



Paper on:

The Governmental Companies that manage Public Services and the Effectiveness of their Accountability System



September
2022

AMAN
Transparency Palestine



The Coalition for Accountability and Integrity (AMAN)

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► Executive summary

The Palestinian Authority (PA) runs the economic system of Palestine, adopting the principles of the free economy. Accordingly, PA established a number of state-owned companies. Establishing those companies requires an enabling environment that ensures managing those companies (as public money) according to sound criteria that guarantee achieving the goals for establishing those companies. This includes the efficient use of public resources to achieve better results and outputs. Several questions are raised on the feasibility of such companies and the extent to which they compete with the private sector. Ambiguity also surrounds the nature of those companies, how they are managed, their compliance with the laws, regulations and governance standards, and means of oversight and control over them.

This paper examines the public policy towards establishing public companies, the technical, administrative and financial requirements for their establishment and the legal and institutional framework that regulate them. It also describes the status of the existing companies and the problems that impede their activation to achieve their goals. Moreover, the paper discusses how to supervise, follow up and hold those companies accountable, ensuring that their procedures and decisions are compliant with the requirements of the official control and accountability bodies. Finally, the paper provides practical policy recommendations to address the irregularities and improve efficiency.

Based on the analyses and investigations, the paper concluded the following:

- The observers and researchers find difficulty in thoroughly monitoring and inspecting issues related to governmental companies because of the lack of a unified central registry (official party) to register and monitor the activities of governmental companies. There are some discrepancies in the data issued by the competent authorities.
- The different Palestinian cabinets have no clear policy towards establishing and managing state-owned companies. No comprehensive law or legislation regulates those companies. It is unclear whether socio-economic feasibility studies are conducted prior to establishing such companies. The government development plans do not directly mention the philosophy of establishing and managing such companies.
- Poor community participation in discussing and adopting relevant laws, and the relative absence of transparency, control and accountability in matters related to the activities and performance of those companies.
- Poor implementation of governance in the public sector despite all efforts that PA institutions exert. Such poor governance applies to governmental companies too.
- Several factors contribute to the poor level of governance, most notably:
 - The Israeli occupation, their practices that affect all aspects of life and their domination of the borders, border-crossings and natural resources.
 - The incomplete legal system.
 - The performance of the judiciary, with the most serious problem being the slow resolution of cases.
 - The political division between the West Bank and Gaza Strip.

- 
- The dysfunction of the Palestinian Legislative Council (PLC).
 - The absence of a political will, evident by the limited human and financial resources allocated for implementing the principles of good governance in the public sector companies.
 - Poor coordination between the private and public sectors.
 - The control bodies are weak and lack autonomy.

The paper suggests several interventions that may contribute to rectifying the conditions of the existing governmental companies and improving their efficiency in public resource management, most notably:

- Develop and implement standards approved by the different institutions, which identify the nature of the governmental or state-owned companies and determine which companies are operational.
- The government shall either conduct or outsource an economic feasibility study for governmental companies and their developmental rationale. It should issue a special law for the company it intends to establish after conducting sufficient community discussions.
- The Ministry of National Economy (MONE) shall develop a registry for governmental companies and publish it in the Palestinian Gazette.
- The State Audit and Administrative Control Bureau (SAACB) must audit the work of the government companies, and publish the reports.
- Develop a special law for each governmental company, including the Palestinian Investment Fund (PIF), which covers all aspects and complies with the principles of integrity, accountability and transparency. The government must also establish the Palestinian Petroleum Company.

► Introduction

Several governments manage vital economic and service sectors through state-owned companies, which enhances the state's participation in development, and its ownership of and oversight over certain vital sectors, in addition to reliance on partnership with the private sector companies.

In Palestine, the Basic Law and its Amendments of 2003 provides in Article 21 that the economic system in Palestine “shall be based upon the principles of a free market economy. The Executive may establish public companies that shall be regulated by the law”.

Practically, the private sector plays an important role in economic activity, and in managing several economic sectors. Some private companies manage certain public services through the contracts with the central government, such as the telecommunications, transportation, energy, electricity, gas, and water utilities. The government supervises some economic activities in two forms:

- Directly, through establishing public governmental companies for specific sectors, which government officials run, such as the Palestinian Electricity Transmission LTD, the National Water Company or through public commissions such as the General Petroleum Corporation.
- Indirectly, solely through PIF, or through holding shares in different private sector companies.

Establishing public state-owned companies requires considering many points, such as the need for the appropriate legal framework, institutional framework, special administrative and financial systems, as well as the technical and financial resources for operating them.

Objective

This paper seeks to examine the public policy towards establishing public state-owned companies, the availability of the pre-requisites for establishing such companies, including the technical, administrative and financial requirements, the legal and institutional frameworks that regulate them, the administrative and financial systems and the necessary funding. It also seeks to depict the conditions of the existing companies and the problems that impede their activation and achieving their goals. It addresses control, follow up and accountability, compliance of those companies with submitting periodical reports to the competent authorities, follow-up of those reports, and the extent to which the procedures and decisions of those companies are subject to the control and accountability measures of the official supervisory bodies.

Methodology

The paper adopts the descriptive analytical approach through:

- 1- Collecting and identifying pertinent information from different sources, as well as relevant studies and reports.
- 2- Reviewing the legislative framework that regulates their operations and the institutional, technical, administrative and professional structures, including the financial and administrative systems.
- 3- Shedding the light on the challenges and problems those companies face.
- 4- Develop a first draft report, discuss it at a workshop with stakeholders, and develop it accordingly.
- 5- Develop applicable recommendations and propose lobbying and advocacy mechanisms for adoption and implementation.

Parts

This paper consists of an introduction and five parts:

- The introduction includes the general framework, objective, methodology and contents.
- Part 1 sheds the light on the government policy towards establishing state-owned companies.
- Part 2 identifies the state-owned companies and the nature of services they provide.
- Part 3 includes the legislative and institutional frameworks that regulate the state-owned companies.
- Part 4 addresses the efficiency of the state-owned companies and the problems they face.
- Part 5 summarizes the conclusions and recommendations.

► **The government policy towards establishing state-owned companies**

A quick review of the government companies reveals that the subsequent Palestinian governments had no clear and thorough plan for establishing and managing government companies. The reasons for this conclusion are:

- 1- No comprehensive law or legislation in Palestine regulates the operations of the public state-owned companies. It seems that decision-makers had no interest to develop this law during the past years, despite a clear constitutional provision since over 19 years old. Neither the government nor PLC had proposed such a law has. Neither the civil society organizations (CSOs) nor the private sector lobbied for such a law or proposed any unofficial drafts for community discussions¹.
- 2- Some decisions by law on government companies were not sufficiently discussed neither with the community nor with the stakeholders, particularly the private sector. This shows that the government unilaterally decides to establish government companies, which adversely affects the principle of partnership with the private sector and its substantial role in economic activity.
- 3- One may conclude that no studies have been conducted for the feasibility, rationale for economic development, or the extent of competition with the private sector. This is evident in the decision to establish the three new government companies and the controversy that surrounded their establishment.
- 4- Slow implementation of some laws and slow responsiveness to the decision of establishing government companies, with the Palestine Water Company as an example.
- 5- Absence of the principle of transparency regarding the government companies to inform the citizens about them and about their relationship with the different ministries and institutions operating in Palestine.

1 The Coalition for Accountability and Integrity AMAN. 2015. The Government Owned Companies in Palestine, Report Series 96. Ramallah-Palestine, P.3.

► Identifying the state-owned companies and the nature of the services they provide

2-1 Identifying the operational state-owned companies

The researcher tried to identify the number of public or state-owned companies, or the companies at which the government holds influential shares through communicating with the concerned parties, including:

- The Palestinian Central Bureau of Statistics (PCBS): In its 2017, Population Housing and Establishments Census, PCBS defined the national government company as the establishment that exercises economic activities of a market profitable nature, but which the government controls either by owning 51% or more of its capital, or through government legislations or decrees². The results of the Census revealed that the following governmental companies operate in Palestine:

1- Grand Park Company, Ramallah, and Grand Park Company Bethlehem:

No website nor any published information exist about this company. It has a Facebook page that asks its "dear followers to contact them for any bookings for accommodation, parties or conferences on their page at Millennium Hotel, Ramallah"³. This company was listed in Palestine Exchange (PEX). However trading stopped in 2003⁴.

2- Tubas Electricity Company: Established in 2006 as a public shareholding company in which twenty local councils hold shares. It receives electricity from the Israeli electricity company, and pays according to meters placed on its transformers. The company includes the power networks of village councils, and deals directly with the subscribers in 20 local councils. The company purchases, and receives payments from 18 other councils, except for Qabatiya, which pays for the electricity from one supplier, namely the Israel Electric Corporation (IEC)⁵. This is one of five companies for power distribution in the West Bank⁶.

3- The Palestinian Banking Institute: The Institute identifies itself on its website as a not-for-profit institution established in 1999 upon the decision of the Palestine Monetary Authority (PMA) in cooperation with the banking sector in Palestine, and is based in Ramallah. Its general assembly includes 14 members representing PMA and the operating banks in Palestine. The PMA governor chairs its board⁷.

4- Gaza Electricity Company: According to the Energy and Natural Resources Sectoral Strategy 2021-2023, the General Electricity Law and the Renewable Energy and Energy Efficiency Law provide that private companies shall manage the generation and distribution sectors. Indeed, the Palestinian private sector built the Gaza electricity generation station. In general, Palestine depends

2 PCBS, 2018. Population, Housing and Establishments Census, 2017- Establishments Report, Ramallah-Palestine. P.24

3 Facebook page of Grand Park Hotel: <https://ar-ar.facebook.com/GrandParkHotels/>

4 United Securities (2013): 2012 Annual Trading Report, PEX. Ramallah-Palestine, P. 41.

5 Palestinian News Agency, https://info.wafa.ps/ar_page.aspx?id=9082

6 Prime Minister's Office (2020): the National Development Plan 2021-2023, and the Energy and Natural Resources Sectoral Strategy 2021-2023. Ramallah-Palestine. P. 30.

7 The Palestinian Banking Institute's website: <http://www.pbi.ps/>

on importing energy from Israel, and imports a small amount from Egypt and Jordan, in addition to the product of Gaza power station, which constitutes 7% of the overall local consumption of electricity⁸.

5- Palestine Poultry Company: The researcher could not obtain information about this company.

6- Al-Quds Open University Laboratories: The researcher could not obtain information about this company.

7- PASA Energy and Environment: The researcher could not obtain information about this company, nor has it been mentioned in the Energy and Natural Resources Sectoral Strategy 2021-2023.

- The Ministry of National Economy (MONE): A visit to the Companies Registry at MONE revealed that only one governmental company, namely the Palestinian Electricity Transmission Ltd. (PETL) is registered there, Al-Istiqlal Bank is under registration, and PIF is registered as a public shareholding company, but not registered as a government company, and it reports to the President's office.
- AMAN⁹: A few studies addressed governmental or state-owned companies. A previous AMAN report identified three government companies namely PIF, PETL and the National Water Company.

2-2 Models for governmental companies

2-2-1 The Palestinian Electricity Transmission Ltd:

The previous name was the "National Electricity Transmission Ltd", and changed to "The Palestinian Electricity Transmission Ltd". This company identifies itself at its website¹⁰ as the first national governmental company that supervises building and operating a national electric power transmission system, and represents the sole authorized party to purchase electric power and transmit it to the Palestinian market. In its session held on 1/11/2013, the Palestinian Council of Ministers (COM) approved the decision to register the National Electricity Transmission Ltd as a public governmental company, implementing Article (18) of the General Electricity Law for 2009. Establishing this company came in line with the National Energy Sector Strategic Plan (2011-2013), whose priority was meeting the increasing needs from different sources, ensuring diversity in electric energy, regulating the technical and financial relations between the local and imported sources of electricity and transmission companies. This company was expected to contribute to improving the conditions of the electricity market, reducing the technical waste in the power system and obtaining competitive purchasing prices. The company's strategic goals are:

- 1- Adopt the single-buyer and partner model in regulating the Palestinian electricity sector.
- 2- Raise the level of electricity services provided to transmission companies.
- 3- Diversify electricity provision through concluding energy purchasing agreements with local electric generation sources and interconnection agreements with the neighbouring countries.

⁸ PMO (2020), previous source.

⁹ The Coalition for Accountability and Integrity (AMAN). 2015. State-Owned Companies in Palestine. Report Series 96. Ramallah-Palestine, P.2.

¹⁰ PETL website <http://petl.ps/go/>.

2-2-2 Palestinian Investment Fund:

According to the Fund's (PIF) website, PIF aims at achieving the maximum positive impact on the main economic indicators through investing in strategic enterprises in developing and vital sectors. PIF was established in 2003 as a public shareholding company registered at MONE. PIF invests in strategic sectors, such as the conventional and renewable energy, agriculture, health, education, infrastructure, industrial zones, real estate, technology and entrepreneurship in Palestine.

PIF runs assets of a total value of US\$ 957.1million as of the end of 2021¹¹. According to PIF 2021 Annual Report, it is registered as a limited public shareholding company in Gaza Strip holding the number (562600718) on 17/3/2003. The PIF shareholders are the Palestinian people, represented by a general assembly consisting of 30 natural and legal persons. PIF activities and main goals are to purchase and sell all kinds of investments that help achieve economic growth and develop the infrastructure in Palestine. PIF seeks to promote local private sector investments and attract foreign investors to achieve Palestinian economic prosperity and sustainable development.

The research revealed that the governmental companies are not known, with no registry to identify them. According to the available information about the governmental companies in the General Census, the legal definition of a national governmental company does not apply on some of them, nor the definition of PCBS. There is not enough information on other companies that may help determine whether they are governmental or not. According to MONE, there is only one governmental company, namely the Palestinian Electricity Transmission Ltd, in addition to Al-Istiqlal Bank under registration. There is a need for an official registry that identifies the governmental companies, which shall be accessible to the public, observers and researchers, to facilitate community control over the performance of governmental companies, since they run public money that belongs to the Palestinian people and constitutes their national resources. They must also be recorded at the public treasury as assets.

2-2-3 New governmental companies according to Council of Minister's decisions

During the past two years, COM decided to establish the following three new governmental companies:

2-2-3-1 Al-Istiqlal Bank for Development and Investment

This bank was established by a Decision by Law No. (5) For 2021 on Istiqlal Bank for Development and Investment¹². It identifies the bank's goals as follows:

- 1- Promoting investment and development towards socio-economic progress.
- 2- Expand the productive base of the national economy.
- 3- Promote investments in start-ups and small and medium enterprises (SMEs), and encourage companies operating in technology and innovation.
- 4- Provide special job creation funds, employ human resources and strengthen financial inclusion of citizens.
- 5- Develop effective mechanisms for running the accounts of governmental projects and funds, as well as any other projects or funds that COM decides to establish, and designate the bank to manage them.
- 6- Contribute to improving digitalization and collection of public revenues and their governance.

11 Palestinian Investment Fund website: <http://www.pif.ps/>

12 Decision by Law No. (5) For 2021 on Al-Istiqlal Bank for Investment and Development. Palestinian Gazette. Issue No. (176). 25/05/2021.

According to some studies conducted by The Palestine Economic Policy Research Institute (MAS), the following constitute prerequisites for the success of this bank¹³:

A stable macro-economic political environment: There is a need to provide an effective legal environment to achieve the goal, and develop the process of regulating and supervising this kind of bank. There is no clear identification of the responsible party for regulation and control over Al-Istiqlal Bank. Furthermore, stability is obviously unavailable in Palestine.

Clear mandate: The mandate or mission of Al-Istiqlal Bank is unclear, and not written in a specific manner, which indicates that it is broad. This is not suitable for launching governmental development banks.

Regulation, control and supervision: Experts advise that regulating government development banks should be the responsibility of the states' central banks, and such banks should be subject to the applicable procedures and laws on conventional financial institutions, while amending the laws to facilitate and suit the mandate of such banks.

Governance and efficient management: The success of government banks in development requires managing them like the private sector to achieve their specific goals, and avoid influencing their performance, evaluation and achievements because the government owns them. This requires for example, the independence of their board members and selecting their executive management according to merit etc.

Financial sustainability and continuity: This constitutes a major challenge for development banks, since it is hard to give priority to the social returns over financial returns and maintain sustainability at the same time.

Performance evaluation: There is a need for clear written definitions of the mechanisms and performance indicators for evaluating the bank, its management and board, through effective governmental parties (such as PMA, SAACB or PLC), or through a relevant independent body identified by the President or the Prime Minister.

2-2-3-2 The National Water Company:

In its Meeting No. (81) held on 2/11/2020, COM decided to establish the "National Water Company" to strengthen the water resources and achieve water, financial and institutional sustainability, so that it becomes a governmental company¹⁴. COM also decided in its meeting no. (144) on 24/01/2022 to form a board of directors for the company¹⁵, and to have the Water Authority as its reference, in accordance with Article No. (8) Of the Decision by Law No. (14) For 2014 on water¹⁶, through putting in place the procedures and plans to establish the company and develop it and develop the regional water utilities in coordination with the stakeholders. The company's board consists of the Chair of the Water Authority, Mazen Ghuneim as Chair, and the membership of Ahmed Sabbah from the Ministry of Finance (MOF), Manal Farhat from MONE, Samir Dawabsheh from Ministry of Local Government (MOLG) and Hani Najem as a water expert.

13 Rabeh Morrar, Omar Abdel Razek. (2021). Financing Development in Palestine through Microfinance Institutions and Development Banks: Options and Challenges, MAS. Ramallah-Palestine, P. 68-74.

14 COM website:

<http://www.palestinecabinet.gov.ps/portal/Decree/Details/3ae2109f-0cd1-43d7-a779-4e3db2c97182>.

15 COM website:

<http://www.palestinecabinet.gov.ps/portal/Decree/Details/349cb713-ab91-4b38-931e-95a3d513aefa>

16 Decision by Law No. (14) For 2014 o water. The Palestinian Gazette, Issue No. (108). 15/07/2014.

It is worth noting that the company was established as the National Water Company in accordance with the Decision by Law on water issued in July 2014, but was never established or registered back then. However, it has been registered on 13/09/2022 as the National Water Company and held the number (562771741). Its goals are to collect and purify water, set up a water desalination station, dig wells and set up water pumps¹⁷. However, no decisions or administrative and financial regulations were issued to regulate this company.

The legal reference for establishing this company is the Decision by Law no. (14) For 2014 on water, particularly articles (37-44). The Decision by Law called it the National Water Company, and provided that it shall be the full property of the state of Palestine, and for COM to identify its capital. It also provided that COM issue regulations to regulate its financial affairs and identified the following competences for the company:

- 1- Provide and sell bulk water for water utilities, local councils, joint service councils and associations.
- 2- Extract water from water sources, desalinate it, and convey it in bulk form in accordance with relevant licensing from the PA.
- 3- Manage and develop any assets received from PA.
- 4- Ensure good commercial relationships with customers and suppliers.
- 5- Provide the necessary means for developing all activities and infrastructure works for bulk water provision.
- 6- Develop proposals on water tariffs and related services and submit it to the COM for approval.
- 7- Any other relevant tasks designated by PA.

The Decision by Law determined the structure and membership conditions of the Board of Directors. It determined the board's responsibilities, as the highest authority to issue decisions in the company, implement the company's policies and oversee the management of its operations in a manner that serves the PA adopted policies. The Board has the full authority to implement the company's mission. It appoints an executive director and contracts an external auditor to audit the company's accounts. The board also submits quarterly reports about the financial and legal activities of the company.

The above reveals that the Decision by Law on water did not clarify the mechanism of disbursing profits or revenues of the company. It did not give the private sector the opportunity to hold shares in the company, as it provides that the company is the full property of the state of Palestine.

2-2-3-3 Palestine Gas Company


In its session No. (123) held on 6/9/2021, COM decided to establish the Palestine Natural Gas Company, as a public governmental company¹⁸. According to the Chair of the Energy Authority Zafer Milhem, the government's decision to establish this company aims at regulating the natural gas sector in the Palestinian territories, manage gas utilities in Palestine and contract various sources to purchase gas, with the Palestinian gas discovered undersea off Gaza coast in 1999 being the most important source. The company shall manage the natural gas in the West Bank and Gaza Strip, including the power stations, water desalination stations, industrial zones and other establishments

¹⁷ MONE website:

<http://www.mne.gov.ps:9095/ords/f?p=103:28:34758718200095>

¹⁸ COM website:

<https://www.palestinecabinet.gov.ps/portal/Decree/Details/c01fd6fc-0f76-4b63-9271-a94c560b6fc2>



that need natural gas. It shall also manage the pipelines from the Palestinian fields to the consumption and distribution centers and transform the national industries to use natural gas since it is less costly and environment friendly, which shall reduce gas emissions. The first phase in establishing the company includes preparing the bylaws, forming the provisional founding board, which shall develop the company's strategy, supervise the natural gas project in Gaza Strip and transform the power station to operate on gas instead of diesel. To overcome the impeding Israeli measures, the assistance of regional and international parties shall be sought to exert pressure on Israel to ensure an enabling environment for the company's operations, removing any possible obstacles¹⁹.

Alternately, the government's announcement to establish a company named "Palestine Gas", without disclosing further details led some private sector experts and economic observers to wonder about the main goal behind this company. Some experts believe that it may constitute the PA arm in the gas agreement reached with the Egyptian side, while others believe that this company may compete with the private sector companies operating in the sector. The current government did not disclose details about the functions of this company, and whether they are restricted to transporting crude gas from its main sources and reselling it to retail companies, or whether the company shall buy gas from its sources and sell it directly to the consumers at preferential rates. It is also worth noting that competing with the private sector shall lead to problems with the companies that operate in the sector. It is better that the company develops the infrastructure by constructing gas pipelines and contracts international oil digging and excavation companies that would provide gas and oil to the Palestinians. If the company is governmental, it should have an independent board. Dr. Samir Huleileh, economist, said that main goal for establishing this company may be to constitute the PA arm in managing the gas discovered undersea off Gaza Strip coast, and that it came within the framework of the recent understandings between PA and Egypt²⁰.

¹⁹ See Xinhua News Agency: "The Palestinian Government decides to establish "Palestine Gas" company to regulate the natural gas sector".
http://arabic.news.cn/2021-09/08/c_1310174204.htm.

²⁰ The website of felesteen online (felesteen news)
<https://felesteen.news/post/>

► The legislative and institutional framework that regulates state-owned companies

The Basic Law: Article (21/1) of the Amended Basic Law For 2003²¹ provides for the following: The economic system in Palestine shall be based upon the principles of a free market economy. The Executive may establish public companies that shall be regulated by the law". This includes freedom of economic activity, preservation of private property, with no appropriation except for the public good, in accordance with the law, with fair compensation or according to a court decision. It is only possible to confiscate private property with a court decision. This means that the private sector leads economic development and economic activity, and the role of the government is to facilitate the work of the private sector and to supervise it.

The Basic Law reflects the legislature's effort to regulate the process of establishing those companies, stipulating that it should be regulated by a law that identifies clear functions and activities, management and accountability systems as well as other aspects.

Decision by Law No. (42) For 2021 about companies²²: Article (29/3) of the Decision by Law provides that "The government and its institutions and commissions may establish shareholding companies upon COM decision, with sole governmental ownership or with partnership with other non-governmental shareholders, to be regulated by a special law".

The Decision by Law on companies asserted three points that the Basic Law did not provide for. The Decision by Law named them governmental companies, i.e. it is admissible for the government itself or any of its institutions to establish those companies, while in the Basic law they were named public state-owned companies, and those companies may be registered at the companies registry at MONE. The Law also determined the legal status of those companies as shareholding, i.e. it opened the room for the public and other companies to own shares in the governmental companies. On the other hand, the Companies Law maintained that those companies should be regulated with a special law.

Practically, the private sector plays a major role in the Palestinian economy at the social and economic levels, as it owned most establishments (140.8 thousand) in 2017, (comprising around 91.5% of the total number of establishments)²³. It is also the largest employer. In 2021, the private sector employed around 66% (around 684,000 workers) of the total workforce, followed by the public sector at 20%²⁴. However, the government also participates in the economic activity. For example, it participates through some of its institutions in nine PEX listed companies, namely: Wataniya Palestine Mobile Telecommunications, Palestine Electric Company, Arab Hotels Company, Palestine Insurance, Palestine Islamic Bank, Al-Quds Bank, Palestine Investment Bank, Jerusalem Pharmaceuticals and Sanad Construction Resources²⁵. There is ambiguity and conflicting information on the number of government companies or public state-owned companies between MONE and PCBS data.

21 The Amended Basic Law For 2003. The Palestinian Gazette. Issue No. 57. August 2005. Ramallah-Palestine.

22 Decision by Law No. (42) For 2021 about companies, The Palestinian Gazette. Issue No. (25). 30/12/2021. Ramallah-Palestine.

23 PCBS (2018): Population, Housing and Establishments Census 2017, final results-Establishments Report

24 PCBS (2022): Labour Force Survey: Annual Report: 2022. Ramallah-Palestine. P.92.

25 PEX website

The Anti-Corruption Law²⁶ No. (1) For 2005 and its amendments: Article (8/2) provides that “the heads and members of the boards and the staff of companies in which the state or any of its institutions are shareholders, are subject to the law”. This means that those companies are subject to the law and their board members and staff must:

- 1- Fill the financial declaration forms.
- 2- The Anti-Corruption commission (ACC) may investigate complaints or suspected corruption cases reported against any of them.
- 3- ACC may receive reports and complaints about corruption crimes committed by any of them.
- 4- ACC may prosecute the persons who violate the provisions of this Decision by Law, request freezing their movable assets as a precautionary measure, request travel bans, and request the competent authorities to suspend them from work in accordance with the applicable legislations.
- 5- ACC may request looking at any files, data, documents or information, or obtaining copies of them from the party that has them in its possession, including the parties that consider such information classified, in accordance with the applicable legal procedures.
- 6- ACC may take legal measures, through the Corruption Crimes Prosecution, to request the court to stop the operations of a company if its directors, board members, representatives, or staff committed a crime identified in this Decision by Law in its name or through one of its means.


The State Audit and Administrative Control Bureau Law and its Amendments²⁷: Article (31/h) provides that parties subject to the Bureau’s control include the institutions and companies that the state either owns or holds shares, or receives assistance from it or from donors”. Article (31/i) states, “the institutions and companies licensed to profit from or manage a public utility”.

According to Chapter 5 of the Law, those companies have several obligations towards SAACB, most notably:

- The financial auditors of those companies must report to SAACB all cases of financial violations in disbursements, during a maximum period of two weeks since they took place.
- The signatories must report to SAACB any incident of embezzlement, theft, squandering, destruction, arson, negligence and the like on the day of their discovery and inform SAACB of the relevant decisions immediately.
- Provide SAACB with the necessary data and indicators to follow up its implementation of the performance evaluation plan in accordance with SAACB systems and forms.
- Notify SAACB immediately of any discovered financial or administrative violation, or incident that may incur financial loss to the PA, or loss of any of its rights, or subjects its fixed or movable assets to loss or any form of harm, so as it would take the necessary measures in accordance with the law, without prejudice to the measures that other parties must take. According to Articles (24) and (25), SAACB is authorized to audit the accounts, documents, and supplies of those companies. Their staff must facilitate SAACB work and provide them with all the information they request. SAACB may draw their attention to the Bureau’s comments, and may inquire about any delays in completing transactions. SAACB may also look at all incoming reports, information and data from the staff as well as inquiry reports on violations related to financial and administrative matters, and may request any information or clarifications from all the governmental departments concerned with their work.

26 Decision by Law No. (7) For 2010 on amending the Illicit Gains Law No. (1) For 2005. The Palestinian Gazette. Issue No. 87. 26 June 2010.

27 State Audit and Administrative Control Bureau Law No. (15) For 2004. The Palestinian Gazette. Issue No. 53. February 2005. Ramallah-Palestine.



Indeed, SAACB has audited the operations of some governmental companies. A review of the published SAACB reports between 2006 and 2021 showed that some reports covered public shareholding companies, such as 2022 Annual Report, which audited the Palestine Banking Corporation, 2015 Annual Report, which audited the South Electric Company and Hebron Electric Company, and 2008 Annual Report that covered PIF²⁸. SAACB report indicated that PIF received Excellent evaluation (compared to Poor in 2006) with respect to the level of trust in the internal control and audit system. PIF had an appropriate organizational structure, accurate job descriptions, integrated accounting system, human resource development, actual performance evaluation, separation of responsibilities, as well as an adequate internal control unit and evaluation of the general system.

SAACB 2015 report covered Grand Park Hotel and Resorts, indicating uncertainty regarding the company's ability to continue its operations because of successive losses between 2011-2013, in addition to a drop in liquidity, investment and equity, and difficulties in meeting short-term obligations. Moreover, there was an exaggeration in the company's assets by around US\$1.5 million, by evaluating some assets at prices higher than the market value, in addition to poor financial and administrative management. At the administrative level, there were poor control measures over the fixed assets, as the company did not keep a fixed assets registry, the Grand Park Hotel renovation project files were not documented, and the contractors did not abide by the contractual period for completing the works.

The role of stakeholders: The review revealed that the general Companies Controller at MONE has no reports about the governmental companies. Moreover, the closing accounts do not mention the governmental companies as state owned assets.

28 SAACB (2009): 2008 SAACB Annual Report. Ramallah-Palestine. P. 22.

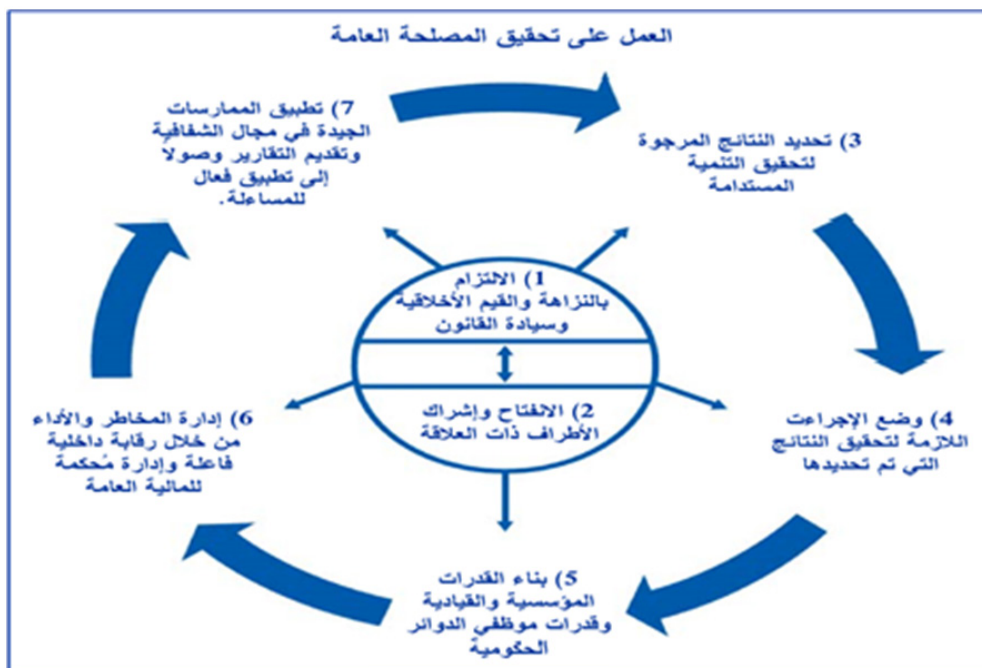
► Good governance in managing the state-owned companies and the problems they face

Efficiency in government companies requires that they fully achieve the mission to which they were established, while fully complying with the relevant laws, regulations and instructions, provide quality services and preserve the rights of various parties. This requires that those companies operate in full compliance with the principles of integrity, transparency, and accountability. This means that those companies must comply with the principles of good governance of the public sector.

Good governance of the public sector is defined as the set of legislations, policies, organizational structure measures, and checks and procedures that affect and shape the way in which the government department is steered and managed to achieve its goal in a professional and ethical manner, with full integrity and transparency, in accordance with monitoring and evaluation mechanisms and strict accountability systems to ensure performance efficiency and effectiveness on one hand, and provide governmental services with equity on the other hand²⁹.

In brief, governance is the arrangements that a government department makes to ensure that the stakeholders achieve the desired goals.

Chart 1: How government companies achieve public interest



Source: Ministry of Public Sector Development (2014): Public Sector Governance Manual. Amman-Jordan.

“A major challenge that faces developing, emerging and transitional economies is to instil corporate governance in public establishments. In many economies, some public sector companies contribute to an influential share of GNP, employment, and income, and their capital share sometimes exceeds that of the private sector. Moreover, the public sector companies often shape public policies.

29 Ministry of Public Sector Development (2014): Public Sector Governance Manual. Amman-Jordan. P. 1

Consequently, enshrining good corporate governance inside public sector companies is crucial for economic development, growth and reform”³⁰.

Some studies³¹ revealed poor governance in the public sector in Palestine, despite PA governance efforts, with some public sector reform. Several obstacles impede proper implementation, most notably:

- The Israeli occupation: and its practices that affect all aspects of life, and their control over the border crossings and natural resources.
- Incomplete legal system.
- The performance of the judiciary, with slow litigation as one of the most pressing problems.
- Political division between the West Bank and Gaza Strip.
- The absence of a functional Legislative Council.
- The absence of the political will to implement governance in the public sector. No adequate human or financial resources are allocated to implement good governance in the public sector companies. The government must allocate budgets to facilitate implementation.
- Poor coordination between the public and private sectors.
- Weak control bodies and lack of autonomy.

It seems that the poor governance in the public sector applies on the governmental companies too. PIF constitutes a practical case to illustrate some aspects:


- Unjustified confusion in the theoretical definition of PIF: The idea of establishing the Fund dates back to the early days of PA inception, in 1995 and 1996. PIF investments were inside and outside Palestine. PIF continued operating without clear legal regulation until President Yasser Arafat issued several decisions (not published in the Palestinian Gazette) in 2000 to establish a higher development council, chaired by him, that oversees PIF operations. He also issued in 2002 a decree to adopt PIF Bylaws and board composition. The changes in the government and the PA executive structure during 2003 led to a review of the legal status of PIF, and consequently it was established as a limited public shareholding company owned by PA (the Palestinian people are the only shareholders). During its early inception days, COM took some organizational decisions (not published in the Palestinian Gazette) about the Board and its term. In 2006, the control of PIF shifted from COM to the Presidency through several relevant decrees and presidential decisions that also amended PIF bylaws³².

- Ambiguity did not surround the inception phase only. In its 2021 Annual Report, PIF said that, “it is compliant with the provisions of its Bylaws and the applicable Companies Law on matters not provided for in the Bylaws. PIF adopts several procedures to enhance governance, based on the principles of integrity, transparency and separation of powers developed in cooperation with major relevant international companies and in accordance with the best international standards and practices. A set of manuals were developed, constituting the frame of reference for implementing the procedures and systems in the different operations. Those are regularly revised and updated. In the same report, PIF indicated that since 2016, it is a full member of the International Forum

30 Catherine Helpline and John Sullivan (2003). Corporate Governance in Developing, Emerging and Transitional Economies. Corporate Governance in the 21st Century. Center for International Private Enterprise. Washington D.C., U.S. P. 26.

31 Shafer, Obeid and Saed Rabay'a (2020): The Level of Governance in Public Sector Institutions in the West Bank and the Main Obstacles. Journal of Al-Quds Open University for Administrative and Economic Research Studies. Volume 5, Issue No. 13, P. 21. Rula Kababji, 2019, The Role of Governance in Alleviating Corruption in the Palestinian Public Sector Institutions. Al-Quds University and Anti-Corruption Commission. Ramallah- Palestine. P. 47.

32 The Coalition for Accountability and Integrity (AMAN) (2015). State-Owned Companies in Palestine, Previous source. P.14.



of Sovereign Wealth Funds (IFSWF), representing Palestine at this international forum, since it has adjusted its systems to meet the Santiago Principles³³, developed under the auspices of the International Monetary Fund (IMF). It is a member of Global Impact Investing Network (GIIN), which includes investment funds and institutions that provide financing solutions for the most challenging conditions in the world.

- The current status of PIF constitutes a violation of the Basic Law, which asserts that state-owned companies must be regulated with a special law, which is not the case with PIF.
- PIF legal status constitutes a violation of the Securities Law. Any public shareholding company must be listed in PEX. PIF is not, and this constitutes a violation of the Securities Law.
- PIF annual reports reveal that they use the services of one external auditor (Ernst & Young Accounting Firm), which constitutes a violation of the Companies Law that provides that companies must change their external auditors every 5 years.
- PIF profits are decreasing. While profits amounted to around US\$60 million between 2009 and 2010, they dropped to an average of around US\$35 million since 2011.
- PIF operations lack transparency. They publish neither the legislations that regulate their work on their website, nor the bonuses that their board members and executive receive.

³³ Santiago Principles: The Generally Accepted Principles and Practices (GAPP). Those are uniform procedures and standards that regulate the work and goals of sovereign funds and develop a framework that accurately identifies the requirements for transparency, disclosure, governance, accountability and risk management. Because of the importance of sovereign funds in the global economy, it was necessary to rule out suspicions of political agendas of such funds to assure the recipient countries, proving that those funds are established on solid grounds, and are purely economic and financial funds. After several meetings, last of which was held in Santiago, Chile, the international working group consisting of 26 IMF member-states with sovereign funds announced 24 principles that reflect the clear practices and goals of those funds, called Santiago Principles. Those principles cover three main aspects namely: the legal framework, goals and coordination with the macro-economic policies, the institutional and governance structure framework, and the investment and risk management framework.

► Conclusions and Recommendations

Conclusions

- The Companies Decision by Law No (42) For 2021 enabled the governmental companies to be registered in the Companies Registry at MONE, and gave the citizens and other companies the opportunity to hold shares in governmental companies.
- Governmental companies are unknown, and there is conflicting information on the names and numbers of those companies among the concerned parties (PCBS and MONE).
- There is no clear government policy towards governmental companies. No comprehensive law or general legislation exists to regulate those companies. Some decisions by law on governmental companies are issued without sufficient dialogue with the community and stakeholders, particularly the private sector. No economic and development feasibility studies are conducted upon establishing a governmental company, and implementing some laws and responding to them is slow during the establishment of governmental companies.
- SAACB has not exerted sufficient efforts to audit the operations of governmental companies.
- The definition of PIF is ambiguous. It is registered as a public shareholding company at MONE, and defines itself as a sovereign wealth fund at the same time. The current status constitutes a violation of the Basic Law, since it must have a special law that regulates its work. It also constitutes a violation of the Securities Law because it is not listed in PEX. PIF operations lack transparency, since it does not publish on its website neither the regulating legislations nor the bonuses of the board members and the executive.
- Poor transparency and lack of publishing information on governmental companies.
- Absence of codes of conduct to which the officials and staff of the governmental companies must comply.
- There are no regular reports about the performance of those companies.
- The place where those companies are registered is not clear, and their resources and assets do not appear in the general treasury and the closing accounts.
- The profits of governmental companies do not clearly appear in the general Budget as revenues.

Recommendations

- The government must develop criteria adopted by the different institutions that identify governmental or state-owned companies and identify the operating companies. The government must conduct or outsource a study on the feasibility and economic development rationale of governmental companies. It must issue a special law for the company it decides to establish following sufficient dialogue with the community and stakeholders, particularly the private sector.
- MONE must develop a special registry for governmental companies to be announced in the Palestinian Gazette.
- Activate SAACB control over governmental companies, and publish their reports in accordance with SAACB procedures to make them available to the public.
- Develop a special law for each governmental company including PIF and Palestinian Electricity Transmission Ltd. (PETL) clarifying all matters related to those companies.

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AMAN
Transparency Palestine



AMAN was established in 2000 as a civil society organization that seeks to combat corruption and promote integrity, transparency and accountability in the Palestinian society. The Coalition was first formed by an initiative from a number of civil society organizations working in the field of democracy, human rights and good governance. In 2006, the Coalition was accredited as a national chapter for Transparency International.

AMAN is a Palestinian think tank and a specialized body providing knowledge on corruption at the local and regional level through producing specialized reports and studies. The periodic publications include: The annual Integrity and Anti-Corruption Report, the annual Palestinian Integrity Index and the National Integrity System studies and reports, in addition to the Coalition's continued contributions to produce reports and studies on the status of corruption in the Arab region.

As part of the global anti-corruption movement - and of international alliances and partnerships with relevant specialized coalitions and organizations - AMAN plays a key role in the transfer and contextualization of necessary international knowledge and tools to combat corruption in all sectors.

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