



**MENA COMMERCIAL LAW STRENGTHENING PROJECT**

**MENA – CLS Project**

**National Commercial Law Assessment Report of Tunisia**

**Tunisia,**

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With the support of the Middle East Partnership Initiative



The National Team in the Republic of Tunisia drafted this report following discussing and finalizing it during a national workshop held for this purpose.

We welcome any notes or comments that you may suggest and which you may kindly send to the following email address:

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## Executive Summary

- 1- This national report includes three parts: the first provides for the economic, social and political background of Tunisia, the second reviews the main features of the legal environment in the framework of commerce and business in the country and the third provides for the most important reform programs and projects for the upcoming period with a view to further strengthen the business climate, stimulate investment and improve the competitiveness of the national economy.
- 2- Tunisia's political system is a republican presidential, where the President of the Republic appoints members of the Government and changes the structure without referring to any other authority. The House of Parliament and Board of Advisers exercise the legislative power and monitor the work of the executive power. In June 1959, the Constitution laid down the basic principles of the republican system, in particular those confirming Tunisia's Arabic, Islamic and Moroccan identity. Moreover, it regarded the republican system as a constant element that can not be reversed, in addition to separation of powers and acknowledging the principles of freedom, justice and respect for the inviolability of the individual.
- 3- Tunisia is a member of several international organizations, and belongs to several economic, multilateral or regional blocs, a founding member of the World Trade Organization (1995) and the first Southern Mediterranean country to have signed since 1995 a partnership agreement with the European Union, as well as bilateral and regional free trade agreements. Thanks to its political stability and socio-economic success Tunisia has gained a good reputation internationally.



- In addition to enjoying good relations with its neighboring countries, Tunisia is diplomatically active in promoting the values of peace, tolerance, moderation and working to serve the objectives of economic development and respects sovereignty and the principle of international legitimacy.
- 4- The country's population accounts 10 million with 65% living in urban areas. Tunisia is characterized by the stability of its population growth rate that does not exceed 1% and focuses on the importance of youth, to an extent 60% of the population is of working age. As a result of the growth level achieved and the development of health services, the living standards have improved where the rate of per capita income recorded about U.S. \$ 4000 per year (which is close to 4 times the level during the mid-eighties). Moreover, life expectancy at birth has improved to reach 74.8 years in 2008 compared to 68.9 in 1987. Access to basic services has also improved including connectivity to electricity, water and sanitation that respectively reached 99.5%, 97.8% and 81.7%.The poverty rate decreased from 7.7% in 1987 to 3.8% in 2008 while the illiteracy rate was reduced from 41% in 1987 to 31.7% in 1994 and to 18.6% in 2008. The demographic development highlights the growing proportion of the population who aging over 60 years and the relatively decreased number of males. In addition, providing working opportunities, especially for university graduates, is one of the most important challenges for the next stage.
  - 5- The economic policy adopted since independence witnessed important historical transformations towards building a modern and diversified economy. With the exception of the short-term grace period (1969), the



adopted policy has always been based on the inherent public-private role. Moreover, the role of the private sector has been gradually strengthened in the framework of the economic activity, especially with the beginning of the economic reform policy during the early nineties.

- 6- The economic reforms that took place between 1990 and 2008 focused on the liberation of all economic policy mechanisms, particularly the investment policy, domestic prices, foreign trade liberalization, simplification of procedures, liberalization of interest rates, reforming the banking system, development financial market and financial disclosure rules in addition to adopting flexible exchange rate policies. Furthermore, they focused on reforming the tax system by reviewing the companies' tax system, updating the value-added and the fees for registration and the customs tariffs and fees system. The State also cancelled competitive activities within the privatization of public institutions program that included around 217 institutions. Such reform activities were accompanied by the modernization of economic legislations and the development of a sophisticated legal framework which establishes the freedom of competition, prevents monopolistic practices and protects IP rights with a view to cope with new economic situations.
- 7- In parallel with these reforms, the program on industrial rehabilitation to assist institutions in restructuring and upgrading their equipments and methods of organization in addition to improving the quality of their products was adopted in 1995. Within the same framework, another program on the rehabilitation of administrative services and the promotion of quality was adopted. The latter program was supported by



a communication department unit established at the first ministry that works on the development of electronic management and the improvement of administrative services in terms of efficiency and speed. Support and assistance structures in the framework of institutions have been also promoted in addition major reforms were introduced to the education and vocational training systems so as to become more responsive to the needs of the labor market.

- 8- The state intensified its efforts to develop the main infrastructure by implementing many projects related to roads, railroads, maritime and air transportation, the management systems of ports and airports, public-private partnerships with a view to complete some major projects in the context of crisis and opening some new sectors to competition such as transportation and telecommunication.
- 9- The reform activities enabled the improvement of the economy's performance, ensured the safety of major financial balances, and maintained, at the same time, an important social covering system achieving a growth rate of 5% and limiting the budget deficit and the trade balance deficit in addition to the inflation rate to no more than 3%. The ratio of foreign debt decreased from 62.6% in 2000 to 54.5% in 2005 and 39.2% in 2008. As for the debt service of current revenues, it has since the mid-eighties recorded a major decline (more than 10 points), decreasing from 27.9% in 1987 to 12.5% in 2005 and 11.2% in 2007. Exports registered a significant development of more than 20% from 2007 to 2008 while imports reached around 80% in 2008 compared to 70.6% in 1987. In addition, economic openness registered about 120% (the total foreign trade of the GDP).



- 10- On the other hand, structural changes in the economic composition were the outcome of the economic developments that took place in the country where the industrial and services sectors increasingly contributed in generating wealth. The radical change however, was recorded within the exports sector. Furthermore, economic production was diversified while the national economy's ability to address foreign crises and the global economic fluctuations and repercussions have boosted (the Gulf War, September 11, the increase of energy and raw material prices from 2006 to mid-2008 and the current financial and economic crisis).
- 11- Despite its outstanding performance, the national economy is facing myriad challenges and stakes. The most prominent problem is unemployment, especially among university graduates in addition to the ability to cope with foreign competition. Investment and exportation sectors are supposed to achieve higher growth levels, consequently accelerating the pace of economic reforms in various fields, especially education and vocational training and highlighting the need to subject the services sector to more competition (infrastructure and telecommunication).
- 12- Legislation in Tunisia is stable where the principal legislative texts (such as the Code of Obligations and Contracts, the Criminal Code and the Code of Civil Procedures) are still in force since the date of their issuance and were only subject to some revisions imposed on need bases to keep abreast of economic and social transformations. However, the nineties witnessed a comprehensive and successive review of the legal system that accompanied the economic reforms occurring in the country since the mid-eighties.



13- The judiciary in Tunisia is divided into an administrative and justice judiciary. The judicial system is hierarchical in terms of form and includes district courts, courts of first instance, appellate courts and the Court of cassation. There are also real estate courts that decide on disputes involving the demarcation of the property. Recent years have seen a trend towards supporting the specialization of judges in the following: institutions, family affairs, social security and the implementation of sanctions....).

Moreover, specialized departments in the courts of first instance were created including 10 employment and business departments. The administrative judiciary includes the Administrative Tribunal; furthermore, there is the Chamber of Accounts (Audit Bureau) and the Financial Penalty Department.

In 1996, the Council for Conflicts of Jurisdiction was established as a judicial body responsible for adjudicating in matters of conflicts of jurisdiction negative or positive between the justice and administrative judiciary whether.

In parallel with the economic privatization and liberalization, the nineties witnessed the establishment of special bodies exercising judicial powers, such as the Competition Council and the sectoral amendment bodies (the National Communications Commission, the General Authority for Insurance, the Financial Market...).

14- Chapter 65 of the Constitution ensures the independence of the judiciary where the Supreme Council of Justice is responsible in adjudicating matters concerning the designation, transfer and dismissal of judges. The Constitution along with the enforced laws guarantee the





right to a fair trial and the principle of litigation in the framework of the first instance and second instance courts.

15- There are several factors governing the adjudication of disputes especially those related to capacities available to courts hence, the current situation is somewhat overcrowded specifically in the major city courts. To overcome this situation, three additional courts of First Instance were finally established in each of Tunisia, Sfax and Sousse in addition, several programs were carried out by the Ministry of Justice for the rehabilitation of the judicial system and the modernization of courts.

16- The business legal framework (the Tunisian economic legislation) is the outcome of a historical development that can be divided into three major eras:

- The pre-independence period (1956), which has witnessed the emergence of some legislations governing the business sector, notably the Code of Obligations and Contracts (1906) which is still in force.
- The period extending from 1956 and 1990 witnessed the consolidation of the Tunisian judiciary and the issuance of more legislations highlighting national sovereignty and paving the way for building new institutions. Among the most prominent legislations issued immediately after independence, we particularly note the Personal Status Code (1956) as well as the Business, the Civil Procedure and Commercial magazines (1959) in addition to the Labor Code and other important laws aiming at the nationalization of agricultural land (1964) and the regulation of the foreign trade practice (1961).

Moreover, some bilateral conventions aiming at protecting the investment emerged and Tunisia ratified international conventions



- related to arbitration in foreign investment disputes. The legislative development that emerged during this period reflected changes in the economic policy of the country starting with the collaboration period in the sixties followed by the liberal trend at the beginning of the seventies that included laws encouraging foreign investment, especially the export sector and protecting the national economy.
- The nineties witnessed a major legislative movement towards modernizing national economic laws in line with the economic reforms that aimed at gradually liberalizing the economy and fusing it with the world economy. This was the outcome of the benefits arising from the country's accession to the World Trade Organization in 1995, its accession to a partnership agreement with the European Union and its signing on many new bilateral and regional trade agreements in the framework of free trade areas. It is also the result of the need to create a favorable business climate that is investment and export enabling since these two components are considered a growth engine and a means to achieve growth objectives especially in relation with creating business opportunities and improving the quality of life.
- 17- Legislative reforms that occurred during the last twenty years included all areas, most prominently: investment laws, a comprehensive review of the tax collection laws, a review of financial and banking laws, the regulation of public transactions as well as of commercial and services activities, the strengthening of competition rules and mechanisms for consumer protection, intellectual property protection and finally simplification of administrative procedures.



18- These reforms allowed for the creation of an investment and business enabling environment and contributed to the improvement of the economic competitiveness. The good rating which the country has received from various international forums constitutes the best evidence. For example, Tunisia ranked 73<sup>rd</sup> out of 181 States as reported by the Doing Business Report in 2009 and 8<sup>th</sup> in the Arab world. The Tunisian experience in areas of development, its success in reconciling economy and society and its economic capacity to deal with international crises made this country a model and a subject of appreciation by many international bodies.

19- Despite the important reform activities and the level of growth recorded by the Tunisian economic legislation, they still require continuous modernizing of national legislations in different areas in light of the challenges of the next stage, the need to accelerate the pace of economic reforms and support further development of the economy, competitive business climate, as well as the need for the national legislation to keep pace with the latest international standards in general and especially the European ones.

According to the study results and the national workshop recommendations on the commercial laws strengthening, and as targeted in the development plan programs for the period extending from 2007-2011, the most important areas requiring legislative review or update are as following:

- the provisions relating to bankruptcy in the Business Magazine
- Proceeding with the program of eliminating the administrative licenses to replace them with bylaws and review the existing ones, in



order to simplify the terms required to carry on with the activity while involving competition structures in this effort

- Conduct a full and accurate legislation diagnosis on the services sector (including professional service-oriented organizations) so that national legislations related to the control of the domestic market keep pace with the European legislation. Review in particular, the law on consumer protection with a view to:
  - enact a new law on the safety of food products.
  - enact a new law on industrial safety products.
- Review the law on foreign trade to further liberate trade and reduce import and export technical control procedures
- Review the law on the commercial registry to urge customers to update data on their activities and to develop the economic information system,
- Review the commercial distribution law to ensure balance in trade relations between producers and large distributors and between them and the small-scale traders, as well as to the legalize some modern distribution systems (work within the framework of the original trademark owner's license)
- Review the magazine on the encouragement of investment in the light of the outcomes of the incentives assessment system currently in place.
- Compile commercial laws in a unified Journal.

20- The modernization and development of the judiciary based on plans and programs in progress, the development of the services and the legal professions sector, further spreading the arbitration culture as well



as promoting the use of alternative means to resolve disputes form an important and supporting business environment enabling factor.

21- Successfully promoting and enforcing competition laws requires respect from the responsible structures and remains an important factor in improving the business environment. This issue has been the focus of follow-up and reform in recent years and included for example, the amendment to the law in July 2005. However, ensuring the integrity of competition in the market and the preventing some of the unlawful practices remain, as highlighted in the recent survey on competitiveness, one of the important issues stressed by the economic institutions.

The in-depth study which we intend to conduct on “Competition Laws” as a theme within the framework of project “Strengthening Commercial Laws” will form an important opportunity to study the required practical actions in this area as well as the contribution that can be provided by competition laws and policies to further improve the investment climate and support the competitiveness of the economy.



## Preamble: Objective and Context of the Report

This National Commercial Law Assessment Report of Tunisia (the "**Report**") falls under project "MENA Commercial Law Strengthening" (the "**Project**") which is implemented by the Arab Center for the Development of the Rule of Law and Integrity (ACRLI) in cooperation with the Middle East Partnership Initiative (MEPI) in each of the 4 countries: United Arab Emirates, Tunisia, Lebanon and Yemen.

The overall goal of the Project, which extends over a period of two years, is to strengthen and reform commercial laws in the MENA region with a view to promoting a legal environment that is business enabling and conducive to short-term local or sectoral economic growth in selected MENA countries. More specifically, the Project aims to improve the capacity to understand complex commercial law and regulations within the business and legal communities in the MENA region and to increase private sector participation in commercial law policymaking.

The Project primarily targets lawyers and businesspersons and seeks to actively involve them together with policymakers and concerned government practitioners in a results-oriented policy dialogue and peer-learning process with a view to enhancing the business legal environment in their respective countries. Consequently, the Project will rely on a network of partners at the national level in Tunisia including the Ministry of Trade and Traditional Industries, the First Ministry (in charge of the civil service), the Ministry of Justice and Human Rights



as a main governmental partner, the private sector institutions, the Bar of Lawyers, the chambers of commerce and other professional associations and unions and centers for judicial and legal studies.

In addition to these national partners, the Project will be supported by an International Advisory Group that comprises regional and international advisors in addition to representatives of regional and international organizations and partners such as the League of Arab States, UNDP, OECD, Union of Arab Chambers of Commerce, Industry and Agriculture, ESCWA, the World Bank, the ICC, and others.

In this context, this National Assessment Report on the state of economic and business laws in Tunisia was developed to provide an in-depth study that presents a clear and focused picture on the development of commercial and business laws in the project countries, including the examination of relevant laws in texts and practice, as well as the analysis of the legal and economic system, with a view towards assessing the extent of contribution of these frameworks in achieving economic growth and creating a business-enabling environment.

The current Report shall be integrated, at a later stage, with the reports developed by the rest of the project countries; into one comparative regional report which provides a forum for regional policy dialogue and peer-learning for stakeholders in the MENA region.



The national team prepared this report and it includes the following:

- Mohamad Ben Freij: Charged with the task of the Office of the Minister of Trade: national writer/ national team coordinator.
- Lotfi Bouziane: economy university professor – economic consultant
- Ahmad Warfalli: judge/ researcher at the Judicial and Legal Studies Center as a legal consultant
- Rushdi Al Mohammadi: first vice chair of the Competition Council – national assistant
- Khalifah Al Tutenki: Director-General of Competition and Economic Research, the Ministry of Commerce and Traditional Industries - national assistant.

In the preparation of this report, the national team has benefited from the valuable observations made by many public and professional parties as well as economic institutions, which responded positively to the project.

The national team adopted the consultation methodology developed by the regional team to facilitate the drafting of national reports and the process of merging them later in the regional report.

For the purpose of the report, the team conducted an inventory on the most important economic legislations in order to identify the most important laws in force and collect them to enrich the data base that the Center will establish with the progress of the project's implementation. The team also benefited from the results of related economic studies and reports and from the important information inventory of the project.





To further analyze the results of compiled data and information and to diagnose the state of legislations including gaps and shortcomings, or discrepancy between text and practice, as well as to identify legal voids and the legislative reform features for the coming years, the team relied on a series of actions previously undertaken by several concerned parties such as the work of the committees in charge of evaluating the implementation of economic and social development plans, the results of the national consultations held on many economic issues and a range of economic researches conducted by official bodies or professional associations.

Various actors involved in the economic activity particularly, in the formulation of recommendations, participated in these activities that formed a national reconciliation of the business sector's various components and reflected the legislative reform movement. These activities also included some individual meetings with public and private actors engaging in the legislation modernization process.

The first version of this report was subject of discussion during a national workshop on “Commercial Law Strengthening for an Investment Business Enabling Environment” held in Tunisia on the 13<sup>th</sup> and 14<sup>th</sup> January 2009, that was attended by around 50 national competent participants representing various involved parties such as business persons, economic and legal university professors, judges, representatives of the chambers of commerce and industry in addition to governmental practitioners from various involved ministries. The extensive scientific and volatile debate that has permeated the



workshop and its resulting recommendations, have enriched the content of the final version of the report.

There is great hope that this work along with the following proposals shall form the basis for more economic and legislative reforms to further enhance the country's business climate.



## The report

### **Socio-economic and political background of the State:**

#### **1- Geo-political state of Tunisia:**

The Republic of Tunisia is located in North Africa and is bounded on the west by Algeria, on the east by Libya and extends over an area of 164 thousand km<sup>2</sup>.

Tunisia has a comprehensive developmental vision that includes economic, social and political fields. Furthermore, it aims to establish the rule of law and of institutions, build a society of democracy, pluralism, human rights and involve citizens in taking essential choices for the development and empowerment of civil society.

Tunisia relied in reforming its political system on the following components: stability and progression, the reform activities reflected in the revision of the Constitution, multiculturalism in the House of Representatives and Regional and local Councils, the strengthening of the constitutional institutions by the establishment of the Constitutional Council and the formation of a second chamber to the House of Representatives which is the House of Councilors.

The administrative management adopted the principles of administrative and decision-making decentralization as the Republic is divided into 24 provinces subject to the supervision of the magistrate (Al Wali) who represents the



authority of the Head of State at the regional level. Each state consists of directorates (262) which are subdivided into 2056 pillars.

The country's constitution ensures the Tunisian belonging to the Moroccan, Arabic and Islamic worlds. Tunisia is also a member of many international organizations such as the United Nations, the League of Arab States, Organization of the Islamic Conference and the Organization of African Union and the Arab Maghreb Union.

In addition, Tunisia is member of many multilateral economic organizations and regional groupings and is a founding member of the World Trade Organization (1995). Tunisia is also the first country from the south of the Mediterranean to sign since 1995, a partnership agreement with the European Union which led to the establishment of a free trade zone between the two parties. This agreement entered into force in January 2008 (based on the 12 years progressivity principle). Tunisia has also signed on a number of regional free trade agreements (Greater Arab Free Trade Area / Agadir Agreement /...) and bilateral agreements with some neighboring and friendly countries (Libya / Morocco / Egypt / Turkey ...).

Tunisia enjoys good relations with its surroundings and has an active diplomacy based on respect for sovereignty and the principle of international legitimacy. Its diplomacy is also active in promoting the values of peace, tolerance and moderation.



The Tunisian diplomacy serves the objectives of economic development by presenting the country's achievements, possibilities and investment opportunities. All such trends translate the deep-rootedness of the Tunisian commercial traditions and open up the national economy to the foreign economy, and reflect the country's tireless efforts to attract investment and promote exports.

### **Socio-Demographic System:**

According to the latest statistics, the population of the country accounts ten million people (10.327,000 inhabitants in 2008), with about one million Tunisians abroad, especially in Europe and the Gulf states.

Around 6 million tourists visit Tunisia annually. There are about 65% of the populations who live in urban areas. During the mid eighties, this percentage was half and third at the time of independence (1956). According to the 2004 census, more than half of the populations live in the northern and central coastal areas. Overall, the demographic situation in the country is semi-stable since the beginning of the nineties where the natural growth of the population is within 1.1% and the net growth (the net migration growth) within 1%.

According to the demographic developments, the average number of family members decreased from about 5.05 in 1987 to 4.4 members in 2008.

As for the distribution of population by age group, we particularly refer to the following:



- The percentage of the population below 5 years represents 8.1% of the total population
- The percentage of the population below 15 years represents 25.3% of the total population
- The percentage of the population between 15 and 59 years represents 65.2% of the total population
- The percentage of the population over 60 years only represents 9.5% of the total population

As for the gender distribution, it is relatively close: Males represent 49.9% and females represents 50.1% in 2007. The population statistics reveal that approximately 60% of the population is of working age.

As a result of the growth evolution, living conditions have improved and the average annual per capita income is about 4000 dollars (or approximately 4 times the level in the mid-eighties), while the poverty rate declined from 7.7% in 1987 to 3.8% in 2008.

We also note that there is a significant system of social coverage and transactions which has exceeded 90%. The rate of access to basic services has improved: the percentage of the power link and access to water and sanitation network recorded respectively 99.5%, 97.8% and 81.7% according to the 2007 data. Life expectation at birth has also increased from 51.1 years at the beginning of independence (1956) to 68.9 years in 1987, 72.6 years in 2000 and 74.8 years in 2008.



This social policy has shown cohesion, especially in light of the successive global economic crises and helped the country to top the International classifications where in 2009 Tunisia has ranked first among the Arab States (77 at the global level) in terms of quality of life according to the annual report of the global company "International Living" on the quality of life in the world. This classification relies on several indicators related to the cost of living, education, entertainment, economic, environmental and health status as well as the liberties status...

Development estimations reveal that the number of population will reach about 12,742 million in 2034 and that the male percentage will gradually decrease while the rate of those over 60 years will increase.

However, the greatest challenge remains within securing working opportunities especially among university graduates, and while development efforts reduced the rate of unemployment from 15.3 in 2005 to 14% in 2007, the rate of unemployment among educated has risen from 14.3% in 2004 to 17% in 2007.

### **3- Economic Policy and General Financial Foundations:**

- the economic policy adopted in Tunisia since independence has witnessed significant shifts that can be summarized in three major historical stages:
  - The fifties and sixties: was marked by the establishment of the economic base of the young State and the adoption of the import policy with heavy state intervention in economic activity and excessive protection,



- The seventies and eighties: is characterized by the adoption of a liberal policy after the failure of the collaboration experience (1969). This period also coincides with the beginning of the emergence of a national private sector in light of investment promotion policies (laws of 1972 and 1974) especially those related to export. This period was also characterized by continued and intensive state intervention in the management and framing of economic activity, as well as the adoption of a protectionism policy of the national economy.
- The nineties and the years following, have witnessed the adoption of structural reform programs, the policy of economic liberalization and gradual openness, the strengthening of the private sector's role as well as the gradual State abandonment of the competitive activities. This period was also marked by the openness of the national economy and its gradual fusion with the global economy: Tunisia has accessed the Marrakech Convention and has become a founding member of the World Trade Organization and concluded a partnership agreement with the European Union.
- the most important economic reforms that occurred from 1990 to 2008 are the following:
  - Liberating the investment policy: by cancelling the required prior licenses, adopting the principle of domestic and foreign investment freedom, issuing a new magazine for investment promotion that includes a number of financial and fiscal incentives, adopting a program to eliminate administrative licenses and substitute them with booklets of condition, adopting the principle of free trade in the commercial





distribution law, as well as liberating the initiative in many vital sectors that were framed such as transport.

- Adopting a policy to encourage investment and exports as growth engines, hence exporting institutions have been strengthened and in 1997, the Higher Council for Export and Investment was established chaired by the Head of State. During early 1999, the program for the development of exports in the framework of cooperation with the World Bank was implemented. It is primarily designed to support exporting enterprises to enter foreign markets as well as to support competitiveness. In this context, the Higher Council for the Institution was established in 2008.
- Liberating domestic prices: domestic prices have been gradually liberated both in terms of production and distribution where freedom became the principle and framing became the exception. Currently, the free price ratio is 87% at the production stage and 80% at the distribution stage.
- Framing prices is limited to the supported basic material or sectors that are characterized by a structural weakness in terms of competition and some material related to household spending. In parallel with the liberalization of prices, the principle of free competition and the establishment of a legal framework that guarantees freedom of competition and prevents monopolistic practices were anchored.
- Liberating foreign trade by removing importing licenses, and by gradually simplifying foreign exchange procedures. The free trade system excluded only a limited list of products mainly related to the protection of public order.



- Liberating interest rates in parallel with the reform of the banking system, which included the following steps: rehabilitating banks, converting development banks to comprehensive banks, restructuring public banks by integrating some and specializing others, developing the financial market and the financial disclosure rules, promoting competition between banks and insurance enterprises as well as restructuring and revitalizing the Exchange market.
- Adopting a flexible exchange rate policy that takes into account national economy competitiveness (it defines the value of the Dinar on the basis of a pool of currencies).
- Reforming the tax system: by reviewing the companies tax system and reducing the taxes rate (currently 30%) in addition to improving VAT collection (to compensate for the former consumption taxes), updating registration fees, as well as reviewing and defining the tariffs and customs duties system in accordance with the obligations of Tunisia towards the WTO.
- Modernizing economic legislations to keep pace with the new economic status (as shown in the part related to reviewing the business legal environment).
- The State ceased competitive activities and progressed in the implementation of the privatization of public institutions program that included around 217 enterprises since the launching in 1987 and a financial revenue that reached 6013 million Dinars. The institutions that were privatized work within the following sectors: Services (117 Institutions)/ Industry: (82)/ Agriculture and Fishing: (18 institutions).



In parallel with these reforms, and with a view to prepare the national economy to cope with foreign competition arising from the country's entry in the free trade zone with the European Union and some other regional groupings, the program for industrial rehabilitation to assist institutions in restructuring and upgrading their equipments and methods of organization and enhancing systems to improve the quality of their products was adopted in 1995. This program assisted about 4000 industrial enterprises and later included many economic sectors, thus becoming an economic rehabilitation program.

Within this context, the program for the rehabilitation of administrative services and the promotion of quality was developed to facilitate transactions. This program was further supported by the creation of the Communication Management Unit at the first ministry that works on the development of administrative services' quality to keep abreast of technological changes, thus ensuring e-governance and improving the efficiency and speed of administrative services.

Institution supporting structures have also been strengthened, such as sectoral and technical centers as well as business centers, chambers of commerce and industry, Industry Promotion Agency and the Agency for Foreign Investment and Export Promotion Center and the professional academies, etc... in addition to the Uni-procedure (one stop) Window to facilitate procedures for investors.

Significant reforms have also been introduced to the education and vocational training systems with a view to respond to the needs of the labor market.



- Intense State efforts strengthened these reform activities with a view to develop infrastructure, assist in the investment climate development and improve economic competitiveness. In this framework, many projects and reform actions have been implemented to develop the infrastructure of roads, rail roads, maritime and air transport as well as management systems of ports and airports. Moreover, private-public partnership has been endorsed for the completion of some major projects in cases of crisis. Several industrial areas have been developed and prepared as well as the telecommunication system that was modernized. Furthermore, the telecommunications sector was opened to competition which contributed to the promotion of its services.
- All the above-mentioned reforms enabled the improvement of the economic performance and ensured the safety of major financial balances, while maintaining at the same time an important social covering system.

The country has been able to achieve a respectable growth rate of 5% while the budget deficit and the trade balance deficit have been limited to no more than 3% of gross domestic product (2.7% and 2.4% respectively in 2007). The inflation rate was controlled and restricted to below 3% and the ratio of foreign debt decreased from 62.6% in 2000 to 54.5% in 2005 and 39.2% in 2008. Regarding the foreign trade, exports continued growing exceeding the 20% rate in the last three years (2006-2008).

Economic developments have resulted in structural changes within the economic composition accompanied with increased industrial and services contribution in wealth production. Furthermore, the exports composition



changed which enhanced the status of the service, mechanical and electrical industries sectors as well as the textile and tourism sectors.

Despite its outstanding performance, the national economy is facing a number of challenges given the profound changes at the international and domestic levels.

At the international level, globalization is expanding, restrictions to trade are being cancelled and regional blocs are emerging leading to intense and fierce competition. Within the same framework, Tunisian preferential treatments, especially in the European market, have been reduced due to the increasing number of members, the dismantling of multi-fiber Conventions and continued negotiations with the World Trade Organization (WTO) and the European Union (EU) for further liberalization in terms of agricultural and services sectors.

The price increase crisis of most raw materials in global markets, especially during 2007 until September 2008 in addition to the financial liquidity crisis and the subsequent turmoil of the global financial system as well as the contraction of global demand further exacerbated the global economic situation.

At the domestic level, demographic rates are developing which translates concomitant impact on the labor market as well as high social security, health and education expenses.



This stage is also marked by increasing pressure on natural resources (energy and water) on the one hand and underlines the terms of mobilizing external financial resources on the other.

In light of the external and internal changes, the most prominent challenges and stakes facing the national economy lie in unemployment, especially among university graduates, and the national economy competitiveness that needs to be strengthened so as to confront competition arising from emerging low-cost economies and from major financial balances. However, the target growth rate in the eleventh five-year plan (2007 till 2011), which is in the range of 6.1%, does not enable the country to resolve unemployment.

This targeted growth rate or higher growth rates are supposed to be achieved by the contribution of investment and export, which requires accelerating the pace of economic reforms in various fields, especially in the sectors of education and vocational training as well as supporting the opening of the services sector (infrastructure and telecommunications) to further competition to improve the productivity level.

#### **4- The Legal System and the Judicial Environment:**

##### **4 – 1 – The main feature of the legal system:**

Tunisia's political system is republican and presidential where the President of the Republic enjoys the power to appoint members of the Government as well as change its structure. Ministers are headed by the Prime Minister who is subject to the President's authority that has the authority to appoint him and terminate his duties without reference to other authorities such as the



Parliament. The House of Representatives and the Advisors Council exercise the legislative power and control the work of the executive power.

The present system was established on the ruins of the monarchy system. The Republic was declared on July, 25<sup>th</sup>1957, almost a year following the independence (March 20, 1956). In June 1959, the constitution was issued laying down the basic principles of the Republican system especially those related to the Arabic, Islamic and the Maghreb identity of Tunisia. Moreover, it states that the republican system is permanent and can not be changed and powers shall be separated.

According to laws passed by the legislative power, this latter enacts legislations and issues the rules governing society, while the executive power is responsible for the country's affairs and is mainly concerned with enacting ordinal provisions and approving international agreements after consultations with the legislative power. On the other hand, the judicial power resolves disputes that arising between individuals on one hand and between individuals and public authority on the other hand, according to the laws in force, whether those conflicts are civil, commercial, criminal or administrative, and the executive power ensures the implementation of those provisions.

The Tunisian Constitution recognizes the principles of freedom, justice and respect for the inviolability of the individual. These principles include the protection of personal data and individual liberties via legalizing penalties, adopting maximum jail time and ensuring the right of individual property



within the limits established by law. They also distribute the fiscal burden between all, each according to his capacities.

The Constitutional Council has also been established to ensure the constitutionality of laws. The first version of the Constitution states that draft laws affecting economy and society should be consulted with the Economic and Social Council where its opinion is non-binding. Following the change that occurred in November 7<sup>th</sup>, 1987 in accordance with order No. 1414 of 1987 dated December 16, 1987, a Constitutional Council was established whose mission is to verify the constitutionality of draft laws submitted by the President of the Republic.

The text of the Constitutional Council also went through major amendments where it was substituted by law No. 39 of 1990 dated April 18, 1990. On November 6, 1995 the text of the Constitution included the Constitutional Council. In October 27, 1997 the Council was granted the power to resolve disputes arising between the legislative and executive powers on the identification of legal and ordinal texts.

According to law No. 76 of 1998 dated November 2, 1998 (the updated version of chapter 75 of the constitution), views of the Council are regarded as binding to all public authorities, thus any law considered by the Council contrary to the Constitution can not be issued.





#### 4 – 2 – Legislative Consistency:

Prior to the French Mandate, Tunisia was applying Islamic Sharia's laws on Muslims and Jewish laws on Jews.

The modern forms of legislations emerged during the mid-nineteenth century, especially following the establishment of the Official Publishing House that published an official gazette containing laws and orders as well as the most important news of the Tunisian Ayyalah.

The French Mandate (1881) has witnessed the commencement of the legislations enacting process, such as the Real Estate Law (1885) which were later compiled in magazines. The first magazine was on the Code of Obligations and Contracts (1906) and later the Magazine on Civil Procedures (1910) followed by the Criminal magazine (1913). These laws remained in force even after the country's independence and the end of the Mandate period in 1956. However, some modifications were introduced to these magazines depending on the circumstances in terms of substance (changing the legal base) and form (compiling texts or publishing subset magazines such as the magazine of Registry Rights in 1965, the Arbitration Magazine in 1993 and the Private International Law Magazine in 1998).

On the other hand, some magazines were entirely replaced especially the Code of Penal Procedures Magazine (1968), since the older version resembled the grievances of the colonial judiciary.



The country witnessed a vigorous legislative movement during the early years of independence. Legislations related to the Mandate Era or the Monarchy system were cancelled while legislations dedicated for national sovereignty were issued such as the law on the property of the royal family (1957), the law on the creation of the Central Bank of Tunisia (1958), the law on the nationalization of agricultural land (1964) in addition to the decree concerning the practice of trade by foreigners (1961).

The sixties era has witnessed the issuance of certain laws related to the socialist movement that was adopted during that stage before the emergence of the liberal movement. The liberal trend reflected laws encouraging export industries that were issued first in 1972 and later in 1974. After the stagnation period during the eighties, the country witnessed a great legislative movement that began in the nineties and included all fields, especially economic legislations as well as laws related to society such as the family and social security laws...

In general, one can say that the Tunisian legislations were characterized by stability and continuity and were subject to gradual change and development to keep pace with the economic and social states at the local, regional and international levels. The Code of Obligations and Contracts remained stable where only few chapters were revised (proving contracts in writing forms and the adoption of e-books as a non formal argument...).

This magazine is considered the mainstay of Tunisian business law, and governs the contractual and non-contractual obligations in general. It also sets



out the general framework of the main private contract types that include sale, rental, buying, loan, deposit, agency in addition to the company contract. The magazine was described as a “Legal Landmark” especially in view of its ability to cope with the changes of circumstances and trends hence, it only witnessed, over the course of more than a century, some partial changes which included minor aspects such as the loan of excess (1958), the deletion of the section on other rights of kind and the inclusion of provisions relating to electronic evidence and the development of written evidence rules.

#### 4 – 3 – Nature and Components of the Judicial System

The judiciary in Tunisia is divided into a justice and an administrative judiciary in addition to some independent bodies exercising judicial powers.

##### a –Judiciary Justice:

The judicial system consists of a hierarchical pyramid form presided by the Court of Cassation which ensures the proper implementation of the law. Judicial courts consider all disputes except those assigned to other courts according to a specific legal text. Its original jurisdiction is related to disputes between individuals in civil, commercial and criminal cases. However, the law gave these courts some competencies in the administrative matter where First Instance Courts consider disputes relating **compensation for expropriation for public interest** and conflicts between taxpayers and the administration. They also consider disputes concerning free professions. Judgments issued by the courts of justice within the framework of these matters are challenged before the Administrative Court as a court of law in its area of competence.



The judicial system structure includes courts of origin that consider conflicts on two levels, including District Courts, courts of First Instance and Appellate Courts, while the Court of Cassation stands at the top of the judicial pyramid.

### **District Judge:**

The District Judge has limited jurisdiction in **civil and commercial matters** in the original cases and it is defined according to the demand criteria. Original or general jurisdiction is a specialty of the Court of First Instance, however, the legislature decided to establish District Courts that consider cases related to a limited economic value, with a view to bring the judiciary closer to the citizen. On May 2<sup>nd</sup> 1995, the ceiling of the judge's jurisdiction was increased from three thousand Dinars to seven thousand Dinars.

The District Court has an absolute jurisdiction, i.e. not limited to the value of demand criteria in issues related to alimony whether the case is brought by ancestors, children or wife. He also adjudicates these matters regardless of the appeal and considers claims related to Al hawaz. The District Judge considers these types of cases as Exclusionary, i.e. even if the demand exceeds the amount of seven thousand Dinars. The judge also considers some types of urgent matters.

In **criminal matters**, the District Judge considers violation cases (minor offenses not exceeding 15 days of imprisonment and no more than 60 Dinars, . He also considers misdemeanors the penalty of which does not exceed a year or does not exceed 1000 Dinars.



- **First Instance Courts:**

The Court of First Instance is the first degree; it has a general jurisdiction and enjoys two qualities at the same time:

**First:** The Court of first instance: First degree court considers all first instance cases advocated for the first time. It has an initial competence and it can not dismiss any case without a special legislative text authorizing the attribution of competence to another judiciary. It issues an initial ruling subject to challenge by appeals.

**Second:** The Court of First Instance: Second degree court: first instance court is also considered a second degree court where challenges against rulings issued by District Courts are raised. As a second degree court, the first instance court's ruling is final.

In **civil and commercial matters**, First Instance Courts consider all cases except those attributed to another court by a special text. It particularly considers commercial disputes (that are also reviewed by the Chambers of Commerce), benefit disputes, family conflicts, and debt collection disputes...

**Labor judiciary** distinguishes between individual and collective employment disputes. Individual conflicts are related to the workers' rights whether related to the benefits generated by the conclusion of the work contract (non-paid wages - grants...) or to the illegal termination of the contract by the lessor (unfair firing fines). An individual judge considers such disputes at the Court of First Instance that shall be located at the same place of work or residence of



one of the parties. Its provisions are implemented immediately and are not subject to challenge in terms of legal suits' branches acknowledged by the defendant. As for the branches subject to dispute, the ruling can be challenged before the Court of Appeal which has three forms. Inspecting work plays a vital role in ensuring respect for labor legislation by the lessors. In the case of a conflict, it has to seek reconciliation between the parties and if otherwise, it has to help the worker to finalize his case.

Collective labor disputes involve a group of workers in relation to their collective status, whether they belong to the same occupational sector or to the same side, which explains the mandatory intervention of public authority through the regional committees of reconciliation. If reconciliation goals do not generate a result, it is required to resort to a mandatory arbitration before an arbitral tribunal that issues a resolution that is binding to all employees and tenants.

In **criminal matters**, courts of first instance, as first degree courts, consider all cases that fall outside the jurisdiction of the District Court, whether related to minor crimes or felonies. They also consider appeals against rulings by the District Judges.

The Court of First Instance also includes members of the Public Prosecutor's office who are in charge of studying crimes, receiving complaints and snitches and overseeing the works of law enforcement officers (police, National Guard and the Customs). Moreover, they are in charge of referring the perpetrators to the competent judicial authorities. This court also includes investigating judges



in charge of researching in crimes and examining the evidences so as to set up the judgment by the judiciary.

There are 24 courts of first instance i.e. one court in each state (province). The number was recently increased to 27 by adding one court of first instance in each of Tunisia, Sfax and Sousse.

### **The Court of Appeal:**

The Court of Appeal has a key or main jurisdiction as a court of second instance. It considers challenges against First Instance rulings in civil or criminal matters as well as appeals against urgent matters rulings issued by the Court of First Instance's Judge. The Court of Appeal also considers appeals against criminal judgments relating to competent party to look into it, which are appeals rare in practice.

Appellate courts also consider demands to annul arbitral decisions and grant them an executive form. In terms of local arbitration, the annulment demands are filed before the Court of Appeal where the arbitration court is located. In terms of international arbitration, the annulment demand is filed to the Court of Appeal in Tunisia only, whether the arbitration award is issued in Tunisia or abroad, regardless of the nationality of the arbitrators and whether the arbitration is headquartered in Tunis the Capital or in other parts of the Republic. This court enjoys an absolute and exclusive jurisdiction and is of importance for public order.



In terms of international arbitration, granting arbitral awards the executive form can only be concluded before the Court of Appeal in Tunisia exclusively while in terms of local arbitration, it is done before the District Court or the First Instance Court, according to the amount.

The Court of Appeal of Tunis also considers appeals against the decisions of professional bodies such as the National Committee of Lawyers and the National Syndicate of the pharmacists and the National Syndicate of Physicians, dentists, the National Syndicate of doctors and veterinarians and the national body of expert accountants . It enjoys significant jurisdictions in relation to the demarcating the practitioners of those professions, or disciplining them, it also considers disputes concerning evaluating the fees of lawyers.

There are currently 10 courts of appeal.

### **Cassation Court:**

The Court of Cassation considers challenges against all final judgments that are no longer subject to appeals. It is noted that amending the magazine of civil and commercial proceedings in 1986 required that all first instance rulings issued by District Courts and Courts of First Instance as first degree courts, must be challenged through appeals before moving to the Court of Cassation.

- **Real Estate Court:** is a specialized court that considers the delineation of real estates at the real estate registry of real estate registry, whether it is an optional registration by a person claiming ownership of a non registered





- property or a mandatory registration in accordance with a survey issued by the Minister of Justice.
- **Committee for revision of property fees:** These committees have a judicial nature and they review requests related to lifting the freezing of real estate fees since the Land Registry does not reflect the reality of its legal and financial state anymore. Thus, the law allowed these committees to authorize each order or decision that would remove the impasse, including **delineation of rights**, regardless of the hierarchy principle governing record-keeping.

#### **Administrative Judiciary:**

The judicial regulation of Tunisia distinguishes between private and administrative disputes. Administrative disputes refer to the cases that include high public officials who have more concessions than ordinary people since they are responsible for public facilities.

Tunisia separates between the administrative and justice judiciary where the Constitution issued on June 1, 1959 includes a separate section (VI) that addresses the State Council. It provided that “the State Council is formed by two bodies: the Administrative Tribunal and the Department of Accounts. The law organizes the Council of State with its two bodies; moreover it defines their goals and procedures to be followed”.



– **the Administrative Court:**

Administrative disputes were subject to the provisions of the judgment order issued in 1888 and in June 1972 an Administrative Tribunal was formed in accordance with law No. 40 of 1972 however, it did not include initially all administrative disputes. This law gave a part of the jurisdiction related to compensation to the First Instance Justice courts. Furthermore, and for the first time in Tunisia, there was a judiciary that annuls illegal administrative decisions and whose decisions, as a first degree court, are considered final.

When reform was available due to the sufficient number of competent judges and the development of awareness on the need to strengthen the administrative judiciary, the legislature further supported and expanded the composition and powers of the Administrative Tribunal following the revision of its law according to the Basic Law number 39 of 1996 dated June 3, 1996. This reform activity included particularly the revision of the court's structure by establishing first instance and appeals chambers in addition to a public plenary judiciary, which were later followed by the addition of cassation chambers.

The impact was clear. The Tunisian administrative judiciary began adopting adjudication on two degrees: appealing against all First Instance decisions and relying on the cassation following the removal of the structural obstacle. On the other hand, the Administrative Tribunal has become in terms of internal system, an integrated judicial body where all departments became subject to control that aims at overseeing the proper implementation of the law by judges. This monitoring task is conducted by the follow up Departments, or the plenary session to avert risk of conflicts of verdicts and to consolidate jurisprudence in this type of cases.



The 1996 reform also supported the Administrative Tribunal as a consultant, which had been originally its task since its establishment in June first 1972. This function is mandatory in terms of all ordinal orders (regulatory) including other draft texts and generally, all legislative or ordinal provisions that require consultation or governmental issues.

It is noteworthy that distinguishing between justice and administrative judiciary, although it is derived from the Constitution, however its implementation is not absolute and unchanging, thus, the legislature addressed this issue by localization for the sake of the proper functioning of the judiciary and of the litigant's justice. Within this context, he introduced exceptions that included whole branches of administrative disputes that were assigned to the justice judiciary such as conflicts of expropriation for the public interest or the judiciary related to social security or employment tragedies in the public sector.

The judiciary has been assigned to review other cases in first and second degrees. However, this review is subject to the control of the Administrative Tribunal (in terms of cassation) including taxes, the control of payment of contributions to social judiciary, and the discipline within the professional bodies.

The principle of separation between private and administrative disputes generates conflicts of jurisdiction between the two judicial systems. Accordingly, the Tunisian legislature addressed this matter and established a Council for Jurisdiction Conflicts in accordance to the Basic Law no. 38 of 1996 dated June 3, 1996.



Moreover, he included a mixed composition of high administrative and justice judges with a periodic chairmanship and supervision role (the First Chairman of the Administrative Tribunal and the First President of the Justice Court of Appeals). He also added controlled procedures and gave its decisions the required argument to prevent the risk of inconsistencies between the provisions of the Justice and the Administrative judicial system.

- **Accounting Department:** In addition to the Administrative Tribunal, the Department of Accounting was created in accordance with Chapter 57 of the Constitution that was issued in June 1956. It is a judicial institution that is specialized, in accordance with law No. 8 of 1968 dated March 8, 1968, in viewing the accounts and the conduct of the State, local communities, public institutions and enterprises and all types of bodies in which the state, municipalities or provinces contribute in the capital. It also estimates the results of economic or financial aids granted by the State or municipalities or provinces to the private enterprises. In addition, the department controls the funds of political parties. The Accounting Department consists of six central Chambers and four regional chambers that have been located in some provinces in order to effectuate the decentralization principle of the regulatory work assigned to the department.
- **Financial Snubbing Department:** is a restraining judicial body of a financial nature that is entrusted by law No. 74 of 1985 dated July 20, 1985 to deter mistakes committed by the state, public administrative institutions, local groups and projects. It is noted that this law has been revised in subsequent texts.



This department does not belong to the category of criminal courts and the reason is, in addition to the rules which determine the criminal, civil or disciplinary responsibility of public officials, the Tunisian financial legislation had enacted a special system that is the responsibility of this department towards violators.

**The Financial Snubbing Department** has gradually found its place among the institutions responsible for ensuring respect for the budget and good use of public funds in addition to the Department of Accounts. It is composed equally by members of the Accounting Department and members of the Administrative Tribunal assigned by a proposal from the Prime Minister and from the chairmen of these two constitutional institutions that form the State's Council.

### **C- Private bodies with judicial powers:**

In parallel with the economic reforms, a number of special bodies with judicial powers were established during the beginning of the nineties. They are in charge of resolving disputes concerning a particular type of offenses. The most prominent bodies are:

- **The Sectoral Amendment Bodies:** such as the National Telecommunications Body, the National Body for Insurance and the Financial Market Body.
- **Competition Council:** considers the violations related to the lack of respect for the principles of fair competition, especially collusion and alliances and the over-exploitation of the market. The council penalizes offenders and issues orders to inhibit acts violating the law, in addition to subjecting the violators to financial penalties.



#### **4 – 4 – the independence of the judicial authority:**

The Tunisian law guarantees the independence of the judiciary as provided for in Chapter 65 of the Constitution that states: "Judges are independent and are only subject to the law." The judiciary and the Supreme Judicial Council were organized by law No. 29 of 1967 dated July 14, 1967 which provided for the establishment of a Supreme Judicial Council headed by the President of the Republic and formed by the Minister of Justice, the First President of the Court of Cassation and the Chief Public Prosecutor to the Court of Appeals. It also includes elected members: Judges of courts of first instance, advisers to the courts of appeal and Advisers to the Court of Cassation.

The Supreme Judicial Council considers matters relating to the appointment of judges, their relocation and dismissal, discipline issues and in the personal inviolability of judges that is lifted if they are found guilty of the commission of acts criminally punishable (most of the cases are related to traffic accidents that cause physical harm to others or cause their death).

The Supreme Judicial Council does not consider cases related to the members of the State. The law provided for two similar bodies engaging in the similar role and providing the same guarantees and they are: the Supreme Council of the Administrative Tribunal and the Supreme Council of the Chamber of Accounts.



#### **4 – 5 – Speed and efficiency of judicial procedures:**

Deadlines associated with the adjudication of disputes are related to several factors: the human and material potentials available for the Court, the degree of backlog, the complexity of disputes, the conduct of the litigants and the legal assistants, working methods of those involved at the litigation stage and at the stage of the implementation of the provisions.

There are some legislative provisions that require the court to resolve disputes within a prespecified deadline.

At present, courts are considering a large number of cases, given the number of judges in Tunisia which is 1766 judges, of whom 510 women or 29 percent. Judges of first level (First Instance courts and District Courts) form 50 percent of all judges (889) compared to 564 judges at the second level (advisers to the Court of Appeal) and 313 judges at the third level (advisers to the Cassation Court). This leads to some overcrowding, especially at the Court of Tunis the Capital and some courts located in major cities of Sfax, Sousse and Grombalia, which forces courts to delay the adjudication of cases.

The latest decision of the year (2008) as well as the judge provide for the establishment of 3 new courts of First Instance in Tunis the capital, Sfax and Sousse (to increase the number of first degree courts by double it) to ensure the fast resolution of disputes.

Within the same framework and with a view to improve the services of the judicial system, the Ministry of Justice and Human Rights laid down in recent



years an ambitious program to modernize the judicial system based in particular on two themes:

First: develop the use of information to include judges in particular so that judgments are directly pronounced in the future and as to reduce time allotted for drafting and reviewing stages which contributes to a fast adjudication and therefore a fast implementation.

Second: facilitate the dissemination on the ministry's Website and strengthen the judicial working methods by reinforcing the libraries of the Ministry of Justice, the Center for Legal and Judicial Studies and the Higher Institute of Justice.

The program aims to strengthen the training of judges in new legal areas such as the commercial and tax law.

On the other hand, and during the year of 1994 Tunisia established the Center for Legal and Judicial Studies which constitutes an observatory for the new legislations and a research tool for the comparative law and the country's needs in the area of legislation. The center consists of cells and working groups comprising senior judges/researchers with no less than 5 years of experience in the judicial field. The Center currently includes about 20 judges with various legal specializations. Its scope of studies includes the social phenomenon that requires analysis and developing legislations as well as the judicial implementation of new laws. The Center is also monitoring changes in comparative legislations, especially within the framework of European legislations and within the economic area. Moreover, it organizes seminars and





training courses thus contributing to the revision of legislations, the drafting of texts and explanation of its provisions. The center also publishes specialized legal magazines especially the “Court of Cassation Magazine” (the civil and criminal branches), the Judiciary and Legislation Magazine, decisions taken by the Administrative Court in addition to the doctrine publications in various legal areas. The center also provides legal consultations to public and moral persons.

On the other hand, the Higher Judicial Institute is playing a key role in terms composition. It has been set up in 1985 as a scientific institution under the Ministry of Justice dealing with the judicial attachés for two years before undertaking the judiciary task, in addition to the completion of the formation of direct judges, as well as its role in the formation of the writing assistants of the courts and legal assistants.

#### **- Business and commercial legal environment:**

##### **1- Revision of the legal and legislative state**

The stages of the Tunisian economic legislation development can be divided into three important historical stages: the pre-independence period, the period following the independence to the end of the 1980s which has witnessed the construction of State institutions and the emergence of national legislations dedicated to the protection of the internal market and extensive intervention of the State in the economic activity and finally the period extending from the 1990s until now. The last period is characterized by the gradual economic liberalization and integration with the world economy accompanied by modernization of various legislations.



### **1 – 1 – the pre-independence period:**

The modern Commercial Law of Tunisia dates back to the early Mandate era. After the chaos that inflicted the country during the mid-nineteenth century when the European countries protected their citizens by concluding agreements excluding them from the jurisdiction of national courts and subjecting them to the jurisdiction of the foreign consulate courts, the colonial authority initiated the development of foundations of a judicial system parallel to the legal judiciary (religious) that applies ordinances laws (laws of status).

In parallel with this structural innovation, legislations governing civil and commercial business in general were enacted. Following the Mandate Era, the law of July 1885 related to the real estate registration was issued which is similar to the "Torrance" law in Australia. This system enabled the stabilization of the real estate legal situations covered by the realignment, registration and clearing from the claimed rights pre-alignment.

This system also enabled the French colonists to take over the most fertile territory of the country.

At the crossroads of the nineteenth and twentieth centuries, a Committee chaired by the Italian jurist David Santillana was formed and included Muslim and European scholars. This committee prepared the draft of the civilian and commercial magazine (1898).

Following the review of this draft, the term "commercial" was deleted and the magazine was called "the Code of Obligations and Contracts" since it contains



the general provisions of civil and/or commercial contracts as well as other provisions relating to business and procedures.

The comprehensive magazine was issued in December 15, 1906 and was implemented in 1907. It organized several aspects mainly: sale and lease contracts, loans, companies' lease on service and manufacturing. The Tunisian commercial legislation did not rely in the early stages on this magazine only, since it remains essentially a civil magazine. Hence, other laws were issued organizing aspects of commercial life, such as the prime order of 16 July 1926 on the maintenance of trade books. In the meantime, different laws have also been issued organizing Civil Procedures (1910) and criminal matters (1913), including the penalizing economic crimes such as fraud and breach of trust and the taking over a part / portion before it's distributing.

Another order was also issued in 1919 suppressing fraud in materials and particularly manufactured materials such as transformed agricultural material and others.

In 1929, the Prime order related to company's capitals was issued and was the first text on financial companies in Tunisia. Moreover, at the beginning of the thirties, Conventions related to checks and bonds were implemented as well as the French Insurance Act (1930) in Tunisia.

### **2 – 1 – 1956 – 1990:**

Following the country's independence in March 20, 1956, the process of modernization began through the consolidation of the Tunisian judiciary and



the issuance of a unified personal status code. Hence, French and religious courts (Hanafis and Maalikis courts for Muslims and special courts for Jews) were cancelled and all proceedings were reviewed by the same courts regardless of the nationality or religion of the parties. This matter paved the way for the abolition of the monarchy and the establishment of the Republic on 25 July 1957

In October 5, 1959, two important laws were issued: the commercial magazine and the civil and commercial proceedings magazine.

The business magazine included in general the organization of public matters related to traders (whether natural persons or companies), commercial books, the legal publicity of companies, securities, checks, reserve conciliation, bankruptcy as well as the organization of the most important commercial contracts including contracts that have been in Europe subject to the customs of trade, particularly bank contracts such as opening accounts and Documentary Credit.

The Civil and Commercial Proceedings Journal organized the civil and commercial dispute resolution procedures and the judicial jurisdiction in these matters including the international jurisdiction of the Tunisian courts and the implementation of foreign judgments in Tunisia, and the judicial system structure. It has also organized the procedures of the implementation of provisions and arbitration and did not differentiate between domestic and international arbitration.



The 1960s was characterized by a socialist orientation where economic legislations did not develop and in exchange, the Labor Code was issued which was characterized by the protection of the worker as the weaker party in the labor relationship.

This has not prevented the issuance of some economic laws that have been affected by this period such as the decree of 30 August 1961 related to the statement on the conditions for the exercise of certain types of commercial activities which organized in particular the conditions for the exercise of some commercial activities framed by foreigners. This phase also saw the beginning of the conclusion of bilateral agreements to protect and encourage foreign investment, the first agreement with Switzerland in December 2<sup>nd</sup> 1961 and with Germany in December 20, 1963. Tunisia has ratified the at that stage the most important international conventions in the field of arbitration in foreign investment disputes: the Washington Agreement concluded in March 18<sup>th</sup> 1965 and the updated agreement on the International Center for Settlement of investment disputes to the International Bank for Reconstruction and Development. It has also ratified in 10<sup>th</sup> of April 1967 the New York Convention for 1958 related to the acknowledgment and implementation of foreign arbitrations.

In the late sixties a wave of openness and liberal tendency started hence, the money surveillance (investment magazine) was issued in 1969. Then in 1972 a law on the promotion of investment in export industries was issued and consolidated in 1974.



The 1980s have witnessed a period of slow legislature movement, even if they have seen the issuance of legal provisions relating to control of the privileges granted to investors in many sectors such as agriculture, industry and tourism.

### **3 – 1 – the nineties:**

In parallel with the economic reforms in the country since the mid-eighties, the period beyond the year 1988 witnessed a large legislative movement that led to a comprehensive review of the existing system.

These reforms have included almost all fields, and in particular the collection of taxes, the commercial law, the organization of public transactions and contracts, the financial and banking system, investment laws and the organization of commercial activities and services, competition and consumer protection.

#### **• Review of the tax collection legislation:**

A radical reform has been introduced to the tax system. The scattered texts were unified in big legal magazines in addition, the tax collection systems were unified and simplified and fees and performances rates were significantly decreased.

In the year 1988 performances on consumption in general were unified in the Journal of the performance of value-added VAT Abidance Magazine before the unification of the tax systems on revenues and profits in the Journal of the tax on the income of natural persons and companies tax in the year of 1989.



In December 27<sup>th</sup> 1993, a magazine to encourage investments was issued unifying the legislative reference of tax and non-tax privileges granted to investors in sectors considered a priority. In 1994, legislations on registration fees and tax collection were issued before the reforms include the field of local tax collection (1997).

In 2000, a new magazine on the rights and procedures relating to tax collection was published which re-organized tax disputes and auditing procedures conducted by the Department of the collection on the situation of individuals and institutions.

Later on, the process of tax collection legislation modernization was concluded by the issuance of Diwaniyah Magazine in 2008 instead of the magazine in 1955 which was severe in dealing with smuggling and granted important powers to officers of the Department to track the smugglers and seize their property.

The new magazine has been characterized by some level of flexibility in the procedures for the resolution of disputes arising between the Department and the citizens. The Reconciliation Commission and the Board Test was established headed by a judge and is in charge of considering disputes related to the customs classification of products.

- **Commercial law reform** in this area, the following main aspects were reviewed:



- Commercial entities: the Business magazine was published in 2000 organizing many aspects that were not included in a legislative text such as companies' merger, acquisition and split of companies, in addition the limited liability one-person company was introduced.

The magazine also absorbed provisions of a number of previous laws such as the complementary loans (Law No. 111 of 1988 dated 8 August 1988) and the law on the creation of new financial instruments for savings (the law of November 16, 1992 supplemented by the Law of November 14, 1994).

- Commercial registry: was restructured by the law of May 2, 1995, which provided in particular the establishment of a local commercial registry in each court of first instance in addition to the Central Register maintained by the National Institute of Standards and industrial property and required all existing companies to register again in the new registry system that relies on a media matrix of a certain mandate.
- Commercial assets: since the amendment of 28 April 2003 the law states that contracts related to commercial assets shall be liberated by an untrained lawyer to ensure delineation transactions in the commercial register and the mortgages register.
- Addressing economic institutions' difficulties: on April 17<sup>th</sup> 1995 a law on saving institutions with economic difficulties was issued and two settlement systems were developed: Consensual settlement and judicial settlement, both designed to provide an opportunity for the Foundation that is encountering difficulties before or after stopping the payment in order to correct its position and pay its debts or at least a significant





amount of it while maintaining employment basis and the institution itself. The law was revised on July 15, 1999 and December 29, 2003 in order to rationalize its use and prohibit some institutions to benefit from its provisions without any right. The bankruptcy system updated since 1959 remained applicable to the institutions with difficulties that can no longer be remedied.

- Resolution of commercial disputes: Chapter 40 of the commercial magazine was amended and commercial departments specialized in commercial disputes were established including a judge or three depending on the type of case with the membership of two traders from the involved sector. In the year 2002 several aspects related in particular to procedures for the implementation of civil provisions and the issue related to the debtor's movable and real estate properties were amended.
- In 26 April 1993 the *Arbitration Magazine* was published which inspired all of its provisions from the Model Law enacted by the United Nations Commission on International Trade Law (UNCITRAL) in 21 June, 1985. This magazine enshrines the principles of laissez-an agreement of the State in arbitration related to international economic and financial transactions and the independence of the arbitration clause from the original contract and the jurisdiction of the arbitrator to consider his competence and temporary and reservatory procedures that allow the parties to freely choose the applicable law or the implementation of the rules of justice, fairness and liberation from laws, both with regard to procedures or the origin of the conflict. This magazine also considers challenging the annulment the only way to challenge the international arbitration's award and the fundamental way to challenge the local



arbitration award procedure with the possibility of challenging, as an exception, the appeals judgment and of intercepting others. As for reconciliation and conciliation, there isn't any issued legislation that regulates them and they remained implemented in accordance with the methods chosen by the parties or the person who asked him to intervene as conciliator. In 1996, the Tunisian Center for reconciliation and arbitration was established developing a system of conciliation and reconciliation. In addition, the parties could still end the rivalry by reconciling after direct negotiation or at the intervention by third parties.

- In November 1998, the *international private law* magazine was issued relating to private conflicts of international dimension since the warring individuals belong to different nationalities. This magazine is characterized by its objective orientations and it did not adopt the nationality criterion in determining the competent court or the law applicable to private international dispute. The magazine adopted an objective criteria most importantly, the domicile of the defendant to the jurisdiction and the residence of the party responsible for the main obligation in the contract for the law applicable to such contract.

- **Review of legislations related to public transactions and tics:**

- Public transactions are contracts concluded by public bodies with local or foreign suppliers to provide them with materials or services they need in their activities or in the conduct of public utilities. They have been organized under the provisions of order number 3158 for the year 2002 dated December 17, 2002, which offset the earlier texts and included



some successive amendments until the principles of transparency, competition and the adoption of a better standard rather than relying on the financial criterion only in the screening of the offers were established.

- Tics of public facilities: also called public utility concessions. The Tunisian legislator gave big importance to the organization of tic since it embodies the public-private contractual partnership in order to ensure the functioning of some public facilities, or the disposition of the branches of the public property and facilities to meet the needs of its users, and to allow the exploitation of some public facilities and equipments in some profitable sectors by the tic system ensuring the attraction of foreign investment and the introduction of advanced technologies and the most recent behavior attitude as well as guaranteeing the possibility to get rid of the burden of the support of some public projects, grants and support in a continuous and unlimited manner for the State.

This law has brought more clarity to the status of competition rules at the level of the initiation process by introducing tics and its preparation procedures and selection of the tic owner, holding involved public persons responsible for calling the public to engage into a competition and for refraining from creating obstacles that undermine real competition between proposals' owners. In addition, they have to make sure that there isn't any violation for the rules of competition in terms of procedures initiated by the involved departments.

The law also organized procedures related to screening and inspecting presentations, involved structures and monitoring bodies. This law also



organizes individual initiatives by proposing projects on the administration and what needs to be done to safeguard the interests of other investors as well as the organization of assignment deadlines and conditions for renewal and ways to collect fees from the users.

• **Review of the financial and banking legislation:**

- Banking law: financial sector was deeply reorganized by the issuance of the law of July 2001 on loan institutions (banks, financial leasing companies, debt recovery companies and investment companies with development capital).
- Insurance Law: the Insurance magazine was issued in 1992 and offset the French law of 1930. The issuance of this magazine came in parallel with the restructuring of the sector.
- The financial market and the stock market: the law of November 14, 1994 (law No. 117 of 1994) was issued to replace the law of 1989. The law has seen a number of successive amendments aimed to strengthen the financial market. It was coupled with tax legislations aimed at encouraging companies to list its shares on the stock exchange market through the reduction of tax on profits, then through tax exemption on the added value following the establishment of a holding company and enlisting it in the stock exchange market. In later stages, a secondary market for securities issued by medium-sized companies was established. In 2000, the March 21, 2000 law was passed (law No. 35 of 2000) on the establishment of non-financial bonds, which requires that the nominal shares of all companies remain hidden and laid on terms to cancel the shares of their holder. This rule was confirmed by the provisions of the commercial entities magazine.



- The safety of financial transactions: law number 96 for the year 2005 dated October 18, 2005 was issued on strengthening the integrity of financial relations. The law aims to strengthen the transparency of financial information and the policy of financial disclosure of companies. The provisions of this law are consistent with the principles of good conduct of businesses that have been adopted in the framework of the Organization for Economic Cooperation and Development (OECD).

- Financial lease and debt collection: financial leasing operations were regulated by law of 26 July 1994. Moreover, the tax system applicable to these operations was gradually developed to keep pace with the global trends. The debt recovery companies were also organized (they are in charge of استخلاص the debts of others either by purchasing them or under a power of attorney from the owner) by the law of 2 February 1998.

• **Regulating real estate:**

- Updating frozen fees: with a view to address the difficulties arising from the lack of conformity of the listed domestic situation on the real estate registry for many real estates, law number 39 for the year 1992 has been issued on 27 April 1992 updating the real estate frozen fees by the creation of committees to look into the difficulties and authorize all action they deem appropriate and consistent with the real situation for the lifting of the deadlock on the fee for the reintegration of the property in the economic cycle.

land Reclamation: on 26 February 1990 a law on the reorganization of the land reclamation was issued to secure the rights of buyers. The law most importantly



provided for the need to obtain a license for the exercise of this activity and imposed restrictions on the sale of real estate before the completion of construction and imposing land reclamatoin to submit a bank guarantee of the amounts he is obtaining with a previous given price of the buildings that have not yet completed from the time of sale. Law number 9 for the year 1994 dated 31 January 1994 was later issued concerning the responsibility and technical control in the field of construction. This law required each real estate construction professional to technically monitor the construction field by the Office in charge of quality and safety assurance of the building.

Chapter 99 of the Code of insurance added by the law number 10 for the year 1994 dated 31 January 1994 required each constructor the conclusion of an insurance contract of 10-year liability in the building field even if it is only one building. This chapter only excludes 3 cases that are of interest to the image of the State and local public groups and public administrative institutions and public facilities when they build such buildings for their own benefit without resorting to participators and the image of the material person who is constructing housing by resorting to participators or without him for personal occupation or occupied by the spouse, children, ancestors or spouses branches, and the image of natural or moral persons, the enterprises' owners, where a list is formulated with a proposal of the ministers in charge of finance and housing.

- **Updating legislations related to commerce, services and associated professions**

The legislation modernization process included many areas relating to the simplification of economic activities procedures and the consolidation of the



principle of free trade and free competition, as well as the creation of a legal system that provides the necessary protection to the consumer and ensures the transparency and integrity of transactions, and protects the institutions from all forms of unlawful competition.

The most important texts that have been enacted are as follows:

**Competition and prices:** law No. 64 of 1991 dated 29 July 1991 on competition and prices was revised and completed 5 times, most recently in July 2005. The provisions of this law promote the principle of liberation of prices<sup>1</sup> by relying on free competition and preventing unlawful competitive practices (agreements that have a negative impact on the functioning of competition in the market / over-exploitation of dominance or of economic subordination / discriminatory business practices and other practices which may prejudice the normal conduct of market mechanisms ...) This in addition to subjecting economic focus processes with an impact on the market to prior censorship, and controlling the powers of the authorities charged with overseeing the functioning of the market and following and deterring such practices (the Competition Council/Economic Control). The provisions of this law are also related to price control systems, transparency of business transactions to ensure fairness to the consumer and among the professionals.

- **Consumer protection:** there are numerous legislative texts relating to consumer protection mechanisms, the most important are the following:

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<sup>1</sup> Free price rate: 87% in the production phase and 80% in the distribution phase



- ° Law No. 117 of 1992 dated December 7, 1992 on consumer protection: which aims to control the general rules of consumer protection in terms of safety and health, prevent quality fraud and protect it from false advertising, ensure the quality of services and anchor the rights of consumers, particularly their right to information, guidance, security and redressing damage.
- ° Law on installment sales (number 39 of 1998 dated June 2, 1998), funded by the traders. This law aims to ensure the transparency of the payment terms before the consumer and the protection against all practices that exploit the financial weakness to burden him with excessive expenses behind the cover of installments.
- ° The law on sale methods and commercial publicity (number 40 of 1998 dated June 2, 1998), which aims to regulate the rights and obligations of both the consumer and trader in commercial transactions relating to sales in low prices and sales outside shops and with no commercial publicity.
- ° Law on the promotional games No. 62 for 2002, dated July 9, 2002, which sets the conditions and methods for the organization that are aimed at the development of sales whatever the techniques or advertising media used.
- ° Law on the Legal Metrology (No. 40 of 1999 dated May 10, 1999 and supplemented by law No. 12 of 2008 dated February 11, 2008). This law aims to strengthen consumer protection through legal metrological controls over instruments used in the areas of trade, health, safety and the environment.
- ° In support of consumer protection, the National Institute on Consumption was established and is especially in charge of conducting comparative analysis and studying of phenomena and consumption patterns. It is also in





charge of following-up on consumption and the rationalization of consumer behavior and supporting the organizations and structures involved in consumption, particularly civil society organizations. (Law No. 70 of 2008 dated November 10, 2008)

• **IP Protection:**

- Law No. 36 dated February 24, 1994 on the protection of literary and artistic property.
- Law No. 57 of 1999 dated June 28, 1999 on the designations of the origin and source of agricultural products.
- Law No. 84 of 2000 dated August 24, 2000 on the patents.
- Law No. 20 of 2001 dated February 6, 2001 on the protection of the formal design of integrated circuits.
- Law No. 21 of 2001 dated February 6, 2001 on the Protection of Industrial Designs.
- Law No. 36 of 2001 dated April 17, 2001 on the protection of industrial, commercial and services trademarks
- The revised law number 50 of 2007 dated July 23, 2007. The most prominent features of the latest revision is the criminalization of forgery and enabling the control agencies (Customs/ Economic control ...) to track violations without waiting for the victim to sue (as required by provisions of the Customs Code issued in December 29, 1955).
- Law on the designations of origin and geographical indications and data related to the source of traditional industries products (No. 68 of 2007 dated December 27, 2007).



• **Regulating the distribution trade:**

- Law No. 44 of 1991 dated July 1, 1991 on distribution trade which came within the framework of reforms aimed at progressive liberalization of the various business activities, through the principle of freedom of trade and the elimination of pre-licensing system and simplifying the procedures for exercising some private activities. There must also be a review of the provisions of this law in order to achieve balance between modern forms of trade and small commerce and promote the emergence of modern distribution systems (such as working with a permit of the original trademark owner).
- the organization of economic commercial activities by books of conditions order number 2552 of 1999 dated November 8, 1999 on the control of the list of commercial activities under the book of condition.
- the organization of the small trades and professions in accordance with law No. 15 of 2005 dated February 16, 2005, which aims at the development of this sector in order to push the investment forward and improve the competitiveness of craft activities.

• **Legislations related to investment:**

- Adoption of the principle of freedom of investment and lifting monopolies gradually in all of the competitive sectors and the privatization of several public institutions (the fields of industry, trade and services) and facilitating procedures to conduct projects (the Investment Promotion Magazine 1993).
- Culminating the procedures and provisions aiming to establish a favorable climate for investment, the Tunisian legislator issued an integrated system



designed to promote a culture of economic initiative and to remove obstacles to the institutions and persons interested in conducting projects, in accordance with law number 69 for the year 2007 dated December 27, 2007 on the stimulation of the economic initiative. One of the most important additions to this law is the simplification of procedures related to the creation of projects and institutions through providing for time limits and procedures for obtaining related administrative documents in addition to the adoption of electronic means of sending requests and files. This law also controls time limits to ensure that completed projects are linked to basic public services with the right of the sender to consider the place of residence or part of it a headquarter for his economic activities. The law also addressed the issue of financing projects in a separate part urging the banks to take care of small and medium-sized enterprises and facilitate their access to the financial information while easing the burden and enable them with the necessary transparency to complete their activity. It also sought the stimulation of the economic initiative for the development of economic structures and spaces supporting small investors, such as incubators of institutions and work spaces while saving institutions with economic difficulties.

- **Foreign trade:** Like the liberal trends that have characterized the whole economic policy, the principle of freedom of import and export was adopted since the promulgation of the law number 41 of 1994 dated March 7, 1994 on foreign trade, which was strengthened by the accession of Tunisia to many international conventions as well as the procedures that have been taken in order to facilitate foreign trade procedures and promote exporting companies (to strengthen the mechanisms of support: Export Promotion Fund / Fund to break into foreign markets).



On the other hand, and with a view to meet the challenges arising from the liberalization of foreign trade, protective mechanisms were adopted and they are designed to address the illegal import practices such as dumping and supporting (Law No. 9 of 1999 dated February 13, 1999 on the protection against illegal import practices). The principle of resorting to preventive procedures was also adopted in the framework of importation when the conditions necessary for the protection of national production of import were met, which would result difficulties in branches of national production (Law No. 106 of 1998 dated December 18, 1998 on preventive measures related to import).

- **the trade-related professions sector:**

The profession of accountants was reorganized in accordance with Law No. 108 of 1988 dated August 18, 1988. Law No. 16 of 2002 on the organization of the profession of accountants was also issued in 4 February 2002. The law enabled those who are specialized to audit for medium-sized companies.

- E-commerce and E-exchanges: the law on organizing e-trade systems was issued in 2000 in parallel with the recognition of the value of e-books as an informal excuse (customary books) by amending the Code of Obligations and Contracts in accordance with Law No. 13 of June 2000.
- **Protection of personal data:** a basic law on the protection of personal data from illegal treatment, especially by commercial institutions was issued in June 27, 2004.

- **Commercial international agreements:**

Tunisia has concluded a number of multilateral, regional and bilateral trade conventions, especially its accession to the WTO and the conclusion of a



partnership agreement with the European Union, in addition to the agreements concluded with Arab and non-Arab states in order to facilitate exchanges between them. Tunisia signed approximately 180 conventions up until 2006<sup>2</sup>. These conventions reflect diversity in terms of privileges as well as progression in terms of the level of economic openness. However, some of the conventions constitute important stations in the economic policy in view of their content and effects particularly:

- ✓ Protocol of accession to the General Agreement on Tariffs and Trade (GATT) March 12, 1990, after Tunis only had the status of an observer since 1959.
- ✓ Agreement for the Establishment of the Standing Advisory Committee for the Arab Maghreb countries (1964).
- ✓ Marrakesh Agreement on the creation of the World Trade Organization (the acquisition of the country as the founder of the organization).
- ✓ The partnership agreement signed with the European Union in 1995, which provides for in particular the establishment of a free trade zone. Under this agreement, which was to compensate for the 1976 agreement, Tunisia became the first country South-Mediterranean to achieve this level of partnership with the European Union.
- ✓ Many agreements on the establishment of regional free trade zones such as the Greater Arab Free Trade Zone (1997), the Arab-Mediterranean free trade Zone (2004) and the Arab Maghreb Union as well as several bilateral agreements (Turkey / Egypt / Jordan / Morocco ...).

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<sup>2</sup> Tunisia 1956-2006 Newsletter of the Ministry of Trade and Traditional Industries to mark the fiftieth anniversary of Independence, p. 14



It should be noted that according to the obligations of Tunisia in the World Trade Organization, the approach adopted in the field of international trade cooperation has become more dependent on the mechanism of free zone trade agreements. (Chapter XXIV of the General Agreement on Tariff and Trade). Tunisia seeks to broaden the base of free trade zones with many of its trading partners.

## **2- Assessing the role of commercial laws in creating an investment enabling climate:**

Tunisian legislation has become geared towards the promotion of private investment (national and foreign) and the strengthening of economic competitiveness. However, it did not rely in attracting investment on some natural advantages (proximity to Europe ...) nor on the tax incentives (tax exemption or reduction), not also on low cost of labor, but has worked to create an integrated legislative environment that considers transparency in transactions between merchants and consumers and among dealers themselves, establishing the principle of freedom in the transactions and the reduction of interference of authorities and the granting of legal guarantees to the commercial activity the most important components that promote and encourage projects project.

Tunisia also focuses legislative attention on young project creators and provided them with different possibilities for small businesses and medium-sized enterprises, especially through the availability of different funding sources particularly by the Tunisian Solidarity Bank or SMEs Bank or micro-credit associations. Furthermore, the Tunisian legislation provides traditional



mechanisms such as banking finance through the Development Fund for small and medium-sized enterprises, which enabled the thousands of young people who do not have the financial capabilities to create projects, where a significant number of those projects succeeded.

By analyzing the commercial laws and development in recent years, we note that they worked to facilitate the transaction procedures, develop methods of governance and transparency, promote the resolution of disputes through conciliation and provide for the protection of minorities.

### **2-1. Facilitating procedures:**

In addition to the above mentioned program on the deletion of licenses, the business magazine (1959) granted several options for economic projects creators, including the possibility of establishing a single institution without a separate legal personality, or establishing three types of companies:

Association of persons (Negotiation company or simple loaning company) that is characterized by the solidarity of partners in the company's debt, and the Limited Liability Company where the partner is responsible for the company's debts only to the extent of his contribution and who is not allowed to miss on his contribution . Contribution can only be made by money or transferred funds without contributing to the work. Financial companies or Capital companies on the other hand include the Anonymous Company, shares loan companies. The Anonymous Company should be created by at least 7 shareholders. The company is run by a Board of Directors formed of 3 to 12 members headed by the Director-General according to the choice of partners.



With the publication of the Business Magazine in 2000, these types of companies remained but witnessed the introduction of some important modifications and additions, in particular:

- The inclusion of the one-person limited liability company, which can be established by a single partner who is necessarily a natural person and who is the sole agent of the company. Furthermore, the company is subject to the usual rules of the Limited Liability Company.
- Authorizing the company to choose between management by the board of directors (the traditional version) or by the Group Administrative Committee of no more than five directors. This body is subject to the control of the Control Board composed of 3 to 12 member selected among the shareholders.
- Developing the audit provisions by making the appointment of an independent auditor mandatory for all companies above a minimum limits related to the total budget, total income and the average number of currency, while all Anonymous Companies are subject to an auditor no matter the size of the calculations. And if they exceed a certain size they should be subject to double-check by auditors together. The amendment was introduced to an important aspect of the provisions of the 2005 audit, particularly in the framework of the law of October 18, 2005 on strengthening the safety of financial relations and in particular by putting an end to the possibility of renewal of the auditor's mandate whether he is a natural person or a legal entity, and the redistribution of tasks between the expert accountants and accounting professionals.
- Organizing merger, division, change of the form of a company, economic interests and economic interests.





The merger and division procedures aimed to protect creditors and prevent the exploitation of these processes to circumvent the tax law rules and the rules of fair competition. The law is based on the imposition of a high degree of transparency especially on the parent company. Furthermore, the law developed restrictions on transactions between acquisition companies so as not to overcome the law of credit institutions or form a prejudice to the rights of minorities in these companies in particular the subsidiary companies.

A radical amendment was introduced to the registration of companies' contracts through the provisions of the registration fees and tax magazine (17 May 1994), which deleted relative fees of the contracts of companies and replaced it by a registration fee that does not exceed 100 dinars, regardless of the type, activity and the size of capital of the company.

The establishment of companies was also gradually facilitated especially through the law of January 26, 2005, which reduced the minimum capital required for the establishment of the Limited Liability Company to one thousand dinars before being entirely eliminated in accordance with the law on the stimulation of economic initiative, which also allowed contributing to the capital of the Limited Liability Company after it was prohibited since 1929.

### **2-2 the protection of minorities:**

Law of December 27, 2007 on the stimulation of the economic initiative was issued particularly to consolidate the protection of minority partners by strengthening their right to access to the company's documents and to request to make a test to verify the credibility of a specific process or processes



performed by the creators in addition to their right to request annulment of decisions taken during plenary sessions and that are contrary to the interests of the company.

### **2-3 Means of evidence:**

It should be noted that the commercial law is characterized by the flexibility of the evidence provisions since the law does not require writing evidence necessarily and since the commercial transaction can be proved in every means (Chapter 569 of the Business Magazine).

Since the issuance of Law of August 2, 2000, the Tunisian law permits the conclusion of business transactions and prove them by electronic means on the stipulation that they carry a reliable electronic signature and an updating system that can identify its holder accurately identified and that the electronic document is retained in its final version so that it can not be modified.

### **2-4 Alternative Dispute Resolution Mechanisms:**

We particularly refer to the efforts made to promote these mechanisms, through:

- The publication of the Arbitration Magazine in April 26, 1993: it is an alternative way to resolve investment disputes adopted by the state since it reflects guarantees and speeds in adjudicating conflict, which is consistent with the willingness of the parties associated with the Tunisia via investment agreements, and capital investment in Tunisia.



- The establishment of the Tunisia Center for Reconciliation and Arbitration since 1996 and the evolution of its activity and influence.
- The adoption of the possibility of reconciliation with the administration in some economic legislation (e.g. the competition and prices law) where the institution is granted the right to reconcile with the Administration in respect to the public case in some issues related to economic offenses.
- We also refer in this context to the experience of administrative mediator that was established by an order dated December 10, 1992. It was charged with the task of considering individual complaints from legal and moral persons in the framework of administrative matters that concern them and goes back to look into to the interests of the state, local public groups, institutions and structures charged with running a public facility.

To settle complaints, the Administrative mediator provides recommendations that he deems successful in the settlement of disputes to the concerned party. The Administrative Conciliator may not intervene in issues published before the courts, nor may he review the court ruling.

In addition to the Administrative Conciliator's experience, there are some other successful experiences such as the Banking Conciliator and the conciliation procedures in the fiscal law and the openness of the Customs Magazine to reconciliation.

**Regarding allowing public persons to resort to arbitration:** chapter 7 of the Code of Arbitration stated in paragraph 5 the following: "Arbitration is not allowed (...) Five: in disputes relating to the state and public institutions taking



the administrative form and domestic groups, unless these disputes resulted from international economic, commercial or financial relations which are regulated by Part III of this magazine.”

Public persons are generally not allowed to recourse to arbitration since the state and its subsidiaries are not allowed to deny its judiciary and to agree with others to avoid the principles of arbitration jurisdiction, as is the case in several other Arab and foreign countries that refuse to withdraw arbitration as a means to resolve disputes that involve the State. However, Chapter 7 excluded a whole chapter Service quarrying and allowed the inclusion of arbitral conditions within the framework of contracts and transactions concluded with third parties as well as the agreement to arbitrate conflicts.

This exception covers most of the public activity since non-administrative institutions are more and more undertaking activities and areas concerned with the continuity of the public sector

On the other hand, Chapter 7, the fifth part of the Arbitration Code allows for the adoption of this means for the resolution of all disputes concerning the State and public entities even if they are administrative disputes on the stipulation that they are international disputes on the one hand, and arising from economic, commercial or financial relations on the other.



Moreover, there are several legal texts which allows for arbitration in the framework of the public in the form of a special legislation (Such as law number 81 of 1992 dated August 3, 1993 on free economic zones, Magazine Promoting Investment issued in accordance with Law No. 120 of 1993 dated December 27, 1993, Law No. 93 of 1999 dated August 17, 1999 on the issuance of the fuel Magazine, Law No. 108 of 1985 dated December 6, 1985 on the promotion of financial and banking institutions dealing primarily with non-residents, the decision of the Minister of Trade and Traditional Industries dated December 24, 2004 on the formation of arbitration committees to resolve disputes over the results of the technical supervision operations related to export.) they can also take the form of investment protection bilateral conventions or international multilateral treaties.

In overall, and based on the foregoing, we note that the legislative reforms that have been reviewed in this report worked on providing an investment enabling climate, especially through focusing on stimulating private initiative, ensuring necessary fiscal and financial incentives, simplifying procedures related to creating projects, commercial transaction procedures and costs, making administrative services accessible to citizens, adopting the One Stop Window and strengthening rules of transparency and financial safety.

In addition, they focused on creating legislative frameworks that ensure the protection of investment, innovation and freedom and integrity of competition by establishing independent and regulatory bodies that ensure respect for and enforcement of such legislations.



Structures that endorse institutions and promote their roles were also strengthened (investment bodies/ chambers of commerce/ CEPEX Center for enhancement of exports / technical centers / business centers / specialized advisory councils ...) while the participation of the private sector in decision-making and in the preparation of appropriate legislations was strengthened especially through national consultations on the most important topics, as well as through advisory boards and committees that prepare and study the laws and in which various components of civil society participate.

However, we noted that there are some **deficiencies** at the levels of legislation and implementation:

**In the framework of legislation** we noted the following:

- The weakness of legislative drafting and the difficulty to understand the legal terminology especially since they are inspired from the European laws and Western in general. Moreover, the drafting of laws is the responsibility of the Administration which does not necessarily use legal experts.
- The **successive changes** in legislation prevent investors to have a clear and stable idea about working methods. For instance, the Business Magazine published in November 3, 2000 and completed in 2001 was amended three times in 2005 alone; in addition, a similar law with respect to the creation of online companies was issued in 2004. This is due to the fact that many of the laws are formulated in a precise manner covering even detailed aspects, and not only the principles and general rules.



- There are myriad legislations which are no longer keeping pace with the new era, for example, provisions relating to bankruptcy in the Business Magazine that still imposes severe punishment on the trader whose project fails. Moreover, legislative texts relating to concessions and the reasons for preference of some creditors to others remain scattered and inconsistent and do not give any clear solutions. The doctrine unanimously agrees that creating a satisfactory arrangement for the creditors of a bankrupt merchant is almost impossible, and the same applies to the legislation related to some legal forms of institutions such as the Mutual Societies law that dates back to 1967.
- Legislative inflation: the existence of useless and unimplemented legislative texts such as the provisions of the Business Magazine related to some banking contracts such as the documented credit.
- The non-issuance of myriad executive texts which prevents the implementation of the law and leaves the Administration as well as their clients in a critical position making solutions unclear.
- The failure to provide adequate protection for some types of clients and providers, especially small traders, who are treated like ordinary creditors. Some foreign laws grant them concession for redemption such as employees. The Tunisian law (Law of 17 April 1995) prohibits the cancellation or the delay to pay debts.

**In terms of implementation,** we noted the following gaps:

- The lack of adequate administrative means to implement laws effectively: IT safety laws, environmental protection laws, organizing hunting and fishing laws, IP protection and combating piracy...



- The slow process of litigation, the failure to resort to arbitration and the limited alternative means to resolve disputes due to the absence of the arbitration culture, the inexperienced arbitrators and the litigants' fear of free arbitration due to the high cost of fees.
- The dispersion of laws and difficulty of access.
- The failure to update data provided by the Commercial Register.
- The limited role of the merchant in the commercial departments.
- The difficulties and problems facing the implementation of provisions.
- The difference of the legal system within the Anonymous Companies and the Limited Liability Companies in terms of common matters.

**II- The most prominent reform activities and programs aiming at strengthening commercial laws and the investment climate in Tunisia are the following:**

Strengthening the investment climate and improving the national economy competitiveness are still one of the most important determinants of the economic policy and reform programs approved by the State and one of the constants leading the process of reform and legislation modernization.

The most important programs under process or planned within the five-year plan (2007-2011) as well as the most important priorities for reform engendered by the debate at the National Workshop on “Strengthening Commercial Laws” organized on 13 and 14 January 2009 are the following:

- **Simplify procedures related to the establishment of institutions** and the completion of works, through:





- Pursuing the current plan to delete the administrative licensing and replace them with Books of conditions The target is to delete half of the current licenses.
- Reviewing the current Books of Conditions with a view to delete unnecessary conditions (with the involvement of the Competition Council).
- Strengthening the system of establishing online companies and E-signature
- Adopting new forms of commercial entities such as Simple Anonymous Companies “societe anonyme simplifiee” that can play an important role in attracting investments.
- Updating the legal framework of Mutual Societies (the 1967 law) especially since they play an important role in foreign countries in areas of agriculture, transformative industries and other sectors
- **Progress to implement the second program on developing exports and move towards a third program** that includes components in the following areas:
  - Shortening the period of dispatching imported and exported merchandises and their holding period in ports.
  - Developing logistic services and circulating electronic connectivity for parties involved in foreign commerce procedures (technical supervision /Customs dispatching /Standard file transfer ...)
  - Developing technical specifications and requirements for the foreign markets.
- **Strengthen the investor’s trust in the legal framework regulating companies:**



- Unifying the legal system of the Anonymous Companies and the Limited Liability Companies in terms of common matters
- Reviewing provisions related to the assembling of companies regarding the necessity to establish the parent company in the form of an Anonymous Company (this condition is useless especially in light of the difficulty to assemble 7 companies)
- Clarifying to what extent civil companies enjoy legal personality so as to resolve the problems faced by these companies in terms of management of tax collection and real estates.
- Considering to abandon commercial departments due to the limited role of the trader in those departments and creating judicial bodies specialized in business crimes and acts especially the Public Financial Prosecution (parquet financier spécialisé) Monetary Public prosecution Office called in France “ le pôle financier”.
- Assisting legally distressed institutions by shortening the period of liquidation and reducing costs.
- Adopting the possibility for commercially distressed institutions to be referred to the currency interest.
- Adopting the minority’s right to leave the company in accordance with solutions provided for in the German law.
- **Further endorse investment and competitiveness:**
  - Reconciling between the economic movement, the legal review and the need to ensure legislative consistency by focusing on the general principles in the legal drafting.



- Improving the legislative drafting process (form specialized frameworks/involve universities in legal projects...)
- **Assembling legislations regulating the commercial sector** in a unified magazine and implementing the recommendations of the expanded national consultancy on the “State and Aspects of the Commercial Sector” (2004) which will facilitate easy access to different legal rules regulating the economic life.
- **Diagnose the state of legislations in the services sector**, especially those with important export potentials with a view to prepare for negotiations that are intended to take place with the EU to further liberate this sector and to promote its exportation potentials and its contribution to generate wealth.

This diagnosis is included within the framework of efforts aimed at the rehabilitation of the services sector in accordance with the recommendations of the national consultation already carried out in 2005.

- Continue efforts to **modernize the economic legislations so as to keep them pace with the European legislation**. Within this framework, the following is being carried out:
  - Reviewing the **legislation on the control of the domestic market and consumer protection** (draft law for the safety of food products / draft law for the safety of industrial products / draft law on unfair terms in Adhesion Contracts



- Reviewing the legal specifications framework in preparation for the mutual recognition with key trading partners of Tunisia, Europe in particular.
- Review **the law on commercial distribution** to keep abreast with the development of commerce in order to ensure a balance between multi-wings commerce as well as smaller commerce on the one hand and between producers and distributors on the other. This while taking into account the new distribution systems (such as Grace Contracts or Employment Contracts) thus providing greater protection for organized commerce against parallel and non-structured commerce.
- **Review the commercial register law** to further urge economic customers to update their data as well as to develop the maintenance and management of economic information systems (central registry), while activating the role of Chambers of Commerce such as the One Stop Window.
- **Review the foreign Commercial Law** and its executive texts to further liberate foreign transactions and reduce technical monitoring procedures in terms of imports and exports.
- **Review some laws related to certain commercial activities** that enjoy exclusive concession granted for the public institutions to gradually opening up these sectors to competition and separating the commercial activity from the exercise of certain powers of public authority at the level of these institutions.
- **Further pay attention to the arbitration system** to give greater flexibility to the resolution of disputes through conciliation: develop the arbitration magazine to resolve conflicts and to promote a culture of



arbitration and urge investors to have recourse to this mechanism and create a model system to bring about reconciliation and arbitration centers and strengthen the formation of arbitrators.

- Review the laws of exchange to introduce greater flexibility with a view to keep pace with liberating the Dinar and promoting foreign financial liberalization.
- Conduct a comprehensive assessment of the financial and fiscal incentives system of investment by bringing more efficiency and further directing these systems towards the priority sectors which requires review of the relevant legislation.
- Further support and rehabilitate the judicial structures and endorse specialization in courts.
- Strengthen the competences of the district amendment Committees.



#### IV – Conclusion

Business laws are comprehensive and include many fields and legislations, hence the report attempted to provide only an overview on the state of commercial legislations and the deep developments that occurred especially during the last two decades in parallel with the rapid pace of the economic reform and development in the country.

Tunisia endeavored to modernize the legal system and develop the judiciary as well as the administration by analyzing various laws, regulations and reform programs under process with a view to create a business enabling climate and to improve economic competitiveness in a country where natural resources are limited and growth is based on the ability to develop the investment and export sectors.

In conclusion, the report stated that the current legislation contributes effectively to improving the business climate and achieving sustainable economic growth. Within this framework, Tunisia received honorary rankings at the level of competitiveness i.e. providing the appropriate investment environment or at the level of good public finance governance where the country ranked second globally according to the Davos report published in October 8, 2008.

Due to the fact that improving the business climate requires continuous effort, and since there is a fierce competition among nations regarding this matter, the report proposed a number of reforms for the next phase that can be subject of reflection and study, and may enrich issues for following workshops.



The proposed reforms cover a range of fields including: the service sector, the simplification of administrative procedures, provisions relating to bankruptcy, laws on the control of the domestic market, the organization of commerce and some types of commercial contracts as well as the requirements to match national legislation with European ones.

Freedom and integrity of competition in the domestic market is one of the most important determinants of an appropriate and business enabling environment and one of the elements supporting economic competitiveness. Furthermore, developing competition laws and successfully implementing them provide the guarantee for institutions that seek to invest, in addition they provide protection for small and medium enterprises. These competition policies strengthen the economic efficiency and exert pressure on price and production input costs for the benefit of the consumer and the institution.

Tunisia, being aware of the competition laws and policies' importance, has sought the development of a sophisticated competition legal framework and worked on its implementation and supporting its structures. Tunisia has also worked to update this framework in parallel with the evolution of the economic liberalization and openness. However, ensuring the integrity of competition in the market and preventing some unlawful practices remain, as highlighted in the recent survey on competitiveness, one of the essential issues stressed by the economic institutions.

The in-depth competition study which we intend to conduct within the framework of modernizing commercial laws will form an important



opportunity to study the practical procedures required in this area and the contribution that can be provided by competition laws to improve the investment climate and support a competitive economy.





**V- Annexes:**

Annex 1. List of the most important references

Annex 2. List of the most important business related legal magazines.

Annex 3. The National Workshop Report on Strengthening Economic Laws.

Annex 4. The Economic Paper.



**Annex 1 – list of references:**

- **Economic development plans**, publications of the Ministry of Economic Development and International Cooperation.
- **National consultations on trade, services and export**, publication of the Ministry of Trade and Traditional Industries.
- **Legal journals.**
- **World Bank reports.**
- **Annual reports of the Central Bank of Tunisia.**
- **The CB Publication: 50 years of independence.**
- **The Ministry of Finance Publication: 50 years of independence.**
- **Publication of the Ministry of Development: 50 years of independence.**
- **Publication of the Ministry of Justice: 50 years of independence.**
- **Publication of the Ministry of Commerce: 50 years of independence.**
- **Annual report on the demographic situation in Tunisia** (National Institute of Statistics (INS) 2006).
- **Annual report on indicators of infrastructure** (the National Institute of Statistics (INS) issue No. 11 / 2007).
- **Data available on the Web sites of ministries and public institutions.**
- **Publications of the Tunisian Institute of competitiveness and quantitative studies (ITCEQ).**
- **Publications of the National Institute of Statistics (INS).**
- **Report of the World Trade Organization the commercial policy review of Tunisia, WTO, 2004.**



- **The economic balance.**
- **Arbitration in Tunisia: Reality and Stakes**, (Parliamentary Studies series No. 7), Office of Parliamentary Studies and Research - the House of Representatives. May 2006.
- **The Tunisian Judicial System** (parliamentary studies series No. 5), Office of Parliamentary Studies and Research - February 2006, the House of Representatives.



**Annex 2 – the most prominent legal magazines related to the business sector:**

- **Code of Obligations and Contracts:** issued in 1906 and revised several times. In August 26, 2005 some of its provisions were reorganized in accordance with law number 87 for the year 2005.
- **The Commerce Magazine:** Law number 129 of 1959 dated October 5, 1959, which was revised and supplemented with additional laws, most recently Law No. 38 of 2007 dated June 5, 2007.
- **The Code of Civil and Commercial Procedure:** Law No. 130 of 1959 dated October 5, 1959 and the inclusion of the magazine on the civil and commercial proceedings.
- **The Code of maritime trade:** law No. 13 of 62 dated 24 April 1962 and the latest revision of law No. 3 of 2004 dated January 20, 2004.
- **The Code of Civil and Commercial Procedures:** Law No. 130 of 1959 dated October 5, 1959 related to the inclusion of the Civil and Commercial Proceedings Magazine.
- **Maritime Commerce Magazine :** Law No. 13 of 1962 dated April 24, 1962 and Law No. 3 of 2004 dated January 20, 2004.
- **Commercial Companies Law :** Law No. 93 of 2000 dated November 3, 2000. The sixth title (chapters 461 to 476) was added in accordance with Law No. 117 of 2001 dated December 6, 2001. The last review of Law No. 1 of 2009 dated January 5, 2009.



- **The Magazine on Promoting Investment:** Law No. 120 of 1993 dated December 27, 1993. The magazine was edited and reviewed several times most recently Law No. 5 of 2009 dated January 26, 2009.
- **The Magazine on Foreign Trade:** Law No. 18 of 1976 dated January 21, 1976 and edited by Law No. 48 of 1993 dated May 3, 1993.
- **Public Accounting Magazine:** Law No. 81 of 1973 dated December 31, 1973 and the last review of Law No. 43 of 2003 dated June 9, 2003.
- **The Added Value Magazine:** Law No. 61 of 88 dated June 2, 1988 edited by Law No. 71 of 2006 dated October 28, 2006.
- **The Individual and Companies' Income Tax Magazine:** Law No. 114 of 1989 dated December 30 1989.
- **Registration Concepts and Tax Collection Magazine** Law No. 53 of 1993 dated May 17, 1993
- **The Tax Rights and Procedures Magazine:** Law No. 82 of 2000 dated August 9, 2000.
- **The Insurance Magazine:** Law No. 24 of 1992 dated March 9, 1992 that was edited by successive laws most recently Law No. 8 of 2008 dated February, 11 2008.
- **The Arbitration Magazine:** Law No. 42 of 1993 dated April 26, 1993.
- **The Tariffs Magazine:** Law No. 34 of 2008 dated June 2, 2008
- **The Communications Magazine:** Law No. 1 of 2001 dated January, 15, 2001 and edited by Law No. 83 of 2008 dated January 11, 2008.
- **The Private International Law Magazine:** Law No. 97 of 1998 dated November 27, 1998.
- **The Criminal Magazine:** issued in accordance with order of July 9, 1913 and was reviewed several times, most recently in 2005.



- **The Criminal Procedures Magazine:** Law No. 23 of 1968 dated July 24, 1968 on the reorganization of the criminal advocating law.
- **The Registry Magazine:** Law No. 5 of 1965 dated February 12, 1965. The last revision was done in August 9, 2000.
- **The Criminal Procedures Magazine:** issued by Law of December 30, 1921 and was reorganized by Law No. 23 of 1968 dated July 24, 1968.
- **The Labor Magazine:** issued by Law No. 27, 1966 dated April 30, 1966 and was edited several times most recently in April 2007.
- **The Maritime Labor Magazine:** issued in December 7, 1967 in accordance with Law No. 52 of 1967 and was edited in 1995.
- **The Maritime Administrative Organization Magazine:** Law No. 59 of 1976 dated June 15, 1976.
- **The Maritime Commercial Ports Magazine:** Law No. 25 of 1999 dated March 18, 1999.
- **The Construction Magazine:** Law No. 122 of 94 dated November 28, 1994.
- **The Combustible Magazine :** Law No. 93 of 1999 dated August 17, 1999. It was recently reviewed on February 18, 2008.
- **The Mine Magazine :** Law No. 30 of 2003, dated April 18, 2003.