



**Arab Center for the Development of the
Rule of Law and Integrity**



**Republic of Tunisia
Ministry of Commerce and Handicrafts**

**Regional Conference on
“Creating a Dynamic Legal Environment for Business in the MENA Region:
Challenges and Priorities”**

**15 – 16 May 2009
Gammarth, Tunisia**

Final Report of the Conference



With the Support of the Middle East Partnership Initiative

Agenda Summary:

Day one: Friday 15 May 2009	
16:30 – 17:30	Registration
17:30 – 18:00	Opening Session: Welcome statements and background information setting the tone for the conference
18:00 – 20:00	Plenary Session One: Overall Assessment of the Business Climate in Project Countries
20:00	Networking Event: Official Dinner
Day two: Saturday 16 May 2009	
9:00 – 10:30	Workshop 1: National Business Climate Development Strategies Workshop 2: Challenges for Foreign Direct Investment (FDI) in the Project Countries
10:30 - 11:00	Coffee Break
11:00 - 13:00	Plenary Session Two: Key Priorities for Commercial Law Reforms in the MENA Region
13:00 - 14:00	Lunch Break
14:00 – 15:30	Workshop 3: Key Requirements to Improve the Legal Environment for Doing Business. Workshop 4: The Case for Introducing Modern Legal Institutions into Legal Systems in the Project Countries.
16:00-15:30	Closing Session

Final Report

1. Introduction

The Arab Center for the Development of the Rule of Law and Integrity (ACRLI)¹ with the support of the Middle East Partnership Initiative (MEPI), held a regional conference on **"Creating a Dynamic Legal Environment for Business in the MENA Region; Challenges and Priorities"** in Gammarth, Tunisia on 15-16 May 2009, in the context of the MENA Commercial Law Strengthening Project (MENA-CLS).

The conference was attended by an estimated number of 125 participants² from the project countries³, including legal and business persons, policy-making dignitaries, representatives of key governmental bodies as well as regional and international experts and representatives from involved international and non-governmental organizations.

The conference aimed at presenting and discussing the **"Comparative Commercial Law Assessment Report"**, with a view to strengthen the participants' knowledge on the risks and challenges of the business climate and to contribute to the formation of a clear and concerted vision on the required reform actions and developmental policies based on the priority needs of each project country.

Moreover, the conference provided a platform for dialogue on regional economic policies to secure a new opportunity for the exchange of ideas and experiences between participants and to provide a peer learning process with a view to come up with ideas and efforts and needs of modernization. In addition, the regional report constituted a scientific tool that can thrust forward aspired legal reform.

This report summarizes the proceedings of the conference and its main outcomes that resulted through interventions and discussions which fed the decisions of the conference.

¹ ACRLI site is the following: www.arabruleoflaw.org

² You can find attached the list of participants in the conference

³ The project countries are: Lebanon, Tunisia, Yemen and the UAE

2. Summary of the Regional Conference activities

❖ Opening Session:

This session witnessed the official opening of the conference, and comprised three main welcoming statements that provided background information setting the tone for the conference.

Mr. Wassim Harb (Founder and General Supervisor of ACRLI) started by thanking all the participants for their interests and diverse efforts towards strengthening commercial law in their countries and then provided a short presentation on the achievements of the center and activities of the project. He noted that this conference is the outcome of a close cooperation between the Center and the Ministry of Commerce and Handicrafts in Tunisia and the result of the continued and thanked support of the Middle East Partnership Initiative (MEPI). Finally, Mr. Harb explained the framework, background and agenda of the Conference as well as the Regional Report, focusing on its methodology, processes and main sections.

His Excellency Mr. Marc DeJardin (Deputy Chief of Mission at the U.S. Embassy in Tunisia and Representative of the USA Government) acknowledged the excellence of the substance and organization of the conference. He highlighted the importance of this project in the development of a business enabling legal environment in the project countries which will contribute to the promotion of investment and improvement of the overall economic and legislative climate.

His Excellency Mr. Ridha Touiti (Minister of Commerce and Handicrafts in Tunisia), welcomed the country delegates to Tunisia, stressing the importance of the themes of the conference and their associated discussions that will support the outcomes of the project and contribute to the modernization of commercial laws in the involved countries, building on the different country experiences. Mr. Al Tuwaity expressed confidence in the conference's results and recommendations to the extent that they will contribute to dissemination benefits from national experiences and best of practices, especially since the experiences of the four countries are rich and various.

❖ **Plenary Session One: “Overall Assessment of the Business Climate in Project Countries”**

The session, chaired by Mr. Shokri El Mamogli, representing HE Mr. Ridha Touiti, was initiated by a short visual presentation on the statistics and basic indicators that relate to the business and legal environment in the project countries. The session discussed the main outcomes of the comprehensive assessment process that took place during the first phase of the project, addressing the characteristics of the business environment in the four involved countries (Lebanon, Tunisia, United Arab Emirates and Yemen). Focus was laid on the different key risks (economic, social, legal, administrative ...) faced by the business community in the project countries, and that are usually negatively reflected on the reform and developmental process in the region.

During this session, the following speakers provided their presentations consecutively:

Mr. Samir Nasr (Economist, Head of "Etudes et Consultations Economiques", Regional Advisor for the MENA-CLS Project) presented an intervention on "**Assessing Business and Investment Risks in the MENA Region**", where he discussed the economic and policy-making related section of the regional report, focusing on the risks and constraints of doing business in the project countries. He explained the global financial crisis in the MENA region, in terms of its implications and the means to address it, with a view to ensure investment reform, economy improvement and private sector development in each of the project countries. In addition, Mr. Nasr provided an overview on the socio-economic, political, and investment background in each of these countries, based on a comprehensive risk analysis. He also addressed the structural, dynamic and practical risks as well as the mechanisms to overcome them.

Mr. Roger Melki (Economist) addressed "**The Business Climate in Lebanon: Challenges and Policy Options for Reform**" offering a detailed presentation of the governmental reform program, that is based on six internal pillars, with financial support from the Arab and international community: (1) radical reform of public finances, (2) adopting a firm monetary policy, (3) carrying out a privatization program, (4) adopting a social sector reform program, (5) promoting growth, and (6) accessing to international

financial assistance. Mr. Melki also suggested structural reform that may contribute to enhancing growth and improving the business environment in the Lebanese State. He concluded by commending the local reform efforts which are expected to lead, in the next five years, to a marked improvement in macroeconomic indicators.

Mr. Lotfi Bouziane (Economic University Professor), addressed "**The Business Climate in Tunisia: Challenges and Policy Options for Reform**", explaining the basic indicators related to the quality and status of the business climate in Tunisia, in terms of statistics and figures. Moreover, Mr. Bouziane stressed the importance of advancing a number of legislative, economic, and administrative measures that can contribute to the alleviation of economic risks and pave the way for reform in Tunisia. He went over the evolution of the economic and investment status in Tunisia since the mid-eighties, and focused on what he called institutional dynamism in Tunisia, stressing that any enabling environment for business development should be characterized by the following interactive features (1) a firm social cohesion, (2) the widest integration in the global economy, (3) sustained economic growth, (4) weakening capacities of instruments intervening in the traditional economic policy, and (5) strengthening the role of competition in the economy.

Mr. Mohammed Al Muhairi (Senior Legal Adviser and Director of Department of Strategic Legal Affairs in the Executive Board in Dubai) addressed "**The Business Climate in the UAE: Challenges and Policy Options for Reform**" stating that UAE's economy is one of the region's most competitive and attractive to business economies, where the UAE has achieved – due to the confidence of the international economic community – a distinguished place between many countries in the world. Moreover, he emphasized that the impact of the financial crisis on the UAE economy has been limited thanks to its attractive business environment and due to the following reasons: (1) commercial openness and a strategy of economic diversification and a close public-private partnership, (2) the focus on the services sector which includes tourism, transport and communications and which has huge human labor resources with competitive wages, (3) the UAE enjoys a historical record in the reduction of tariffs and non-tariff incentives, (4) the development of non-oil exports of the share of total GDP, which amounted to more than 40%, and (5) the development of the structure of local industries based on petroleum to more diverse and inclusive industries. Finally, Mr. Mohamed Al Muhairi mentioned some of the challenges facing the business

climate in the UAE, namely: legislations; the economic recession, including the difficulties in generating income and reducing expenditure; increasing concern in the environment and greening initiatives; entry of firms in neighboring markets and remote geographic regions; the scarcity of managerial and human outstanding skills; the establishment of alliances and mega-deals; the repetition of business model; and finally risks related to international reputation.

Mr. Mohamed Al Hawari (Undersecretary for Studies Sector, Ministry of Planning and International Cooperation), addressed "**The Business Climate in Yemen: Challenges and Policy Options for Reform**" presenting the legal and institutional framework for investment in terms of existing legislations and institutions concerned with the promotion and regulation of foreign direct investment. In addition, he presented models for reform in the business and investment environment in Yemen, and explained the business environment indicators, setting the position of Yemen in the Doing Business Reports for the years 2008-2009. He affirmed that Yemen has improved in six key indicators, while it has declined in four. Finally, after talking about the overall challenges and risks facing the investment environment, Mr. Hawari identified the main obstacles facing investment according to their degree of impact and used them as a basis for key proposals for future reforms, that include (1) shifting from the General Authority for Investment to the Investment Promotion Authority (2) providing infrastructure services for the investment sites and industrial areas, (3) issuing the land register law and starting the implementation period, (4) issuing the new investment law, (5) preparing and implementing the promotion of investment strategy in Yemen (6) completing the implementation of single-window system, (7) reviewing financial and commercial laws by improving the investment environment, and (8) promoting the activity of the unit of Public-Private Partnership (PPP).

Afterwards, the audience and the speakers **engaged into a general discussion** on the repercussions of the global economic and financial crisis on the Arab World, specifically the project countries, in addition to other constraints faced by the economies of the project countries and the entire Arab region.

At the end of the session, the chairperson presented the conclusions of the interventions and discussions, highlighting the common features among the four project countries, which are:

- 1- An improved percentage of achieved growth

- 2- An economy independent of petroleum
- 3- A diversity of the production base
- 4- A prominent role of the private sector
- 5- Exerted efforts to improve the infrastructure, the business environment and attract investment.

❖ **Networking Event:**

The first day of the conference ended with a formal dinner which was attended by all the participants from the four project countries and representatives of Tunisian governmental parties, as well as the Director of the Regional Bureau for Middle East Partnership Initiative in Tunisia. This activity introduced participants from different project countries to each other and to the expert speakers ensuring the formation of personal relationships among all involved persons with a view to facilitating coordination and communication that can achieve the objectives of the project at the regional level. During this networking event, **Ms. Rola Akoum** (ACRLI Legal specialist) provided a presentation on the activities of the MENA-CLS project, specifically the awareness campaign which was launched in order to serve two main functions (i) raising awareness among target beneficiaries about project activities and results and (ii) deepening and advocating reform recommendations that will be developed as a result of the project activities.

• **Workshop 1: “National Business Climate Development Strategies”**

This workshop was chaired by **Mr. Chakib Nouira** (President of the Arab Institute for the Head of Enterprises in Tunisia) who stressed on the importance of the topic of discussion, given its close relation with the business and legal environment and its developmental dimensions.

Mr. Julien Levis (Private Sector Development Specialist, FIAS, World Bank Group) gave an intervention on "**Assessing the Business Climate: Approaches and Key Indicators**", reviewing the most important indicators for the classification of countries, particularly through the Doing Business Project. Mr. Levis focused in particular on the index of the dynamism of legislative reforms for doing business, pointing out the rank of the Arab region following the United States and Europe. In addition, he referred to the rank of each of the

project countries based on the international indexes, citing examples of important reforms undertaken by these States, for example, reforms related to loans, information about borrowings and business registration and their costs, and facilitation of administrative procedures.

Afterwards, Mr. **Alexander Bohmer** (Head of Unit, MENA-OECD Investment Programme, OECD Private Sector Development Division) provided an intervention on "**Business Climate Development Strategies: Definitions and the OECD Model**". He focused on the most important points in the organization model, particularly legislations on enterprises, the role of law, combating corruption and modern laws in the area of business. He stressed that (1) there is no single strategy model to develop the business climate, (2) there is a need for the establishment of a committee or structure in charge of legislative reform, with the participation of various ministries, the private sector and the rest of concerned parties, and (3) the role of the private sector and public-private partnerships.

The third intervention enclosed the theme "**the Role of the Private Sector and Public-Private Partnerships**", which was presented by **Mr. Yussuf Bu Hilal** (the Director General for Production Services at the Ministry of Economic Development and International Cooperation in Tunisia) who stressed the importance of developing and improving partnerships between the private and public sectors in the field of infrastructure as well as allocating a number of services that were previously exclusive to the State in order to accelerate economic growth and strengthen competition and market mechanisms. He also accentuated the need for liberalization of investment in most sectors and to allow the conversion of foreign currency earnings, highlighting the importance of recourse to the various mechanisms of this partnership to advance growth. Finally, he reviewed a number of major projects being completed in Tunisia within the framework of this partnership.

At the end of the workshop, **open discussion** took place between the participants, covering a number of points, most notably the impact of improving the business legislation on foreign investment flow; the relation between financial and economic crisis currently affecting the world; and laws relating to transparency in business and finance. Emphasis was laid on (1) the role of business legislation in advancing national investments and attracting foreign investments (2) the close relationship between domestic private sector competitiveness and the evolution of business legislation, (3) the need for ongoing

coordination between various parties involved in controlling strategies related to the development of business legislation, and finally (4) the close relationship between the economic and financial legislation and the global crisis. Within this framework, attention was drawn towards the cautious approach of some Arabic legislation that enabled their associated countries to avoid the significant impacts of the crisis, for example, the Lebanese legislation which prohibits commercial banks from speculation.

- **Workshop 2: “Challenges for Foreign Direct Investment in the Project Countries”**

This workshop was chaired by **Ms. Husniya Ali** (Director of Customer Services, Knowledge and Human Development Authority in the Dubai Executive Council) who emphasized the strong role of FDI in the promotion of investment and creation of a legal environment that is more conducive to business.

The first speaker was **Mr. Kamal Hamdan** (Economist, Head of "Consultation and Research Institute") who discussed "**The State of FDI in Project Countries: Incentives and Obstacles**" providing an overview on the macroeconomic status in these countries and focusing on the distortion in the structure of prices in the least developed countries; a thing that increases the value of foreign currency. Mr. Hamdan called for the liberalization of commerce as an incentive to improve the business climate and for improving governance, specifically on the judicial level. He explained the flows of FDI and gave a comparative overview on the state in the four countries, describing the situation in Lebanon as stable, In Yemen and Tunisia as volatile and in the UAE as increasing. Finally, the basic issue that Mr. Hamdan addressed was the flow of FDI and its impact on the recipient country, especially that direction of these funds is what determines their significance and importance. Mr. Hamdan ended his intervention by providing a statistical analysis on the flow of foreign direct investments in each of the project countries.

The second speaker, **Mr. Khalid Al Yahya** (Director for the Arab Public Management Program, Professor of Public Administration and Policy) addressed the "**Inter-relation and Interaction between Foreign and National Capitals**". He started by providing an analysis of the relationship between local and foreign investors through a description of the existing cooperation, and then he spoke of the deficiency in studies and the weakness in terms of analyzing the nature of relations in terms of interaction between internal

investors(local) and external investors (foreign). He defined four key issues that affect the quality of investors and the process of knowledge transfer: (1) the image of foreign investors, which varies according to whether investment is viewed as an opportunity or a threat, (2) the process or the problematic of the transfer of knowledge, experience and technology and (3) the relationship requirements between local and foreign investors and the public and private sectors. Finally, Mr. Yahya spoke about the issue of future researches and their relation to policymaking, especially capacity-building and investment policies.

Afterwards, **Mr. Hani AL Bouani**, (Vice president, Yemen Maritime Authority) presented an intervention about "**the Role of the Legal Community in Promoting Investment**", whereby he defined the components of the legal community in its broad concept which includes legal persons, arbitration centers, judges, Bar Associations, stressing their role in the promoting foreign investment. Afterwards, he discussed the role of the legal community in overcoming obstacles to investment, stressing the role of the lawyer as one of its basic components, especially in view of the shift of his role from the traditional activity of proceeding and defending to various activities such as arbitration, mediation, conciliation and, more importantly, his role as an adviser to the foreign investor. Mr. Al Bouani stressed the need for the lawyer to be familiar with economic legislations and asked for imposing an obligation of seeking a lawyer's assistance and services for the establishment of any company. Finally, given the role of arbitral and legal institutions and bar associations, Mr. Al Bouani stressed the need for an ongoing preparation and organization of training courses.

Upon the conclusion of all presentations, a very interactive discussion took place among all participants, whereby some inquiries were raised on the common obstacles in the four project countries and the actual role investment can play towards development.; in addition to explaining the issue of closing down the business and its mechanism as well as the means of commercial law interpretation. Consensus has been set on the following recommendations: (1) strengthening the flow of foreign investment, (2) improving and consolidating the relation between the foreign and national investors, (3) promoting the role of commercial laws, and (4) encouraging research centers and legal studies for building knowledge.

❖ **Plenary Session Two: “Key Priorities for Commercial Law Reforms in the MENA Region”**

The focus of this session was on the priorities of commercial legislation reform in the MENA Region. **Mr. Rainer Geiger** (Lawyer and International Advisor for MENA-CLS Project) chaired and opened this session, stressing the importance of modernizing the legislative framework, as one of the most prominent components towards a better legal business environment.

Mr. Elias Chalhoub (Lawyer, MENA-CLS Project Manager) initiated this session providing a presentation on **"the Commercial Law Assessment Report and its Findings on Key Legal Reforms in Project"**. He performed a superficial revision of commercial legislation in the project countries and the region and then referred to the sources of legislation based on their historical evolution, focusing on laws related to bankruptcy, taxes, competition and labor. Mr. Chalhoub stressed the need for specific laws outlining investment and described the Lebanese law as the most. He also considered the Yemeni law as good as it was developed based on the legal expertise, highlighting the necessity of acceding to bilateral and multilateral investment agreements.

Then, **Ms. Giselle Zoueïn** (Lawyer at Ibrahim Najjar Law Firm) spoke on **"Key Commercial Law Recommendations in Lebanon: Priorities and Obstacles."** She discussed the legislative amendments that contribute to promoting the investment environment, as well as the state of business on the practical and management level through an enumeration of the related laws. Moreover, she talked about the state of commercial legislative reforms especially as regards the achieved reforms on administrative development laws and laws related to the accession to international conventions. Finally, Ms. Zoueïn reviewed the main challenges facing the development of commercial legislation in Lebanon: (1) the impunity culture, (2) undermining the power of the state and (3) the corruption phenomenon.

Within the same context i.e. **Key Commercial Law Recommendations in Lebanon: Priorities and Obstacles**, **Mr. Antoine Basile** (International Economic expert and University Professor), criticized the absence of a clear economic policy aiming at the development of legislations and the lack of the concept of "legislative modernization", as a national economy requirement. Furthermore he stressed the role of incentives in promoting

investment, specifically the ones that compensate for the lack of economic structure (Risk Premium Functions), and those relating to development goals and the strengthening of the missing and insufficient factors of production to create a dynamic economy which technology forms a large part of it. After emphasizing the importance of avoiding "tax duplication", Mr. Basile discussed investment incentives, pointing out to their high cost and poor management which often lead to inequality and discrimination. Finally, he emphasized the risk of involvement of the regional countries in a detrimental competition which requires coordination between the States to prevent discriminatory competition.

Afterwards, **Mr. Ahmed Worfali** (Judge, Team leader, Centre for Legal and Judicial Council) provided an intervention on the **Key Commercial Law Recommendations in Tunisia: Priorities and Obstacles**. He explained the different steps to develop the legislations and stressed on the following legislative amendments: (1) facilitate the establishment of companies regarding publishing, (2) improving transparency of transactions between companies (3) strengthening civil liability for investors, (4) developing a strong system of profits and establishment, (5) facilitating the exit of minority partners from the company, and (6) validating agreements concluded in the company with restrictions. Finally, he provided a brief overview on the set of recommendations that were put forward by the national report on commercial law assessment in Tunisia, emphasizing that these recommendations were endorsed by the "book of commercial companies"- a legal periodic in Tunisia.

As for Mr. Habib Mulla (Founder and Executive Chairman of the Office of Habib Al Mulla and associates), he presented the **Key Commercial Law Recommendations in Tunisia: Priorities and Obstacles**. He started by describing UAE as an economic giant, that is the most detrimental, among all other Arab countries, on the global economy. He mentioned, however, that the UAE suffers from some weaknesses in terms of commercial legislations; these weaknesses can be identified as following: (1) national commercial legislation does not necessarily reflect best practices, (2) national commercial legislation is strongly based on the French and Egyptian legislation; a thing that came by coincidence and was not the result of any study or intention, especially since the French school doesn't satisfy Dubai's aspiration of becoming a regional business hub, (3) the legislative process requires an extensive number of steps vastly distributed among different ministries; a thing that risks

proper coordination and communication, and (4) the Commercial Companies Law of 1984 is still based on the Belgian commercial law of 1945. Based on the above, Dr. Mulla explored the possibility of issuing a socialist centralized law that can contribute to liberalizing the economy, mentioning that a recent draft Company law was submitted to the Council of Ministers and the National Economic Council, yet was later withdrawn according to a political decision after being described as a "disaster. Also another draft law was being prepared but turned out to be incompatible with the Chambers of Commerce and private interests.

His Excellency **Mr. Ismail El Wazir** (Member of the Yemeni State Council, President of Yemeni Centre for Conciliation & Arbitration (YCCA)) discussed "**Key Commercial Law Recommendations in Yemen: Priorities and Obstacles**", reviewing the legislative and legal features of commerce, economy and business in the country. He introduced all national commercial laws with a view to analyze their strengths and weaknesses; he also identified the economic agreements between Yemen and Arab and foreign countries as well as the types of companies in Yemen and their related legal provisions. Finally, Mr. El Wazir discussed the effects of legislation on promoting the investment environment, the institutional system, administrative procedures and, finally, the main recommendations on the reform of commercial legislations.

At the end of this session, **Mr. Wassim Harb** (Founder and General Supervisor of ACRLI) encouraged all delegations to adopt and work on the recommendations brought forward in the regional report, emphasizing that any process related to legislative drafting must take into account the cultural heritage and modern methodologies in terms of text, law and judicial decisions.

Upon this, a **general discussion** took place between the audience and the speakers, which addressed the main topics relevant to law reform in the Arab region, including (1) the quality and level of legal knowledge at law schools graduates, especially that there is a shortage in the number of law faculties, and they all rely on old curricula, (2) the impact of cultures on the process of legislative amendments, and (3) the contradiction between national arbitration laws and the internal laws of arbitration centers. Participants agreed on the need to pay more attention to the development and reform and called on the participants and organizers to the adoption of these recommendations.

- **Workshop 3: “Key Requirements to Improve the Legal Environment for Doing Business**

H.E. Minister Ismael El Wazir (Member of Yemeni State Council, President of Yemeni Centre for Conciliation & Arbitration (YCCA)) acted as the chairperson of this workshop, explaining that improving the business legal environment is an ongoing process that demands several components and requirements that must be achieved together.

Mr. Zuhair Iskandar (Chairman of the Center for Legal and Judicial Studies in Tunisia) spoke on "**the Role of Legislative Drafting**", stressing the importance of promoting regulatory and legislative drafting as they have an integral effect on the quality of legal texts and their consistency with other laws in force. He focused on the importance of orienting efforts towards developing the capacities of persons in charge of drafting in the context of a knowledgeable judiciary building on the expertise available inside and outside the Arab region including tools and modern scientific methods. Mr. Iskandar, then, presented the experience of Tunisia which emanates a strong conviction that legislative drafting is one of the key requirements for improving the legal environment. He referred to the gradual progress of the Tunisian experience which started by the establishment of the Center for Legal and Judicial Studies during the nineties of the last century under the supervision of the Ministry of Justice and Human Rights, and which will be resumed today with many steps, most notably transforming this center to a regional center open to all Arab countries to benefit from provided knowledge and training services.

Afterwards, Ms. **Arlette Zakarian** (University Professor) talked about "**The Quality of Legal Institutions and Services**" as an essential part of the business legal environment system. She considered that challenges brought about by globalization and the accelerating trend towards the use of international legal institutions in the area of business does not eliminate the need to consider upgrading existing services and institutions at the national level; especially given the major role that these institutions and services can play in the global integration and improving the legal environment in general which reflects positively on economic growth. The basis of legal institutions and services of good quality, according to Ms. Zakarian, is the legal education which strengthens human capacity at the national level. However, one of the most important obstacles to activate its role in the regional countries is

the business legal and regulatory framework that should be developed within the context of the rules of good governance, the rule of law and combating corruption, and in view of the following five key factors (1) legal security and stability, (2) transparency, (3) legitimacy, (4) efficiency and (5) specialized expertise.

Finally, Mr. **Reiner Geiger** (Attorney and an International Expert for MENA-CLS Project) discussed "**Corporate Governance**" as a key element in the legal environment of business. He addressed the main obstacles in the region including gaps in the regulatory framework and funding, control of the State-and-family owned enterprises on the market and the lack of information on the structure and activities of companies operating in the market. On the other hand, he drew attention to positive and encouraging developments including some legal reforms, developments in the framework of capital markets and investment, Islamic financial institutions as well as small but solid beginnings at the level of regional cooperation. Based on the foregoing, Mr. Geiger explained that there is an urgent need to strengthen a reform-driven approach by true stakeholders that seeks to balance law enforcement and the voluntary commitment of companies, to focus on the development and implementation of principles of transparency, accountability and business integrity, in order to involve stakeholders directly in the decision-making, and to strengthen the interrelationship between corporate governance and public sector governance.

Afterwards, room was open for **questions and discussions**, where participants mainly focused on the Tunisian experience related to legislative drafting in the framework of the institutions involved in business conflict resolution, and on some aspects of corporate governance, particularly in terms of their impact and interaction with the current financial and economic crisis. In conclusion, participants agreed on the need to give the financial and economic crisis more attention, calling the Arab Center for the adoption of a recommendation in this regard.

- **Workshop 4: “The Case for Introducing Modern Legal Institutions into Legal Systems in the Project Countries.”**

Mr. Frederic Jenny (Chairman of the Competition Authority, the Organization for Cooperation and Development (OECD)) spoke on "**Competition Laws and Supporting Institutions**". He explained the importance of developing appropriate legal systems that

enable business environment, and stressed the importance of competition laws in this context especially in terms of strengthening investment and market mechanisms and creating a business legal environment. Mr. Jenny focused on competition laws that contribute to the support of the rule of law and promotion of transparency and integrity and ensure what is called the "culture of fair competition", especially since monopoly poses a threat to some key sectors in the State in the absence of competition laws. He identified actions that do not respect competition and its policy; a thing that harms the State's economy and even the existing cultural system and social justice. He also introduced the state of competition and market strength in each of the project countries and explored the need for each of these countries to issue laws that regulate competition, especially in light of flowing FDI. In conclusion, he referred to the development and issuance of competition laws which is a necessity in order to ensure a comprehensive legislative reform process and to create an environment more conducive to business.

The second speaker in this session was **Mr. John Spanogle** (University Professor, George Washington University), who discussed "**Modern Forms of Companies.**" He noted that the company laws of the project countries are mostly inspired by European laws of mid last century, and thus modernization becomes a must. Mr. Spanogle stressed the importance of introducing modern companies, such as the Holding Companies that can fully own subsidiary companies and the Off Shore Companies that can operate without having a physical presence in the country, due to their positive role in encouraging foreign investment. He explained that the Limited Liability Company is a good example of companies that encourage investment, since it protects the investor against his private property and guarantees the shareholders a personal management of their assets. The case is similar for the One-Person company that does not yet exist in the project countries, except for Tunisia. This type of companies does not require partnership among several people since it is not based on the concept of "unity of finances", and thus has an effective role in strengthening the business and investment legal environment. In conclusion, Mr. Spanogle emphasized the need for a clear company law that allows the investor to be aware of his capacities and liabilities. He cited four recommendations for the project countries (1) exploring the possibility of introducing Holding Companies in their existing legal systems, (2) introducing Off Shore Companies in their existing legal systems, (3) modernizing the

legal frameworks that govern Joint Stock Companies (4) introducing the One-Person companies.

The last intervention was for **Mr. Sami Houerbi** (Director of ICC dispute settlement services in the MENA region) who discussed: "**the Concept of Arbitration under Alternative Dispute Resolution Methods of the ICC**". He pointed out to the need to introduce this mechanism in the existing legal systems, defining alternative dispute resolution methods as mechanisms that parties resort to by their the own free will in the events of a dispute rather than referring to a judge; examples are mediation, experience, reconciliation and conflict. Mr. Houerbi gave a quick introduction on alternative dispute resolution procedures of the International Chamber of Commerce, which vary according to whether there is a prior agreement or not. He explained procedures for the selection of a neutral arbitrator and the fees and management of conflicts, in addition to means of completion of the procedures. Finally, Mr. Houerbi highlighted the benefits of the system adopted by the ICC, in terms of the confidentiality of meetings and deliberations, the flexibility and adaptability of the system, in addition to its speed and lower costs. Moreover, he submitted a detailed explanation of the status of conflict resolution in the project countries, in terms of the availability of necessary legislative framework, whether on the national or international level.

At the end of the workshop, participants **focused in their discussion** on three key points: (1) the advantages and disadvantages of arbitration compared with the judiciary, (2) the main difference between competition and competitiveness, and (3) the concept and benefits of the One-Person company and its impact on investment.

❖ **Closing Session**

The closing session summarized the main findings of the workshops which were presented in turn by **Mr. Khalifa Al Tutenki** (Director General of Competition and Economic Research at the Ministry of Commerce in Tunisia), **Mr. Ali Zbeeb** (Lawyer, University Professor and Coordinator of the MENA-CLS Project), **Mr. Arkan Seblani** (Legal Expert, UNDP-POGAR), and finally Ms. **Rola Akoum** (Legal expert, ACRLI).

Afterwards, **Mr. Wassim Harb** (Founder and General Supervisor of the Arab Center for the Development of the Rule of Law and Integrity) announced the conclusion of the

proceedings of the conference, hoping that it has achieved the desired results. He called on all participants to send any comments or observations on the national reports, the regional report or the Conference's theme in general to the following email: echalhoub@arabruloflaw.org with a view to provide ongoing communication and joint work to strengthen commerce in the MENA region via developing an enabling business legal environment with its different components. Furthermore, Mr. Harb presented the findings of the conference that revolve around five pillars (1) policies and legislations affecting business, (2) the content of these legislations, (3) public-private cooperation, (4) human efficiency in the administrative bodies and the judicial and executive authority, and (5) promoting legal knowledge existing in the Arab countries.

Finally, His Excellency **Mr. Zuhair Modhaffar** (Minister Delegate to the Prime Minister in charge of Civil Service and Administrative Development), represented by Mr. Fathi Badira presented the **official closing statement**, stressing on the necessity of following up the works of this Conference through advocating its outcomes and recommendations. Mr. Modhaffar emphasized on the importance of working to strengthen commercial laws in the MENA region based on the experiences of the project countries. He pointed out that the first phase of the project has shown positive results confirming that the change is still possible and that the region is still able to attract new investments enhancing development in the region. With this in mind, he stressed the importance of modernizing Company Laws in such a way that allows for the emergence of new types of companies, the simplification of procedures and transactions, and the strengthening of competition rules which would contribute to the promotion of a new business culture based on bold and successful reforms. Finally, Mr. Modhaffar reiterated his thanks to all participants, in addition to the organizers from the Ministry of Commerce and Handicrafts in Tunisia and the Arab Center for the development of the rule of law and integrity and wished them success and to continue forward with the MENA-CLS project.

3. Conclusion

This conference constituted an important starting point for consolidating regional efforts towards the promotion of commercial laws and the improvement of the business climate in the MENA region. This was done through reviewing and discussing the prevailing commercial status in an objective and practical manner that commensurates with the status and needs of States. Furthermore, the interventions and discussions that took place during the conference formed a unique opportunity to exchange expertise and experiences between Arab countries and between them and international experts; a thing that reflected positively in the process of deepening the knowledge-building and advancing development and reform. The conference has contributed to improving the capacity of participants to understand commercial issues based on the outputs that have been developed in the context of the first phase of the project. The conference also came out with recommendations on legal reform and general strategies that contribute to the strengthening of the business climate in the project countries and the reinforcement of the capacity of the private sector to engage in future political dialogue with governments.