



MENA Commercial Law Strengthening Project (MENA- CLS)

Under the Patronage of H.E. the Minister of Commerce and Crafts
in Tunisia

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First Regional Conference

**“Creating a Dynamic Legal Environment for Business in the MENA
Region: Challenges and Priorities”**

Gammarth, Tunisia

15 - 16 May 2009

Background Paper



With the support of the Middle Eastern Partnership Initiative

1. Introduction

In the context of the MENA Commercial Law Strengthening (CLS) Project, the Arab Center for the Rule of Law and Integrity (ACRLI) is organizing with the support of the Middle East Partnership Initiative (MEPI) a regional conference on **“Creating a Dynamic Environment for Business in the MENA Region: Challenges and Priorities”** in Gammarath, Tunisia on 15-16 May 2009.

This paper has been prepared to provide key background information about this conference, which is one of two regional conferences that will be organized under the MENA-CLS Project. For more information about the conference and the Project in general, please contact the Project Manager Mr. Elias CHALHOUB at echalhoub@arabruleoflaw.org.

2. Overview on the Arab Center for the Rule of Law & Integrity

ACRLI is a regional, private, non-governmental not-for-profit organization, headquartered in Beirut, with a number of national chapters and partner organizations in different Arab countries. It was established in 2003 by a group of distinguished Arab reform advocates and activists, including judges, lawyers, journalists, academics and development practitioners. ACRLI is dedicated to enabling the active engagement of different components of the Arab society in defining and implementing reforms aimed at strengthening two core values, the rule of law and integrity, both of which are cornerstones for good governance and development.

ACRLI works with governments, civil society and the private sector to advance its objectives. Its work mainly includes research, training, awareness raising and knowledge development. It offers leading experts on judicial reform, regulatory reform, human rights, anti-corruption in the public and private domains, corporate governance, business-climate development, legal informatics and other areas of reform.

3. Overview on MENA Commercial Law Strengthening Project

The MENA-CLS Project is a two-year (2008-2010) regional project implemented by ACRLI with the support of MEPI in four MENA countries: Lebanon, Tunisia, UAE and Yemen. The project rests on the assumption that working to improve the legal environment for business through building the capacity of demand-side actors (mainly the legal and business community) and helping them develop and advocate specific policy and law reforms stands to enhance the business climate and thus contributes significantly to the efforts aimed at improving economic growth and development in the MENA region.

The MENA-CLS Project has two main objectives (i) to improve the capacity to understand complex commercial law issues within the legal and business communities in the project

countries; and (ii) to increase private-sector participation in commercial law policymaking.

These two objectives will be served through a number of activities including action-oriented research, commercial law assessment reports, thematic studies, national workshops, national training seminars, and regional conferences in addition to various awareness-raising activities.

At the end of the project, a number of concrete results are expected to be achieved:

- Assessment of the state of commercial law in project countries: This will be primarily achieved through the development of national commercial law assessment reports and a comparative analytical report, both of which will be prepared according to a pre-set methodology and discussed and validated during national and regional events, respectively.
- Reform-driven networking among members of the legal and business communities and between them and policymakers: This will be primarily done through identifying core reform-drivers and key concerned institutions, followed by outreach activities aimed at enhancing the exchange of knowledge, cross-sector interaction and the exploration of possibilities for partnership-building. Project events will be designed to maximize the opportunity for networking between these reform drivers.
- Access to commercial legal information and data: This will be primarily achieved by the development and publication of a web-based compendium in Arabic and English. The compendium, which will be posted on ACRLP's website, will include commercial laws, regulations, court judgments, doctrines and other legal resources. It will also include information and resources on business advocacy and international best practices, among other useful tools for commercial law practitioners in the region and beyond.
- Platform for specific commercial law reforms at the national level: This will build on the results of the commercial law assessment report (see above) and will be primarily achieved through the preparation of an in-depth thematic study in each project country, in accordance with a pre-set methodology that relies on desk and field research. Each study will be discussed and validated at a national workshop, with a view to establishing a platform to advocate specific commercial law reforms in each project country. A regional conference will be organized at the end of the project to provide for regional policy dialogue and peer-learning on the thematic issues and reform recommendations that emanated from the national level with a view to exploring the way forward.
- Awareness-raising on commercial law reform: This will be primarily achieved through an "Awareness Campaign" which is expected to serve two main functions (i) raising awareness among target beneficiaries about project activities and results and (ii) deepening and advocating the commercial law reform recommendations that will be developed as a result of the project activities to decision-makers. The

Campaign will have three main outreach elements (i) the media; (ii) the legal and business communities; and (iii) decision-makers and will make use of the project events to reach out to the target groups. At the end of the Campaign, a national workshop will be organized in each country to raise awareness on the importance of commercial law and its role in promoting economic development and growth and to advocate the various commercial law recommendations that have been developed by the project for each country.

- Capacity-building on Complex Commercial Law Issues: This will be primarily achieved through two training seminars that will be organized in each project country. The first seminar will address commercial dispute resolution mechanisms and the second seminar will focus on other complex commercial law issues in each project country, building on the outcome of the commercial law assessment reports and thematic studies.

For more information about the project, please visit our website at www.arabrulelaw.org.

4. Event Description

The regional conference on **“Creating a Dynamic Environment for Business in the MENA Region: Challenges and Priorities”** which will be held in Gammarath, Tunisia on 15-16 May 2009, is one of two regional conferences under the MENA-CLS Project.

In preparation for this conference, the National Teams in each project country conducted a series of activities that led to the preparation of a “National Commercial Law Assessment Report” in each of those countries in accordance with a pre-set methodology. Each one of these reports was discussed and validated during a national workshop attended by members of the legal and business communities and key policymakers and representatives from the concerned government bodies.

The reports were used to develop a draft “Comparative Commercial Law Assessment Report”, which seeks to summarize the main findings of the national reports and use the information provided to analyze the business climate and the priority areas for reforms that are likely to enhance this climate in the project countries.

- Objective: The conference seeks to provide a forum for reform-driven networking and action-oriented discussion on the content of the Comparative Report with a view to helping participants develop a clearer understanding of the existing risks and challenges and forge a more coordinated vision for needed policy and law reforms, based on the priorities of each project country.
- Expected results: The conference is expected to contribute to improving the participants’ capacity to understand complex commercial law issues based on the work that has been done by the project so far.

It is also expected to produce a number of policy and law reform recommendations aimed at enchaining the business climate in the project countries. These

recommendations will inform future activities and will certainly enhance the ability of the private sector to engage in policy dialogue with governments in the future.

- **Participants:** The conference will be attended by more than 100 participants, including prominent members of the legal and business communities in the project countries and high-level policymakers and representatives of key concerned government bodies, in addition to regional and international experts and representatives of partner institutions.
- **Logistics:** The conference will be organized in Gammarath, Tunisia at the Ramada Hotel by ACRLI in cooperation with the Ministry of Commerce and Handicrafts in Tunisia. For logistical support and questions, please contact rsalem@arabruleoflaw.org.

5. Conference Program

The two-day conference will comprise two plenary sessions and four workshops in addition to the opening and closing sessions. Each day will comprise a plenary session and two parallel workshops. To ensure that the outcomes of the workshop will be transmitted to all the conference's participants, a Rapportuer will be appointed to assist each workshop's Moderator in summarizing the outcomes of the workshop and presenting them at the closing session, where a final discussion to outline recommendations will be carried on.

This section of this background paper presents the content and format of each of these sessions and workshops. **For more detailed information, including speakers, please consult the Conference Agenda.**

Opening Session

The opening session will provide background information and set the tone for the conference.

Plenary Session 1:

Overall Assessment of the Business Climate in Project Countries

This first plenary session will present and discuss the assessment that the project has made regarding some of the main characteristics of the Business Climate in the four project MENA countries (**Lebanon, Tunisia, UAE and Yemen**). It will specifically focus on key risks (economic, social, legal, administrative etc.) and the various challenges associated with doing business in the project countries from a policy perspective.

This plenary session seeks to help participants draw specific lessons and policy recommendations for the project countries, as well as lessons that might have implications for business-climate development in the MENA region as a whole. Accordingly, the session is expected to address country-specific issues including, *inter alia*, socio-economic and geo-political elements that affect

the business climate, current government policies, structural and institutional deficits, the impact of the global economic/financial crisis and possible policy options for enhancing the business climate.

Format: *The session will consist of one general presentation on different economic elements and policies followed by four interventions from the panel of discussion on the business environment in the involved countries. There will be strong involvement from the floor through short two-minute comments/questions. The entire session will be moderated by a high-level expert with a background in business and public policy. The interventions will build on the findings and recommendations of the economic and political part of the “Comparative Commercial Law Assessment Report”.*

Networking Event

The Networking Event is aimed at providing an informal space for interaction between participants from the four project countries. **It will also witness the official launching of the project’s “Awareness Campaign”** which seeks to serve two main functions (i) raising awareness among target beneficiaries about project activities and results and (ii) deepening and advocating reform recommendations that will be developed as a result of the project activities.

The launching will be followed by an **official dinner organized by ACRLI**.

Workshop 1: National Business Climate Development Strategies.

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Developing the business climate in a given market requires concerted and coordinated efforts that involve a multiplicity of stakeholders. A common in-depth understanding of key issues and different approaches to developing national business climate development strategies is critical in helping these stakeholders identify appropriate responses to existing risks and challenges in a more effective and efficient manner.

This workshop seeks to encourage discussion between policymakers and members of the business community on the strategic elements of business-climate development, including assessments, indicators and model strategies. The workshop also seeks to encourage interaction between the public sector and the private sector, with a view to encouraging partnership-building in relation to the development and implementation of country-specific strategies.

Format: *The workshop will be organized in the format of a panel discussion of three with strong interaction between the panel and the participants through two-way questions and answers. The entire session will be moderated by a high-level expert with a background in business development strategies and related policy reforms. He/she shall work with the workshop’s Rapporteur to present an “Outcome Report” during the closing session.*

Workshop 2: Challenges for Foreign Direct Investment in the Project Countries.

Foreign Direct Investment (FDI) is an important tool for economic growth and development, especially in developing countries. Observers argue that the level of FDI inflows into the MENA

region is low compared to other developing regions of the world. One of the main reasons is the business climate in many MENA countries, which is not fully conducive to attracting investors.

This workshop looks at the state of FDI in the four project countries, presenting most recent data and discussing main incentives and key obstacles with a view to drawing lessons, not only for policymakers, but also for members of the legal and business community regarding their role in promoting investment and enhancing positive interaction between foreign and national capitals.

Format: *The workshop will be organized in the format of a panel discussion of three with strong interaction between the panel and the participants through two-way questions and answers. The entire session will be moderated by a high-level expert with a background in investment and economic development. He/she shall work with the Rapporteur to present an “Outcome Report” during the closing session.*

Plenary Session 2:

Key Priorities for Commercial Law Reforms in the MENA Region.

This second plenary session will present and discuss suggestions for law reforms that would contribute to improving the business climate in the four project MENA countries (Lebanon, Tunisia, UAE and Yemen). It seeks to define the different components and groups of the legal environment with a view to improve the quality of services and outputs offered by them. It specifically focuses on discussing key priorities of reforms in order to improve current laws and regulations and related institutional arrangements, and to suggest new ones based on the results of the work that has been done so far, at the national level. Furthermore, the session will discuss capacity gaps in using and implementing a number of these laws.

Unlike the first plenary session which focused on policy issues, the second plenary session will focus on concrete law-related reforms that will inform the next set of activities under the project. Accordingly, the session is expected to address country-specific law-related issues including, *inter alia*, the need to modernize aspects of the commercial law and introduce new legal institutions, the quality of commercial law texts, accessibility to the legal corpus, the capacity of the judiciary, the capacity of lawyers, red-tape and others.

Format: *The session will consist of one presentation addressing different legal and legislative aspects of the regional report followed by four interventions on the methods of legal reform in the involved countries with strong involvement from the floor through short two-minute comments/questions. The entire session will be moderated by a high-level expert with a background in commercial law practice and related reform initiatives. The panel will build on the findings and recommendations of the “**Comparative Commercial Law Assessment Report**” in relation with the legal and reform part related to legislation development.*

Workshop 3: Key Requirements to Improve the Legal Environment for Doing Business.

Improving the legal environment for doing business is an indispensable element of the effort to improve the business climate. This transcends the improvement of certain texts to a series of reforms. ACRLI understands the legal environment as including, laws, regulations, the judiciary and its supporting apparatuses, law enforcement authorities, and legal education, with two overriding principles that govern all (i) the rule of law and (ii) integrity. In the MENA region, research and experience reveals key reform needs in almost all of these areas.

This workshop looks at the key requirements to improve the legal environment for doing business in the four project countries, presenting expert analyses and discussing entry points with a view to drawing lessons that may inform future project activities and national reform efforts. In addition to contributing to knowledge-building, the workshop is also expected to encourage interaction between participants with a view to exploring ways to increase the drive behind some of these reforms in each of the project countries.

***Format:** The workshop will be organized in the format of a panel discussion of three with strong interaction between the panel and the participants through two-way questions and answers. The entire session will be moderated by a high-level expert with a background in legal and judicial reforms. He/she shall work with the Rapporteur to present an “Outcome Report” during the closing session.*

Workshop 4: The Case for Introducing Modern Legal Institutions into Legal Systems in the Project Countries.

Modern legal institutions, though proven to improve the business climate in different legal systems across the globe, remain largely under-developed and under-utilized in the MENA region. Key institutions in company law and other areas such as competition and alternative dispute resolution stand to contribute significantly to commercial law strengthening in the MENA region.

This workshop is expected to contribute to the creation of a common language between participants and to increase their understanding of these key modern legal institutions. It is also expected to enhance interaction between participating members of the legal and business communities in the project countries and participating policymakers, with a view to advocating the transposition of these legal institutions into the legal systems in the project countries.

***Format:** The workshop will be organized in the format of a panel discussion with strong interaction between the panel and the participants through two-way questions and answers. The entire session will be moderated by a high-level expert with a background in legal and judicial reforms. He/she shall work with the Rapporteur to present an “Outcome Report” during the closing session.*

Closing Session

The closing session will summarize the main findings of the workshops and build on the discussions during the plenary sessions to make final recommendations for policy and law reforms aimed at improving the business climate and to contribute concrete inputs to the upcoming project activities.

6. Concluding Remarks

The Regional Conference is expected to be a major step towards the project's objectives and is going to set the ground for a series of national activities that the project intends to undertake in the project countries, including thematic surveys and research and a number of training activities.

The outcomes of the conference will be posted at ACRLP's website www.arabruloflaw.org. For any questions or comments, please contact the Project Manager, Mr. Elias CHALHOUB at echalhoub@arabruloflaw.org.
