



**Regional Report on**  
**The Business Legal Environment in the MENA Region: Status and Reform**  
**Challenges**  
**(Lebanon, Tunisia, Yemen and the UAE)**

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## **Table of Contents**

<b>Introduction</b> .....	3
<b>I - Project Overview</b> .....	3
<b>II- Report Drafting Methodologies</b> .....	4
<b>III- The Regional Team and Contributors to the Drafting of the Report</b> .....	5
<b>Part one: Analytical approach of the socio-economic structure of the involved countries</b> .....	6
<b>I- Socio-Economic Background of the Involved Countries</b> .....	6
1. Location and Common Historical Background.....	6
2. Socio-Economic Characteristics of the Project Countries.....	7
<b>II- Risks and Hurdles Undermining the Business Environment in the Involved Countries:</b> .....	10
1. Preamble.....	10
2. Socio-Political Risks and Constraints.....	11
3. Economic Risks.....	13
4. Administrative and legal risks and constraints.....	19
<b>Part two: Analytical Approach of the Current Legal Structure</b> .....	21
<b>I- Definition of the Legal Environment</b> .....	21
<b>II- Sources and Clarity of the Legislations</b> .....	21
1. Common Law Resources in the Involved Countries.....	21
2. General Characteristics of Legislations in the Project Countries.....	21
<b>III- The Judiciary and Alternative Means of Dispute Resolution</b> .....	22
1. Judicial Structure and Organization.....	22
2. The Efficiency of the Judiciary in the Involved Countries.....	23
3. Level of Legal knowledge.....	26
<b>IV- Business and Economic Laws</b> .....	27
1. Legislative Shortcomings.....	28
2. Suggested Legislations for the Aim of Transparency.....	32
<b>List of References</b> .....	34
<b>List of Annexes</b> .....	39

## **Introduction**

### **I - Project Overview**

The Arab Centre for the Development of the Rule of Law and Integrity (ACRLI)<sup>1</sup> in cooperation with the Middle East Partnership Initiative (MEPI) is implementing a project on "Commercial Law Strengthening in the MENA Region"<sup>2</sup> (hereinafter "*the Project*"). The project extends over a period of two years and includes Lebanon, Tunisia, Yemen, and the UAE (hereinafter "*the Project Countries*").

The overall goal of the Project is to strengthen commercial law reform in the region and in the project countries with a view to promoting a legal environment that is business enabling and conducive to short-term local or sectoral economic growth. Moreover, the Project aims to improve the capacity to understand complex commercial law and regulations within domestic legal systems and to increase private sector participation in business law policymaking. The Project primarily targets lawyers and businesspersons, with a view to actively involve them with commercial policymakers in a results-oriented policy that can the business legal environment in their respective countries.

The project's activities are performed over two phases: the first phase, already concluded, included the development of a general report on "the State of Commercial Laws" in each project country. These reports described the general state of the business legal environment, with a focus on commercial and business laws in the project countries. Furthermore, these reports studied and analyzed the status of courts and alternative means for dispute resolution, in terms of efficiency and adequacy. Finally, these studies identified obstacles and presented reform suggestions to foster the business legal environment and the investment climate in each State.

Building on these studies, which were discussed and validated in national workshops held in each of the involved country, this regional report has been drafted, constituting the culmination of the

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<sup>1</sup> For further information on the ACRLI please visit the following address: <http://www.arabruleoflaw.org>

<sup>2</sup> For further information on the project please follow the following address: <http://www.arabruleoflaw.org/compendium/output/main>

project's first stage, and providing a comparative analytical approach on the status of commercial laws and the legal business environment in the MENA region in general and in the project countries, specifically. This report was discussed, developed and adopted in its final version during a regional conference held in Tunisia on "Creating a Dynamic Business Legal Environment in the MENA Region: Challenges and Priorities".

The project's second phase, initiated in parallel with the drafting of this regional report, includes the development of 4 theme-specific studies in each project country. These specific themes were identified and selected according to the needs of the country in some cases; in others, they were perceived as an ideal model that can be followed. The themes are: *Intellectual Property Laws* in Lebanon, *Investment laws* in the UAE, *Enforcement of Contracts and Recovery of Debts* in Yemen and the *Competition Law* in Tunisia.

## **II- Report Drafting Methodologies**

ACRLI relied on several levels and styles in the process of drafting this report.

**Level one:** builds on the information provided by the national reports<sup>3</sup> after the examination, analysis and comparison process performed by a specialized regional team. This regional team reviewed the details of written texts and background papers submitted by specialized experts as a basis for the national reports. In addition, the team relied on individual interviews with national experts and business and legal persons as well as on the meeting minutes related to dialogue sessions and brainstorming by national teams. This level also employed the reports and outcomes of the national workshops conducted in the involved countries.

**Level two:** is based on the background papers attached to this report that include (1) the introductory background paper that provides for the historical, geographical, economic and socio-political status of the involved countries, (2) the background paper based on the analysis of constraints faced by the investment environment in the professional countries, particularly the political, social and economic constraints, (3) the legal paper that addresses the general legal

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<sup>3</sup> These reports were drafted by a national team on the basis of thorough research work and multi-faceted background papers; in addition to focused panel discussions and individual interviews conducted with legal experts, economists, representatives of governmental and non-governmental bodies.

environment in the project countries in terms of legislation, judiciary or legal knowledge level and development and (4) the background paper that provides for reform ideas and suggestions that help to chart the road map towards the strengthening of the business legal environment.

**Level three:** includes the interventions and discussions that took place at the Regional Conference on "Creating a Dynamic Business Legal Environment in the MENA Region: Challenges and Priorities", in which a large number of legal and business persons and stakeholders concerned with the legal and regulatory environment for business in the Arab region participated. This conference formed a forum for dialogue on regional economic policies securing a new opportunity for the exchange of ideas and experiences between the interlocutors and providing a peer knowledge exchange with a view to feed ideas and efforts and modernization needs in this area helping this regional report to form a scientific tool pushing towards achieving the desired legal reform.

### **III- The Regional Team and Contributors to the Drafting of the Report**

The report is the outcome of a focused research-oriented process resulting from a set of activities mentioned above in the second part. The national team<sup>4</sup> in each project country participated in drafting this report under the supervision of and via communicating with the regional team and with the consultation and direct follow up of national, regional and international experts who were carefully and accurately chosen each in his fields of expertise (economy, law, statistics etc...). It is also done by the contribution of a wide range of the beneficiaries (legal and business persons and regional and international organizations) who directly participated in workshops and deep-discussion seminars and interviews. The number of contributors to the outcomes of this report exceeded 350<sup>5</sup>.

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<sup>4</sup> Kindly find attached the structure of the regional and national teams involved in the implementation of the project

<sup>5</sup> Kindly find attached the annex including the list of names of experts and targeted persons who participated in any of the events of the project

## **Part one: Analytical approach of the socio-economic structure of the involved countries**

### **I- Socio-Economic Background of the Involved Countries**

#### **1. Location and Common Historical Background**

The four project countries are situated in the geographic region known as the MENA region. They are all members of the League of Arab States and they all share common cultural, historical and religious background since the mid seventh century following the dispersion of Islam in Eastern and Southern Mediterranean region and all of the Arabian Peninsula. Starting from the sixteenth century, the European influence began having a direct and indirect impact on some of the project countries. However this influence ended when the Protectorate Era was imposed and when some countries such as France and Britain occupied other countries when the direct influence lasted until after the twentieth century.

This protectorate or mandate era had a direct impact on the legal systems of these countries, especially in Lebanon and Tunisia where the French impact was direct and clear and also in Yemen and the UAE that witnessed the introduction of the Roman-Germanic legal system.

**Consequently, all of these countries share a cultural background albeit in different levels; something that is shown in the socio-economic development in terms of human or economic growth based on the level of cultural interaction and the governance systems as well as economic nature and components.**

## **2. Socio-Economic Characteristics of the Project Countries**

### **i. Lebanon**

Lebanon is a republic based on a parliamentary governance system where the circulation of power is done on a regular basis. The Lebanese society is very complex in terms of the sectarian structure. Its four million populations are divided into 18 Islamic and Christian sects and 86.6% of it live in the cities. The Lebanese community is considered young where the average age is of 29 years and the literacy rate is of 88.4%. A great part of the educated people reached the university level and there are more than 56 active universities and high institutes. However, the Lebanese society is still suffering from the outcomes of the civil war and the regional conflicts that directly affect the homogeneity and unity of the demographic structure. Moreover, there is a huge disparity in terms of distribution of wealth between regions and social classes. The Lebanese economy is liberal and based on individual initiative and efficiency of the domestic labor. The movement of capitals across borders is totally free and the banking system is a developed one. In addition, Lebanon is characterized by a unique and strict bank secrecy law. The GDP (Gross Domestic Product) in Lebanon is about Billion \$ 17,5 and is distributed on the economic sectors as following: agriculture 12%, industry 21% and services 67%. The inflation rate registered in 2008 was 2,5%. The socio-economic development programs in Lebanon, particularly reconstructing what the war had ruined, rely on important foreign assistance programs from the Arab States, the World Bank, in addition to industrial countries where the rate of these assistances and long term loans reached 71% of the total of investment in this area.

### **ii. Tunisia**

The governance system in Tunisia is presidential and republican where the executive power is in the hands of the President of the republic. Tunisia is politically and socially stable. It is a Muslim community; however, the State adopts a secularist approach where Tunisia is the only Arab State that adopts civil law in matters of personal status and thus prohibits polygamy. The Tunisian community is young where the age rate is 29 years and the literacy rate is of 74.3%. Tunisia has a population of 10 million and it should be noted that it implements social awareness programs aiming at limiting the increase of population in a view to raise the living and education standards.

These programs have so far succeeded where the per capita income is expected to reach 8.4 thousand dollar according to the expectations of the World Bank for the year 2008. The Tunisian economy maintained an annual growth rate of 5.4% between 2004 and 2007 whereas it decreased in 2008 to reach 4.1%. This rate is expected to increase to more than 6% during the next five years. The inflation rate is of 5%. Exports of the industrial sector recorded 69% of the GDP especially textiles, auto parts and electrical appliances. However, this sector is currently suffering because of the global financial crisis. The tourism sector comes after the industrial one where the number of tourists for the year 2008 reached around 7 million tourists. The agricultural sector forms 10.5% of the GDP. The State is still controlling important economic sectors especially financing, oil, electricity, gas distribution, telecommunications, water resources and national airline. Tunisia is one of the founders of the WTO and thus it is obligated to adopt a free economic system that aims towards reaching new markets, especially European ones. Textile industries, mechanical and electrical machines are considered the best hub for investment in Tunisia whereas tourism is pretty much restricted to coastal areas despite the high number of tourists. In addition, energy production that is in the process of privatization forms a good investment opportunity along with oil, telecommunications and commute sectors.

### **iii. Yemen**

The governance system in Yemen is presidential and republican where the parliament plays an important role that increased especially after the unification of Yemen in 1990. The Yemeni society is very young where the age rate is of 16 years. In addition, it is considered a tribal community especially in the north. The security situation in Yemen is still unstable especially in the northern and tribal areas. The literacy rate is of 50.2% with great disparity between males and females. According to statistics of 2006, the population of Yemen is of 21,456,188 where 45.2% still live under the poverty line. The population increase is of 3.46% annually and unemployment is of 35%. The Yemeni economy suffers from chronic problems including scarcity of natural resources, low water resources, and the increasing number of population and the security instability; all these factors have pushed the country to spend on the armed forces at the expense of economic and social development in addition to the disparity in the distribution of wealth

between the north and the south where the southern part suffers from great poverty despite significant oil resources upon which the economy in this area relies. Economic reform began in Yemen since the unification in 1990; The Yemeni government committed to growth and reform plans since 1995 directed by the International Monetary Fund and the World Bank, where local currency exchange rate was stabilized and the inflation rate was reduced from 70% in 1994 to 19.8% in 2006. Yemen is also adopting a privatization and investment promotion program through issuing modern laws and establishing free zones with the support of funds, states, and other donor organs. Yemen is also trying to diversify sources of income that used to mainly depend on production and sale of available oil in small quantities. Thus, the government is promoting and endorsing the agricultural sector and developing the fisheries as well as the services sectors, in particular telecommunications. However the economic development is still facing an undeveloped infrastructure. The most important investment areas in Yemen fall within the industrial and economic public institutions that are in the process of privatization. The government is currently studying the case of 61 private institutions in addition to investing in free zones (especially in the city of Eden and its surroundings) and the rest of port cities such as Al Hodeida and Al Makla. Investment in these areas falls within the framework of developing essential infrastructures and some manufacturing industries and the fisheries sector; in addition to developing main structures of oil and gas production in Ma'rib and Shabwah and the necessity to build a pipe line to Eden and establishing factories for gas liquidation.

#### **iv. UAE**

The UAE is a federal country including 7 Emirates that extend from the southern Arabian Gulf and the Arabian Sea all the way to the borders of Amman. The UAE population is around 4.5 million among which 80% are expatriates. The UAE community was and still is a Bedouin society despite the extreme modern aspect of civil centers in the State such as Dubai, Abu Dhabi, Al Ain, Al Sharjah and Ras Al Khaimah. The age rate in the UAE is of 30 years and the literacy rate is of 77.9% that increases to 99% for those who fall within the category of less than 24 years old. The UAE enjoys a relatively high welfare standard where the per capita income is of 40,000 UAD per year which is considered the highest in the world. However, this rate varies from one Emirate to

another: it is higher in Dubai and the UAE and lower in the other emirates. UAE's economy is liberal and open despite some legislative restrictions that still exist especially in the field of sharing in the companies' capital. The economy in the UAE relies on oil and gas production and sale however a transformation occurred in the last years towards diversifying income resources especially in Dubai where wide opportunities for tourism and investment in the field of finance, real estates and services were open as well as in the rest of the emirates in parallel with the issuance of the federal law that provides for establishing free financial zones. The GDP registered in 2007 around US\$ 190 billion which made the UAE the second State in the Gulf area in terms of income after the Saudi and number 38 globally. This income rendered the UAE economy one of the fastest growing economies in the world; however, the direct impact of the global financial crisis slowed down this growth and may continue on the same path for the following years. What encourages investment in the UAE is the low percentage of taxes despite some obstacles that we will mention later. The most important investment areas in the UAE are focused within the services and real estates sectors. It is noted that appropriation is now allowed for a period of 99 years after it was prohibited for non-nationals. The situation is the same in the financial zones in the free zones and some manufacturing industries. The main sector is the oil sector which is entirely in the hands of the government in terms of production, industry and commerce.

## **II- Risks and Hurdles Undermining the Business Environment in the Involved Countries:**

### **1. Preamble**

It is striking that the entire Arab region stretching from the Eastern Mediterranean to the Arabian Peninsula and to North Africa up until the Atlantic Ocean only attracts 1.5% of investments from outside the region, 2% in the best cases from global investments (except what is invested in the sectors of mining, oil, gas and derivatives), despite the fact that FDI levels and rates are increasing in other countries outside this region. Moreover, a big part of the FDI was restricted towards a few countries such as Saudi Arabia, Egypt, Tunisia, Bahrain, Morocco and the UAE recently. Yemen is the least country to attract FDI.

There is no doubt that there are negative factors affecting growth in the business environment in the MENA region, thus undermining foreign investments. We will limit the discussion in this

report to *four factors* that we believe are the key causes affecting the growth of business and investment in these countries, noting that each component of these factors varies according to each of the project countries. Consequently the upcoming section will discuss the following: socio-political risks and constraints, economic risks and constraints, legal risks and constraints and administrative risks and constraints.

## **2. Socio-Political Risks and Constraints**

### **i. Political risks**

There is a direct link between the political situation in a certain country- that is reflected in public and private liberties, respect for human rights, equality before the law, commitment to implement the rule of law and the circulation of power- and the flow of capitals and investments that foster the economy and the society. This is due to the fact that these factors lead to a socio-political stability and therefore enhance the investor's trust in terms of respect of his rights and equalizing him with the rest of investors in the market. Moreover, the investor will feel secure that his investments won't be jeopardized by political fluctuations and individual moods of governors.

It is to be mentioned that the majority of involved states do not comply with the above-mentioned standards. Democratic mechanisms are only adopted on the surface since participating in the governance is not based on stable principles or on real implementations and is only limited in most cases to the texts. All of the involved countries shifted directly from colonial dominance to individual governance without a real test for democracy; therefore, institutional systems of these countries, even though they seem solid, lack strength elements that aim at the continuance of the regime through the succession of power. The reason is that these regimes do not rely on their peoples in order to reflect the society's interest from the governed perspective. Perhaps, the Freedom House Index is a strong corroboration of the low level of civil and political liberties in the different involved. The index's scale ranges from 1 (which is the best level) to 7 (which is the worst). All four project countries, except for Lebanon, ranged either last or before last indicating that they do not enjoy a high degree of freedom and liberty. This weakness in democratic regulations explains the absence of investments with a long term productive dimension in most Middle East countries; actually, most investments are done for a short term due to the change of

political situations and social fluctuations where the aim is to reap current temporary opportunities.

Based on the above, any analysis that takes into consideration the political interpretation of risks is very likely to be true, since all economic indicators note the escape of capitals for the MENA region. In addition, the oil boom that occurred in recent years didn't rise the FDI percentage to more than 1.76% of global capitals. The high economic growth rate in some oil countries is due to domestic investment resulting from the surplus of these countries. This type of governance systems makes the economy of those countries semi-directed (except for Lebanon) even if they seem on the surface liberal and dependent on market mechanisms. The reason is that governance in those countries regulates social and political activities and directly interferes in the economic situation.

## **ii. Social Risks**

The value system in the MENA region is still based on religious and tribal values. Religion is the main generator of social relationships from which all the principles guiding and governing relationships, behaviors and aspirations between individuals and groups are inspired. The religious and tribal values highlight the principles of obedience to the ruler or Head of the clan, therefore, governance systems are a far fetch from democracy and the rule of law. Over the centuries, the Arabic socio-political culture was based on male governance and on the dependence on immediate family, making the introduction or renewal of new regulations a complicated matter. Thus, the economy is directed towards the ruling class of the society that becomes, by virtue of its position, richer with more economic and financial benefits, thus increasing social disparity. In many cases, the above mentioned pattern governs the four involved countries where social disparity is vast between the governing and governed classes, and where there is no circulation of power, in addition to the large gap in literacy rate between man and woman. The Lebanese case is unique by virtue of religious diversification that increases the dissociation of the community which leads to an unfair distribution of wealth. Thus, areas develop more than others and mixed religious and sectarian areas become more socially tolerant especially on the level of commercial trade.

### 3. Economic Risks

We will start by addressing the objective conditions of the economic environment of the involved countries, which are considered an indicator and generator of the economic activity. We will later discuss the financial and economic situations in the region in light of the global financial crisis.

#### a. Objective conditions in the investment environment

These conditions can be summarized as follows:

- Appropriate infrastructure such as roads, ports, airports, continued water and electric energy resources, phone lines, effective shipping and transportations means.
- Natural resources such as agricultural lands, mines, energy sources and raw materials and a tourism enabling environment
- Effective human resources
- The safety of macroeconomic fundamentals that affect the economy. We mean by this the rate of economic growth and the inflation rate as well as the level of bank interest and foreign debts and the taxes level.

Actually, there is a big disparity between each of the project countries in terms of availability of these elements. While these resources are detailed in the background paper on risks and hurdles, below is a table comparing the availability of these resources in the project countries :

	<b>Lebanon</b>	<b>Tunisia</b>	<b>Yemen</b>	<b>UAE</b>
<b>Roads</b>	Sufficient network; needs development and maintenance.	Good road network in coastal area and not sufficient in the villages.	Not sufficient road network and is currently in the process of development in main cities	International standard

<b>Ports and Airports</b>	Good but needs better administrative efficiency	Good and efficient in cooperation with public-private sectors	Undeveloped and the government is seeking to develop it	Good and developed both financially and administratively
<b>Water Resources</b>	Available but mal-stored and distributed	Available and Good (97.8%)	Scarcity of water resources	Low natural mineral water resource, sufficient desalination for domestic use
<b>Electric energy</b>	Insufficient, unavailable and at a high cost	Sufficient (99.5%)	Under process of development and insufficient feeding only 30% of country's need	Developed, good and sufficient
<b>Telecommunications</b>	Good and acceptable	Good and open for competition	Growing in terms of mobile services but insufficient in terms of landlines	Modern networks
<b>Transportation</b>	Available Transportation; Vehicles but no	Available	Available	Available and highly efficient

	public transportation organization			
<b>Natural resources and wealth</b>	Available only for Tourism	Oil and gas resources plumb and phosphate resources and natural resources in terms of tourism and agriculture	Oil resources that enable exportation, oil refineries, fisheries and some agricultures: grains and sesame seeds	seventh oil producer globally and forth in the Gulf area and Iraq
<b>Human resources</b>	Available and efficient	Available and efficient accompanied with high unemployment rate for good labor	High illiteracy rate especially among women, inefficient labor with low cost	Generally imported labor on all levels
<b>Macroeconomic fundamentals</b>	Good growth rate, high bank interest and high public debt.	Acceptable and stable growth rate and acceptable interest rate and reasonable debts	High inflation rate (19.5%) acceptable growth rate (5.5%) limited foreign debt (6 Billion dollars) and reasonable debts	High growth rate, high inflation rate due to growing consumption, very low taxes almost non-existent and no

				foreign debts
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Upon a general review of the indicators mentioned in the attached table, it is evident that all the involved countries achieved, in one way or another, development, albeit limited. This is due in some cases to the international reform and development programs, as is the case of Tunisia and Yemen; or thanks to the natural development of markets due to liquidity abundance in others as is the case of the UAE. In other cases, it is due to preservative financial policies as is the case in Lebanon.

**b. Current and Expected Financial and Economic Situations in the Region in Light of the Global Financial Crisis**

- **Political Background of the MENA Region**

To avoid repetition of what was mentioned in the economic background paper, we refer to its content, however highlighting the below basic issues.

The MENA region is located at the crossroads of global trade in terms of merchandise and cultures, and is therefore subject to two kinds of great global dangers: oil and climate change on the one hand and economic turbulences on the other. The economic growth is frequent and rapid due to high oil revenues; geopolitical instability, however, constitutes a main problem that leads to a major fluctuation in financial markets especially since oil consuming countries are aiming towards diversifying energy resources; a thing that is expected to push peace further away from the region. Resolution options depend on the business community that has to play a role in promoting pragmatic moderation and employing youth which will eventually promote long term economic growth and limit the flow of wealth to outside the region.

- **The Global Financial Crisis in the MENA Region**

The region is witnessing great development in addition to a high inflation rate especially in terms of fuel and food prices. However the repercussions of the global economic crisis will lead to a decrease in monetary transactions from the USA and Europe to the region where economic decline is still dominating. Statistics show that 58% of transactions are from the USA and Europe and 26% from the GCC countries, therefore some of these countries that are characterized by small economies will face transaction tensions and crisis as well as a decrease in FDI rates accompanied by low oil prices after the high prices recorded. For this reason, governments should manage oil incomes and promote better capital investment in terms of money and human element since the economic slowness can raise great social tensions especially in countries with high unemployment rates among youth.

- **Global Risk Outlook at the level of the involved countries**

- **Lebanon**

The Lebanese economy is generally directed abroad; however it has shown a remarkable flexibility in the face of the unfolding global financial crisis in 2009. In fact, Lebanon has not been affected much by the global financial crisis and recorded an economic growth rate of 6% in 2008 vis-à-vis 8.5% in 2007. According to some international reports, the most promising investment sector in Lebanon is the banking sector which was not directly affected due to the existence of high levels of liquidity and limited dealing in real estate lending; in addition to the insurance sector and the sectors of IT and communications, trade and industry of medical drugs where Lebanon is a pioneer in the region. The slow growth in the GCC countries could have a negative impact on the flow of remittances to Lebanon. Furthermore, the global economic slowdown would impact on tourism and the construction and real estate sectors. It can also affect the implementation of promises made to Lebanon at Paris 3 meeting. It is expected that the level of public debt rate will decline from 164% of the GDP to 149% in 2009 and 145% in 2010, because of expectations of decreased deficit in the balance of payments.

➤ **Tunisia**

Tunisia has successfully emerged from a challenging and critical decade due to its openness to the global economy. This decade included several crises: a severe drought that hit the country; September 11 and its repercussion; the increase in oil prices; the expiration of the Multi-fiber Agreement in 2005 that affected the manufacturing sector. However, the big challenge remains in tackling youth unemployment, and improving the business environment to continue to attract foreign direct investments. Tunisia came strong into the global crisis due to several factors including: Tunisia does not have a real estate problem, public debt is low, the money market is highly liquid and foreign participation in the stock market is low. Given the country's dependence on EU for its exports, the real economy could not escape the effects of recession in Europe and US. Tunisia economy slowed down in 2008 to achieve 4.5%. In addition, the increase by 40% of the foreign investment in 2008 reduced financing needs; also, the government increased investments by 20% in the 2009 budget and launched a reform process to enhance the business environment and another series of administrative and services reform programs. Thus, annual inflation should decline from 5% in 2008 to 4% in 2009 and 3% in 2010.

➤ **Yemen**

Yemen ranks 149 out of 175 countries on the UNDP Human Development Index for 2004, which renders it one of the least developed countries in the world. Yemen faces a number of socio-economic uncertainties due to depressed oil prices, growth slowdown in the Gulf economies in addition to domestic religious and tribal challenges especially in Sa'ada. Due to low oil prices and despite natural gas flux this year, financial deficit will remain high and growth will slow down in other non-oil sectors. The inflation rate is expected to decrease to below 10% this year after it recorded high levels at 19.5%. The global financial crisis is expected to have a limited impact on the Yemeni banking sector due to limited exposure to foreign banks. However, the remittances of Yemeni abroad, particularly in the Gulf States will be affected directly and they are currently estimated at 6.5% of GDP more than exports of hydrocarbons by 50%. The economic slow pace

in the Gulf countries and the industrial countries will directly affect the FDI limiting the financing of oil and non-oil sectors equally, especially the fisheries sectors.

➤ **UAE**

UAE's economy is characterized by its diversity, despite that the oil sector is the key element of its economy and also enjoys a stable commercial environment and a solid financial status as well as an efficient banking system. The UAE ranked 46 out of 181 countries according to the Ease of Doing Business Indicator of 2009 despite rising fears concerning the real estate market. The Dubai International Financial Center (DIFC) succeeded in attracting important investors and skilled labor that is expected to develop both in terms of organization and transparency. The global financial crisis had an impact on the UAE economy especially Dubai and particularly tourism and real estate sectors since it depends on foreign debts and the Emirates is currently facing a decrease in global financing. The case is different in Abu Dhabi where 90% of oil reserves are there. The UAE bank launched a federal program to support the financial situation in Dubai by granting a 20 Billion dollars loan with the support of the government of Dubai. However, a huge number of big projects in the framework of tourism and real estates were cancelled due to the deflation of credit and the absence of investors and appropriators from outside the country. Oil is still the backbone of the economy and the lifeblood of the investment in the UAE.

**4. Administrative and legal risks and constraints**

**i. Administrative Hurdles**

The administrative risks facing the business environment in any given administrative system relate to the following factors:

- administrative routine and multi-level administrative transactions and modern equipments
- efficiency and integrity of the human resources

**ii. Legal Hurdles**

Legal risks are normally divided into two types:

- Legislative risks that are due to the level and modernization of legislation and its conformity with the investment environment and sufficiency
- The human resources responsible for implementing laws such as judges, judicial assistants in terms of efficiency, sufficiency, integrity, effectiveness and independence.

**Attached to this report are four lists highlighting the obstacles that face administrative and legal systems in each of the four involved countries, in addition to some suggestions that can enhance a business enabling legal environment.**

## **Part two: Analytical Approach of the Current Legal Structure**

### **I- Definition of the Legal Environment**

We mean by "legal environment" of any State the comprehensive legal system with all of its components in terms of legislation, administrative system in addition to parties responsible for its implementation i.e. judges and their assistants. Thus, a healthy investment environment requires the existence of two key elements: 1- a strong and promoting and 2- a human element that effectively and efficiently implements this legislation.

We will only refer in this report to the common elements of the existing legal systems in the project countries without going in to the legislative details that are mentioned in the national reports and the background paper on the legal aspects of these reports, to which we refer.

### **II- Sources and Clarity of the Legislations**

#### **1. Common Law Resources in the Involved Countries**

The legal system based on the Roman-Germanic inheritance; i.e. the civil law system as compared with the common law one, is prevalent in the project countries, specifically in terms of form and context where legislative authorities in those countries, whether elected or not, issue, develop, amend and change laws. Laws in these systems are positive, with the impact of the Islamic Sharia or religious legislation in some aspects related to personal status and family's right.

#### **2. General Characteristics of Legislations in the Project Countries**

Each of the legislations in the involved countries has unique characteristics despite the common resources and similarity in terms of systems.

The Lebanese legislation is flexible even though it is outdated and is apt for coping with new legal situations through the process of deduction of detail and jurisprudence out of the general rule.

The Tunisian legislation is stable and steady since the beginning of the legislative movement in the nineteenth century. We should note that commercial legislations developed towards liberalism

since the eighties of the last century especially after the accession of Tunisia to the WTO and globalization.

The Yemeni legislation is mainly inspired from the Islamic Sharia where the Yemeni constitution provides that it is the sole source of legislation. The Yemeni legislation relied on sub sources of the Sharia based on the process of "*public good and favorable construction*" in order to enter modern legal systems especially commercial ones and thus became mix with the prevalence of the Roman Germanic pattern in all that is related to economic, and commercial exchange.

The UAE is different in terms of legislation levels and not in terms of the common source based on the Roman Germanic laws. Each Emirate has its own federal and domestic legislation and the constitution allowed them to have their own rules and judicial authority on the stipulation that they do not contradict with the federal laws. Local laws are issued by the governor of the Emirate thus they are apt for fast development and modernization where they are not submitted to multi-level parliamentarian procedures or political disputes. However they can be affected personally by the governor or whoever issues them since they are not based on democracy of issuance.

We will later refer to the business laws in the involved countries and whether they keep pace with requirements of global trade and open markets.

### **III- The Judiciary and Alternative Means of Dispute Resolution**

#### **1. Judicial Structure and Organization**

There are two kinds of judicial structure in the project countries in terms of jurisdiction. Yemen and the UAE rely on a unified judiciary system with a comprehensive jurisdiction without differentiating between administrative or civil judiciary. On the other hand, Lebanon and Tunisia rely on the dual judiciary system that distinguishes between administrative and civil judiciary; such dualism offers privilege to public authorities whereas conflicts arising from their activities with citizens are raised before the administrative judiciary.

All four of the involved countries admit the right of appeal before courts, with a reservation in the case of administrative courts in Lebanon where decisions cannot be reviewed. However, like all

other countries, the principles adopted in the courts are based on equality, publicity, and respect for the right of defense.

The courts' jurisdictions are comprehensive in Lebanon, Tunisia and the UAE where first instance, appeals and cassation courts consider all types of cases, except for certain cases and what is legally mandated to special committees that have a judicial character such as committees related to objection to taxes and expropriation in Lebanon and the Competition Council in Tunisia etc...

Yemen is the only involved country to have penal and commercial specialized courts, public finance courts and tax and customs courts on the level of first instance that appeal before a unified court of appeals.

## **2. The Efficiency of the Judiciary in the Involved Countries**

### **i. Judicial Independence**

The main dilemma facing legal systems in the developing countries in general and the MENA countries in particular does not lay in texts and judicial regulations. It is results from the extent of respect of these texts, the transparency in their application, and commitment to the principle of separation of powers, their independence and cooperation.

The four involved countries face the same problem since all of their constitutions provide for the independence of the judicial power from the executive and legislative power as well as the judge's individual independence. However, when it comes to practice, one cannot but note the dominance of the executive power and sometimes the legislative power over the judiciary. This situation reveals clearly from the way members of the judicial councils are appointed whether entirely or partially by the executive authority which is the case in Lebanon and Tunisia and the UAE. In some countries, the judicial council may be chaired by the president of the country or who ever is mandate-leave alone that they do not enjoy financial and administrative independence except for Yemen where it is provided for in the constitution.

Interference in the work of this authority or even in the work of judges themselves is common in all of these countries whether by the executive authority or family or tribal authorities which has become so common among the public and is being documented in the official reports such as those of the World Bank. This issue pushes investors to resort to international alternative means to resolve disputes.

## **ii. Efficiency of the Judicial Systems and Easy Access to Justice**

The judicial systems in some of the involved countries suffer essential structural problems undermining their effectiveness and leading litigants to avoid resorting to them. These problems include: slowness in adjudication, high cost of litigation and inefficiency of the human element in terms of issuing decisions or implementing them. The judicial systems in both Lebanon and Tunisia suffer from the low number of judges in comparison with the number of cases raised before the judiciary leading to a judicial backlog that has become chronic in Lebanon and critical in Tunisia where the authority is seeking to establish additional first instance courts in the big cities.

Moreover, litigants have a tendency to procrastinate and judges fail to commit to legal deadlines due to accumulation of cases thus, the judge will be forced to postpone deadlines in order to avoid adjudicating large number of cases beyond his capacity. In Yemen, the lack of trust in the judicial system is due essentially to the popular culture that used to resort to tribal means to resolve disputes in addition to the inefficiency of the judicial human resources in general and the avoidance to pay judicial fees that exceed sometimes the litigants' capacities.

The case is better in the UAE, where there are federal and local courts and where there are constant efforts to develop the courts, federally and locally. Thus, Dubai's courts are considered one of the most modern courts in term of general equipments. However, this is not enough especially since the basis of the judiciary is its human element which still needs rehabilitation and training in all of the involved countries to keep up with the globalization era as shall be mentioned later.

### **iii. Alternative Means to Resolve Disputes**

One of the most important means that a capital-attracting country can use in order to enhance the investor's confidence in protecting his rights is the introduction of alternative means of dispute resolution in its legal systems, thus qualifying these systems to perform this task and preserve the confidence of investors.

Legislations of the four involved countries allow the recourse to arbitration both nationally and internationally; in addition, these states (except for Yemen) signed the "New York Convention of 1958 on the Enforcement of Arbitral Decisions" and they have all signed the "Convention on the International Center for Settlement of Investment Disputes in Washington of 1965" that encouraged the International Bank for Reconstruction and Development to establish it. Therefore, respecting this membership by the project countries forms an alternative means for the investor rather than the local judiciary in those countries in which he does not trust.

Despite that, as mentioned, the legal systems in the four involved countries allow the recourse to alternative means, most importantly arbitration in its various levels, there remain some restrictions in this area: the Tunisian and Lebanese laws allow the State to recourse to arbitration with private institutions only in the case of a prior permit for the competent authority to include the provisional clause in the administrative contracts. This issue still forms an obstacle even if partially.

It is to be mentioned that Yemen, although not yet signed the New York Convention yet (which is currently in this process), respected this treaty and implemented provisions issued for the interest of one of the American companies.

Finally, all of the project countries acknowledge the reconciliation and arbitration system and expertise of the Arab and European Chambers of Commerce that was implemented on 10/1/1983. Consequently, these alternative means to resolve disputes present an alternative mean for the investor instead of the local judiciary of the involved countries.

### **3. Level of Legal knowledge**

The term "level" implies here the extent that the members of the legal community- from judges to lawyers, assistants, law professors, etc.- enjoy from educational level during their university years, after graduation and throughout their carrier lives.

#### **i. Academic knowledge**

Upon reviewing the current level of legal persons in the project countries, it becomes evident that educational and academic curricula in the legal institutes are still as those that were adopted in the mid sixties of the last century in the French institutes. These curricula are solely based on theoretical learning of the basic principles of legal institutions and classic Roman Germanic theories without laying focus on the practical aspect. In addition, there is no interest in teaching comparative law in the framework of recognizing legal institutional patterns in other modern and traditional systems. Moreover, the student doesn't familiarize throughout his university program with the public law institutions that he is expected to encounter on a daily basis as a judge or a lawyer, especially with regards to international treaties and institutions in the framework of international commerce, resolving disputes, enforcing provisions and their conflict with internal laws.

#### **ii. Training Judges, Lawyers and Judicial Assistants**

Despite the fact that these countries established judicial institutes to train judges (that are admitted after their graduation from universities for two or three years before without any prerequisite of practical experience); they are taught theoretical legal information that are similar to those they have learnt in the educational institutes and address the same scientific curricula without focusing on serious and field training. There is no continued preparation after the appointment that is a must throughout the practice of the legal and judicial profession since there are new legal patterns that come up everyday especially in the framework of developed and open to globalization business.

The case is the same for lawyers and perhaps even worse. In many cases, lawyers only go through what is called a training period which is often futile since the intern lawyer is often treated below

professional efficiency level. This period ends by a formal theoretical exam or in some cases without any exam at all.

Assistants to judges do not get any schooling or training prior to their appointment. However, in Lebanon and Tunisia they are subject to some training sessions after their appointment and in some cases they undergo training through annual summer sessions.

### **iii. Statistical Information**

There are around 15 faculties of law in the project countries: 7 in Tunisia, 5 in Lebanon, 2 in the UAE and 1 in Yemen. Classes in these faculties are taught in the Arabic language, with the exception of a few universities and courses. The number of graduates from these institutes does not exceed 2000-2500 annually and are later distributed on all legal occupations, therefore the number of judges is not market sufficient. The rate of graduates who speak good English or French is less than 50% for English and even less for French and in an average rate for both not exceeding in all of the Arab countries 36% for English and 30% for French. This is while emphasizing that foreign languages are important in the field of business laws; English is the language of global trade and modern patterns of new legal contracts and institutes while French is the Roman Germanic system language implemented in the project countries. Legal persons who know how to use the computer range between 67% in Lebanon, 13% in Yemen and an average 36% in all of the Arab countries. Legal persons who use all forms of legal references range between 85% for legal magazines, 50% foreign references and 35% for databases.

We should note that legal databases are not available for the public in the project countries and are limited to some Justice Palaces as is the case in Beirut and to universities.

## **IV- Business and Economic Laws**

We mean by business laws all types of legislations related to commerce, commercial enterprises and companies. We also mean the series of economic and commercial legislations that include land, marine and air trade, financial and bank laws, tax, customs and fees laws, competition and

intellectual property laws, labor and corporate governance laws, investment laws in addition to some implementation decrees and decisions or administrative procedures<sup>6</sup>.

**This report will not discuss in detail the contents and stipulation of these laws, as this was already covered in the National reports of each project country.** We, thus, refer to the *annexed four lists* of shortcomings and obstacles facing the different legal systems, in terms of the existing legislation or in terms of suggested reform amendments in each of the four countries. The below will highlight the requirements and needs of the business legislative corpus in the project countries, regarding the lack of some modern legal institutions that should be introduced to fill a legislative gap or for the sake of transparency in monitoring the business environment and institutions.

### **1. Legislative Shortcomings**

Despite that the legislations of the four project countries do include the basic laws that relate to commerce and business, they still fall short of recognizing and addressing modern legal institutions, new contracts and mechanisms of insolvency. In fact, the legal systems in the project countries are based, as we mentioned earlier, on the Roman-Germanic legal system that continued until recently, to adopt traditional legal institutions in business regulation. This system is based on specific patterns, specifically contracts and their special rules. We should note that these contracts are the most common and frequent in transactions and consequently they were assigned with specific stipulations. In addition, the judge should determine whether the contract, different in context, is categorized among the contracts identifies and named in the system, however he can not expand in measuring, innovating, changing or adding.

Given that practical life development leads to the emergence of many novel contracts that weren't known earlier, and after the openness of markets on global commerce and the launch of business projects in areas destroyed by the war, and following the growth of consuming markets that receive manufactured goods in developing countries due to the emergence of oil wealth surplus and others, and therefore the openness of all prospects and the liberalization of world commerce

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<sup>6</sup> We should note that the circulation is restricted to laws and decrees without administrative decisions and procedures that are in many cases as important as the law itself as is the case of the decisions of CB governors, ministers of finance and economy.

by the establishment of the WTO, a new set of multinational companies emerged. In addition, and following the end of the cold war starting early eighties of the last century and after the downfall of the socialist countries' system and China's adoption of the economy market, the need for privatization became a necessity; thus there was a series of transfer processes of public sector institutions to private entities, especially after the public sector has proved failure in management and development. Therefore, the public-private cooperation was consolidated in such a way that gave the private sector the management and implementation of facilities and institutions that were monopolized by the public sector especially in the framework of services and public facilities such as roads, water, electricity and others.

The Roman-Germanic systems did not accept these modern concepts at first, since especially that these laws do not accept private appropriation of facilities considered in the administrative laws as the property of the State. Thus, it took long debates and discussions to find legal solutions. In many times, it was necessary to resort to a new legislation that allows the State to rely on private finance on the condition that the private sector invests in the facility until it gets back its finance with interests and expected profits. Such an agreement is possible and actually happened in Lebanon during the mid sixties of the last century with the issuance of a law that allows individual companies and the private sector to construct highways in return of a Toll Road. Another law was issued during that period known as the law on "establishing mix projects in the benefit of tourism". As a matter of fact, Lebanon had adopted the system related to establishing public projects by concession since the thirties of the last century (electricity, the Tobacco and Cigarette Company).

On the other hand, the Anglo-Saxon laws are more flexible in terms of introducing new contracts for two reasons:

- First, they do not differentiate between the administrative and the civil law where the administration is equal to individuals in terms of contracting, which explains the easy acceptance of BOT contracts (Build, Operate and Transfer) in these legal systems. Such contracts also allow in many cases the ownership of the public facility by the investor throughout his investment period where there is no separation between public-private

properties; such a process acts as guarantee for the investor, yet is not found in the Roman-Germanic systems.

- The second reason is due to the nature of the Anglo-Saxon laws resulting from the common laws. Actually, these laws did not get affected much by the parliamentary legislative movement until the mid fifties of the last century when socio-political circumstances required codifying the contracting norms under the influence of the economic and industrial development. In Britain, *the Sale of Goods Act no. 1893* was issued and included a written legislation of the accepted legal norms that are adopted among the contractors and it was the first legislation to be issued by the legislative body on this matter. Other legislations were issued with an aim to regulate contractual relations between individuals, especially commercial and industrial contracts related to complex technological development.

There is some controversy in some of the involved countries especially in Dubai on the feasibility of holding to Roman Germanic legal system in this Emirate in particular, and in the UAE in general. Some legal and business persons consider that the Anglo-Saxon system best suits the developing financial and real estate market in Dubai, especially in terms of the flexibility of this system and introducing new contracts without any hurdles in accordance with the principle of freedom of will between individuals based on the principle of socio-economic freedom launched by philosophers of the eighteenth century. On the other hand, there are the supporters of the traditional pattern who consider that the contract has a socio-economic effect and thus the power of freewill is limited by social and economic factors. This theoretical debate on the nature of the contract was solved in the German law that can be adopted as an example of a compromise between the two theories, and accordingly a hybrid of the Roman-Germanic and the Anglo-Saxon systems in the involved countries (*this is the case in Lebanon*). Any expression of will while contracting is considered a social act and therefore it entails results; thus, the judge's space of interpretation becomes narrow and limited.

Consequently, the contract in the German law becomes closer to contracts in the Anglo-Saxon system, where it enjoys a binding effect in itself. This effect is guaranteed by virtue of the law and

due to the fact that the judge has no role except in binding the contractor to implement the contract as expressed by the parties. On this basis, any objective interpretation of the principle of "freedom of will", which constitutes the founding basis of the contracts theory, leads to the development of a legal system that respects the will of the parties while at the same time coping with the needs that emerge along with economic development and growth.

We discuss below the most important modern contractual patterns that are not yet available in the laws of the involved countries yet should be introduced:

- **BOT (*build-operate-transfer*), DBOT (*design- build-operate-transfer*), BOO (*build-operate-own*)**, and other contracts essential to develop the main public sector facilities that are in need of big finances and developed management; requirements that are not found in the public sector in many cases. This type of contracts embodies public-private cooperation in the framework of commerce and industry which in many cases are not useful economically due to mismanagement of the public sector.

- **Joint Venture or Consortium** contracts which are temporary contracts to implement projects. These types of contracts are unknown in the commercial laws of the involved countries and can form a temporary cooperation between specialized companies to implement projects that require joint specialties and possibilities, thus, the company is established for the purpose of the project and ends by its termination. This type has become common today and was introduced in many legislations

- **Franchise and Leasing contracts** that emerged out of the need of markets for technical expertise, development of production means, management and finance; capacities that are developed and owned by international companies pioneering in their areas of specialty.

- Finally, **the model international contracts in the framework of contracting and engineering** such as the International Federation of Consulting Engineers (FIDIC) and others in Britain like ECE or those implemented in Northern America and South East Asia.

In addition, there are traditional loaning contracts in the framework of the existing laws that are inspired by the principles of the World Bank for international loans and finance loans. They are

known as IBRD Loans and IDA Credits and they aim to develop international contracts in this area to cover the local markets' need for foreign loans and finance.

## **2. Suggested Legislations for the Aim of Transparency**

Based on the foregoing; and in view of the fact that the MENA region is one of the most geopolitically sensitive areas; and since it is at a crossroad between eastern and western commerce; and because it embraces enormous natural resources and energy; and recognizing that this region is still in dire need of development in many areas particularly in the systems of democracy and transparency in order to reflect on the various components of authority including legal, legislative and judicial systems; the development of these systems is the cornerstone in an attempt to build a sound business environment to attract capital from international markets rather than exporting them and emptying the region. It is this that serves the interests of the peoples of the region and raises the standard of life, both materially and morally.

The region in general and the project countries specifically are in need of a comprehensive legislative workshop to review existing business and commercial laws and to develop new laws that can contribute to attract investments and enhance the business legal environment. One of the very basic laws in this regard is the Corporate Governance law which is necessary and unavailable in any of the four countries, particularly after they have become members of the Organization for Economic Cooperation and Development (OECD), which requires from members to commit to the five principles of governance. The case is similar in reference to the necessity to issue an anti-corruption law in each country and a competition law, similar to the one in Tunisia.

In addition, there are some mechanisms and steps that are vital for the creation of a healthy business legal environment and they include:

- Modernizing the tools for legislative policymaking, through relying on public participation and using modern means and in-depth objective studies
- Reviewing models of legal institutions existing in the project countries, with a view to develop them according to modern patterns and market needs as well as orient them towards finding solutions for the current situations and organize new ones

- Repealing favored laws that contradict with the new legislative patterns in order to guarantee equality among all traders in the market, and moving towards market liberalization and competition promotion.
- Adopting alternative means for dispute resolution by reinforcing the international arbitration culture which encourages the investor and reassures him on the safety of his investments; in addition to working to strengthen the adequacy and efficiency of the human element entrusted with implementing laws through improving the training and education curricula as well as satisfying the requirements of the judges and their assistants both in terms of number and material.
- Encouraging the public administration to cooperate and integrate with the private sector rather than consider it a supervisor and a tax collector, especially that the investment environment requires a sensitive understanding from the part of the administration to the needs and requirements of the investors and a perseverant effort to satisfy them.
- Applying the available investment laws in each of the involved countries and acceding to international treaties to protect investments especially the Arab Investment Guarantee Corporation and the Multilateral Investment Guarantee Agency (MIGA) related to the World Bank.
- Working towards joining the WTO; a thing that will gradually lead to the conformity of legislations and the proper training of human resources to comply with open market requirements and international commercial standards.

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## **List of Annexes**

**Annex one:** Structure of the Project Management Team

**Annex two:** List of names of experts and targeted persons who participated the project's activities.

**Annex three:** Background paper on the historic, economic and political state of the project countries

**Annex four:** Background paper on the legal environment of the project countries

**Annex five:** Background paper on economic risk analysis and outlook of the project countries

**Annex six:** Background paper on reform recommendations and suggestions to strengthen the business legal environment in the project countries

**Annex seven:** List of obstacles and reform suggestions aiming at promoting the business legal environment in Lebanon

**Annex eight:** List of obstacles and reform suggestions aiming at promoting the business legal environment in Tunisia

**Annex nine:** List of obstacles and reform suggestions aiming at promoting the business legal environment in Yemen

**Annex ten:** List of obstacles and reform suggestions aiming at promoting the business legal environment in the UAE