Switzerland BIT (2001)	In force	25-02-2001	11-12-2001
49	Jordan - Syrian Arab Republic BIT (2001)	In force	08-10-2001	11-05-2002
50	Jordan - Tajikistan BIT (2017)	Signed	10/12/2017	
51	Jordan - United Republic of Tanzania BIT (2009)	Signed	08-10-2009	
52	Jordan - Thailand BIT (2005)	In force	15-12-2005	08-06-2012
53	Jordan - Tunisia BIT (1995)	In force	27-04-1995	23-11-1995
54	Jordan - Turkey BIT (1993)	In force	02-08-1993	23-01-2006
55	Jordan - Turkey BIT (2016)	Signed	27-03-2016	
56	Jordan - Ukraine BIT (2005)	In force	30-11-2005	17-04-2007
57	Jordan - United Arab Emirates BIT (2009)	In force	15-04-2009	12-02-2010
58	Jordan - United Kingdom BIT (1979)	In force	10-10-1979	24-04-1980
59	Jordan - United States of America BIT (1997)	In force	02-07-1997	12-06-2003
60	Jordan - Yemen BIT (1996)	In force	08-05-1996	28-01-1998
Multilateral Agreements				
	Arab Investment Agreement	In force	26-11-1980	07-09-1981
	Amendment to the Arab Investment Agreement	In force	22 -01-2013	24-04- 2016
	OIC Investment Agreement	In force	05-06-1981	01-02-1988

Source: UNCTAD, *International Investment Agreements Navigator* (database), <http://investmentpolicyhub.unctad.org/IIA/IiasByCountry#iialInnerMenu> (accessed on 9 February 2018).

Annex 4.B. Treaties with investment provisions

No.	Title	Parties	Type of agreement	Status	Date of signature	Date of entry into force
1	Jordan-Turkey FTA	Jordan; Turkey;	Treaties with Investment Provisions	In force	01-12-2009	01-03-2011
2	Jordan-Singapore FTA	Jordan; Singapore;	Treaties with Investment Provisions	In force	16-05-2004	22-08-2005
3	EFTA-Jordan FTA	EFTA (European Free Trade Association); Jordan;	Treaties with Investment Provisions	In force	21-06-2001	01-09-2002
4	Jordan-US FTA	Jordan; United States of America;	Treaties with Investment Provisions	In force	24-11-2000	17-12-2001
5	EC-Jordan Association Agreement	EU (European Union); Jordan;	Treaties with Investment Provisions	In force	24-11-1997	01-05-2002

Source: UNCTAD, *International Investment Agreements Navigator* (database), <http://investmentpolicyhub.unctad.org/IIA/IiasByCountry#iiaInnerMenu> (accessed on 9 February 2018).

Annex 4.C. ISDS cases against Jordan

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2015	Alyafei v. Jordan	Investment: Shareholding in the Amman-based Housing Bank of Trade and Finance. Summary: Claims arising out of the alleged breach of a share purchase agreement the claimant signed with Jordan's Social Security and Investment Fund (SSIF) in 2012 to purchase the latter's shares in Housing Bank of Trade and Finance; in particular the alleged non-payment of a "break-up fee" stipulated in the agreement.	Discontinued	Jordan	Qatar
2	2015	Orange SA v. Jordan	Investment: Majority shareholding in the Jordanian telecommunications company Orange S.A. Summary: Claims arising out of the alleged discriminatory State actions in the procedure of renewal of the 15-year 2G license of the claimant's local subsidiary Orange S.A., the formerly state-owned Jordan Telecommunications Company (JTC).	Settled	Jordan	France
3	2013	Alghanim v. Jordan	Investment: Majority shareholding (96 per cent stake) in Umniah, a Jordanian telecommunications provider company that held a GSM operating license. Summary: Claims arising out of alleged Government measures following Alghanim's sale of its stake in Umniah, a Jordanian telecommunications company, to the Bahraini company Batelco; possibly including a tax assessment levied upon the investor by Jordanian authorities.	Pending	Jordan	Kuwait

4	2009	ICRS v. Jordan	Investment: Rights under a light railway system agreement concluded between Jordan and the claimant. Summary: Claims arising out of the alleged unlawful termination by the Government of an implementation agreement concluded between Jordan and its Public Transport Regulatory Commission with the claimant to build, operate, and transfer a light railway system (the LRS Project) connecting the Jordanian cities of Amman and Zarqa.	Discontinued	Jordan	Kuwait
5	2008	ATA Construction v. Jordan	Investment: Contract concluded between ATA Construction and a State-controlled entity to construct a dike at a site on the Dead Sea; claims to money in the form of an award rendered in claimant's favor. Summary: Claims arising out of the annulment by the Jordanian courts of an arbitral award rendered in favour of the claimant following a dispute arising from the collapse of a dike constructed by ATA for the Arab Potash Company, an entity based in Jordan and controlled by the respondent.	Decided in favour of investor	Jordan	Turkey

6	2007	Trans-Global v. Jordan	Investment: Rights under a production sharing agreement concluded between a wholly-owned subsidiary of the claimant and Jordan's Natural Resources Authority; capital contributions of over USD 29 million in the petroleum exploration venture. Summary: Claims arising out of claimant's oil exploratory work which confirmed the existence of oil deposits in the Dead Sea and Wadi Araba basin in a designated area of exploration, followed by the Government's alleged systematic campaign to prevent the investor from pursuing any further role in the development of those oil deposits despite an express contractual entitlement to participate.	Settled	Jordan	United States of America
7	2002	JacobsGibb v. Jordan	Investment: Data not available Summary: Claims arising out of a waterway construction project.	Settled	Jordan	United Kingdom
8	2002	Salini v. Jordan	Investment: Rights under a contract for a dam construction project concluded with the Jordan Ministry of Water and Irrigation. Summary: Claims arising out of the disagreement between the Government of Jordan and the investor as to the amount owed to the claimants for works done under a contract for a dam construction in Jordan.	Decided in favour of State	Jordan	Italy

Source: UNCTAD, *Investment Dispute Settlement Navigator* (database), <http://investmentpolicyhub.unctad.org/ISDS/CountryCases/106?partyRole=2> (accessed on 20 December 2017).

Annex 4.D. ISDS cases by Jordanian investors abroad

No.	Year of initiation	Short case name	Summary	Outcome of original proceedings	Respondent State	Home State of investor
1	2017	Itisaluna Iraq and others v. Iraq	Not available	Pending	Iraq	Jordan United Arab Emirates
2	2014	Dagher v. Sudan	Investment: Shareholding, through certain intermediary companies, in the Sudanese company Jet Net, which held license rights to build, operate and own a retail business of wireless communications granted by the Sudanese Ministry of Communications. Summary: Claims arising out of the Government's alleged failure to grant frequencies for a wireless internet network that was built by a company in which the claimant held shares.	Pending	Sudan	Jordan Lebanon
3	2013	Al Sharif v. Egypt (I)	Investment: Shareholding in the Sokhna Port Development Company that operates the Port of North El Sokhna. Summary: Claims arising out of the alleged interference by the Government with claimant's investments in a port development project.	Settled	Egypt	Jordan
4	2013	Al Sharif v. Egypt (II)	Investment: Data not available Summary: Claims arising out of the alleged interference by the Government with claimant's investments in a customs system project.	Settled	Egypt	Jordan
5	2013	Al Sharif v. Egypt (III)	Investment: Shareholding in the company Amiral Holdings, which formed part of the winning consortium for a 25-year concession to develop a bulk liquids terminal in East Port Said. Summary: Claims arising out of the alleged interference by the Government with claimant's investments in a bulk liquids terminal project.	Settled	Egypt	Jordan
6	2009	East Cement v. Poland	Investment: Interests in a cement production facility. Summary: Claims arising out of a decision by a Polish bankruptcy court concerning claimant's alleged investment in a cement manufacturing plant.	Discontinued	Poland	Jordan

Source: Source: UNCTAD, *Investment Dispute Settlement Navigator* (database), <http://investmentpolicyhub.unctad.org/ISDS/CountryCases/106?partyRole=1> (accessed on 20 December 2017).

5. Conclusion

In the challenging economic environment Jordan has been facing in recent years, fostering investment is key for promoting inclusive economic development in the country. Attracting investment will be also vital for enabling the economy to deal with the Syrian refugee crisis, allowing it to sustain growth and stability.

Although there is no single model of success when it comes to investment policy and promotion, there is general agreement on the importance of a sound, transparent and predictable legal framework to reassure investors and foster investment. In the past couple of years, Jordan has started implementing investment regulatory reforms as part of a more global reform agenda for economic growth and stability. A modernised Investment Law was enacted in 2014, and a unified Investment Promotion Agency established. This was followed by the revision of the FDI restrictions regime in 2016. These reforms demonstrate the strong political will of the Jordanian Government to strengthen the investment legal framework in line with international best practices and to overcome the challenges and difficulties faced by investors. In this context, the OECD Jordan Investment and Competitiveness Project has built awareness of and supported these reforms, providing technical advice to the government, and building capacity to support implementation efforts.

Nonetheless, important challenges remain and efforts should continue, especially to implement the reforms to date and improve the country's investment promotion capacities. While a sound investment regulatory and institutional framework is a necessary condition to foster investment, it is not sufficient. A good investment climate also requires a broader policy reform agenda which involves other key areas, including good governance policies, tax and trade measures, sound competition rules as well as effective anti-corruption regulations.

The OECD remains committed to working with Jordan on a number of areas for reform with a view to increasing the well-being of its population, including developing policies to improve the business and investment climate.

Annex A. Project timeline: OECD activities

2013	
Oct.	Adherence of Jordan to the OECD Declaration on Multinational Enterprises and International Investment and launch of Jordan investment policy review.
2014	
Sept.	Launch of the Project and first Steering Group meeting with key stakeholders
Oct.	<i>Enactment of the 2014 Investment Law</i>
Dec.	Analysis of the 2014 Jordan's Investment Law with a focus on the protection of investment
2015	
Mar.	Capacity-building workshop on the "Legal Investment Framework: Challenges and the Way ahead"
May	"Preliminary analysis of Jordan's investment regime: Focus on FDI restrictions" and Capacity-building workshop on the revision of the Regulation on Non-Jordanian Investors
Oct.	Second Project steering group with key stakeholders
2016	
Feb.	Workshop on "Boosting Jordan Competitiveness : Modernising the Legal Framework for Investment"
May	Analysis of International Investment Agreements and Investor-State Dispute Settlement Mechanisms in Jordan and Capacity-building workshop
June	<i>Adoption of Regulation No. 77 regulating non-Jordanian investments</i>
September	Capacity-building workshop on Responsible Business Conduct
December	Capacity-building workshop on "Investment Dispute Management in Jordan"
	Launch of the OECD Jordan Clean Energy Investment Policy Review during a high-level event in Amman
2017	
May	Update of Jordan's ranking in the OECD FDI Restrictiveness
December	End of the Project

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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The Programme supports reforms to mobilise investment, private sector development and entrepreneurship as driving forces for inclusive growth and employment in the MENA region, building also on the need to mainstream the region's increasingly well trained youth and women.

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ENHANCING THE LEGAL FRAMEWORK FOR SUSTAINABLE INVESTMENT

Lessons from Jordan

Over the last few years, Jordan has been challenged by an unstable and fragile regional context and has engaged in a global reform agenda to enhance its economic growth and stability. Jordan is actively committed to improving its business and investment environment. Major legal and institutional investment reforms undertaken in this context include the adoption of a modernised Investment Law in 2014 and creation of a unified Investment Promotion Agency. To guarantee long-lasting impact, all of these measures require efficient implementation.

Under the Jordan Investment and Competitiveness Project (2014-2017), the OECD supported the reforms of Jordan's domestic investment legal framework, which focused on investors' protection and the revision of the FDI restrictions regime. The Project also built capacities among investment policy stakeholders, and delivered advice and training to help modernise the Jordanian international investment framework.

Enhancing the legal framework for sustainable investment: Lessons from Jordan presents an analysis of the recent investment reforms and the lessons learnt in the process. It demonstrates that, despite a complex environment, building a more conducive investment climate in support of inclusive growth is possible.

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