



MENA-CLS Project

Second Regional Conference on

“Prospects and Challenges Facing the Modernization of the Legal Environment to Enable Business and Investment in the MENA Region”

22-23 January 2010

Beirut – the Lebanese Republic

Closing Report



With the support of the Middle East Partnership Initiative

Table of contents:

1. Brief Agenda.....Error! Bookmark not defined.
2. Closing Report: 11
 ❖ **Introduction..... 12**
 ❖ **Closing Session and Recommendations:..... 13**
3. Conclusion: 18

1. Brief Agenda

Day One: Friday January 22, 2010

15:00 – 15:30	Registration
15:30 – 16:00	Opening Session The opening session will provide official statements and set the tone for the conference. <i>Short movie on CLS project and its main pillars</i> Statement of the Arab Centre for the Development of the Rule of Law and Integrity (ACRLI) and presentation of the programme Statement of the Middle East Partnership Initiative (MEPI) representative Statement of H.E. Minister of Justice in Lebanon
16:00- 16:15	Break
16:15 – 18:00	Introductory Session: The Business Legal Environment in the MENA Region from the Perspective of International and Regional Organizations involved in Commercial Activities and Development: An outlook on Expertise, Experiences and Recommendations for Reform and Development. <i>This session will present the field experience of international and regional organizations in terms of activities and practices in the MENA region according to their respective competences. The Organizations involved are the following:</i> <ol style="list-style-type: none">1. <i>Commercial Law Development Programme-CLDP- US Department of Commerce</i>2. <i>Union of Arab Banks- UAB</i>3. <i>Organization for Economic Co-operation and Development-OECD</i>4. <i>Millennium Cities Initiative of The Earth Institute-MCI- Columbia University</i>5. <i>International Chamber of Commerce-ICC</i>6. <i>Al Iktissad Wal Aamal Group</i>

7. *World Bank*

- **An Overview on the Laws governing the Commercial Contracts and Lending based on the Commercial Law Development Program's (CLDP) experience in the Region**
- **Commitment of Arab Banks to Investment Mechanisms, Credit Guarantees and Risk Reserves in the Arab Region and Achievements of the Union of Arab Banks in this area.**
- **Regional Trends in Investment Laws, Public Private Partnership Frameworks and Corporate Governance**

- **Attracting Investment into Medium-size, Small- Budget Cities.**
- **Resort of Regional Public-Private sectors to the ICC Arbitration Court to resolve Trade and Financial disputes arising from International Contracts and the Commitment of Litigants to the Implementation of Arbitration Judgments.**
- **The Status of the Arab Investment Environment under the recent Economic Crisis**
- **Reforming the Corporate Legal Framework- Issues and Approaches**

- **Open Discussion**

Day two: Saturday 23 January 2010

9:30 – 11:00 Session 1: Intellectual Property Law: Challenges and Reform Recommendations- the Lebanese Model

This session will discuss the importance of protecting all forms of IPR with a special emphasis on the literary and scientific aspects. It will accentuate the importance of developing IPR Laws in light of the great technological advancement, openness of markets and the development of publication means. Furthermore, it will reveal how laws that existed until the late seventies of the last century, are keeping pace with recent developments since theft of intellectual and literary production are trans-national crimes which require international cooperation and developing national laws.

- **Presentation of the IP Thematic Survey results in Lebanon**

The survey in Lebanon aimed at collecting statistical data that helped the National Team to prepare the thematic national study. The survey targeted 165 people involved in the subject of the study.

- **The main findings of the National Thematic Study on Intellectual Property in Lebanon**
- **Regional/Arab Cooperation for protecting Intellectual Property**
- **International Means for protecting Intellectual Property and fighting Counterfeit and Piracy**
- **Open Discussion** (30 minutes)

11:00 – 11:30 Break

11:30 – 13:00 Session 2: Competition Law: Challenges and Reform Recommendations- the Tunisian Model

This session will discuss the importance of competition legislations within the framework of commercial laws in general and in light of the related international treaties and the recent economic developments.

The Tunisian experience will be tackled as a model in this session, whereas the economic background which enabled the enactment of the Competition Law will be discussed as well as the legislative and institutional framework of this law. Moreover, this session will address the relationship between Competition and the public sector as well as the impediments facing the competition in the financial markets and the reform and development paths.

- **Presentation of the Thematic Survey results on Competition Law in Tunisia**

The survey in Tunisia aimed at collecting statistical data that helped the National Team to prepare the thematic national study. The survey targeted 165 people involved in the subject of the study.

- **The main findings of the National Thematic Study on Competition Law in Tunisia**
- **Opening the Public Sector to Competition: Promoting Competition Rules and Enforcing the provisions of the Law in the Public Institutions**
- **Beyond the Financial Crisis: the Role of Competition Policy**
- **Open discussion** (30 minutes)

13:00-14:30 *Lunch*

14:30 – 16:00 **Session 3: Enforcement of Contracts and Recovery of Commercial Debts: Challenges and Reform Recommendations- the Yemeni Model**

This session will discuss means and major hurdles facing the enforcement of contracts and recovery of debts in general as well as applying the necessary guarantees to facilitate the enforcement and recovery of debts on the one hand and to avoid risks faced by creditors in the debt recovery on the other. The Yemen

will be presented as a model in this area.

The session will conclude by proposing development and reform procedures that would enable both the administrative and legal systems to become more effective in the field of granting and enforcing credits.

- **Presentation of the Thematic Survey results related to the Enforcement of contracts and the recovery of Commercial Debts in Yemen**

The survey in Yemen aimed at collecting statistical data that helped the National Team to prepare the thematic national study. The survey targeted 165 people involved in the subject of the study.

- **The main findings of the National Thematic Study on the Enforcement of contracts and the recovery of Commercial Debts in Yemen**
- **The need to reform Banking Securities and Guarantees as a Precondition for Granting Loans**
- **International Measures to avoid Bad Debts Problems and exposing the Depositors to Risks- Lessons Learned from Basil II Committee of Banking Supervision to avoid Credit Risks**
- **Open Discussion**

16:00-16:30 Break

16:30 – 18:00 **Session 4: Investment with a focus on the Real Estate Sector: Challenges and Reform Recommendations- the Dubai Model**

This session will present key investment laws in the UAE, at both the federal and the Dubai levels with a special focus on the real estate sector. It will address Property Laws and the various forms of long term leasing contracts in addition to the administrative and legal bodies entrusted with the implementation of such laws.

Moreover, the session will address the most important activists in the field of investment and real estate development in Dubai, real estate registration in addition to the resolution of conflicts. It will tackle the most important recommendations for reform and development in terms of current laws and potential future laws, while highlighting the relation between the prosperity of the real estate sector and the legal reform.

- **Presentation of the Thematic Survey results on the (20 minutes)
Investment with a focus on the Real Estate Sector in Dubai**

The survey in Dubai aimed at collecting statistical data that helped the National Team to prepare the thematic national study. The survey targeted 165 people involved in the subject of the study.

- **The main findings of the National Thematic Study on (15 minutes)
Investment with a focus on the Real Estate Sector in Dubai**
- **The New Law to protect the rights of Real Estate Investors (15 minutes)
- How to regulate the relationship between Developers and
Investors**
- **Prosperity of the Real Estate sector in UAE in harmony
with the Legal Reform: Lessons learned from the recent
Crisis for moving forward**
- **Open Discussion**

18:00 – 19:00 Closing Session

- **Closing Statement**
- **Presentation of the conference's outputs**

2. Closing Report:

❖ Introduction

Within the MENA-CLS Project implemented by the Arab Center for the Rule of Law and Integrity (ACRLI¹) in cooperation with the Middle East Partnership Initiative (MEPI), ACRLI organized the second regional conference on **“Prospects and Challenges Facing the Modernization of the Legal Environment to Enable Business and Investment in the MENA Region”** held in Dbayeh, Lebanon on 22-23 January 2010.

More than 125 participants² from the project’s pilot countries³ representing the Legal and Business community, representatives of international and regional organizations attended the two-day conference and participated in its various sessions.

The second regional conference on “Prospects and Challenges Facing the Modernization of the Legal Environment to Enable Business and Investment in the MENA Region” is the final and fundamental activity of the MENA-CLS project that sought the interpretation of key findings of the project including researches, general and specialized reports and surveys in the project countries. This conference is an extension of the dialogue launched during the first regional conference held in Tunisia on 15-16 May 2009 on “Creating a Dynamic Environment for Business in the MENA Region: Challenges and Priorities” which served as a forum for the exchange of ideas and experiences between participants and enabled a peer learning process forming a reference point for ideas, efforts and modernization needs in this area⁴.

¹ ACRLI’s website: www.arabruleoflaw.org

² Attached herewith Annex No.1: List of Participants

³ The project Pilot Countries are: Lebanon, Tunisia, Yemen, UAE

⁴ For further information on the second regional conference please visit the following link:
<http://www.arabruleoflaw.org/activitiesListing.aspx?postingID=363&categoryID=5&Id=188>

The conference interpreted key findings of the project including research, and general and specialized reports and surveys on commercial laws in the project countries. It also proposed reform recommendations related to real estate investment laws in Dubai, competition laws in Tunisia, Lebanese intellectual property laws, and enforcement of contracts and debt recovery in Yemen.

The identified reform recommendations will be advocated in front of the decision makers for further action and are expected to produce tangible impacts and concrete results as it was the case with the first phase of the project.

- Report on Intellectual Property in Lebanon
- Report on the Competition Law in Tunisia
- Report on the Investment Law in the UAE (with a Special Focus on the Real Estate Sector in Dubai)
- Report on the Enforcement of Commercial/Financial Contracts and Debt Recovery in Yemen

This report provides a brief on the main recommendations of the conference in addition to results achieved through the interventions and discussions of participants that enriched and added value to the conference.

❖ **Closing Session and Recommendations:**

The closing session summarized the main findings of the four workshops. After declaring the end of the conference; the conclusions and recommendations that resulted from the conference were presented as follows:

- **Recommendations of the first session on IP protection (in Lebanon):**
 - Adopt acceptable and necessary limits for the protection of intellectual property rights in general.
 - Address the legal constraints and any legal gaps in existing laws and draft laws.
 - Address the practical constraints: lack of staff, lack of adequate equipment, high fees, slow proceedings, the weak budget...
 - Facilitate and promote access to intellectual property laws and trade systems.
 - Address the judicial backlog problem by addressing the shortage of judges and experts and specialists in the field of intellectual property rights.
 - Address the lack of laws and regulations problem.
 - Develop scientific strategic basis to fight intellectual property crime.
 - Adopt a comprehensive action plan to activate the protection of intellectual property rights.
 - Adopt a financial plan to encourage innovation and promote intellectual property as a culture and economic wealth.
 - Promote and raise awareness among the public and strengthen their familiarity with intellectual property rights and the means to protect them
 - Involve developing countries and least developed countries in this issue
 - Train cadres in the ministries and bodies concerned.
 - Promote awareness and disseminate IP culture in collaboration with the Department of small and medium-sized enterprises.

- Carry on with the implementation of the model project to address the weaknesses of laws and apply severe sanctions, which serves as a guiding project for the Arab states.
 - Commitment by the Arab countries that shall interpret laws in a consistent manner or joint at least.
 - Discuss intellectual property issues in new media that are important in promoting innovation
 - The need to teach intellectual property, especially on the scope of BA students in the Arab world.
 - The Arab states shall own the issuance of the necessary decisions
 - The role of the League of Arab States shall secure cohesion among IP legislations in the Arab world
 - Conduct specialized statistics to determine who are the pirates and who are the counterfeiters and to determine the number of inquiries to the prosecution
 - Move forward with the project for the establishment of an Arab office for the registration of patents
 - The need to strengthen international cooperation to achieve concrete results in the field of combating piracy
 - Emphasis should be placed at the national level to meet international standards for combating piracy and counterfeiting and impose severe penalties
 - The need to exchange experiences at the level of international organizations and local authorities and building the capacity of these authorities via international cooperation
 - Supplement developing countries with these experiences through financial and technical assistance.
- **Recommendations of the second session on the Competition Law in Tunisia:**
 - Staying the course: no tolerance for cartel type behavior

- Resisting protectionist pressures
- Stepping up consumer protection policies
- Flexibility for restructuring and merger operations
- Exit strategies for state intervention (re-privatization of enterprises totally or partially nationalized during the crisis)
- Stronger advocacy role of competition authorities
- National studies and workshops at the local level
- Training of enforcement officials and judges
- Integration of competition in curricula for higher education
- Exchange of experience at a regional level –creating a MENA forum for competition
- Peer reviews of national legislation and policies
- Advice on the design of competition laws and agencies
- Twinning programs and institutional partnerships.

- **Recommendations of the third session on the enforcement contracts and recovery of commercial debts in Yemen:**

Part One: Recommendations related to banks

- Review contracts and reconsider the adopted model contracts
- Adopt clear contract models that are free of ambiguous and brief terms
- Provide facilities for corporate investments
- Set preconditions for loans
- Provide credit departments with qualifying high banking competencies and capabilities
- Emphasize on the completeness of the credit facility papers (documents and contracts...)
- Establish departments to follow-up bad debt cases that shall be eligible to manage good dialogue and sound discussions with customers
- Resort to modern means of resolving disputes (conciliation and arbitration)

- Rely on sound economic feasibility studies
- Reforms shall include in general the management aspect, especially corporate governance
- Reform and improve the performance of banking and activate its mechanisms
- Create modern and developed banking rules and regulations
- Correct the existing imbalances in the banking system (separate management of the banking company from shareholders)
- Develop and adopt standard policies and systems on the granting of loans for all banks without exception
- Continue the monitoring of project implementation and operation
- Create an IT system for bank clients
- Create a unit to collect information on customers
- Verify the qualities of borrowers and their eligibility before concluding any contracts with them.

Part two: Recommendations related to courts

- Review the existing legislation governing this type of activity
- The Ministry of Justice shall continue and upgrading training through providing integrated and private courses
- Adopt written pleadings rather than oral in order to double the achievement and avoid confusing the lawyers and conflicting parties
- Address the lack of electronic filing of cases and court documents
- Address the judicial backlog
- Facilitate the enforcement of judgments
- Address the slow pace of procedures which does not fall in the interest of banks

Part three: Recommendations related to Basel II:

- Distribute less profits

- Supply dynamic provisions for the bad years
- Define the leverage ratio for banks
- Identify ways to calculate the risk of concentration
- provide training on governance and oversight
- Adopt a comprehensive review for the reward policy
- Exchange reports in banks and banking authorities
- Adjust with the principle of the fair market value

Part four: Recommendations in general

- Facilitate access to commercial systems and laws
- Create simple tax systems
- Strengthen cooperation between local authorities and the central authority with the business sector

- **Recommendations related to the fourth session on investment with a special focus on the real Dubai:**

- Protect consumers and investors from financial abuse.
- Establish robust supervision and regulation of financial institutions.
- Develop a single set of high quality accounting standards.
- Loan originators must keep part of their risk through judging the credit worthiness of borrowers and assessing the property.
- Aim for more clarity on the status of Rating Agencies, for better transparency and additional regulation, supervision and monitoring.
- Central bank must formulate a better systematic monitoring system.
- Avoid underestimating the strength of strong domestic whose weakness and non comprehension can cause domestic failure.
- Avoid excessive investment in one particular industry; Diversification.

- Provide Real Estate with substantial amounts of equity in order to provide an appropriate asset liability match.

3. Conclusion:

This conference formed an important reference point for regional reform efforts seeking to promote commercial laws and enable the business environment in the MENA region. It provided an objective and practical review process tackling the current status and specific need of countries. Moreover, the interventions and lively discussions during the sessions served as a common ground enabling the exchange of Arab as well as international experiences and expertise which positively deepened the capacity building process and pushed forward the wheels of development and reform. Additionally, the conference contributed in strengthening the capacity to understand complex commercial laws based on findings developed in the course of the first level of the project. The Conference also produced legal reform recommendations and general strategies that would promote the business environment in the project countries and strengthen the capacity of the private sector to participate in future political dialogues with governments.