



المركز العربي لتطوير حكم القانون والنزاهة

Arab Center for the Development of the Rule of Law and Integrity – ACRLI

MENA COMMERCIAL LAW STRENGTHENING PROJECT

MENA – CLS Project

National Commercial Law Assessment Report

Yemen

Sana'a,

November 2008



With the support of the Middle East Partnership Initiative



The National Team in the Republic of Yemen has drafted this report after discussing it and finalizing it during a national workshop conducted for this purpose.

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

echalhoub@arabruloflaw.org



In the Name of God, most Gracious, most Merciful

Executive summary

The report provides for the political social and economic background of Yemen and offers valuable information on the economic, political, social, legal and judicial structure in Yemen.

The economy of Yemen is based on a free-market system, i.e. free economy, while its political structure is grounded on a mixed system (presidential and parliamentarian) where people elect their President directly based on the nomination of the House of Representatives. In addition, it is necessary for the government to obtain the endorsement of the parliament on its governmental program.

The legal system in Yemen is based on a sole source which is the Islamic jurisprudence, however the modern legal patterns especially the Latin ones found their way into legislation throughout sub-sources of the Islamic jurisprudence such as “Public Good and Favorable Construction” “Istislah wa Istihsan” which are allowed to be used on the stipulation that they do not contradict with the provisions of the Islamic jurisprudence “Sharia’a”.

Laws regulating commercial, economic and investment activities in Yemen are generally good and consistent with the international commercial legislation. Their implementation however is fraught with several difficulties such as the disqualification of commercial practitioners and their lack of knowledge concerning source and rules of business in addition to the limited effectiveness of the judiciary in adjudicating cases that depend to a large extent on the person of the judge rather than on established legal traditions.

In the framework of commercial debt collection, the report notes that debtors tend neither to pay their debts nor meet their financial obligations, and banks avoid filing bankruptcy and often resort to reschedule the debt instead.



In conclusion: The report provides a number of recommendations, particularly in the framework of debt collection, stating that banks shall take enough guarantees upon granting the loan and shall not rely on the wealth of the borrower or on personal knowledge.

The most important amongst these recommendations is the introduction of the commercial register system in the Property Register legislation that currently exists on the basis of personal record and the need to meet the legal requirements of commercial contracts especially mortgage contracts.

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Preamble

This report falls within project "MENA Commercial Law Strengthening" (the "**Project**") which is implemented by the Arab Centre for the Development of the Rule of Law and Integrity (ACRLI) in cooperation with the Middle East Partnership Initiative (MEPI), in each of the UAE, Tunisia, Lebanon and Yemen.

The project, which extends over a period of two years, aims in general to strengthen and reform the commercial law in the MENA region with a view to promoting a legal environment that is business enabling and conducive to short-term local or sectoral economic growth in selected MENA countries. It is expected that the project improves the capacity to understand complex commercial law and regulations within the business and legal communities in the MENA region and increases private sector participation in commercial law policymaking.

The Project primarily targets lawyers and businesspersons and seeks to actively involve them together with policymakers and concerned government practitioners in a results-oriented policy dialogue and peer-learning process with a view to enhancing the business legal environment in their respective countries. Consequently, the Project will rely on a network of partners at the national level in the Republic of Yemen, including the Ministry of Justice as a key governmental partner, the Bar of lawyers, Chambers of Commerce and other professional associations.

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

The current report has passed through three main phases. The first phase was to determine legislations governing commerce and investment activities in Yemen in addition to relevant laws while the second phase was devoted to provide feedbacks on the most pertinent laws as a starting point for in-depth discussions on the subject.



These comments and feedback are based on the legal reviews of the National Team (NT) that includes three members: Mr. Ismail Ahmed Al Wazir (National Author / Expert), Dr. Mohammed Jaafar Kassem (National Consultant) and Mr. Louay Ismail El Wazzir (Consultant / National Assistant). In addition they are based on the results of the questionnaire sent to a group of Yemeni commercial and execution judges, lawyers and university professors and a number of merchants. Three meetings were held between September and October 2008 with Heads and judges of commercial and ordinary courts in addition to lawyers and business and legal persons. The meetings focused on the goals of the project that aim to strengthen and reform commercial law in the MENA region with a view to promoting a legal environment that is business enabling and conducive to short-term local or sectoral economic growth in selected MENA countries and to actively involve them with commercial policy makers through a results-oriented dialogue. The points of view that were discussed during those meetings were noted down and deployed during drafting the Yemen National Report.

The National Team encountered a difficulty relying on the Yemeni judicial jurisprudence and obtaining magazines that include jurisprudence of commercial judges due to the lack of specialized magazines in circulating commercial provisions in order to solve legal and practical difficulties encountering the commercial activity. However, this difficulty was overcome through the extensive experience of the national team on judicial and legislative activity in Yemen and through the findings of the questionnaire and individual interviews with each of the commercial and execution judges, university professors, lawyers and merchants.

The report presented two main subjects: Execution of contracts and debt collection through their legal framework embodied in the texts of the Yemeni Civil Law, Code of Procedure and civil execution law as well as the commercial law and their associated difficulties and the recommendations adopted by the National Team based on the outcomes of the questionnaire and individual interviews.

In this context, this National Assessment report on the status of economic legislations and business laws in Yemen was prepared aiming to provide an analytical study that



would supply a clear and focused picture on the status of commercial and business laws in the countries of the project including a study of relevant laws in texts and practice as well as an analysis of the legal and economic system in general, with a view to assessing the extent of contribution of these frameworks in achieving economic growth and creating a favorable legal environment for investment.

The current Report shall be integrated, at a later stage, with the reports developed by the rest of the project countries into one comparative regional report which provides the outcomes and conclusions and creates a forum for regional policy dialogue on the development of commercial laws in the MENA region.

Socio-economic and political country background

The geographical and political state of Yemen:

Yemen is an Arab country located in Southwest Asia at the southern tip of the Arabian Peninsula. It covers around half a million square kilometers and it is bordered by Saudi Arabia to the north and Oman to the east. It has a southern coast which oversees the Arabian Sea and a western coast overseeing the Red Sea. It is situated at the entrance of the Bab-el-Mandeb Strait and includes several islands in the Red Sea and the Arabian Sea, the most important of which is the Island of Socotra. Until the year 1990, Yemen was constituted of two States known as the Yemen Arab Republic (YAR) established in the north and the People's Democratic Republic of Yemen (PDRY) in the south. In 1990 the two republics reunited under the name of the Yemen Republic. The political system in Yemen is based on a political and party pluralism in a view to maintain peace. There is also the parties' law that regulates provisions and procedures related to the formation of political organizations and parties and the practice of the political activity of the parties and different political powers.

The Yemen Republic is a sovereign State and has adopted the United Nations Charter, the Universal Declaration of Human Rights, the Charter of the League of Arab States, and the generally accepted norms of international law.



The geographical and political state of Yemen:

The Social and Demographic state and the economic variables:

The Yemeni population is divided into provinces in an imbalanced manner due to natural and economic reasons. The largest provinces, population wise, are Ta'izz followed by Al Hudaydah, Ibb and the Capital Sana'a. These four provinces include about half of the population living in the Republic (42.8%), whereas Al Mahrah (0.45%), Ma'rib (1.2%) and Raymah (2%) are considered smaller. The large dispersion in the distribution of the country's population in those communities, particularly rural populations, is largely found in the mountainous provinces. The dispersion of villages and population centers on the rugged mountainous terrain lead to difficult access to basic high cost services, moreover, these natural conditions contributed to the isolation of the population for a long time.

The evolution of the political system

The political system founded on the 22nd of May 1990 following the declaration of Yemen Unification underwent five different periods characterized by special features, such periods are:

The first period: started since the declaration of unification and the establishment of the Republic of Yemen on the 22nd of May 1990 and ended on the 27th of April 1993 by the parliamentary elections. The Supreme Authority Body was considered a problem but as a result of the elections it was reformed according to the unification agreement and on the basis of a transitional period.

The second period: is the period of the coalition between the General People's Congress, Yemeni Grouping for Reform and the Yemeni Socialist Party. This period was the outcome of the parliamentary elections that were held on the 27th of April 1993. It ended during the summer of 1994 with the end of the war and the transition to a new period of growth and prosperity within the framework of a united Yemen.

The third period: was characterized by a coalition between the General People's Congress and the Yemeni Grouping for Reform. Constitutional amendments were



conducted during this period notably the transition from a Presidential Council to the President of the Republic. This period has been characterized by the strengthening of the State's institutions structure in the framework of a unified Yemen in addition to the growing number of civil society institutions. This period lasted until the 27th of April 1997.

The fourth period: started following the elections held on the 27th of April 1997 when the General People's Congress obtained the majority of votes and formed the government alone, achieving the Yemeni voter's will. This period has been marked by the deepening of the democratization of the political system and the introduction of constitutional reforms that presented a step forward in the promotion of democratic life in the country.

The fifth period: this period was marked by the first direct presidential elections by the people in 1999 when President Ali Abdullah Saleh, the national consensus candidate, won the presidential mandate from 1999 till 2006. This period also witnessed the adoption of the Local Authority Law that was recently amended giving the power to the local councils in the governorates and districts to elect governors and district administrators.

Local authority elections, the referendum on constitutional amendments, the formation of the Shura Council, the prolongation of the presidential period to 7 years and of the House of Representatives to 6 years, all of these steps pushed forward the strengthening of the democratic aspect of the country.

Foundations and principles underlying the system of governance:

The system of governance in Yemen is based on the separation and cooperation of the authorities as well as on judicial review. The Supreme Court of the Republic is the highest judicial body specialized in monitoring the constitutionality of laws, statutes systems and resolutions, and has the right to declare the annulment of laws, statutes systems and resolutions contradicting with the constitution. The system of government also allows the amendment of the constitution. The people who ratified and acknowledged this constitution can amend it through legitimate methods and through the people's deputies / representatives so that it continues to reflect the



realities and expectations of the people and to keep up with the modern logic and the requirements of the social development.

Economic policy and the foundations of public finance:

Following the unification of Yemen and the declaration of the Republic of Yemen on the 22nd of May 1990, the government embarked on implementing an ambitious comprehensive program of economic, financial and administrative reform with the support of the International Monetary Fund (IMF), the World Bank (WB) and the donor community which pushed forward economic growth, prompted macroeconomic stability, and liberated commerce and prices as well as privatization. According to this comprehensive program adopted by the government in 1995, the programs of the successive governments between 1990 and 2006 included many key points: institutional reconstruction, modernization and development of public administration bodies, development of the regulatory and functional structures, jobs' description, elimination of duplication and repetition in handling more than one governmental position at a time, giving importance to the productivity efficiency, endorsing and expanding the public sector's role in providing social services and leaving the role in areas of production, distribution and services to the private sector, giving greater powers to the local authorities via public participation (who directly elected local councils and more development was carried out by the election of provincial governors by local councils) as well as the promotion of democracy and political pluralism, reforming the judiciary and independence of its bodies and imposing the respect of the rule of law. The reform program also aimed at achieving real growth rates in the economic sectors, reducing inflation and unemployment rates and stabilizing exchange rate, stabilizing the balance of payments and the public budget, in addition to providing an attractive investment environment through structural reforms, strengthening the role of the private sector, and achieving greater economic openness to the outside world in terms of macroeconomic indicators (the Central Bank of Yemen and the World Bank reports). The reports published by the Yemeni News Agency on economic growth data revealed that the real Gross Domestic Product (GDP) recorded between 2006 and 2007 an annual growth rate of 3.2% and 3.6% respectively, while the real GDP increased to 3.8 trillion Rials in 2006 compared to 3.2 trillion Rials in 2005 with an increase of 653 billion Rials following a



negative growth in previous years which did not exceed 1% or 2% prior to the implementation of the reform program especially between 1991 and 1994. The economy also recorded a growth rate of 5.5 % compared with a 4.6 % during the same period with an increase of 1.1 %.

The agricultural sector:

Throughout the past 18 years, and since the declaration of the unification on May 22nd 1990, the agricultural sector received wide attention by the government that aimed to develop and expand its productivity and increase the volume of agricultural exports, through the completion of many infrastructure and unique strategic projects, in addition to specialized institutional projects particularly in areas of natural resources development, subsoil water, soil, development of irrigation and environmental protection. The implemented projects also included projects aiming at preserving lands and waters in the following provinces: Sana'a, 'Amran, Al Hudaydah, Ta'izz, Dhamar, Lahij, Abyan and Shabwah at a cost of more than YR1 Billion Rials, and developing rural areas in the following provinces: Shabwah, Abyan, Hadramaut, Lahij, at a cost of \$38,630 Million USD in addition to the agricultural cooperation project in the eastern regions of Mayfa'a and Shabwah at a cost of \$25,650 million USD. The projects also included the promotion of self - aid in the following governorates: Lahij, Abyan, Ta'izz, Ibb, Ad dalih, Al Bayda' at a cost of around YR541,800 Million Riyals, and the second phase of project preserving groundwater and soil which covered 15 provinces at accost of 3\$5 Million USD, alongside implementing the second phase of the Ma'rib Dam project between 2003 and 2007 at a cost of \$30 Million USD, the propagation of seeds and agricultural services in the various governorates between 1998 and 2003 at a cost of YR460 Million Riyals. In addition, the Project on rural development for the Central Heights was also implemented at a cost of \$26,400 million USD, as well as the project of rural development in Al Mahrah at a cost of \$17,795 Million USD, and project of developing Hadramaut Valley at a cost of \$38,630 Million USD, project of developing the irrigation system in Al Hudaydah and Lahij at a cost of \$25,600 Million USD and project maintenance of Buna Valley at a cost of YR 210 Million Riyals. During the past few years, the Ministry of Agriculture and Irrigation gave wide attention to the marketing and exportation field as the cornerstone of agricultural



development through the establishment of 13 markets and agricultural products centers in various provinces. 6 new markets along with 18 centers and malls are currently being finalized in addition to 6 units for the collection and dissemination of agricultural marketing information with the aim of supporting the infrastructure necessary for the success of the process of marketing and export.

Fisheries Sector:

In this context, the government has sought to develop the investment in the fisheries sector especially since the declaration of the Republic of Yemen on the 22nd of May 1990, both in terms of provision of infrastructure and planning to fish in territorial waters, or by providing opportunities for the private sector to invest in this sector which contributed to the development of fish production and fish products industry. The total allocation that covered the fisheries sector needs in the institutional and legislative structure from 1990 till 2007 reached about YR12 Billion Riyals. This sum contributed significantly to the increase in the amount of fish production under the supervision of the Ministry of Fisheries. However, the real leap for the development of fisheries sector in Yemen lies in the implementation of the Fourth Fisheries Project, in cooperation with the European Union (EU) during the period from 1998 to 2001, for a total cost of \$39.5 Million USD. Which was regarded amongst the largest and most important projects of governmental investment in the fisheries sector which contributed to the improvement of fishing methods and the support of fishery research centers and the protection of the marine environment. The establishment of the Fund to encourage agricultural and fishing production also contributed in the development of investment in the fisheries sector between 1996 and 2007 through mega-projects costing more than five Billion Riyals.

Management of the fishing traps:

The government is working on the implementation of project Management and conservation of fish traps, “Fish Project No. 5” which is also considered amongst the largest and most important projects implemented by the Ministry of Fisheries in cooperation with the World Bank and the European Union in the framework of the investment programs for the development of the fisheries sector in Yemen within the



third five-year plan for economic and social development between 2006 and 2010. In addition, they implemented a promotional project to attract local and foreign capitals for the investment in fish farming project that includes 25 sites suitable for farming along the coastline of Yemen. The procedures of governmental reforms supported by a strong presidential commitment to an effective future role in the fisheries sector lead to the increase in demand on investments in this sector between 1992 and 2007 to reach about 161 at an investment of YR41 billion Riyals and with fixed assets totaling around YR39, 804 Billion Riyals providing more than 6, 000 job opportunities. The private sector, as an important partner, has also played an important role in the development of the fisheries sector in Yemen which led to a growing share of fish exports during the past 18 years.

Fish exports:

Yemen's exports of fish recorded an increase from \$27 Million USD in 1990 to \$259 Million USD in 2006, however, it recorded a decrease of \$197 Million USD in 2007 in view of action taken by the ministry to meet the local requirements of the fish meat and to provide food security by prohibiting the export of six species of fish desired locally. The production increased from 82 thousand tons in 1994 to approximately 222 thousand tons by the end of last year. Moreover, the fish production recorded in 2006 an average growth rate of 20,3% which is an increase of 17%, more than the second five-year development plan target between 2001 and 2005 i.e. about 41,548 thousand tons. Whereas the growth rate of the average annual increase of the value of fish production recorded about 6%. The proceeds of fish exports are an important resource of the national income in terms of securing foreign capital.

Telecommunications sector:

During the early years of the unification of Yemen, the government focused on the modernization and development of this sector in the southern and eastern provinces which only included 31,713 phone lines that all relied on outdated mechanical technology that had disappeared in most countries. The means of correspondence between the main cities in those provinces had been concentrated on microwave communication linking Eden to Hadramaut via old techniques within the system of frequency division with a total capacity of less than 200 channels. Achievements



continued and evolved and expanded to cover all rural and urban areas of Yemen despite the difficulties encountered by the unified State. Between 1995 and 2006 Yemen achieved a leap that exceeded all expectations in the field of communication and information technology either through the expansion in the implementation of the projects in the framework of centrals, networks, and fiber-optic cables or the increase in the number of beneficiaries from landlines at the level of urban and rural areas in addition to the introduction of mobile telephone services which were not known before 1990 as well as internet services that entered Yemen in 1996. In light of this development, national network capacity achieved a quality leap where telephone lines reached 1,326,125 million beginning of 2008 in comparison with 153,866 thousand in 1990. Whereas the current number of operating phone lines is 1,21 million and 988 telephone lines. The number of telephone lines in rural areas increased to 190 thousand and 575 phone lines beginning of 2008 in comparison with 3 thousand and 548 phone lines in 1999. While the number of operating telephone lines currently reached 156 thousand and 190 phone lines and the number of call centers throughout the governorates of the republic reached 13,769 thousand. On the other hand, internet services that entered Yemen for the first time in 1996 has expanded and the number of subscribers and visitors increased until the beginning of the year 2008 reaching 216,77 thousand subscribers in comparison with 3,862 thousand subscriber in the year 1999 and 24 thousand in the year 2000 while internet cafes increased from 50 in the year 2000 to 925 at the beginning of the year 2008. Rural areas in Yemen are linked to the world by the Global System for Mobile communications (GSM) that witnessed noticeable development in this area despite the short period in terms of both number of subscribers or beneficiaries of this service and multiple operating systems. For competition purposes, this service allowed companies to invest in this area which was limited to Teleyemen telecommunications in the year 2001. Two private sectors SabaFon and Spacotel in addition to the satellite mobile service (Al Thuraya) invested in this field with the GSM system.

The Yemen Mobile service with the CDMI system was introduced as a better alternative for the wireless telecommunications services system (TeleYemen) which resulted

Yemen to be the first Arab country to adopt this high efficient system which is globally classified as the third-generation mobile phone bringing the number of subscribers to



mobile telephone services with the GSM and the CDMI to approximately 4 million. A new company based on the GSM system named Unitel Hits was launched last year. Consequently, achievements made in the areas of service and infrastructures have increased enormously.

In general, we can say that the Yemeni economy is based on the freedom of economic activity for the benefit of the individual and society promoting national independence by adopting the following principles:

- a- Islamic social justice in economic relations aimed at developing production and achieving social balance and equal opportunities and raising the living standards of the community.
- b- Lawful competition between the private and public sectors well as achieving a fair and equal treatment of all sectors.
- c- Protection and respect for private property unless for the necessity of the public interest and fair compensation in accordance with the law.

Natural resources of all types and sources of energy in land or above, in the territorial waters or the continental shelf and exclusive economic zone are regarded as state-owned which ensures their exploitation for the public interest.

The economic policy of the state shall be based on economic scientific planning ensuring optimum utilization of all resources and development and advancement of the capacities of all sectors in various areas of economic and social development in the context of the general plan of the State to serve the public interest and the national economy.

The State is concerned about the freedom of foreign trade and investment in favour of the national economy. Thus it issues legislations to ensure the protection of producers and consumers and to provide the citizens with essential commodities. These legislations also prevent monopolies and encourage private investment in various areas of economic and social development.

The legal system and judicial environment:



The legal system in Yemen is mainly based on the Islamic Jurisprudence which is considered as the sole source of laws in accordance with the constitution. Since “Public Good and Favorable Construction” ’Istislah wa Istihsan’ are regarded as sub-sources of Islamic law, many European models have been introduced without contradicting with the provisions of the Islamic Shari’a especially in matters of trade. Thus, one can say that the legal system in Yemen is of a mixed nature, through the domination of the Civil law but still based on the principles of the Islamic Shari’a.

The Yemeni Judiciary structure:

The Yemeni Judiciary is based on the principle of unity of the judicial system which is reflected in the Supreme Court that has jurisdiction to look into all constitutional, administrative, military, civil, penal and personal status appeals.

The Courts of First Instance have jurisdiction over all cases; however, the Yemeni legislator stated the emergence of several specialized first instance courts such as commercial and criminal courts in addition to public funds and tax and customs courts.

All types of first instance courts verdicts may be appealed before the Appellate Courts in the provinces where in each there exists one Court of Appeal that decides regarding appeals against the verdicts of first instance. Decisions of the Courts of Appeals are subject to challenge before the Supreme Court.

There is not one exceptional court in Yemen because the Yemeni Constitution expressly prohibits the establishment of special courts.

In accordance with the provisions of the Yemeni Constitution, the judiciary in Yemen is independent in terms of authority, finance and administration and the Public Prosecutor’s office forms one of its bodies. Courts adjudicate in all disputes and crimes, and judges are independent and are only subject to the law. No one may interfere in any manner in lawsuits or matters of justice and such interference is a crime punishable by law and subject to no statute of limitation.



Under the Yemeni Constitution and the law of the judiciary, the judiciary is an integrated unit. The Law arranges the judiciary sectors and its degrees and defines its competences, as well as the criteria of the judges, the conditions and the procedures for their appointment and transfer and promotion and other guarantees. No special courts may be established under any circumstance.

There is the Supreme Council for the judiciary. It is organized by the law which shall define its competences, the means of nomination and appointment of its members and ensures the application of the guarantees granted to judges in terms of recruitment and promotion, and separation and isolation in accordance with the law. The council shall consider and approve the draft budget for the judiciary, as a prelude to include it as a priority in the state budget.

The Supreme Court of the Republic is the highest judicial body. The law defines its composition, terms of reference, and the procedures to be followed before it. In particular, the Supreme Court shall exercise the following:

- 1) Decide in all cases related to the constitutionality of laws, statutes, regulations, and decisions.
- 2) Decide in all cases of conflict of competencies of judicial entities.
- 3) Investigate and advice regarding the framework of challenges submitted to the Parliament concerning the legitimacy of membership of any of its members.
- 4) Give the decision related to appeals against final sentences in civilian, commercial, criminal cases, personal statutes cases, administrative disputes and disciplinary actions.
- 5) Put the President and the Vice-President and Prime Minister, ministers and their deputies on trial in accordance with the law.

Furthermore, Court hearings are public unless the court decides otherwise taking account of public order and ethics. The verdict is pronounced publicly in all cases.



The Judicial Authority Act No (1) for the year (1991) states that the judiciary is an independent authority in the performance of its duties, judges are independent and subject only to the law. Nobody may interfere in any manner in lawsuits or matters of justice. Such interference is a crime punishable by law and subject to no statute of limitation.

The independence of the judiciary is an inevitable and firm goal to achieve justice in the community imposed by the nature of judicial work, and by the will of free peoples. This matter reflects public ideals in the framework of justice and restrains the achievement of its objectives in a life of dignity. Since in case of no judiciary independence, there can be no justice, and if justice is regarded as the basis of government, then the independence of the judiciary is the foundation of justice.

The Constitution's text stressed on the independence of the judiciary in Article (149) that states "the judiciary is an independent authority legally, financially and administratively... judges are independent and subject only to the law".

To achieve the principle of judicial independence and integrity, the Constitution ensured the most important principles of independence and the Judicial Authority Act No. (1) for the year (91) which organized the judiciary and its bodies and functions and safeguards was also issued. In addition, and in order for the judiciary to carry on its duties and obligations, many courts were established to be in charge of the achievement of justice among people and different parties. In order to ensure the integrity and independence of the judiciary, the judiciary law no. (1) of (91) prohibits judges to engage in trade.

There shall be no combination between the judicial function and any other function or work incompatible with the duties of the judge and the independence and dignity of the judiciary. Each person engaging in the judiciary functions shall provide a disclosure of his all his assets including money, property and real estate which shall be reviewed by the competent authority in the Supreme Judicial Council on an annual basis.



The degrees of courts are as follows:

- The Supreme Court
- Appellate courts
- First instance courts

Personal inviolability of judges:

- 1) Judges may not be dismissed from their positions except after issuing sentence signed within the framework of an accountability lawsuit in accordance with the provisions of the law of the judiciary.
- 2) With the exception of the state of flagrante delicto, judges may not be arrested or temporarily imprisoned before obtaining permission from the Supreme Judicial Council to authorize the continued detention or order his release with or without guarantee.
- 3) Criminal proceedings may only be filed with the permission of the Supreme Judicial Council at the request of the Attorney General and the Supreme Judicial Council appoints the court that shall be responsible for the trial of the judge.

The first national workshop on commercial laws incorporated the following recommending.

- Appreciate the steps taken by the commercial judiciary in the Republic of Yemen with the need to pay attention to the issues related to training and qualifying commercial judges on an ongoing basis.
- The necessity of governmental and business and legal communities' participation to support Judicial Reforms.
- Refrain from exerting pressures and focus on the judge on calculative bases, an avoid taking into account other aspects that may be due to other parties.
- The necessity to maintain the specialization of judges, especially with regard to commercial judges since they have acquired the necessary expertise with regard to commercial judiciary.

Commerce and business legal environment:



a. A review of the characteristic features of the legal and legislative status related to commerce, economy and business in the State.

Prior to the year 1990, Yemen was split into two systems and two different States on the levels of organization and economy. In the northern part of the country, previously known as the Arab Republic of Yemen, the system of governance was based on the principles of Islamic law and free economy. While in the southern part of the country, previously known as the People's Democratic Republic of Yemen, there reigned a socialist economic system inspired by the experience of socialist countries in economic reconstruction.

Upon the establishment of the Republic of Yemen on May 22nd 1990, a political system based on political and economic freedoms was adopted based on the market economy system with some public sector and mixed institutions, however, the fundamental nature of the economy is the free economy. Following the introduction of privatization that shifted from a planned economy to market economy, investment activities were available in the vast majority of economic activity, with limited exceptions represented in the need to obtain agreements with the States in some economic activities such as petroleum, gas and minerals.

b. Laws governing the commercial activity and relevant laws:

The legislation movement to regulate commercial activity in the Republic has been as ongoing process since May 1990.

The most prominent legislative activities in the Republic of Yemen took place following the unification of the State in May 1990 where a number of laws have been issued to achieve legislative unification in the new State in accordance with the Constitution of the united state adopted in 1990. During 1990, 1992 1993 and 1997 a number of commercial laws governing different branches of commercial activities were issued as follows:

Laws relating to commercial activity in Yemen from 1990 to 2008:

	Subject of legislation	Date of issuance
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1	Law No. (8) of 1990 related to Finance Law	26/8/1990
2	Law No. (14) of 1990 related to Customs	3/9/1990
3	Republican decree on law No. (15) of 1990 related to Customs Tariff.	22/10/1990
4	Republican decree on law No. (20) of 1990 related to the cancellation of certain taxes imposed on goods.	1/11/1990
5	Republican decree on law No. (22) of 1991 related to investment.	10/4/1991
6	Republican decree No. (31) of 1991 related to income tax	2/4/1991
7	Republican decree on law No. (32) of 1991 related to commercial law.	12/4/1991
8	Republican decree on law No. (91) related to the Registration of trade	13/4/1991
9	Republican decree on law No. (34) of 1991 related to commercial entities.	13/4/1991
10	Republican decree on law No. () of 1991 related to commercial banks	13/4/1991
11	Republican decree on law No. (40) of 1991 related to foreign commerce	13/4/1991
12	Republican decree on law No. (19) of 1992 related to civil law	29/2/1992
13	Republican decree on law No. (36) of 1992 related to the organization of foreign companies' agencies and branches	
14	Republican decree on law No. (37) of 1992 related to supervising and monitoring companies and insurance brokers	2/4/1992
15	Republican decree on law No. (15) of 1994	13/10/94



	related to maritime law	
16	Republican decree on law No. (4) of 1995 related to the amendment of law no. (7) of 1991 on production taxes	29/2/1995
17	Republican decree on law No. (5) of 1995 related to labor law	19/2/1995
18	Republican decree on law No. (19) of 1995 related to exchange activities	19/2/95
19	Republican decree on law No. related to customs tariff	25/5/95
20	Republican decree on law No. (20) of 1996 related to Islamic banks	9/7/1996
21	Law no. (35) of 1998 related to the cancellation of fees and commission collected while granting customs declaration on imported goods	24/12/1998
22	Republican decree on law No. (18) of 1999 related to the commercial chambers and their general union	17/1/1999
23	Republican decree on law No. (19) of 1999 related to encouraging competition and preventing monopolies and commercial fraud	17/1/1999
24	Law No. (44) of 1999 related to the specifications and standards and quality control	13/10/1999
25	Law No. (10) of 2002 related to the amendment of some of the provisions of law No. (30) on the register of trade	5/2/2002
26	Law No. (20) of 2003 related to commercial names	5/3/2003
27	Law No. (40) of 2006 related to the systems of payment, financial, bank and electronic transactions	28/12/2006
28	Law No. (5) of 2007 related to local commerce	27/3/2007
29	Law No. (11) of 2007 related to financial leasing	26/4/2007



In addition to other laws and execution lists detailed in the annex of laws relating to commercial activity in Yemen from 1990 till 2008 mentioned in this report.

Yemen has concluded a number of economic agreements with the majority of Arab countries and a number of friend countries. Moreover, it has acceded to some of the GCC institutions in areas of education, youth and sports well as standards and quality control. Yemen is currently seeking to join the World Trade Organization and is a member of a number of economic agreements related to the Arab League. It has also concluded a number of economic agreements with some foreign countries such as the United States of America, Great Britain and France, and formed a number of joint committees with a number of Arab and foreign countries to activate the process of economic exchange.

Yemen has also concluded a number of agreements with Islamic and international financial institutions and funds in addition to agreements with the European Union and the UN.

Multilateral agreements:

1. Law No. (49) of 1999 approving the accession to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States issued on 22/11/99 and published in the Official Gazette issue (22/1999).
2. Republican resolution No. (159) of 2000 related to the ratification of the accession to the Islamic Institution for the Development of the Private Sector issued on 15/7/2000 and published in the Official Gazette issue (21) 2000.
3. Law No. (17) of 2001 related to the cooperation agreement on the levy of taxes and duties between the Council of Arab Economic Unity countries (CAEU).
4. Law No. (18) 2001 on the Agreement on avoidance of double taxation & evasion of taxes between the Arab Council of Economic Unity issued on 21/11/2001 and published in the Official Gazette - number (22) / 2001.



5. Law no. (41) 2002 related to the accession to the Convention of facilitating and developing the trade exchange between Arab countries and the Greater Arab Free Trade area issued on 20/10/2002 and published in the official gazette issue no. 20/2002
6. Law no. (27) 2006 related to the accession of the Republic of Yemen to the amended and reviewed version (1972) of the Paris Convention for the Protection of Industrial Property issued on 7/8/2006 and published in the official gazette issue no. 16/2006
7. Republican decree no. (160) of 2006 related to the ratification of accession of the Yemen Republic to the establishment of International Islamic Trade Finance Corporation (ITFC) Agreement issued on 6/11/2006 and published in the official gazette issue no. 21/2006

Furthermore, we have laid down a comprehensive report list including all laws and conventions relating to economic and commercial activities between the Republic of Yemen and a number of countries and regional and international organizations in addition to agreements with financial institutions and funds, and bilateral agreements concluded with neighboring governments and agreements concluded with the European Community and the UN, which are available in the annex of regional and international agreements attached to this report.

Commercial Entities in Yemen:

The law provides for two types of partnerships: Association of Persons and Association of Funds. Associations of persons are divided into three kinds:

- 1- Unlimited Partnership: where each partner is severally and jointly liable to the extent of his assets for all the company's debts and liabilities.
- 2- Limited Partnership in commandite: which includes two types of partners: Active partners who shall be severally and jointly liable to the extent of all their assets for all the company liabilities and debts, and sleeping partners who are only liable to the extent of their portion in the capital of the company.
- 3- Copartnery forms the third type.



Associations of funds are divided into several types where the liability of partners is limited to their share or portion in the company's capital. They are subdivided into three types of companies: Joint Stock Company, Limited Partnership by Shares and Limited Liability Companies. In Yemen, the most common form of companies is the Limited Liability Company since partners are responsible for the company's liability to the extent of their portions in the company's capital. These companies are often non-functional and, in general, they are used to avoid liability, as previously mentioned, and to overcome legal restrictions and facilitate tax evasion.

In general, it is noted that the form prevails over substance in the Yemeni Company Law as well as in the practical implementation of guarantees contained in the texts of laws whether relating to partners or shareholders. General Assemblies of most companies do not exercise their required monitoring role and their meetings are merely formal and attended by a few number of persons. The case is similar for the texts that prevent individual control over a significant proportion of the company's capital, where the ceiling of what can be owned by the partner is agreed upon in many ways. With respect to the accounts of companies, the law provides that Directors are responsible before the General Assembly of Partners who appoints them. The General Assembly is also in charge of appointing an independent auditor who usually follows the international standards in accounting. However, the role of General Assemblies is often formal when reviewing the reports of accounting.

The law distinguishes between ordinary commercial companies and investment companies in terms of licensing and tax and customs exemptions and areas of activity. Hence, there is an investment public body that is responsible for licensing investment projects and companies that frame their activities and the law also gives these bodies, customs and tax concessions with a view to encourage domestic or foreign investment in Yemen.

There is a necessity to activate the role of the Ministry of Legal Affairs with respect to amending commercial laws to eliminate any inconsistency in the texts of those laws, especially the taxation law in a view to create mutual trust between the person in charge of paying taxes and the collector.



There is currently a legal review of the investment law in the light of the weaknesses revealed by experience which do not encourage investment. This review especially aims at limiting the role of the public investment body in the framework of promoting investment and reviewing tax and customs exemptions and seeks to grant this responsibility to taxes and customs authorities. This review of the law and its points of focus are still controversial and subject to study and debate till this present day.

Analysis of the points of strengths and weaknesses in commercial laws:

Due to the nature and magnitude of this paper we will not analyze and comment on all commercial legislations in Yemen, instead we will focus on the most prominent ones.

In fact, the Company Law includes legal texts that facilitate the establishment of companies. The law requires two documents: the conclusion of the statutes of the company and approval on its bylaws followed by its registration in the commercial register. The establishment of financial companies requires obtaining the approval of the minister. The bylaws usually include the formation and competences of the Board of Directors, regular and non-regular General Assemblies, the legal quorum for the meetings and the issuance of its resolutions. In this regard, there are some texts that protect the minority of shareholders, such as the right of 5% of the capital contributors to introduce certain issues into the agenda of the General Assembly's meetings and the right of every shareholder to receive a copy of minutes of meetings.

The extraordinary General Assembly can not take decisions that may increase the financial burdens of shareholders. In addition, shareholders who represent 25% of the company's capital can call upon the extraordinary General Assembly to convene for crucial reasons. If the Board of Directors does not convene, those shareholders may ask the Ministry of Trade to convene the General Assembly. The decisions of the extraordinary General Assembly for example can only be taken by the two-thirds majority of the meeting. And if the resolution is related to a capital increase, reduction or prolongation of the duration of the company or its dissolution before the designated date or its merger into another company or entity, the decisions shall be taken by the partners representing three-quarters of the shares represented at the meeting.



Commercial transactions are easily proven through organized commercial books and records imposed by law, such records are regarded as means amongst merchants as well third parties.

In Yemen there is a special law preventing monopoly and encouraging competition. Law No. (19) of 1999 provides for the establishment of the Competition Protection and Monopoly and Commercial Fraud Prevention Commission, however it has not yet seen the light. This law includes fine penalties whereas in the case of repetition, imprisonment is imposed and violating contracts and agreements become null and void. The court may require the write-off of the offender from the records of commerce, importers or commercial agents and broker-dealers. Moreover, the law requires referring the violations to the prosecutor by a Ministerial decision based on the recommendation of the commission. However, a public lawsuit can only be filed at the request of the Minister. In fact, this law has not been activated it is yet to be known whether the judiciary has issued rulings and decisions under the provisions of this law.

With regards to the protection of intellectual property (IP), the Republican Decree on law No. (19) 1994 imposes imprisonment for a term of six months maximum or a minimum fine of ten thousand Yemeni Riyals, the equivalent of \$50 over the individual who commits one of the following acts:

- Abusing rights of the author, inventor or discoverer described in the law
- Taking credit for a book, invention, discovery or creative suggestion and impersonating another.
- Inciting or participating in such acts.

It should be noted that this is done without prejudice to the right of compensation for the injured. The same law also requires the implementation of a more severe penalty provided for by any other law other than the IP law.

It is noted that penalties provided by law are not sufficient to effectively protect the intellectual property and do not pose a strong deterrent to the perpetrators of such acts.



The law regulates rules of arbitration and reconciliation in the Arbitration Law No. (32) for 1997. Other alternative dispute resolutions such as mediation, conciliation and amicable settlement are practiced but not legally regulated.

The State may be a party to a national or international arbitration, for example the case of Hunt and Exxon Company versus the Republic of Yemen before the Arbitration Court in London related to the International Chamber of Commerce in Paris regarding the extension of the concession contract originally awarded to Hunt in 1981. The court ruled in favor for the Republic of Yemen in August 2008.

The other example on local arbitration is the case of Turks company versus a Turkish company concerning a technical contract with the Ministry of Public Works to build Sana'a – Al Jawf road brought before the Yemeni Center for Conciliation and Arbitration. The decision was the entitlement of the claimant for compensation and time extension.

It should be noted that the Yemeni Center for Conciliation and Arbitration was established by commercial banks and a number of judges and lawyers and businessmen and is approved by the Central Bank of Yemen, the Ministry of Justice, the Union of Chambers of Commerce and the Association of Banks. The Center practices a number of alternative means to resolve disputes in addition to arbitration such as mediation and reconciliation and is a member of the Union of International Arbitration Centers and a founding member of the Union of Arab Arbitration Centers.

The Labor Code regulates the relations between employers and employees, with the existence of bodies comprising employers, workers and State representatives to look into all related matters. These laws do not include arbitrary texts against the employer, since they generally include provisions and rules agreed upon in the framework of the International Labor Organization and the Arab Labor Organization.

The first national workshop on commercial laws came out with the following recommendations:



- 1- The necessity for awareness programs organizing government partnership with the private sector.
- 2- The necessity for legal texts which result in outputs that serve the economy and development in the country which leads to the reduction of unemployment rate and creates a balance between exports and imports.
- 3- The necessity to review some laws, such as judicial fees law and the Law of Evidence and taxation.
- 4- The necessity to review the legal fees law to reduce the backlog of cases submitted to commercial courts.
- 5- The necessity to address the provisions of the Investment Law and link them to the environment and to the national interest of Yemen.
- 6- The necessity for the Yemeni legislature to review the conduct of certified accountants.
- 7- The necessity for a text that criminalizes the actions of the Boards of Directors of the banks regarding loans.
- 8- The necessity of an electronic transactions law.
- 9- The necessity to include contracts not included in the Commercial laws namely:
 - Supply contracts
 - Mortgage contract
 - Loan contract.
- 10- Unifying other commercial legislations to complement the existing legislations such as antitrust law and commercial fraud.
- 11- Demanding institutions, commercial and banking companies, and monitoring bodies to commit to laws regulating business as they would be of great importance in the commercial judiciary reform and development and rapid achievement

The effects of legislation on promoting investment:

Investments in Yemen are governed by Investment Law No. (22) - 1991, its amendments in 1997 and 2002 and its execution list. This law is applied in the framework of domestic and foreign investment; however it contains special rules for foreign investments.



Since the issue of investment in Yemen tops the concerns of the Yemeni Government in terms of commerce and economy, it has received considerable attention in the "Memorandum of the World Bank - Comments on the Investment Law and Amendments Currently Proposed," presented by the Office of advisory services for foreign investment which we will base on while presenting the weaknesses and strengths of the law, the incentives system and the institutional framework of investment and its administrative procedures in addition to the issue of access to land for the purpose of investment.

- **Investment Law strength points:**

In an effort to promote the national business environment in Yemen, the investment law includes many important features that are usually considered as useful or attractive by the private sector including foreign investors:

Definitions of important terms (Article 2):

The inclusion of the main guarantees that investors expect to find - especially foreign investors - in any similar investment law and, more specifically, the following guarantees:

- Freedom of investment (article 4)¹
- Equal treatment (Article 5 and 11)
- Foreign investors' access to land (Article 7)
- Freedom of management (article 10), including recruitment and dismissal (Article 17. B)
- Exemption from mandatory pricing controls and identification of profits (Article 12)
- The transfer of profits and funds, and invested capitals (Article 13 and 15)

¹ And similarly, the model law to encourage foreign investment in the GCC countries (the Model Law of the GCC countries) is applicable to all foreign investments, [including] those exempted under a special agreement, or resolution, or related to the extraction or exploitation of natural resources under privilege or a special agreement.



- Protection against dispossession, nationalization or expropriation (Article 13)
- Access to arbitration mechanisms (Article 61)
- The right to import the necessary materials for the investment project (Article 16).

Note: One of the proposed amendments seeks to delete the latter article without providing any explanation, but the question remains: is the intent not to allow projects to import necessary inputs? (All or part of the inputs and on what ground?) Or is the intent simply to change this procedure? The explanation here is guaranteed. This may also suggest that there is a need for additional technical assistance in areas of commercial policies and procedures.

The institutional framework of investment was clearly defined. Still, the Office of Advisory Services for Foreign Investment recommended a number of important changes on the institutional framework in the study "Promoting Investment," recently updated and referred to above. It is useful for investors to read the law to comprehend this framework (Article 27 and 37).

There are only few restrictions and obligations specified in the law, which certainly develops a very attractive feature for foreign investors. However, these limitations may exist elsewhere in the legal and regulatory framework, and in any case, they should be referred to in the law for transparency purposes.

Investment Law weak points:

The investment law includes several features in terms of form and style discouraging the potential investor. Of course form is not considered more important than content except in the area of promoting investment where initial impressions are important and a clear and concise law is likely to create a positive initial impression more than the long and vague one.

This law is extensively long and concentrated: 76 Articles take over a total of 64 pages in the reviewed English version. It was found that in many countries, some of which are very open to FDI, that investment-related legislation was limited to 6 or 7 pages, which certainly conveys a more positive approach towards investors (which the



country seeks to attract). One cause may be that law contains many issues that should be appropriately addressed in other legislative texts. Hence a sound suggestions would be to transfer the clauses related to customs duties and tax exemptions to laws relevant to customs and taxes which would contribute to making the investment law more agreeable and concise. Once again, we recommend the adoption of this approach if the authorities, as hoped, intend to reform the custom and tax systems over the next few months. Furthermore, legislations provide myriad details that are usually earmarked for the implementation of the executive statutes rather than the substance of the investment law. Following this approach, the government will maintain some flexibility in the implementation of the legal structure, and it is certainly easier to amend the executive statutes than to amend the law.

The list of definitions is too long and can be easily shortened to a modest number of key terms that will assist in abbreviating the law.

The investment law is overly complex and includes many internal references that indicate other provisions, causing more elongation. In addition, there are many cases where articles can only be understood after referring to two or three other articles.

Moreover, many of these provisions are unclear along with incorrect internal references to other provisions in the English version of the investment law (such as the reference to the following: Paragraph (1) of Article (1) is present in article (21); article (20) paragraph (a -1) is present in article (23) and articles 20 (a) (1-2-4) are present in article (39) (1); article (42) (b) is present in article (71) (a) (3) and Article (20) (a) and (b) is present in article (71) (b). Such could pose problems in the translation process from the original Arabic text to English. However, potential foreign investors have access to the investment law from outside the country without necessarily consulting a local lawyer which increases the frustration due to the lack of clarity in the legislations.

Comments on the proposed amendments: some articles were deleted or re-formulated, and unfortunately the proposed amendments had little to curtail in the length and intensity of the law or to improve clarity of many provisions.



Investment Incentives:

Tariffs on imports: Article 18 of the law exempts investors from all customs duties and taxes on fixed assets for the creation and expansion or rehabilitation of the project, where the Authority gives preference for local production. Article 18 also exempts fisheries, livestock and agricultural production inputs from customs duties. In addition, equipments and furniture for hotels, hospitals and educational projects imported for replacement are tax exempted if they had been used for a period of seven years. Article 19 also allows authority to exempt fixed assets at the request of the concerned parties. However, Article 24 authorizes the Tariffs Commission to impose or increase customs duties collected on imported goods and production inputs competing local production.

Tariffs on exports: according to Article 26 of the law, any project exports forming a part of its production is eligible for (1) exemption from all imposed fees or taxes, (2) exemption from duties or other taxes on the production of goods and services resulting from the registered project, (3) exemption from taxes on profits earned from exports after the end of the exemption period granted for the project, and (4) recovery of all customs duties and fees on imported inputs included in the amount of exported products. On the other hand, the Model Law of the GCC countries do not contain any exemptions from tariffs on exports, we also note that most of the countries have no longer serious tariffs on exports since this system is outdated.

Tax exemptions: projects are exempted from profit taxes for a period of 7 years. The Cabinet may extend the exemptions to 10 years or more and to two more years for each to achieve one of the three conditions of the project, however the total exemption period can not exceed 16 years. The law also allows tax exemptions in terms of real estate, stamps, and commercial business imposed on companies operating in Yemen, as well as other taxes on capitals. There are more exemptions for 50% of the imposed taxes on the loans granted to finance the projects with no income tax on the profits of the project.



The World Bank mission suggests reviewing the incentives system since the experience revealed, while implementing the law, limited effectiveness in attracting investment to Yemen on the one hand, and referring tax and customs exemptions, following their review, to the taxes and customs department to enable it to carry on with its main task of promoting investment.

Institutional System:

Investment Law No. 22 established the General Investment Authority that conducts a variety of all regulatory and investment promotion activities. Investment Promotion Authorities, as shown by their names, are primarily promotional organizations that should focus on facilitating the work of investors, generating investment, and building a good reputation advocating for policy. Foreign companies are often the main client of the Investment Promotion Authorities that require services in the early stages taking into account the circumstances of the company's investment. On the other hand, providing licenses, approvals and certificates, as well as conducting inspections do not promote Yemen as an investment hub since the regulatory work confirms that investors and their projects are subject to the laws and regulations of the country, which means putting an end to the different needs for the establishment and operation of their businesses.

Recent trends in the framework of the regulatory function have seen the exercise of regulatory control showing great effort in organizing and streamlining the investment requirements and procedures and in dealing with investors as clients, rather than subjecting them to monitoring. While the best of practices suggest that the two sets of functions will be better placed in separate organizations which clearly focus on personal activities, however, any decision on this matter must be very cautious due to the specific circumstances and alternative options available for the implementation of separate roles. For example, if there is no improved institutional option to take responsibility for one or two sets of tasks, the situation may stay under the same institutional umbrella, however, regulatory steps should be taken to separate them from each other.

Administrative procedures:



The close connection at the institutional framework level is a question of administrative procedures for investment that are numerous and complex in the investment law. The part related to the licensing of projects, exemptions and regulatory procedures represent a valuable attempt to reduce administrative burdens faced by investors including the imposition of time limits on managerial decision-making which are automatically approved in the case of failure to respond in the right time ("silence means consent" in principle). This situation is supported by the availability of appeal mechanisms for investors (articles 38 c, 58-63).

Under the current investment law, there are many examples on regulatory complexity and administrative burden, such as: the tiring system of scrutiny of the customs tariffs by the General Investment Authority.

The General Investment Authority determines the feasibility of the implementation of documentation fees while preparing the project's agreements which are mostly exempted from certification fees. Documentation fees cost less and compliance fees cost more since commercial institutions must submit their agreements to the General Investment Authority for review - for exemption considerations.

The staff of the General Investment Authority shall deal with multiple economic authorities and with a qualified incentive package since the country is divided into two investment areas.

Moreover, as previously mentioned in the section on incentives and tax exemptions that require complex control procedures and a long time as in this approach, there is a need to determine the eligibility of projects and to cover the necessary period of time, as well as to control the implementation of these projects.

Appropriation (Access to Land):

This matter deserves a special focus since it continues to place serious obstacles to private investment and to the development of the private sector in general. The World Bank's assessment of the investment climate "Priorities and recommendations for accelerating the growth of the leadership of the private sector (investment climate



assessment)", conducted in Yemen and issued in March 2006 highlighted the serious problems faced by private companies in terms of purchase or lease of land.

These problems include the limited availability of commercial land with the same guaranteed legal ownership document², which were not resolved by including them in the Investment Law No. 22 within a specific paragraph to ensure the right to purchase or lease of land (Article 7). Separating the law between "books" and "practice" on land issues, is not a rare matter since, as a matter of fact, such situation was noticed in several other countries. The fundamental problems involve land titling and largely complex registration systems which also could not be solved by adding a clause or two in the investment law of the country. Instead, the Yemeni Government should adopt and implement land policy and procedural reforms that will give investors more confidence in the effectiveness of this guarantee for the purchase and lease of land. It seems that one of these amendments being considered intends to give authority to the General Investment Authority to allocate necessary land for the establishment of projects and the conclusion of relevant contracts.

As for arbitration, we noticed that except for the general arbitration rules of Islamic law and common practice, modern rules of arbitration still require more awareness for their circulation, especially since the law allows such a choice and also forces courts not to consider cases where the contract or a separate agreement entails arbitration.

In conclusion, rules of contract in the Yemeni civil law are sufficient and sound for most commercial transactions.

It should be noted that although the Civil Code takes into account the general contracts law, the commercial law and the company law included provisions

² It was noted in the evaluation of the investment climate that conflict over land has engulfed the Yemeni courts, including nearly 80 per cent of all pending issues in 2000. The long history of incomplete or inaccurate land records and recurring land ownership disputes prevent the use of land or buildings as an additional guarantee for mortgage loans. The recent Report on Yemen entitled "The liberalization of the investment environment in Yemen (the matrix of constraints and treatment policies) noted that the problems associated with the purchase of land for the investment project often show more than one person claiming ownership of the land



regulating certain types of commercial contracts such as mortgage related contracts and the commercial company contracts.... etc.

The law in the second book (civil implementation) related to the Code of Civil Procedures & Execution No. (40) 2002 organized the execution of contracts and debts recovery in Yemen. It includes three sections each containing various chapters and divisions including articles 314 to 504.

In general, the implementation may only be forced by an execution bond which is confirmed, due and with a specified amount, thus execution may only take place under an executive form represented in an executive bond unless the law provides otherwise.

Executive Statutes under the Law:

- Decisions of the Yemeni courts
- Orders on performance and orders on petitions by the competent judge in accordance with the law
- Provisions of the arbitrators that can be executed
- Reconciliation agreements ratified by courts
- Final decisions of the administrative committees entrusted with the settlement of disputes in the cases provided for in the law
- Drafts related to old “Wakfs” of land and real estates written by a famous

In addition, executive statutes issued in foreign countries, may be executed if they are considered the same in the Yemeni law on the stipulation that:

- 1) The executive statute does not violate the provisions of Islamic law, public ethics or rules of public order in Yemen.
- 2) Yemeni courts are not competent in conflicts in which foreign executive statutes were made and that the court that issued them is competent in accordance with the rules of international justice..
- 3) The implementation of executive statutes in Yemen shall be conducted within the same conditions established in that country (reciprocity).



Garnishment of the debtor's money with a third person:

The creditor may garnish what the debtor owns from debts or properties or other rights with third parties even if they were postponed or suspended on a condition. The garnishment commences prudently and ends executively. This provision applies for the garnishment of official stocks, and bonds and of due profits shares of moral persons in addition to the right of the capital owner before the speculating worker.

Executive Garnishment:

Executive garnishment only occurs when the disdainer owns an execution bond and after the debtor announces consensual implementation following the deadline specified by the law elapses.

The judge may order detention in accordance with the law on proceedings and civil execution in the following cases: if the person subject to an executive garnishment refused to deliver garnished funds voluntarily, if he acted differently to the garnishment order, if he concealed his funds, or if the garnished funds are not enough to cover the debt.

The law provides for the implementation of specific rules for the seizing of properties and movable goods so as to guarantee the rights of the creditors. The nature of these procedures varies depending on the nature of the garnished funds, whether they were immovable or movable. The law also sets rules and special procedures for the selling of the seized funds. These rules and procedures differentiate between the funds generated from real estate or movables; the law also sets rules for the distribution of the proceeds of the funds sold.

The execution of provisions and their clauses on the State:

The law of proceedings and civil implementation provides for adopting the general rules in the implementation of judgments against the State, stipulating that the issuance of the sentence does not exceed a period of thirty days. If the party does not



carry on its execution part, the Prime Minister will be informed and the implementation shall be carried on within a period of 45 days. If the execution was not concluded during this period, the judge will issue an executive order and if the execution requires the garnishment of governmental accounts in the Central Bank or any other bank, the judge has the right to carry on with the sentence of garnishment.

In case the amount is significant, the judge may allow its payment in installments, and he may compel the government to formally pledge to include payments within their future budgets. The law of proceedings and civil execution imposes penalties on conspiring to issue judgments in favor of the plaintiff , whether by the judge or another person. The sentence is imprisonment for a term not exceeding two years. The law of proceedings and civil execution organized sentences against the State in articles 487 and 490.

Implementation of mortgages:

Courts face many difficulties while reviewing issues related to the implementation of mortgages due to the following reasons:

- Banks deal with borrowers on the basis of (Foresights) or customary ownership document and not on the basis of property registration.
- Data in the mortgage contracts are non-compliant with the requirements of the mortgage contract
- Specifications of real estate as well as the process of property assessment are inaccurate, particularly in the capital Sana'a
- The property register law is based on the personal record and not on the commercial register system, which requires amendment to convey trust in real estate transactions and to reduce land disputes.

Effectiveness of the credit system in commerce development and project financing:

The credit system existing in a number of banks does not help with the development of commerce and the financing of projects as being in contravention of international



norms established in the credit system and is based on the borrower's status and personal knowledge without taking adequate safeguards, and even if otherwise they usually worth much less than the debt.

Proposals for the development of contracts and debt collection:

- 1) Rules of the executive inquiries shall require the debtor to make a declaration or statement under oath of his garnished funds
- 2) In the case of the debtor's failure to allocate sufficient funds to cover the debt, the execution judge shall ask the government and public and private organizations and banks to provide information on the existing or disposed funds related to the convicted
- 3) Learning from the experience of Maghreb Countries and Tunisia on the alternative means of bankruptcy system for debts recovery
- 4) Amending Article (117) of the Code of Procedure and Civil implementation so as to allow for debt collecting companies to advocate before the judiciary on behalf of the creditors.
- 5) Banks shall deal in matters of real estate mortgages on the basis of constraints from the Property Registry, and not on the basis of Foresights.
- 6) The real estate registry system shall be organized on the basis of the commercial register system
- 7) Reviewing data related to mortgage contracts applications to satisfy the legal requirements
- 8) Determining the exact specifications of the real estate in mortgage cases and assessing them in a correct manner
- 9) Developing the credit management system in banks and referring them to the ones with experience.
- 10) Owners of the majority of the shares shall not manage banks since their majority is non-qualified and non-specialists in this area and since they exploit and violate banking laws in the framework of access to the majority of the debts from the depositors or shareholders accounts



- 11) Controlling local notaries who mostly violate the law by documenting contracts that do not fall within the scope of their competence or by introducing new contracts after mortgaging the former contract at the banks.
- 12) Banks shall not issue duplicate contracts for the same loan – facilitation contract - loan contract - mortgage contract – and identify them as specified contracts.
- 13) Amending certification fees law to reduce such fees with a view to help the dissemination of the contracts documentation.
- 14) Provisions shall be included in the law on proceedings and civil execution since their absence forces to reconsider cases at first instance
- 15) Amending the texts of the proceedings law regarding the procedures of litigation and appealing against procedures of the execution judges.
- 16) Amending the Arbitration law, shifting from a customary arbitration system to an institutional arbitration
- 17) Finding a deposit mechanism within the texts of the banking law to support troubled banks.



Conclusion:

We have completed our review and study of the commercial legislations and procedures related to commercial and investment activities as well as the debt collection.

We should point out that these recommendations have been tailored on the basis of the extensive expertise of the report's authors who have spent more than thirty-five years in the judicial and legislative activities related to commercial and investment activities.

The report mainly relies on the outcomes of the questionnaire conducted with previously mentioned people and individual interviews.