

Jordan Banking Law: Highlights and Amendments

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October 2015

For these reasons, the government has drafted an amendment to the Jordanian Banking Law No. 28 of 2000 (“the “Banking Law”) in a manner that gives the Central Bank more oversight and authority over the management in banks in order to maintain the security of all financial transactions deriving therefrom. The draft of the Amended Banking Law (the “Draft”) has not yet been passed as it is still under review.

Appointing the Management of the Bank

First, the Draft gives the Central Bank full discretion to determine the number of members of the Board of Directors and the Independent Members in addition to the conditions and requirements of this independence. These requirements have been highlighted in the Corporate Governance Instructions for Banks No. 58 of 2014 (the “Instructions”), which provides in Article 6(d) that the qualification of a Board Member as an independent director shall be subject, as a minimum, to the following requirements:

- not to have been an executive director of the bank’s board within the last three years of the execution date of the Instructions;
- not to have been an employee of the bank or any subsidiary thereof, within the last three years of the execution date of the Instructions;
- (not to be related, up to the second degree, to any other board member or a member of any board of any subsidiary of the bank, or to any qualifying shareholder of the bank (i.e. a person holding directly or indirectly 5% or more of the share capital of the bank) (“Qualifying Shareholder”);
- not to be related, up to the second degree, to any of the senior executive manager of the bank or any senior executive manager of any subsidiary of the bank;
- not to be a partner or employee of the bank’s external auditor, whether a current auditor or an auditor appointed within the last three years, and for said member not to be related, up to the first degree, to the person responsible for auditing the bank;
- not to be a Qualifying Shareholder of the bank, or a representative of or affiliated to a Qualifying Shareholder, or otherwise with its affiliates a Qualifying Shareholding, or be a Qualifying Shareholder of a subsidiary of the bank or of the bank’s group;
- not to have occupied the position of Board Member or member of a management committee of the bank or any of its subsidiaries for more than eight consecutive years;
- for the said member and any company in which he is a Board Member or Qualifying Shareholder, not to have been granted credit by the bank exceeding 5% of the subscribed share capital of the bank, nor to have been a guarantor to a credit exceeding the same threshold; and
- to hold high financial or banking expertise and qualifications.

The Central Bank also has the right to object to the nomination of any person to the membership of the Board of Directors if the Central Bank finds that the nomination contradicts the requirements stated above or if this person is less than twenty five years of age, not of good reputation or is a member of the Board of Directors, general manager, regional manager or an employee of any other bank (provided that this bank is not an affiliate).

Secondly, the Draft stipulates that the general manager of the bank shall not be related, up to the third degree, to the chairman of the Board of Directors, any of its members or any Qualifying Shareholder. The Central bank shall also be entitled to apply the same condition to any of the high positions in the bank. Additionally, the Central Bank may object to the appointment of the general manager of the bank or any of the high positions if the appointment was not in full compliance with article 25 of the Banking Law which explicitly requires the appointed person to be of good reputation, not to be a member of the Board of Directors of any bank (provided that this bank is not an affiliate), to be fully dedicated to managing the bank's activities and to hold sufficient banking expertise and qualifications.

Financial Crisis Procedures

In the event that a bank encounters a situation that has a fundamental effect on its financial status, the Draft entitles the Central Bank to take, in coordination with Jordan Deposit Insurance Corporation (the "JDIC"), any of the procedures stated below if it would be a better approach to achieve financial banking stability and of lower cost than commencing the liquidation process:

- issuing a decision to merge the bank with another bank, subject to the approval of the second bank.
- issuing a decision to sell the bank or any of its assets, rights, liabilities and obligations against other banks.
- the JDIC shall endure the difference between the value of the assets and the rights of the bank and the value of the liabilities and obligations of the banks for the purposes of enforcing (a) and (b).

If the sale or merger stated above were not possible or if the Central Bank saw that delaying this decision may decrease the cost of correcting the situation, then the Central Bank may establish a bridge bank in coordination with the JDIC. The following provisions shall be utilized to facilitate the creation and operation of this bridge bank:

- the Central Bank determines the assets, rights, liabilities and obligations that are to be transferred from the bank to the bridge bank.
- The Companies General Controller shall, upon the request of the Central Bank, register the bridge bank in the public shareholding companies registry in addition to the issuance of a registration certificate for that bank which provides its ownership and those authorized to sign on its behalf however specified by the Central Bank. Noting that the bridge bank shall not be subject to the provisions of the Companies Law, the Securities Law or any legislation deriving therefrom.
- The Central Bank shall issue a decision to liquidate the bank that is encountering financial problems and refer it to the JDIC for the purpose of liquidating the assets, rights, liabilities and obligations that were not transferred to the bridge bank. Further, the Central Bank shall, in coordination with the JDIC, set out the necessary arrangements to determine the manner in which the JDIC is going to execute its obligations along with the conditions and provisions for the same that are provided in the Deposit Insurance Corporation Law No. 33 of 2000.
- The bridge bank shall conduct the banking duties in accordance with the arrangements determined by the Central Bank in terms of the management or the type of the activities being practiced, all under the supervision of the Central Bank until the Central Bank takes the decision it deems fit and appropriate; i.e. selling or merging the bank.
- In the event that the assets and rights of the bridge bank are less than its liabilities and obligations, the JDIC shall cover the discrepancy in accordance with the arrangements agreed upon with the Central Bank.

It is also worth noting that, in relation to the above, the Draft further empowers the Central Bank as follows:

- The Central Bank shall substitute the bank's Board of Directors, the ordinary and the extraordinary general assembly in all the stages required in order to proceed with the above-mentioned procedures.
- The assets, rights, liabilities and obligations of the bank shall be assessed by a special committee formed

by the Central Bank, which shall include representatives of the JDIC.

- Objections to any decision or procedure by the Central Bank shall not halt or postpone the execution of these procedures.

The amendments highlighted above constitute a step forward in ensuring and maintaining the transparency of the management of Jordanian banks in addition to a set of steps and procedures for aiding banks that are encountering financial problems. All being said, the Draft attempts to avert any future financial crisis by expanding the Central Bank's oversight of management and setting a plan for banks in trouble. Such an approach should reflect positively on the financial market, increase consumer protection and hopefully reduce the number of financial crimes.