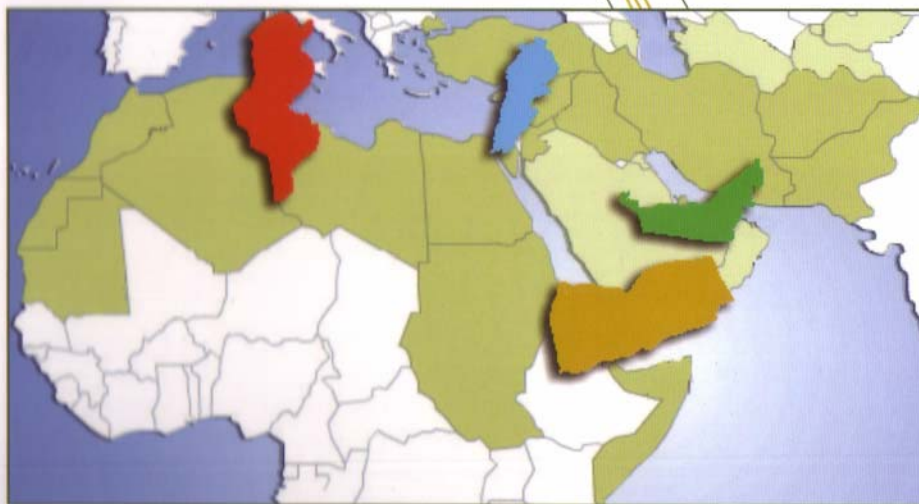




The Arab Center for the Rule of Law and Integrity  
المركز العربي لتطوير حكم القانون والنزاهة

## MENA Commercial Law Strengthening Project - CLS



مشروع تعزيز القوانين التجارية  
في دول الشرق الأوسط وشمال أفريقيا



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## Overview

The MENA Commercial Law Strengthening Project is a two-year regional program (2008-2010) that will be implemented in Lebanon, Tunisia, UAE and Yemen, by the Arab Center for the Rule of Law and Integrity (ACRLI) in cooperation with the Middle East Partnership Initiative (MEPI).

## ACRLI's Project Partnerships

A Network of regional and international advisors represented by the International Advisory Group & other partners from the League of Arab States, UNDP, OECD, ESCWA, the World Bank, the ICC... working closely with National networks of highly qualified professionals in diverse relevant fields.

## Target Beneficiaries

The Project primarily targets members of the legal community (lawyers, judges, academicians), business leaders and professional associations & syndicates in view of actively involving them with policymakers and concerned government practitioners in a result-oriented policy dialogue.

**CLS' Objective** is to strengthen demand-side commercial law reform in the selected MENA countries with a view to promoting a legal environment that is business enabling through increasing private sector participation in commercial law policymaking conducive to economic growth.

## Expected Results

- ☐ **National & Regional Commercial Law Reports:** Assessment of the state of commercial laws in the project countries.
- ☐ **National Workshops & Regional Conferences:** Reform driven networking between lawyers, business persons, policymakers and government practitioners.
- ☐ **Compendium:** Facilitate access to commercial legal information through IT means.
- ☐ **National Thematic Studies and Surveys:** Reform of selected commercial laws in each project country:
  - Intellectual property rights in Lebanon
  - Competition in Tunisia
  - Enforcement of commercial contracts/ Recovery of debt in Yemen
  - Dubai Real estate laws – UAE
- ☐ **Awareness campaign:** Increase engagement of stakeholders in reform activities.
- ☐ **Training sessions:** Capacity building on commercial dispute resolution.

## لمحة عامة

يقوم المركز العربي لتطوير حكم القانون والنزاهة ACRLI بتنفيذ المشروع الاقليمي «تعزيز القوانين التجارية في دول الشرق الأوسط وشمال إفريقيا» على فترة سنتين (٢٠٠٨ - ٢٠١٠) في كل من لبنان، وتونس، واليمن، والإمارات العربية المتحدة، وذلك بالتعاون مع مبادرة الشراكة الشرق أوسطية MEPI.

## الأطراف المشاركة

يعتمد المشروع على شبكة من الشركاء من ذوي الخبرات العالية على المستوى الوطني، إضافة الى شبكة من المستشارين الإقليميين والدوليين ومجموعة من المؤسسات الاقليمية والدولية مثل جامعة الدول العربية، برنامج الامم المتحدة الإنمائي، منظمة التنمية والتعاون الاقتصادي، منظمة الاسكوا، البنك الدولي، غرفة التجارة الدولية وغيرها.

## المستفيدون

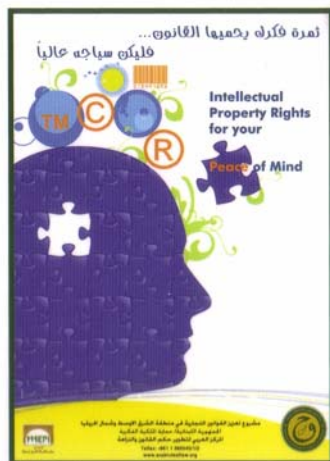
يستهدف المشروع في المقام الاول، مجتمع الحقوقيين من محامين وقضاة واكاديميين، ورجال الأعمال والجمعيات المهنية والنقابات، وهو يسعى الى إشراكهم بصورة فعلية في حوار مثمر مع صانعي القرار وواضعي السياسة التجارية.

يهدف المشروع إلى تعزيز وإصلاح قوانين الأعمال في الدول المعنية بالمشروع بغية دعم وتنشيط القطاعات الإستثمارية وتحسين البيئة القانونية الملائمة للأعمال من خلال زيادة وتفعيل مشاركة القطاع الخاص في وضع سياسات تطوير القوانين بما يحفز باقي دول المنطقة للاقتداء بالإصلاحات المقترحة.

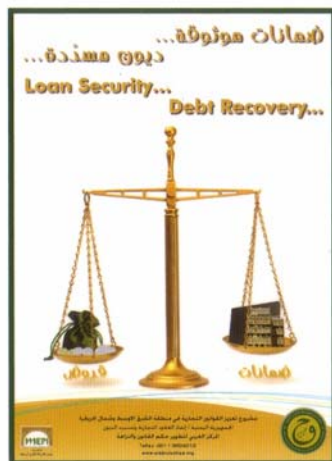
## النتائج المتوقعة

- تقارير وطنية وإقليمية... لتقييم واقع قوانين الأعمال في البلدان المشاركة في المشروع
- ورش عمل وطنية ومؤتمرات إقليمية... لبناء شبكة من مجتمع الحقوقيين ورجال الاعمال والجمعيات المهنية وواضعي السياسات والهيئات الحكومية
- كومبنديوم ... موقع الكتروني متخصص لنشر التشريعات التجارية وتعزيز الوصول الى المعلومات القانونية وقوانين الاعمال
- دراسات معمقة/أبحاث ميدانية واستطلاعات رأي... لصياغة منهاج للإصلاح في مجالات محددة من القوانين التجارية بحسب المواضيع ذات الاولوية في دول المشروع وهي:
  - قانون الملكية الفكرية في لبنان
  - قانون المنافسة في تونس
  - تنفيذ العقود التجارية واسترداد الديون في اليمن
  - القوانين العقارية في إمارة دبي - الإمارات العربية المتحدة
- حملات توعية... لتفعيل مشاركة المعنيين في نشاطات الإصلاح
- دورات تدريبية... لبناء القدرات على حل النزاعات التجارية في دول المشروع

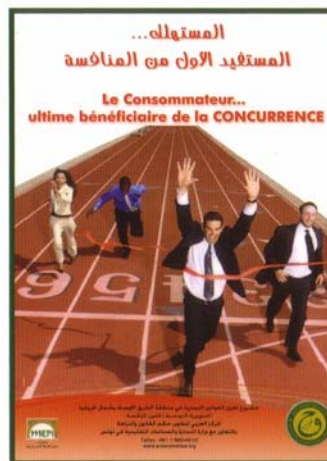




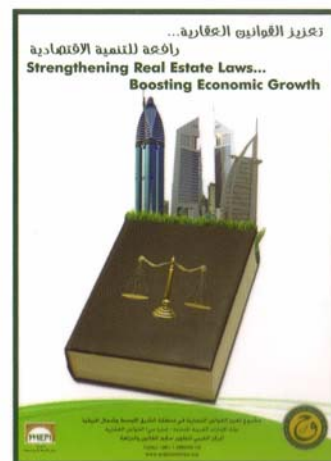
**Lebanon**  
Intellectual Property  
Rights



**Yemen**  
Enforcement of Commercial  
Contracts/Debt Recovery



**Tunisia**  
Competition Law



**UAE**  
Investment Laws



[www.arabruleoflaw.org/compendium/output/main](http://www.arabruleoflaw.org/compendium/output/main)

The United Arab Emirates occupies a prominent economic position in the world. It is considered the most business attractive economy in the Arab region.

2008 -2009

UAE 3<sup>rd</sup> in the Arab world ranking on the Ease of Doing Business

In terms of global competitiveness, UAE was the Arab leader in 2007, and ranked 33<sup>rd</sup> worldwide and 3<sup>rd</sup> in the Arab world as of the last update of the "Ease of Doing Business" Indicator published by the World Bank for the period 2008-2009.

In a comparative analysis of the index components in the Arab region, UAE ranks 1<sup>st</sup> regarding "trading across the borders" and second as far as "registering property", "getting credits" and "paying taxes", but steps to low positions for "protecting investors", "enforcing contracts" and "closing a business". As far as "starting a business", UAE made a significant progress gaining 8 points and

ranking 3<sup>rd</sup> after Saudi Arabia and Egypt.

## ECONOMIC DIVERSIFICATION AND TRADE LEGISLATION COMPLEXITY

Inspired by the legislative systems of both Egypt and Kuwait, the UAE issued the Finance Law in 1980 which hasn't been amended since. In 1984, the Trade Law was issued in 1984 and amended in 1988.

The UAE follows the principles of free economy and enjoys a substantial trade surplus as it relies mostly on natural resources, such as oil and natural gas. Recently, the strategy of economic diversification has been adopted to reduce reliance on natural resources and involve the private sector in the development process. The UAE succeeded in this endeavour. Real estate and construction sector became the second in the national economy, contributing 16.1% to the GDP in 2007. Dubai was the first to diversify its economic structure through the enhancement of tourism and services.

However, UAE did not achieve the progress desired for attracting private sector capital funds to further increase the diversification of the economy, but the private sector did contribute to enhancing the economy by providing the required skills. Noting that the vast urban development in the UAE was not due to existing trade legislation (Corporate and Commercial Representation Laws); in fact, the political stability, the open market policy and the massive availability of capital funds were all factors conducive to a business-enabling environment.

The legislative policy in UAE varies from one Emirate to another. However, each Emirate has to harmonize its internal legislation with the Federal legislation as mandated by the Constitution.



Real estate Investments face some challenges due to the investment laws that are subject to Federal laws prohibiting direct foreign ownership. Therefore most of major investments remain within the public sector of the local government or belong to the Governors themselves. Moreover, corporate laws require local partnership at 51% of capital share as a minimum. This leads to the circumvention of the law in many cases creating an unstable and insecure investment environment.

The rights of investors remain unprotected due to these instabilities regardless of attempts of the judicial system to deal swiftly and effectively.

In searching for solutions, we find that alternative means to speed up conflicts resolution through the legal system or other means, such as the establishment of parallel legal institutions (Arbitration Centers), constitute partial but risky solutions without offering a safe haven for investors.

## TO IMPROVE THE BUSINESS ENVIRONMENT

In addition to identifying legal obstacles preventing the stimulation of the private sector investments, the **Report on the Status of National Trade Laws in the United Arab Emirates (2009)** provided two sets of recommendations resulting from the discussions and brainstorming of experts, stakeholders, and decision makers in the public and private sectors:

### 1. Proposals for Administrative and Political Development:

- ❑ Publishing all laws , decrees and decisions in the official journal.
- ❑ Following international standards of democratic governance.

### 2. Proposals for Legislative Modernization:

#### *Drafting new laws*

- ❑ Issuance of new legislation covering all fields aiming to encourage investments.
- ❑ Identifying and protecting non-UAE investors' rights.
- ❑ Protecting customers and companies working in several sectors especially industrial sectors, including construction.

#### *Developing existing laws:*

- ❑ Suppressing the ceiling of 49% for foreign ownership and amending Article 22 of the Corporate Law (which stipulates that an Emirati citizen must have a 51% capital share).
- ❑ Authorizing the free zone companies to enter and work in the UAE market.

Current laws to be updated: ▪ Companies ▪ Maritime ▪ Arbitration ▪ Competition ▪ Anti-dumping ▪ Anti-trust  
▪ Fighting Commercial Concealment ▪ Electronic Signature ▪ Organization of Industries ▪ Foreign Investments  
▪ National Statistics Centre ▪ Credit Information





## MILESTONES OF ECONOMIC LEGISLATION

The nineties have witnessed a wave of large-scale legal reforms consistent with economic reforms initiated by the government in the mid-eighties, and based on the principles of liberal economy and the rehabilitation of market mechanisms. This exhaustive revision of a great number of laws included laws on investment, tax collection, finance & banking. It also revised regulations and procedures related to public procurement and contracting, trade and services activities, reinforcing competition and consumer protection mechanism, and other processes supporting the set up of small and medium enterprises and the simplification of administrative reforms.

**TUNISIA ... 1995**

**MEMBER OF WTO...**

**FIRST SOUTH MEDITERRANEAN COUNTRY TO ENTER INTO PARTNERSHIP AGREEMENT WITH THE EU...**

In line with reinforcing the competition laws in the domestic market, Tunisia has gradually relinquished competitive activities with the privatization program affecting 217 institutions in the last twenty years. In parallel, the government adopted a sophisticated legal framework to face the challenges of foreign trade liberalization, by adopting protection mechanisms aiming at facing illegal trade practices. Tunisia considered being a pioneer in the Arab region by issuing laws on competition since the early nineties, namely the Competition Law (N° 64, 1991), the Law on Import Safeguard Measures (N° 106, 1998) and the Anti-dumping & Subsidy Law (N° 9, 1999).

These reforms resulted in a business and investment-enabling environment. The good ranking enjoyed by Tunisia in the various international fora is an excellent pointer on the progress achieved in the field of economic efficiency. According to the last World Bank Report on the "Ease of Doing Business" for the period 2008-2009, Tunisia is placed 69<sup>th</sup> gaining 4 points on the international ranking of economies, 7<sup>th</sup> in the Arab region.

**2008 - 2009**

**Tunisia 7<sup>th</sup> in the Arab world ranking on the Ease of Doing Business**

In a comparative analysis of the "Ease of Doing Business" index components in the Arab region, Tunisia ranks 5<sup>th</sup> regarding "protecting investors" index making a surge in this field. As far as "enforcing contracts", Tunisia maintains its 2<sup>nd</sup> position, and steps to 11<sup>th</sup> position regarding "construction permits" and 4<sup>th</sup> position regarding "starting a business" and "getting credits", but do not register any progress regarding "paying taxes".

In spite of the outstanding performances, Tunisia faces a series of challenges, such as capacity to face external competition, and unemployment for university graduates.



## TO IMPROVE THE BUSINESS ENVIRONMENT

Proposals to improve the business environment included in the **National Report on the Status of Trade Laws in Tunisia (2009)**, covered a series of laws and procedures, such as the law on the service sector, the revision of administrative procedures, the provisions related to bankruptcy, the laws on the control of domestic markets and the regulation of exchanges, the law on enforcing some types of trade contracts, in addition to matching national laws with EU laws and regulations.

These proposals came as the result of discussions with experts, stakeholders and decision-makers in the private and public sectors.

### 1. *Proposals for Administrative Improvement*

- ☐ Undertake a complete and accurate diagnosis of the status of legislation enacted in the service sector.
- ☐ Work on facilitating procedures for creating and doing business.
- ☐ Achieve a progress in the second program for export promotion and move toward the third program.

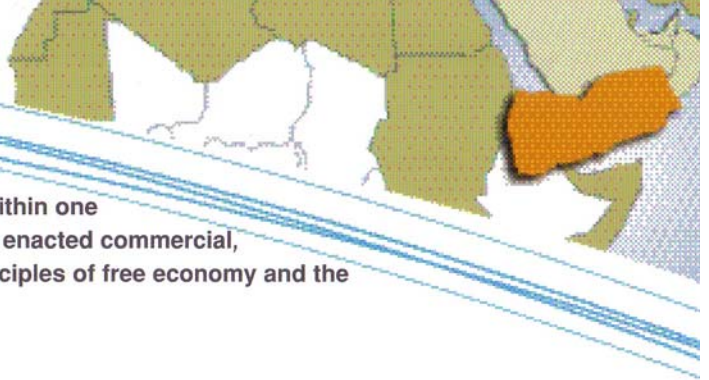
### 2. *Proposals for judiciary reforms*

- ☐ Consider relinquishing trade departments and work on instituting legal authorities specialized in financial crimes, namely a specialized financial prosecution office.
- ☐ Strengthen and rehabilitate the legal structures and support court specialization.
- ☐ Speed up the closing of trials.

### 3. *Proposals for legal reforms*

#### Developing Existing Laws

- ☐ Revise the law related to standardization and work on mutual recognition with the EU and some Arab countries.
- ☐ Revise the law on foreign trade to promote liberalization of exchanges and reduce the technical control procedures.
- ☐ Revise the law on the commercial register to incite the stakeholders to update information concerning their activity.
- ☐ Achieve a progress in developing mechanism to collate the laws governing the trade sector into one single journal.
- ☐ Revise the legislation regarding the control of the domestic market and the protection of consumer (draft law on food
- ☐ Revise the law on the distribution sector in a way that guarantees the balance between producers, distributors, while complying with modern distribution systems.
- ☐ Revise some laws related to some commercial activities for which exclusivity has been granted.
- ☐ Work on the development of alternative methods for amicable settlement of disputes.
- ☐ Revise the forex, and finance laws to comply with the foreign financial system and the liberalization of the Dinar.



The division of Yemen came to an end in the early nineties when economic and political affairs were united within one government. Modern legislative models were adopted. The enacted commercial, financial and economic laws were compatible with the principles of free economy and the international trade legislations.

## FEATURES OF ECONOMIC LEGISLATION

Creating an environment conducive to attracting investments entailed modernization of commercial legislation in various fields: Issuance of laws related to companies, finance, customs, investments, taxes, trade register, commercial representations, forex, banking, the fight against monopoly and fraud, standards' control, in addition to modern laws on electronic payments and leasing. Yemen has concluded a certain number of regional and international agreements, and is seeking to be a member of the WTO. Moreover, Yemen works on the eradication of the causes of corruption, through the enforcement of the UN Convention to fight corruption and the setting up of the Higher National Commission.

Progress was achieved in terms of liberalization of trade and prices, in addition to the privatization of a number of industrial and services sectors, namely communication. In 2008, Yemen reformed its commercial registration process to simplify business registration by establishing a one-stop shop. Reducing the number of procedures for business registration compressed establishment time.

2008 - 2009

Yemen 8<sup>th</sup> in the Arab world ranking on the Ease of Doing Business

According to the last World Bank Report on the "Ease of Doing Business" indicator in the Arab region, Yemen ranks 8<sup>th</sup> behind Tunisia.

In a comparative analysis of the index components in the Arab region, Yemen ranks 1<sup>st</sup> regarding "enforcing contracts" and steps back to 5<sup>th</sup> position as far as "registering property", and "construction permits". Yemen is still experiencing great difficulties in eliminating obstacles to free trade in different areas such as "getting credits", "protecting investors", "paying taxes", and "trading across borders".

Yemen judicial system comprised of specialized commercial courts at the first instance. All appeals of any kind are made before specialized courts of appeal. The sentences of commercial courts are final for trials not exceeding 2 million Rials.

The Yemeni constitution is distinctive in the fact that the creation of exceptional courts is prohibited and that the judicial branch is independent from the executive branch both at the financial and administrative levels.

## ECONOMIC LEGISLATION HINDRANCE AT A GLANCE

There are a number of obstacles resulting from contradicting provisions among laws. In addition, there are difficulties in implementing some provisions due to unorthodox business practices, as well as the limited efficiency of the judicial system regarding the issuance of decisions and the execution of sentences. These obstacles are fully described in the National Report on



the Status of Trade Laws in Yemen (2009), which concluded in suggesting a number of proposals and recommendations that resulted from the discussions with experts, stakeholders and decision makers in the private and public sectors.

### DIFFICULTIES IN CLAIMING THE EXECUTION OF LIENS IN THE COURTS...

The current lending system does not help in developing trade and projects financing. Loans are granted on the basis of current mortgage system and the borrower's notoriety and personal acquaintance, with no strict conditions or warranties for lending.

### TO IMPROVE THE BUSINESS ENVIRONMENT

#### 1. *Proposals for Administrative Improvement*

- Land privatization policy to increase investors' confidence in buying and leasing lands.
- Banks should improve the credit management system and place it in the hands of experienced personnel.
- Banks to follow scientific methods in securing real estate mortgages on the basis of real estate registrar (cadastre system) not on nominal system.

#### 2. *Proposals for Judiciary Reforms*

- Increase the number and frequency of training of qualified judges specialized in commerce.
- Grant the judges in charge of executing debts collection the right of requesting information from public authorities and banks regarding the deposits and assets of the party sentenced to pay.

#### 3. *Proposals for Legal Reforms*

##### Drafting new laws

- A new law penalizing members of the Board of Directors of banks regarding lending and credits.
- The Trade Law to include missing contracts such as: imports contracts, real estate mortgages.

##### Developing existing laws

- Revise current texts related to investment law to link it to the environment and public interests.
- Introduce the modern contracts such as: BOT, Franchise, and Leasing.
- Update current texts related to corporate governance, anti-corruption and competition laws.

#### PROPOSALS FOR IMPROVING CONTRACTS AND DEBT COLLECTION

- Mandate debtors to provide a statement accompanied by an affidavit about assets that can be seized.
- Amend the law on contracts certification taxes to decrease fees and promote further the publication of contracts.
- Amend the law on arbitration to include the institutional arbitration system in addition to the customary arbitration.



The team in charge of implementing the CLS-project conducted a survey on the economic legislation in Lebanon. They identified obstacles to the stimulation of investments in various sectors and compiled findings in the Report on the Status of National Trade Laws in Lebanon (2009). The Report contained a set of proposals and recommendations resulting from the discussions with experts, stakeholders, and decision makers in the public and private sectors.

### MILESTONES OF ECONOMIC LEGISLATION

The commercial legislation action in Lebanon began in 1943 with the promulgation of the Trade Law inspired by the French Law, which was virtually the only legal textbook governing the country's economic activity.

In the 1960's, a series of economic legislations were issued; including the laws on commercial enterprise and representation, the Limited Liability Company Law, in addition to the Monetary and Credit Act upon which was established the "Central Bank of Lebanon" and the set up of the banking system. However, the civil war that ravaged Lebanon in the mid-seventies slowed the pace of economic legislation.

As of the early nineties, the Lebanese government launched a series of legislative actions along with the post-war reconstruction effort that covered numerous economic activities aiming to attract investments and develop the private sector. The laws enacted included, inter alia, the development of financial markets and credit contracts, intellectual property rights, investment stimulation, tax law amendments, as well as amending the Code of Civil Procedure regarding the Arbitration Clause in the management contracts, as well as ratification of the "New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards". There is no doubt that the legislation of the financial and real estate investments stimulated the growth of the Lebanese service sector. However, laws related to the industrial private sector incentives were not up to the expectations. As to the laws governing the privatization process, they are still subject to controversy due to contradicting policies.

Since 1920's, Lebanon has concluded various international agreements. Most recently, Lebanon has signed different free trade agreements with its partners, namely the EU Partnership in 2006. Concerned authorities are addressing issues related to deficiencies of existing laws to make them compatible with the accession requirements of the World Trade Organization.

2008 - 2009

Lebanon **11<sup>th</sup>** in the Arab world ranking on the Ease of Doing Business

According to the last World Bank Report on the "Ease of Doing Business" indicator in the Arab region, Lebanon's ranking declined from position 9 to position 11 behind Jordan and Egypt.

In a comparative analysis of the index components, Lebanon enjoys a good position as far as "getting credit" and registers slight progress regarding "paying taxes". Lebanon steps backward to positions 13 & 14 as far as "construction permits" and "registering property". In spite of efforts to reduce the number of administrative procedures for business registration, Lebanon comes 10<sup>th</sup> as far as "starting a business" due to the high related cost of administrative procedures.



## TO IMPROVE THE BUSINESS ENVIRONMENT

### 1. *Proposals for Administrative Reform:*

- Increase the use of IT and by public institutions and promote e-government, particularly in the administrations of commercial register, the cadastre service and the tax department.
- Facilitate and simplify Social Security procedures for companies and employees
- Discharge **citizens and companies** of numerous financial clearances requested by various administrations by the issuance of financial clearances from NSSF and tax authorities.

### 2. *Proposals for Judicial Reform*

- Increase the number of qualified judges and employees and define objective criteria for their selection and promotion.
- Make legal timeframes set by the Code of Procedure compulsory with limited exceptions.
- Speed up trials, control petition exchanges, and ensure the closing of the trial on a specific date.

### 3. *Proposals for Legal Reform*

#### Enacting new laws

- Anti-Corruption Law in line with the accession of Lebanon to international treaty to combat corruption, along with a strict implementation of the current existing related laws, such as Illicit Enrichment Law/ 18-Feb 1958.
- Competition Law for the prevention of monopoly and the development of free competition.
- Corporate Governance Law and Good Governance within the adoption of the principles of the Organization for Cooperation and Development (OECD).
- Law on modernization of financial markets in line with similar European and international laws.

#### Implementing and developing existing laws:

- Proceed with improving the Privatization Law regarding the industrial and commercial public institutions.
  - Introduce new types of contracts in the legal system: BOT, Franchising, Leasing, Consortium etc...
  - Proceed with updating and amending the financial and tax laws to unify the income tax declarations.
  - Improve enforcement of Intellectual Property Rights.
  - Enhance judicial process related to IPR consistent with the laws objectives to protect the intellectual rights as incentives to creators.
- 