



## MENA Commercial Law Strengthening project- CLS

### **National Report on: The Enforcement of Contracts and Recovery of Debts in the Republic of Yemen**

#### *Executive Summary*

**December, 2009 A.D.**

The first part of the national report presents the legislative framework for the enforcement and implementation of contracts and recovery of debts in the Republic of Yemen, by reviewing domestic laws and international conventions, as well as draft laws, relevant decisions and ministerial circulars. In this context the study highlighted the following:

- Yemen is one of the Arab countries that tried its best to strengthen the legislative, judicial and institutional structure in a way that complies with the evolution of economic activities and the growth of commercial transactions, and to convoy with the diversity of disputes resulting from these transactions.
- After the establishment of the Republic of Yemen in 1990, the Yemeni government gave a special care and consideration of passing modern laws that comply with the evolution of the society
- Perhaps this is due to the nature and role of the serious economic policies manifested in economic freedom and incorporated in the market's mechanism and Yemen's effort to import Arabic and Foreign capitals and to attract their interest to invest in Yemen.
- The study included 20 domestic laws with provisions related to the implementation of commercial contracts and debt recovery, as well as a list of relevant regional and international conventions to which Yemen acceded and new draft laws and a list of circulars and ministerial decrees.
- Regarding commercial judiciary in Yemen which is entrusted with the enforcement of contracts, the study indicates that:
- Pursuing the economic and commercial evolutions in the aim to take the commercial disputes and investments out of the normal courts range; Commercial courts were established for the first time in Yemen in 1976 and then had taken the States good care as it appeared through their being affiliated to the State's Legal Bureau that was responsible for all the State's financial and administrative affairs, of the evaluation of its performance , of publishing their verdicts and of overcoming all the obstacles that come in the way of their activities. The period between 1976 and 1985 witnessed a flourishing prosperity in the performance of the Yemeni Commercial Jurisdiction.
- After the establishment of the Yemen Republic in 1990 and after several attempts to treat the commercial judicial situation, to correct its track, and after the failure of the treatments and procedures taken by the government-represented by the Ministry of Justice and the Supreme Judicial Court and confronting the interlacing and diversity in economic, commercial and financial transactions in the country and the resulting complicated and various disputes generally, and for the impositions of the development and investment requirements, the President, who is the head of the Supreme Judicial Court, issued a decision in 1997 to re-establish the commercial qualitatively specialized courts to examine law suits and disputes.

- Eversince, the reformation of the commercial jurisdiction in Yemen, elevated to first and second degree with a Commerce Department in the Supreme Court as stated according to the requirements of the decision issued in 1997, formed an important transformation to the Commercial Jurisdiction in Yemen. The important transformation was in choosing the judges of the commercial courts in all their degrees according to special standards and conditions along with developing the judges capabilities through training courses and seminars held in this domain inside and outside Yemen in addition to ensuring the requirements of the action of these courts satisfying their needs in concordance with their specialties.
- The study included statistics related to disputes concerning commercial contracts viewed by the commercial courts of First Instance, and of Appeals (2006-2008). According to the statistics of 2008 for instance, the number of cases viewed reached 8275 including 4236 competed cases and 4039 outstanding cases and the completion percentage during this year recorded 51%.
- The national report addresses the legal framework of contracts and their implementation focusing on the legal rules of the executive securities, and direct means of execution such as the threatening fine, provisional seizure, sequestration, confiscation of debt with thirds, executive confiscation, enforcement of stipulations and their precept on the State

In this context, the study focused on the following:

- The laws of contracting in Yemen are organized by the Civil Code that includes a number of general rules for contracting and commitments in addition to some contracts nominated in this same code , the most prominent are : Contract of Sale, Real Estate Insurance Contract, Rent Contract and Agency Contract.
- The civil code is considered as very flexible in the subject of contracts since it allows parties to contract about any subject or matter that the code itself doesn't mention. This particularity of the law avoids the mentality present in many countries that are being converted to democracy and that forbids all activities that are not clearly stated as legal by law.
- The enforcement of contracts and debt recovery in Yemen were organized in the Procedures Code and the Civil Implementation No. 40 of the year 2002.
- Generally speaking, compulsory enforcement is not permitted unless it comes out of an economically executive bond for an existing granted right with specified value and in the satisfaction state; also, it is not permitted to execute unless pursuant to an execution bond footed by the executive form as long as the law doesn't state otherwise.
- Moreover, it is permitted to execute the executive bonds issued in foreign countries as long as these bonds match the Yemeni law, since the executive request is subject to the organizing laws of the enforcement of foreign rules stated in Articles (491-496) of the Procedure Code and Civil Implementation No. 40 of the year 2002 A.D.. Pursuant to these rules, the execution judge practices his job taking into consideration not to breach

the rules of International treaties that consider Yemen as a party hereof as stipulated by the Procedure Code and the Civil Implementation in Article (497) hereof.

- The Yemeni Government in its different relevant institutions has given an obvious attention in carrying out contracts. No doubt that the progress that the Yemen obtained in executing the economic, financial and monetary reformations had reflected positively in improving the Yemen's situation in the International reports and that reached the contracts enforcement level, as the last (Doing Business) report about the milieu of business performance, included a lifting of the Yemen's rank in the index of contracts enforcement and which resulted from lessening the number of the procedures put in usage. According to this report, the Yemen's situation is considered as advanced over the other 9 indices, as it occupies number 1 rank among all the Arab nations.
- The second part of the report addressed the issue of bank debts by presenting them and classifying them including bad debts. It also addressed problems related to bank debts and proposed solutions for their recovery whether by domestic means, or through the judiciary or through arbitration and other means

In this regard, the report highlighted the following:

- Despite the exalted efforts to treat the phenomenon of uncollected bank debts and to put into effect many policies and procedures that the Yemeni Central Bank adopts to enforce the role of the banking sector, yet, the financial role that this sector plays in economy is still weak considering its small size and its limited banking services that are provided and its non-possession of a comprehensive standard vision, in addition to not being subject to actual censorship and to international organizing standards.
- If banking activities represent the cornerstone of developing investments and promoting the national economy, then the care of finding guarantees for banks to the recovery of their various debts shall be a priority in the present time. Since the State presented by its relevant institutions and the banks themselves believe that there are steps and different legal/judicial procedures that ought to be taken to treat the cases of uncollected bank debts, but in contrast we should acknowledge that many of the procedures taken to face and treat these problems took place during the late few years in legislative reformation domain and or the commercial jurisdiction reformation.
- That doesn't mean that the entire institutional, legal and judicial information package had been put to solve the bank debts problems and to guarantee the debts recovery, since there are still many unapplied legal procedures and missions that should be put into effect to find solutions of serious existing problems including documentation problems and real estate register problems.
- Maybe the most important and the biggest problem hereof is related to the administrative system of companies, institutions and banks business in Yemen generally, because the structure and the application of this system hold the biggest responsibility of the existence of the bank problems related to the contract enforcement and debts payment, as it has been noticed that the biggest part of the problem comes out from this

system, and it is enough for us to say that the banking system lacks professionalism in practicing its work.

- As a conclusion, the responsibility lies on all the banks and the official and judiciary institutions to treat and recover uncollected debts, but the biggest responsibility lies on banks themselves since they are the primarily concerned in recovering their debts and in protecting themselves by granting the appropriate fiduciary decision and documenting their procedures according to the standards, banking practices, legal requisites put into effect; mostly important is to correct and develop their stocks as a precondition to grant loans, so they can avoid their new loans top become "uncollected debts" again, or even" bad debts".
- The statistics reveal large numbers of loans and advances as on 31/12/2008, exceeding \$ 418 billion YR. The table below shows the amount and the annual increase of the above classified loans and debts of banks operating in the Republic, including bad debts:

<b>Total loans (in millions of rials)</b>						
	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009 (September)</b>
Below normal category	<b>4,030.0</b>	<b>3,501.7</b>	<b>6,540.7</b>	<b>15,276.4</b>	<b>6,786.5</b>	<b>7,810.8</b>
Doubtful debts	<b>3,539.2</b>	<b>3,677.7</b>	<b>3,313.6</b>	<b>6,899.9</b>	<b>668.2</b>	<b>9,330.1</b>
Bad debts	<b>24,361.8</b>	<b>29,438.8</b>	<b>31,602.4</b>	<b>27,660.9</b>	<b>46,362.2</b>	<b>41,648.6</b>
<b>Total</b>	<b>31,931.0</b>	<b>36,618.2</b>	<b>45,456.7</b>	<b>49,837.0</b>	<b>53,816.9</b>	<b>58,789.5</b>

Part Three of the report sets out recommendations and proposals relevant to developing and reforming different aspects addressed in this study and which we look forward to present them to policymakers and decisionmakers as well. The proposals and recommendations are as follows:

#### **First: in the framework of domestic legislations and international agreements**

1. Given that the Law of Civil Procedures has the utmost importance, we believe that there is a need to issue an alternative law and it is not enough to amend 34 articles. The practical implementation of the provisions of the current law, highlighted many difficulties due to the inertia that surrounds the texts. In addition to what is stated in the amendments

addressed in this report, there are still many provisions that need to be modified such as provisions relating to oral pleadings, stopping dates of appeals, amounts of fines, provisions of defenses, provisions of appeal, including the dates, procedures and the reasons for the appeal, as well as the enforcement of provisions, including domestic and foreign judgments.

2. Amending the law organizing agencies and branches of foreign companies, which contains certain provisions that constitute obstacles to the exercise of commercial activity for each of the foreign companies and local agents or distributors, and amending unclear articles in the law.
3. The accession of the Republic of Yemen to the Paris Convention for Industrial Property requires a re-consideration of the provisions of the Intellectual Property Rights Act and harmonizing its provisions with the provisions of the Convention.
4. Although Yemen has acceded to a number of international and regional conventions, there is a number of agreements that have not been ratified by Yemen despite their importance. Perhaps the most important is the New York Convention in 1958 on the Recognition and Enforcement of Foreign Arbitral Awards which was ratified by (142) countries so far, including (15) Arab states as well as the Hague Convention for the Pacific Settlement of International Disputes in 1907, with (109) members including (12) Arab States. Therefore, we recommend policymakers and decision makers to take practical steps towards acceding to these conventions.

## **Second: In the framework of developing commercial judiciary**

1. The National Team faced difficulties in obtaining the (legalized) statements of the claims in the records of the Trade Courts and Branches, since the records don't include the classification of the cases through which it is able to know the number of each type of the cases accurately and easily. By this matter, we recommend the adoption of the classification of the claims presented to the Trade Courts and Branches in the records of these courts.

2. Aiming at the raise of the completion percentage and the concluding of the claims presented to the Trade Courts and Branches, we recommend that the Ministry of Justice continues its course it has followed in the late years represented by supporting the First Instance Trade Courts with the forebears of the graduates of the High Judiciary Institute and to continue the support of the judges' abilities in these courts through the organization of the training courses specialized for them.

3. To double the Trade Courts and Branches completion of claims, it is recommended to adopt the presentation of claims, the replications, the pleadings and all kinds of petitions (in writing) in the sessions of the courts instead of presenting them orally by the lawyers. This may save a

lot of efforts and time wasted, as well as avoiding any discrepancies expected to take place between the written and the oral presentations in the courts sessions.

4. Provide judicial cadre in commercial courts that is aware of the importance of banking and its necessity for societal movement and growth, and understands that interests are not usury and banks have the right of full recovery.

### **Third: in the framework of reforming and developing banking affairs**

- The crucial and essential solutions to the issues of banks and foremost, debts and their recovery are within the banks themselves. In our view banks need to review their basic contracts and perhaps they need to start with developing and reviewing their contract models most importantly, the model of the loan agreement and the model of a credit facility. Moreover they should grant loans and facilities to investment projects and commercial entities rather than individuals.
- Loan agreements should include pre-terms approved by the bank (such as a certificate from the borrower that his properties and assets securing the loan as well as his income are not subject to any seize or mortgage)
- Credit departments should be equipped with bank skills of high qualification and should be familiar with studying and analyzing client applications as well as guarantees and financial solvency to reduce any potential risks and the utmost importance is the rapid and attentive follow-up.
- Banks should complete all credit facility papers including documents, contracts, customer addresses, business records, regulations, official licensing, checks, bonds and financial or real estate or personal business guarantees and all papers that preserve the rights of the bank.
- Establish special departments or sections to follow up with customers facing bad debt problems. These departments or sections should be eligible to manage the dialogue and substantive debate with customers, without arbitrariness or lack of awareness, and should seriously follow-up their debts situation and reach compromises that best meets the interest of the bank.
- Banks should pay attention to alternative means (mediation, conciliation and arbitration) to settle their disputes, especially institutions specialized in the settlement of commercial and investment disputes as the Yemeni Center for Conciliation and Arbitration, which will assist banks to recover debts due to the speed and effectiveness of these means in resolving commercial disputes.
- The lack of studies on the feasibility of projects to which loans are requested, inevitably leads to exploiting the loan without any benefit. Especially when the purpose of the loans and obligations of the borrower not to use loan proceeds for other purposes are not specified.

- Adopt sound and written lending policy to control methods and means of decision-making at the level of credits and should be implemented within banks successfully
- Adopt an effective classification system for debts that is operated automatically and within common standards applied to all banks and implemented under the continuous control and supervision as well as taking effective punitive measures by the central bank in case any bank violates them.
- Adopt an exact pricing system for loans to be adopted by decision-makers in terms of implementation by providing information to decision makers on the costs of sources of funds and indirect administrative costs
- Adopt a system that avoids unlawful competition between banks so as not to engage in unhealthy speculative lendings to increase the number of banks in the banking market at the expense of quality and cost of funds and to avoid the reduction of bad debts
- Establish special and effective credit commissions specialized in granting credit where decision makers therein take sound decisions based on an effective system that provides credit information and ensure the integrity of pricing in accordance with the principles of objectivity and contribute to the diagnosis of bad debts in advance
- Adopt intensive training programs for staff and credit officers and credit committees, decision makers to enable them to take proper credit decision which avoids the banks from falling into the new trap of bad debts
- Create a positive climate for lending ensuring the quality of loans and not just the number
- Require financial and banking institutions to adopt the governance system and separate ownership from management and form specialized committees to monitor the functioning and work of boards in banks
- The Central Bank of Yemen shall take strict and deterrent measures against banks that grant any loans to clients with bad debts in other banks requiring them to pay those debts and imposing the required legal action to ensure debt recovery especially after they no longer bother any importance to the appearance of their names on the list of bad debts issued by the Central Bank.
- Take the necessary actions against troubled debtors by not allowing them to engage in any projects implemented by the government unless they settle with their banks
- Consider agreements and signed contracts approved by the competent courts with debtors an executive bond pursuant to res judicata and avoid conflicts of current accounts, especially after the closure of the accounts and obtaining approvals
- Accelerate the pace of adoption and issuance of the new documentation draft law prepared by the Ministry of Justice, which was forwarded by the Government to the Parliament in order to avoid the risks facing the banks especially view the insistence of debtors of refusing the process of documentation of credit contracts and mortgage contracts because of the high fees imposed on those documents



- Accelerate the adoption of the legal fees law made by the Ministry of Justice and forwarded to the House of Representatives in mid-2009
- Correct practice and change the mentality of lawyers and judges in many of the concepts and legal doctrines that are the foundations of development of the law to address problems related to contracts, such as the theory of arbitrariness in the use of the right - the concept of contractual freedom - the concept of relative impact of the contract - the concept of financial rights through holding training courses
- Devote Greater attention to the reform of the administrative system for companies and financial institutions through reviewing the terms of appointment of administrative leadership - the consolidation of the principles of conflict of interests between administrative leadership and the company or partners - the adoption of transparency - pay attention to the regulatory systems and the legal departments.
- Correct erroneous behaviors through the establishment of rules of conduct by experienced and qualified legal professionals, as the continued focus on the judiciary as the only reform hub is not enough and we must give greater attention to our management.
- Address the discrepancies between the general rules of the Civil Law and the special rules of the Commercial Law that highlighted implementation gaps and difficulty in relying on the general rules to interpret texts and complete obligations (Unjust Enrichment – assignment of debt and assignment of right - the provisions of mortgage and concessions).
- Reform the legal system of interests through explicit provisions recognizing interests, determining the legal rate of interest, setting legal terms and controls on interest rates and requirement to separate between riba-based transactions and non-riba-based transactions