

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 of  
Lebanon**



**With the support of the Middle East Partnership Initiative**



The National Team in the Republic of Lebanon drafted this report after discussing and finalizing it during the national workshop held for this purpose.

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

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## Executive Summary



This National Commercial Law Assessment Report of Lebanon (the "**Report**") falls under the scope of the project "MENA Commercial Law Strengthening" (the "**Project**") which is implemented by the Arab Center for the Development of the Rule of Law and Integrity (ACRLI) in cooperation with the Middle East Partnership Initiative (MEPI) in each of the 4 countries: United Arab Emirates, Tunisia, Lebanon and Yemen.

The overall goal of the Project, which extends over a period of two years, is to strengthen and reform commercial laws 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.

More specifically, the Project aims to improve the capacity to understand complex commercial laws and regulations within the business and legal communities in the MENA region and to increase 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 Lebanon including the Ministry of Justice as a main governmental partner, the Bar Association, the chambers of commerce and other professional associations.



In addition to these 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, Industry and Agriculture, ESCWA, World Bank, the ICC, and others.

In this context, this National Assessment Report on the state of economic and business laws in Lebanon was developed to provide an in-depth study that presents a clear and focused picture on the development of commercial and business laws in the project countries, including the examination of relevant laws in texts and practice, as well as the analysis of the legal and economic system, with a view towards assessing the extent of contribution of these frameworks in achieving economic growth and creating a business-enabling environment.

The outcomes of this research revealed that Lebanon is suffering from many legislative barriers to investment in general, and most importantly from the intensity and complexity of administrative procedures and transactions on the one hand, and the outdated laws and legislations in the field of business and trade that do not keep pace with the developments of these areas, on the other.

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#### **First – Legislative Heritage of Lebanon**

Lebanon, by virtue of its openness to the western, eastern and Arab worlds in general, acts as a bridge and a meeting point between civilizations and cultures particularly in the framework of legal concerns.

This is due to the Ottoman Empire period that was based on cruelty of governance. Salim Baz explained in the Judicial Provisions Magazine that



although the personal status system distinguished between areas of war and peace, every religious community in Lebanon had its own judicial system and legislation in its personal status laws.

Hence, the Lebanese endeavored, even during the Ottoman governance, to issue laws of their own such as the "Sharia brief" written by Bishop Qarali.

With the advent of the French mandate and as a result of the cultural diversity and knowledge of foreign of foreign languages by the Lebanese , Lebanon was able to comprehend the introduction of legislation inspired by the French law and translate it to the Arabic language.

Although the legal Arabic drafting included some shortcomings and errors, it constituted an introduction that enriched the legal Arabic language with vocabulary and terms making it one of the most prominent sources of legal culture in the Arab world. This purity of expression and accuracy in precising is still the focus of attention of all the Arab States.

The reason is that Lebanon was always involved in the development of the legal language and principles adopted by the Roman law. In addition to the deep-rottenness of its legislative heritage, Lebanon enjoys a flexible and ductile legislation.



## Second – a Flexible Legislation

One of the most important specifications of the Lebanese legislation is the desire to modernize civil or non-sectarian laws and to regulate society and relations between individuals that remained greatly flexible. Hence, the Lebanese legislation is not detailed to the point of suffocation in terms of implementation or complaining in terms of its detail.

In addition, laws rose above trivial issues and were tolerant or apt for development to some extent.

The most important aspect of the Lebanese legislation was its legal system ability to absorb entire institutions such as Leasing, Factoring, international arbitration and other legal institutions without resorting to legislation, thanks to the principles of the power of will and freedom of contracting. This absorption remained possible since it did not collide with a preclusive legislation.

Local or international arbitration for example, is not constrained to a restricted heritage as is the case in the French legislation, where arbitration in civil laws still remains the exception.

The development of the legal system in Lebanon, in contrast to France, is not always detailed nor does it bring further complications to the drafting of legal texts.

The Lebanese legislation is flexible i.e. it depends on general principles and does not rely much on change. Unlike the jurisprudence which often traces the



effects of general principles in the French jurisprudence, the Lebanese legislation leaves much room for freedom of will and contracting which discerns it and enables it to cope with economic, financial and social developments.

Moreover, Lebanon was able to absorb the technological revolution in terms of electronic data processing, evidence, credit cards or in most technological emergences in the world, without the need for an accurate legislation, which reflects flexibility of the Lebanese legal system.

Other countries issue and amend legislations for the sake of development while in Lebanon, there is no need for legislation since it is generally flexible.

The Lebanese legal system combines freedom of contracting, French legislative principles, and flexibility in the implementation that characterize the Anglo-Saxon system.

But, unfortunately, the Lebanese jurisprudence is not up to the level of responsibility. In most cases, we find it rigid and unable to catch up with the freedom and flexibility of the private sector. Moreover it does not deduct unique solutions tailored to our society, and mainly approaches the text rather than the philosophy of law and the purpose that it was prepared for. Examples on this case are myriad and almost countless.

Although the Lebanese legal system is, in its large framework, one of the main characteristics of the legal culture in the Arab States, however jurisprudence





seems unstable, uncertain, hesitant, traditional and free from real understanding for the requirements of transactions, not to mention the fact that its credibility is refuted since the majority of judges are apt for influence.

In short, the real development does not rely only on the modernization of legislation, but also depends on creating a cultural shock in the field of jurisprudence and the judiciary. Therefore, the Institute of Judicial Studies where minds and brains ought to be refined and the culture of the intern judge ought to be unified is very important.

#### **Section four – the Report**

##### **Part One – Socio- Economic and Political Background of Lebanon**

In the context of providing a quick overview over Lebanon we will address the geographical and political status (**section I**), its social and demographic status (**section II**), its economic policy and the foundations of public finances (**section III**), and finally its legal and judicial system (**section IV**).

##### **Paragraph. I - Geographical and Political Status**

Lebanon is characterized by **(One)** its unique location in the world and its positive and negative interactions with other neighboring and far countries and **(Two)** its political democratic regime, which sets an example for other Arab countries.



## **One - Geographical Location and International Relations of Lebanon**

Lebanon is located in the eastern part of the Mediterranean Sea and bounded to the north and east by the Syrian Arab Republic and to the south by Israeli State and to the west by the Mediterranean Sea.

Throughout the ages, Lebanon's relation with neighboring countries was characterized by tension and instability. On one hand, it is hostile with Israel where peace is farfetched, and on the other hand, tensed with Syria which is accused by some Lebanese of assassinations and bombings in Lebanon for almost half a century, most notably of killing former Prime Minister Rafik al-Hariri and his comrades in February 14, 2005 and what followed from unstable internal, security and political situation.

No doubt that these relations directly affect the stability of the political and security situation and economic and investment activity in the country.

In return, Lebanon's relation with the international community seems relatively healthy. It is a founding member of the United Nations to which it has resorted many times in order to resolve critical crisis and most notably to issue several resolutions supporting Lebanon's independence and protecting it from neighboring interferences. The most prominent of those resolutions is resolution 1701 to end the war in July 2006 between Hezbollah and Israel. But the fact remains that a number of international resolutions issued for the sake of Lebanon, especially those aimed at reducing the Israeli aggression and occupation, were not implemented and remained pending for a long time, most notably the two famous resolutions 425 and 520, prompting some of the



Lebanese to question the effectiveness or seriousness of the UN resolutions in the light of conflict and balance of international powers.

### **Second - political and security system**

The Lebanese political system is regarded as democratic and parliamentary due to the broad powers granted to the House of Representatives which limits (or practically abolishes) the possibility of its dissolution before the end of its term. This subject is brought for discussion with a view to restore the right to dissolve the House of Parliament to the President of the Republic.

Public life in Lebanon is characterized by the exercise of fundamental religious, press and educational freedoms. Furthermore, it remarkably and openly expresses in the preamble of the Constitution the need to adopt what is in accordance with human rights and UN decisions.

Lebanon is considered the most democratic country in the Arab world where people can express their views no matter how different it varied, across various media means. Besides, it also allows media to freely express its beliefs, criticisms and observations although there is political pressure that can be exerted on some in addition to a number of terrorist acts against which have targeted some media and political figures in the past few years.

However, sectarian rivalry and contradictions of international and Arab interests in Lebanon re-raises the issue of the status of governance and the State's ability to enforce security and policy. Moreover it raises the issue of freedom of thought and expression and their impact on changing and



improving the status of the country on one hand, and the impact of absolute freedom of expression on increasing tensions and sectarian and religious prejudices between different society segments on the other hand.

### **Paragraph two – Socio-Demographic System**

The population of Lebanon accounts to approximately 4.5 million, but the age distribution of the population was not formally documented by the competent Lebanese authorities, despite the fact that some international organizations have published figures stating that 28.6 % of the population does not exceed the age of fifteen years<sup>1</sup>.

#### **Lebanon includes eighteen officially recognized sects:**

- Christian sects: Maronite Patriarchates, Greek Orthodox, Royal Catholics, Gregorian Armenian (Orthodox), Armenian Catholic, Syriac Orthodox, Syriac Catholic, Eastern Nestorian, Chaldean, Latin, Evangelical and Coptic.
- Islamic sects: Sunni, Shiite (Ja'fari), Alawites, Ismailia and the Druze.
- Jewish Sect: (Synagogue of Aleppo, Damascus and Beirut<sup>2</sup>).

### **Paragraph three – Economic Policy and Bases of Public Finance**

The Lebanese economy is regarded as liberal depending mainly on the private sector initiatives and suffers from the significant absence of the state's intervention, control and market regulation. The State's main concern includes **(1)** Adjusting the negative financial situation, **(2)** this reality reflects on all

<sup>1</sup> ESCWA statistics on Lebanon are available on the following address:

[www.escwa.un.org/members/social/asp?country=Lebanon](http://www.escwa.un.org/members/social/asp?country=Lebanon). You can also check the UN statistics of 2006 on the following address: <http://data.un.org/CountryProfile.aspx?crName=Lebanon>.

<sup>2</sup> Ibrahim Traboulsi, Marriage and Effects of Communities covered by law of April 2, 1951, 1994, pp. 14 and 15



economic sectors, (3) although the State is absent economically, it is present financially through the imposition of direct and indirect taxes, (4) and its policy in this area is insufficient to resolve the economic crisis in the country.

### **First - the Overall Financial Status**

We first refer to the **GNP** of Lebanon that reached in 2007 U.S. \$24,001 million<sup>3</sup> and to the **GNI** per capita that recorded U.S. \$5,770<sup>4</sup> according to information published by the World Bank in 2007.

**In general, the Lebanese financial situation of the can be summarized as follows:**

**First:** The State's entire budget is merely enough to cover the electricity bill and the public debt interest, in addition to pensions and wages.

**Second:** In the past few years, Lebanon was supported by regional and international institutions in the framework of endorsing governmental and administrative actions, to an extent that such institutions have become an essential component in meeting daily administrative needs such as: the UNDP, USAID, EU, World Bank, and Arab and Islamic funds.

Based on this fact, Lebanon lives today in blocked prospects and the question is whether and when it is possible to save Lebanon from this bottomless well.

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<sup>3</sup> To review the table organized by the World Bank, please visit the following site:

<http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf>

<sup>4</sup> To view the table organized by the World Bank on GNI per capita, please visit the following site:

<http://siteresources.worldbank.org/DATASTATISTICS/Resources/GNIPC.pdf>



Thus, the accumulation and diversity of crises in Lebanon makes it like the sick men inflicted with an incurable disease that needs constant healing while waiting for a miraculous treatment that may not be created.

Hence, there is a need to stimulate investments in Lebanon by both, the Lebanese and non-Lebanese. However, this stimulation needs a climate of confidence and stability which can not be conceived without the imposition of Security.

The absence of the State and its failure to encourage investment is by itself another manifestation of the main problem of Lebanon: the economic and social structure is the victim of a power struggle over the land.

But the paradox in Lebanon that must be mentioned lies within the fact that the private sector did not lose the spirit of initiative and still aspires to attain the highest levels of innovation, drive and openness to the world and in particular to the Arab world.

In this area, it is not a coincidence that financial deposit's Capitals in the Lebanese banks are estimated by U.S. \$70 billion, which reveals Lebanon in two contradictory aspects:

**First:** It almost makes Lebanon seem as a vast empire which disseminates cultural, scientific, medical, engineering, banking and financial professions



which is a rare situation that effects the evaluation of national income whether directly or indirectly.

**Second:** the Lebanese state seems unimportant in equivalence with the private sector with its capacities and growth.

We will return to this subject in the context of our research.

### **Second: the Status of the Economic Sectors:**

Lebanon falls within the Upper middle Income category according to the World Bank studies on the distribution of income groups, i.e., the distribution of income ranges between US\$ 3,706 and US\$ 11,455<sup>5</sup>. This is due in particular to the activity of the private sectors.

The Lebanese economy is based in particular on the service sector which constitutes approximately 70% of national income especially the banking and tourism activities.

What encourages and stimulates the banking activity in Lebanon is the bank secrecy system which is still precisely and strictly adopted in addition to the severe control exercised by the Central Bank of Lebanon on banks in general.

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<sup>5</sup> These income categories are calculated according to the World Bank Atlas Method as follows: low-income category \$935 or less, lower-middle-income category from \$936 to \$3,705, upper-middle-income category from \$3,706 to \$11,455 and high-income category \$11,456 and more. You can review statistics on the World Bank classification of countries according to income groups on the following Website:

[www.worldbank.org/data/countryclass/classgroups.htm](http://www.worldbank.org/data/countryclass/classgroups.htm) or <http://go.worldbank.org/K2CKM78CC0>



However the newly adopted law on the imposition of bank interests' taxes formed a barrier to attracting large capitals to the Lebanese banks.

Other agricultural and industrial sectors are suffering from the absence of the state and its failure to promote and support them which affects them adversely, especially since they were among the most affected sectors due to the war of July 2006. The agriculture sector suffered heavy losses recently due to the abrupt climate fluctuations that hit Lebanon and the lack of control and regulation of the vegetables and fruit imports movement.

In regard to the telecommunications sector, the Lebanese market remained closed to the possibility of free speculation, at least temporarily, since currently existing companies monopolize the market under an exclusive distribution right granted by the Lebanese Government which keeps the prices of wireless communications in particular, high and expensive compared to those adopted in the rest of the Arab States and the world.

The most prominent sectors currently within the process of privatization are the Lebanese Tobacco and Cigarettes Company (Régie), water, electricity, fixed and mobile telephones. The "Higher Council for Privatization" has been established to take care of the privatization matter in general.

The mobile phone issue is somewhat sensitive: After raising the issue of its privatization in order to earn approximately U.S. \$ 10 billion and as a result of power enticements between the President of the Republic and Prime Minister





pre 2005, this topic was dismissed because the most important revenues for Lebanon are currently generated by the Ministry of Communications., which generates a profit ranging from U.S. \$ 200 million to U.S. \$ 300 million per month to the Lebanese treasury.

It is striking that the Ministry of Finance requests the Ministry of Communications to transfer funds to the treasury at the end of each month, before the expiry of the fiscal year, so that the State can pay its financial obligations.

It is also important to note that full privatization is out of the question because there are many sectors of workers, employees, consumers and beneficiaries who fear that private companies will impose arbitrary conditions.

If there is privatization, the «golden share» remains to the state with a chance to tender in order to grant a new mobile phone investment license (in addition to the existing two licenses). The State remains the owner of assets and concessions of Alfa and MTC Touch companies. Moreover, there is a chance for private companies to obtain the privilege of a third one.

### **Three – the Fiscal Policy**

The fiscal policy in Lebanon includes direct and indirect taxes:

- **Direct taxes:** include the income tax which also comprises corporate taxes amounting to an initial 15% of the profits with the exception of companies that benefit from special regulations and deducted taxes such as the Holding



and Offshore companies. They also include tax on salaries, wages and pensions, ranging between 2 and 20% depending on the category of income, in addition to the tax on industrial, commercial and non-commercial profits organizations ranging between 4% and 21%, and the tax on movable capital income that amounts initially to 10%.

All these ratios are regulated in the Income Tax Law which was adopted by the Legislative Decree No. 144, on 12/6/1959.

The tax on property is also considered a direct tax and ranges from 4% to 14% of tax payers revenues strata..

- **Indirect taxes:** Include registration of real estate in the Property and Land Registry (6% of the value of the real estate), the value added tax (VAT)<sup>6</sup> (10% of the total turnover), financial stamp fee (3 % of contracts and commitments), legal fees (2.5% of the value of applications) and inheritance fees (ranging from 3% to 45%).

#### **Four: the General Economic Status**

The Lebanese economic situation suffers myriad problems, starting from inflation up to the low value of the minimum wage, compared with the high cost of living in spite of the recent increase of 200.000 L.L.

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<sup>6</sup> Law No. 379 Dated 14/12/2001.



The inflation rate in March 2008 reached 10% compared to March 2007, according to the statement of the Central Bank governor Riad Salameh<sup>7</sup>. This is due primarily, to the enormous rise in the price of gasoline.

The deteriorating economic situation of the country is accompanied by heavy bank loans or, on the contrary, by capital freezing and investment in treasury bonds and EUROBONDS in particular.

Interest rates in Lebanon vary between the U.S. dollar and Lebanese Lira: Interest rate of Loans is 10.09% for the Lebanese Lira and 7.28% for the U.S. dollar, while the interest rate of Deposits amounts to 7.25% for the Lebanese Lira and 3.55% for the U.S. Dollar, according to the Central Bank studies for June 2008.

#### **Paragraph Four – Legal System and Judicial Environment**

Although the Lebanese laws and regulations seem to be greatly open, flexible and outstanding (**First**), however, the judicial system in Lebanon is suffering from serious problems that might threaten its effectiveness (**Second**).

#### **First – General Legislative System in Lebanon**

Provisions of the Lebanese legislative system are inspired from the most prominent and successful international laws, most importantly the French laws

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<sup>7</sup> To review the content of this statement please check the following articles:

<http://in.Reuters.com/article/asiaCompanyAndMarkets/idNL0247445920080502> entitled «UPDATE 1- Lebanon inflation climbs, GDP Growth Recovers» or

[http://www.dailystar.com.lb/article.asp?edition\\_id=1&categ\\_id=3&article\\_id](http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=3&article_id) entitled: «Salameh predicts high but “natural” inflation»



such as the civil law, commercial law and the Swiss law related to the real estate register and system.

However, this system suffers from a fundamental problem related to slowness and failure to address legislative gaps in addition to ambiguity of some legal texts which paves the way to conflicting jurisprudences that pose a threat to justice and the principle of equality of all before the law. Fortunately, this issue has less impact on the level of economic and commercial laws.

## **Second – Judicial Crisis**

Lebanese judiciary suffers from a real crisis that embraces especially factors of pressure and cases' backlog (1) the spread of corruption (2) the slow pace of judicial proceedings (3) the high cost of legal fees (4) which encourage many of the traders to resort to alternative means to resolve their disputes (5).

### **1. Enormous volume of work and cases**

Courts in Lebanon suffer from an acute crisis known as "Judicial Backlog" i.e. the abundance of pending and accumulating proceedings for years accompanied by the lack of number of appointed judges. The most striking example is the presence of approximately 140.000 unresolved files to the Ministry of Justice today.



It is noted that the number of forensic judges reached 395 in early July 2004 and 42 judges joined the ranks of judges in early October 2004<sup>8</sup>. The current number of active judges is approximately 502.

It is also noted that the recent contest for the selection of new apprentice judges took place in 2005, which has resulted in total apprentice judges' vacancy in the Institute of Judicial Studies. A new contest was only announced recently in October 2008 in order to select 20 new judges. However, the number may increase to 30 judges among which are 15 Law PHD holders.

In addition, the judicial appointments and transfers that were to be approved since three years ago have been hampered because due to political differences, which also led to disruption of the work of a number of judges who had ended their apprentice period without being recruited for the exercise of their functions in courts. Nevertheless, the sixth of March 2009 has witnessed a remarkable development. Judicial appointments were endorsed unanimously by the members of the Supreme Judicial Council followed by immediate approval of the Minister of Justice and the signing of the Ministers of Defense and Finance and the Prime Minister and President of the Republic. These formations included positions of 502 judges.

In general, the current number of judges is small in comparison with the number of cases and files which weighs heavily on the judiciary in Lebanon.

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<sup>8</sup> The Arab Center for the development of the rule of law and integrity, national and regional reports on the status of the judiciary in some Arab States, 2004, pp. 364.



According to the report of the Legal Information Center at the Ministry of Justice, the total number of files discharged and disputes adjudicated from 1/10/2007 until 31/5/2008 is as follows:

Province	Rotating	Incoming cases	Dismissed	incoming /dismissed ratio	The increase	Remaining	Crossed
Beirut	126,236	262	126,586	350	98,21 %	19,198	19,548
Mount-Lebanon	159,064	638	161,202	2,138	93,35 %	30,010	32,148
North	44,181	235	42,682	-1,499	109,1 %6	17,868	16,369
Bekaa	34,536	74	35,558	1,022	90,14 %	9,345	10,367
South	21,661	34	22,031	370	95,17 %	7,294	7,664
Nabatieh	7,495	7	7,223	-272	107,3 %5	3,974	3,702
Total	393,173	1,250	395,282	2,109	97,65 %	87,689	89,798



In addition, and in response to the need of public officials to speed up the courts' functions and the wheel of the Lebanese judiciary, the Ministry of Justice recently announced a contest for the selection of 712 writers, penalty drafters and Registrars. The Civil Service Council is currently in charge of the contest.

## **2. Corruption**

A significant number of judges have been referred to the Disciplinary Board some of which have been accused by corruption.

The Ministry of Justice, the Supreme Judicial Council and the Central Inspection addressed these complaints and abuses and held the perpetrators accountable during their recent campaign known as "the Good Judiciary".

This is regarded as an entry to the reform and “purification” of the judiciary system to strengthen the confidence of citizens in general and investors particularly in terms of its integrity and effectiveness.

## **3. the Slow Pace of Judicial Proceedings**

Judicial proceedings in Lebanon are very slow due to the requirements of speed and efficiency in business and trade, particularly international ones, which leads to delaying proceedings in general and commercial litigation and disputes in particular, which takes several years that might exceed five, leading to additional legal expenditures and fees.

As a matter of fact,



**A:** judicial proceedings in Lebanon Start before the Court of First Instance and then before the Court of Appeal to be referred later to the Court of Cassation. There is a possibility to add two additional methods of appeal: 1- challenging final decisions made on the basis of the State’s responsibility and the judges’ mistake, on the one hand, and a re-trial if the conditions are available on the other hand,

**B:** Parties often resort to criminal proceedings in order to apply the rule of “Penalty Curbs Right” in Lebanon with a view to close the civil case. That is if the debtor fails to claim the foreign creditor company and its employees in order to obtain an absentia arrest warrant that will be circulated after the issuance of the presumptive absence decision on Interpol references worldwide,

Such circumvention around binding laws makes national and international business transactions unusual which is globally disapproved, as if the Lebanese debtor has become a burden on national and international societies. There are many examples of this type that reveal the lack of coordination between laws, most notably the lack of coordination between implementation laws, commercial laws and penal laws which leads to delaying the retrieval of rights and increasing objections and cases parallel to the original one in the framework of commercial disputes to delay their adjudication.

The “Penalty Curbs Right” rule is one of the main obstacles in Lebanon that encounter the implementation of private contracts and international arbitral awards or granting international provisions the executive green light.





However, the Ministry of Justice is in due process of preparing a draft law to amend the issue of implementing the principle “Penalty Curbs Right with a view to develop domestic legislation to enable the judge to exercise his right of assessment and therefore to freeze the implementation or refuse the freeze request.

If article 199 of the Code of Civil Procedure is amended, it shall grant total credibility to arbitral awards as well as foreign and domestic decisions.

**C:** in counterpart, it is remarkable indeed that **the conduct of courts in Lebanon is very slow even though it has been almost literally transferred from the French Code of Civil Procedure:** The text is similar in Lebanon and France, but the implementation is widely different. The fact remains that the daily practice before the courts takes an independent and quite different path from the path taken by the French courts, as if Lebanon, despite the amendment of the Code of Civil Procedure, still applies the former version Code.

The truth remains that amending the text is not enough to amend daily practice, and there should be other measures that include, but not limited to:

- Courts must hold sessions more than once or twice a week.
- Appointing a judge whose mandate is to ensure the speed up of trials, to control the exchange of regulations, and to guarantee the debate door closure deadline, which is not subject to modification, where requests for a re-trial, or opening documents or the request to interfere or to introduce



- may not be accepted after such deadline. This is what is known in France as "ordonnance de cloture des débats" (order to close the debate).
- There should be some kind of clear prospect for ending the trial in the primary phase and not later than 12 to 15 months since non-fast ruling is the equivalence of non-realization of the right.
  - The issue of judicial recess is no longer in line with the requirements of the current lifestyle, which have been perceived by many institutions leading to shortening the summer holiday period, including schools which now open in early September rather than the end of October. In the past year the judicial recess has been shortened 15 days at the insistence of the Justice Ministry but that is still unsatisfactory.

As a result, litigation should speed up in order to create a climate of confidence between the investor, the litigant, the lawyer and the judge himself. Consequently, the Lebanese judiciary will become once again a role model, especially since the Lebanese culture is characterized by its openness to the Arab and Western worlds alike and since Lebanon is a key player in the Western legal culture and not new in the field of science and culture in Arab and Western countries.

#### **4. High legal fees**

It is well known that the relative legal fee accounts 2.5% of the value of demands, and the quarter of the fee is paid when upon submitting the claim or list containing the request. The rest of the relative fee is paid when the sentence is pronounced depending on the amount imposed according to this verdict.



However, cases that can not be valued as well as cases that are strictly defined in the law of Judicial Fees of 10 October 1950 are subject to the deducted fee which ranges between 25.000 and 50.000 L.L.

Regarding claims to execute verdicts' at the executuin departments also go through multiple stages that usually takes more than a year. These stages begin by the procedural warning and followed by all executive procedures for seizing assets if the verdict imposes a certain amount of money such as discriptive draft, ToR, auction sale, ..reference order, price distribution project...

However alternative means to resolve disputes are available allowing litigants in Lebanon to resort to them rather than resorting to the official judiciary.

##### **5. Ability to resort to Alternative Means of Dispute Resolution**

The most important means of domestic and international arbitration is subject to the provisions of articles 762 and after of the new Code of Civil Procedures.

Following the amendment of article 762 of the same law in accordance with article I of Law No. 440 Date 29/7/2002, has enabled the State and public administrations to resort to arbitration to resolve their disputes, thus decreasing the fear of international institutions and companies involved in contracts and commercial dealings with the governments.

We shall hereafter provide for laws regulating trade and business in Lebanon.



## **Part II – Business and Commercial Legal Environment: Presentation and Commercial Legislations Assessment**

The laws concerning business in Lebanon are myriad and branched (**section I**) and include shortcomings and deficiencies (**section II**) that may reflect negatively on the stimulation of investments in the country (**section III**), which requires to search for appropriate legislative solutions to address perceived gaps (**section IV**).

### **Section I – The State of Laws and Legislations in the Framework of Commerce and Investment**

In this section, we will review laws and decisions on one hand (**I**) as well as bilateral and multilateral agreements on the other hand (**II**).

#### **I – Laws and Decisions**

The Commercial, investment and economic activities are generally organized in Lebanon, by various laws and decisions including:

##### **1- Civil and Real Estate Laws:**

- Code of Obligations and Contracts of 9 March 1932 and its amendments
- Decision No. 188, date 15/3/1926 regarding the establishment of the Land Registry
- Real Estate Law issued by decision No. 3339 Date 12/11/1930.

##### **2- Business, Commerce and Companies Laws and their Branches:**

- Code of Land Commerce of 24 December 1942 and its amendments
- The maritime trade law of February 18, 1947 and its amendments



- Legislative Decree No. 34 of 5 August 1976 on commercial representation and its amendments.
- Decree No. 959 of January 29, 1965 on the organization of real estate companies.
- Decree No. 35 of 5 August 1967 on Limited Liability Companies.
- Decree No. 96 of 20 January 1926 relating to foreign companies and its amendments
- Legislative Decree No. 45 of June 24, 1983 on the system of Holding companies and its amendments.
- Law No. 19 dated 5/9/2008 related to amending certain provisions of Legislative Decree No. 46 dated 24/6/1983 (Offshore companies whose activities are limited outside the Lebanon), which allowed, in the fourth paragraph of Article 3, members of the Board of Directors of these companies to be of foreign nationalities, it has also exempted the non-Lebanese and non-resident in Lebanon Head of Board of Directors or the authorized signatory on behalf of the company from the obligation to obtain a work permit, and also exempted the position of Head and membership of Board of Directors and from the constraints and the maximum limit stipulated in Article 154 of the Code of land Commerce.
- Decree No.111 dated 14 December 1933 and its amendments related to regulation of lending institutions upon mortgages.
- Resolution No. 109 l. T. ر.ل.ر dated July 21, 1937 related to the system of insurance companies and the collection of capital and savings.
- Law No. 58/67 dated 5/7/1967 on the implementation and investment in tourism projects.
- Patent Law No. 240 dated 7 August 2000.



- Law on the Protection of Literary and Artistic Property No. 75 dated April 3, 1999.
- Labor Code dated 23 September 1946 and its amendments
- Social Security Law dated 26 September 1963 and its amendments.
- Consumer Protection Law No. 659 dated February 4, 2005.
- Decree No. 9812 dated 4/5/1968 related to the organization of the security bodies.
- Law No. 318 dated 20/4/2001 related to combating money laundering.

### **3- Tax Laws:**

- Land Tax Law dated 20/12/1951.
- Income Tax Law dated 12/6/1959.
- Built Property Tax Law dated 17/9/1962.
- Amusement Tax law dated 5/8/1967.
- Value Added Tax Law No. 379 dated 14/12/2001.
- Tax Procedures law No. 44 dated 11/11/2008.

### **4- Banks and Financial Markets Laws:**

- Monetary and Credit Law dated 1/8/1963 and its amendments.
- Decision No. 2572 dated 20/10/1969 related to the client system in the Beirut Stock Exchange.
- Legislative Decree No. 120 dated 16/9/1983 related to the organization of the Beirut Stock Exchange.
- Law No.110 dated 7/11/1991 related to the reform of the banking situation.



- Decree No.7667 dated 16/12/1995 related to the implementation of the internal system of the Beirut Stock Exchange.
- Law No. 520 dated 6/6/1996 related to the development of the financial market and credit contracts.
- Resolution No. 6213 dated 28/6/1996 related to the institutions of financial intermediation.
- Law No. 360 dated 16/8/2001 related to promoting investments in Lebanon.

#### **5- Laws on the Codes of Procedures and judicial proceedings**

- The new Code of Civil Procedure under Legislative Decree No. 95 dated 16/9/1983, and its amendments which includes a special chapter on domestic and international arbitration.
- The new Code of Criminal Procedure No. 328 dated 2/8/2001 governing the Code of judicial and criminal reviews.
- Penal Code No. 340 dated 1/4/1943 which provides for special provisions on fraud and misuse of credit, in addition to crimes committed in the exercise of business and trade.
- Legal fees law dated 10/10/1950.

#### **6- Transportation and Services Laws:**

- Decree No. 2158 dated July 8, 1965 related to the organization of the civil aviation industry and air transport investment in Lebanon.
- Decree No. 4216 dated 20 October 1972 and its amendments related to the organization of travel and tourism agencies and tourist transport.
- Telecommunications Regulation Law No. 431 dated 22/7/2002.



- Electricity Regulation Law No. 462 dated 2/9/2002.

#### **7- Laws of Administrative Contracting and Regulation:**

- Decree No. 4517 dated 13/12/1972 related to the general system of the public institutions.
- Civil regulation law under Legislative Decree No. 69 dated 9/9/1983.
- The law related to regulating privatization and defining of terms and areas of application No. 228 dated 31/5/2000.

#### **8- Environment Protection Laws:**

- Law No. 64 dated 8-12-1988 related to conservation of the environment against pollution from hazardous wastes and materials.
- Environmental Protection Law and its annexes No. 444 dated 29/7/2002.

Such legislations are outdated which highlights their inconsistency and failure to cope with modern developments and requirements of business and trade in general, despite the amendments sometimes introduced in a hasty and non-integrated manner.

Indeed, all of these laws have been approved throughout *legislative stations in the life of the country* that witnessed significant and crucial amendments as well as the adoption of key legislations. Lebanon is now waiting for a new legislative station to clear the dust of years of its laws and bring back their youth and effectiveness.





The most prominent of these legislative stations can be summarized by the following periods and eras:

**First station:** The French mandate period from 1925 till 1942. This period witnessed the adoption of a number of laws that has been and still the cornerstone of the legal system in Lebanon. These laws are the Code of Obligations and Contracts, the Commercial Law and the Penal Code...

This era is considered a major legislative one since the justification of the mandate system was to establish and develop basic Lebanese institutions and laws so as to enable Lebanon to become independent. Most of these laws are still applicable today despite some amendments.

**Second Station:** Extended throughout President Fouad Chehab's mandate between 1958 and 1964. Several laws were adopted during this period, notably the inheritance law, and the majority of laws organizing the Lebanese State such as the Civil Service Law, the Judiciary Organization laws and the Judicial System Law...

**Third Station:** Is the era of President Elias Sarkis that extended from 1976 until 1977 during which, several laws and legislative decrees were adopted, especially the ones related to the organizing the relationship between the landlord and the lessee in addition to granting traders and insolvent institutions additional period to pay their debts and restore burned and disposed



documents due to riots that had occurred between the Palestinians and Lebanese...

**Forth Station:** is the era of President Amin Gemayel which began in 1983 where the Minister of Justice was Roger Shaikhani. This period is very well known in contemporary history, as the President tried, at that time, to create a legislative revolution through issuing a number of legislative decrees leading to naming it the period of the legislative decrees.

However some of the Lebanese did not acknowledge the legitimacy of the President and refused to abide by these decrees so they challenged their lawfulness which led to their cancellation. Only few of those decrees remained and they include: the Code of Civil Procedure adopted in 1983 and the law of joint ownership and the law of organ donation.

**Fifth Station:** extends from the mid-nineties up till the year 2000 where many banking laws and financial markets laws were adopted.

**Today** there is a project to establish a comprehensive legislative workshop that addresses several issues most notably the draft law Tenancy Law, draft Penal Code, draft amendment to the Code of Civil Procedure, draft amendment to the Code of Criminal Procedure, draft to review and update the Code of Obligations and Contracts, draft law on financial markets and the draft revision of Trade Law, in addition Law No. 19 of 5/9/2008 was recently issued to amend the Offshore Companies law as well as law No. 43 of 3/11/2008 to



amend Law No. 250/93 dated 14/7/1993 (establishment of the Constitutional Council) furthermore, the Law issued on 9/6/2006 was cancelled.

**Three elements characterize the conditions and reasons of these legislative eras as following:**

**The first element: the country's escape from a major crisis** after passing through a difficult period that destabilized civil peace, such as the two years war, the 1958 revolution, the assassination of President Bashir Gemayel, the assassination of President Rafik Hariri and the war of July 2006...

**The second element: the political power's will to reform.** This was the case during the first mandate of President Fouad Chehab as well as the era of President Elias Sarkis, and the period which witnessed the presence of legal personnel in key ministries such as Dr. Nasser Al-Sa'edi (Ministry of Justice) who launched in the nineties a number of important laws such as the Leasing law, the Financial Institutions law, the law on financial intermediation and the credit law.... In addition, and during his presence at the Ministry of Economy, he launched the literary and artistic property law and the industrial property law.

**The third element: the Lebanese consensus on the legitimacy of governance** which allowed the support of the legitimacy of the laws passed by the governing authority and the imposition of its implementation and respect.



Lebanon today combines all these factors, allowing for reflection to launch a new legislative workshop to update and develop various laws.

In addition to local laws and regulations, we must address the bilateral and multilateral agreements that Lebanon concluded in the framework of trade, business, investment promotion and protection.

### **Second – Bilateral and Multilateral Agreements**

The most prominent of these bilateral and multilateral agreements are:

- Economic agreement between Lebanon and Syria on 5/3/1953 provided on various provisions relating to the exchange of agricultural, livestock and industrial production and the protection of national Lebanese and Syrian producers and the organization of internal fees and transit.
- Trade agreement between Lebanon and the Government of the Republic of Senegal on 29/5/1963 which organized import, export and transit between the two countries, in addition to an agreement involving financial and economic cooperation on 19/5/1963, aimed in particular, to facilitate the establishment of the business Bank and the economic expansion of the Lebanese capital in whole or in part of Senegal and to ensure investments by the two countries.
- Agreement on trade and technical cooperation between Lebanon and the European Economic Community and its Member States Date 21/5/1965 awarded better treatment for the products of the two groups in accordance with certain conditions.



- Economic agreement between Lebanon and the Republic of Iraq on 9/4/1967 organized import, export and transit and fees between the two countries, an agreement between the two countries on economic, commercial and scientific and artistic cooperation on 25/12/1999 that aimed at strengthening the economic and social cooperation between the two countries in the fields of trade, agriculture, industry and services such as transport, housing and reconstruction.
- Trade agreement between Lebanon and Nigeria Date 29/3/1968 organized import and export between the two countries. Economic and trade agreement between Lebanon and Saudi Arabia 11/11/1971 organized import, export, transit and fees between the two countries.
- Convention on economic cooperation and capital investment between Lebanon and Kuwait Date 22/6/1972 organized import, export, transit and fees and the promotion of tourism and protection of capital and investment between the two countries.
- Cooperation and technical agreement between Lebanon and Morocco on 10/3/1972 for the establishment of scientific research institutes and exchange of inventions, documents and technical information and to stimulate trade and investment between the two countries.
- Cooperation agreement between Lebanon and the European Economic Community on 3/5/1977.
- Convention to facilitate and develop trade exchange between the Arab states on 22/2/1982.
- Framework Agreement on Trade Preferential System among the Member States of the Organization of Islamic Conference on 15/11/1996 aimed to



- promote investment between the Member States through the exchange of trade preferences, through adopted principles.
- Convention to encourage and protect and ensure investments between the Member States of the Organization of the Islamic Conference on 15/11/1996 to regulate the provision of facilities and incentives for investment between the States concerned.
  - Economic agreement between Lebanon and Sudan on 21/4/1969 related to trade relations
  - Convention related to the revitalization and protection of mutual investments on of 9/3/2004.

In addition to other bilateral agreements with the following countries: China (29/11/1972), Czechoslovakia (28/8/1980), Romania (6/12/1980 and 19/1/1994), Turkey (10/10/1991) Egypt (8-2 / 1992), Jordan (1/10/1992), Bologna (27/5/1993), the Czech Republic (7/10/1994 and 19/9/1997), Russia (31/3/1995 and 7/4/1997), Malaysia (23/3/1995 and 26/2/1998), Kuwait (10/1/1996), Ukraine (25/3/1996), Armenia (1/5/1995), Australia (11/3/1997), Germany (28 / 3 / 1997), Greece (24/6/1997), Cuba (14/12/1995 and 11/3/1998), Iran (28/10/1997), Chile (26/11/1997 and 13/10/1999), Canada ( 11/4/1997), Tunisia (24/6/1998), Italy (7/11/1997), France (28/11/1996), the United Arab Emirates (17/5/1997), Azerbaijan (11/2/1998), Finland (25/8/1997), Morocco (3/7/1997), Yemen (25/11/1999), Bulgaria (23/7/1998), Bahrain (7/8/2003), Vietnam (12/8/2003) and Iceland (24/6/2004).



However, the provisions of these conventions remain restricted to countries of which Lebanon has concluded such treaties with.

In general, these agreements provide for preferential treatment for the development of economic relations between the two countries, especially in matters related to import and cooperation in the exchange of information, import and export licenses, facilitating transit trade, organizing paying and calculating charges namely customs, organizing free zones in case they exist and the passage of vehicle shipping, facilitating means of air and ship transport and cargo, technical and tourist cooperation, encouraging mutual investment by ensuring fair and equal treatment for foreign investors and facilitating administrative transactions and granting licenses and permits related to the free transfer of payments related to these investments and reducing expropriation and nationalization policies ...



## Part II – Analysis of Commercial Laws in Light of Business and Investment requirements

We will begin by conducting a general comprehensive overview of economic laws **(First)** and then we will present a more accurate and detailed overview of these laws and their shortcomings **(Second)** in the light of needs and requirements of trade and investment.

### First – General Overview of Economic Law

Despite the fact that Lebanon has initiated to establish a legislative workshop since the early nineties, at various levels and by multi-governmental and multi-legislative references, still all these attempts have not yielded concrete results, for the exception of some legislative activities including: the law on the development of the financial markets and credit contracts No. 520 of 6/6/1996, the law related to the organization of financial lease No. 160 of 27/12/1999, the law to encourage investment in Lebanon by certain tax exemptions and the establishment of the Investment Development Authority of Lebanon (IDAL) No. 360 dated 16/8/2001, the accession of Lebanon to the New York Convention on the recognition and execution of arbitral awards on 10/6/1958 in accordance with Law No. 629 dated 23/4/1997, the amendment of the arbitration law, particularly in the framework of administrative contracts, in accordance with Law No. 440 dated 29-7-2002, the draft Law on the Establishment of the Supreme Council of the financial markets in Lebanon, as well as many memos and circulars and decisions issued by the Governor of the Bank of Lebanon, etc. ...





Nevertheless, Lebanon has not yet laid an integrated strategy aimed at preparing its legal system which allows the creation of a climate of confidence for the foreign and Arab investors and even the Lebanese and emigrant at the same time.

The mentioned strategy is supposed to review the grounds that give credibility to the judiciary, its general structure the speed of intervention and effectiveness of its decisions, etc. ...

In addition, all laws that sponsor business, corporations and business behaviors have become to a great extent very monotone and decrepit in addition to the lack of coordination among each other which widely opened the door for the development of random legal institutions without prior planning or methodology.

Not to mention that the aspiration of Lebanon, which focuses on its accession to the WTO is largely futile, due to regional, domestic and professional reasons that consider some of the privileges a shield protecting the trader, the professional and the industrialist in addition to beneficiaries from the stalemate of the legislative authority activity and from the fragmentation that infected the executive powers.

Therefore, it becomes evident that in order for Lebanon to return to the circle of trust, which is essential for financial investment, its actions must be based on the following axiomatic:



### **1- Laws must be respected**

All laws related to taxes, the protection of literary and artistic property which consecrates the banking secrecy, commercial agencies, arbitration, enforcement or criminal laws are not simply a means or excuse to circumventing them as to disabling them and use them against any clear strategy aiming for investment promotion.

In this context, it may be useful to give two examples of the lost relationship between execution laws and criminal laws:

**A:** International Arbitration Awards executed in Lebanon become part of the judicial system on the grounds of which there is a possibility to file a bankruptcy case or to demand the execution of those decisions before the competent departments. While the debtor can appeal before the investigating judge or before a criminal judge against those decisions or against some foundations or invoices on which it is based. The mentioned has aimed at the realization of a general rule that dates back hundreds of years "Penalty Curbs Rights": «Le criminel tient le civil en l'état».

**B:** It is true that Lebanon has introduced the Off Shore companies as Joint Stock Companies where the capital has been recently reduced in this type of company from 100 million L.L to 50 million L.L in order to attract and encourage the establishment of such companies in Lebanon. However, this type of legal, financial and commercial frameworks, has become, in itself, what is called "Russian puppets" «Poupées rousses», thus making the Lebanese legal



system a vehicle for the issuance of bogus invoices that burden the Lebanese tax system and build up a framework of a huge amount of hollow transactions.

## **2- Coordination between laws must be the basis of an overall developmental strategy**

The Lebanese Code of Commerce has aged and deep salient wrinkles are now covering its most prominent features. Rather than having a business law, we have modern and sometimes ancient laws that are based on the power of will at times and witness flagrant interference at other times.

There are myriad examples in this area: financial laws are so strict and rigid, while commercial laws, companies' laws and securities and checks laws are outdated, undeveloped and stagnant.

It is true that there are numerous bills designed to regulate e-commerce, e-signature and e-credit cards, etc ... However, this does not fall within a modernized research framework that could constitute a new and modern beginning for a legal modernization workshop. Major projects alike the development of electronic commerce in Lebanon (which is known as Ecomleb which is formed by the contribution of the most prominent members of science and law in Lebanon and France including Pierre Catala) hasn't been approved to this date, while a less integrated project inspired originally from different inconsistent laws in general may be approved by the House of Parliament.



This latter project was approved by the Parliamentary Information Technology Committee on 21/12/2006 and was referred to other committees, thus it was included in the agenda of the joint committees on 11/9/2008 and was later referred to a sub-committee chaired by MP Ghinwa Jaloul and members of congress Hussein Haj Hassan, Yassin Jaber, Atef Majdalani and Hassan Yacoub for further study.

A sub-committee was formed in close cooperation with the Ministry of Justice to re-draft this issue and become subject to further discussion in parliamentary committees; however, it hasn't been approved to date.

### **1- Lebanon's legislation must be reliable**

The weakness of the legislative activity in Lebanon is no secret, that is if the legislature decided to legislate at all. The Lebanese laws in general are derived from model laws which is the case in the field of electronic commerce, arbitration, literary and artistic property, etc ... or inspired from foreign legislations, French in particular.

But the legislative activity in Lebanon remains incomplete since it lacks a great deal of coordination, editing, details and coherence. How many times did the legislator forget a chapter or article when adopting the final text of the law? And how many times did he catch up or tried to catch up by voting on the laws based with a sole article? For example, the legislature forgot the chapter related to the right of option related to the heritage law for non-Muslims dated June 9, 1959 so he later added it, and also acknowledged the same law under a single



article for the necessities of the situation. How many times do we found that some legislations are product of private interests?

In addition, the House of Parliament passed a law related the exclusive management of the Cigarettes and Tobacco in Lebanon complying with the policy of one of the influential politicians in power which led to the prosecution of the Lebanese State by international forums. Another law was passed recently in the Parliament to satisfy a powerful politician annulling a decision of the Shura Council that abolished a contest in the public security which is a violation of the constitutional principle of separation of powers<sup>9</sup>.

The time has come for Lebanon, which embraces cultured and ambitious people well as its unique composition and strength of decision, to open up and attract capitals and promote credibility of its public action, with all integrity and intention believing that we are worthy to be the hub of crafts, trade and endless prospects.

### **Second – detailed approach on economic laws**

In light of the current Lebanese Ordinance law,, laws and regulations that foster trade and investment in Lebanon in general, remain either insufficient or outdated.

Below is a breakdown of this situation:

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<sup>9</sup> Al-Nahar, Sunday 15 March 2009, Musa Asi, "the Contest - the scandal to promote public security officers: the State Shura Council canceled the results so the House of Representatives approved it!!" Al Nahar investigations, pp. 15.



- 1) **The Code of Land Commerce** as well as special laws relating to particular types of companies in addition to financial and tax laws do not address the procedures to facilitate the establishment of companies and reduce their cost.
- 2) The Lebanese law did not pay much attention to **the means to protect minorities in companies**, in contrast to European and French laws for example. The bigger effort in this area is due to the Lebanese jurisprudence that developed the concept of texts and gave minorities several rights, most importantly, the right to appoint a Judicial Administrator (Administrateur Judiciaire) in the event of a dispute between partners that resulted in the impossibility of proper management of the company, the right to abort the company in cases where the transfer of shares was conditioned by the consent of other partners, the right to appoint an auditor (Auditeur) for the detection and evaluation of the company's accounts ...
- 3) The Lebanese laws have not yet adopted the **Automation and Informatics system** (Informatisation) in the area of companies and commercial registry for instance and yet still depend on paper filing which remains scientifically unorganized and undeveloped.

Moreover, the entire administrative transactions still take place within the official departments that generally have not yet adopted advanced means in the framework of Internet and modern technology to facilitate the completion of such transactions **from a distance**, in a view to promote the work of the individual as well as the administration.



With reference to the Memorandum of Understanding related to the service of the management of registration of domestic and foreign companies transactions via mail» which was signed on 28/9/2007 by the Ministry of Economy, Trade and the Ministry of Justice and the Ministry of Finance and LibanPost (SAL). This memorandum is the introduction of a cooperation mechanism between the administration and the postal company whereby the latter is committed to ensuring and facilitating some of the administrative services such as facilitating procedures of registration of new companies. We refer to this although there are some crucial problems concerning this issue which may be solved.

The Ministry of Finance recently announced the launch of a periodic tax statement technique related to the value added tax (VAT) on its web site ([www.finance.gov.lb](http://www.finance.gov.lb)), but this technique have not yet been actually launched.

On the other hand, reviewing official public records such as commercial and real estate registry is still limited to official departments. Any person requiring such information must go to the relevant department wherever it resides on the Lebanese territory. Unfortunately, such websites and public records haven't been launched yet despite the fact that these techniques certainly contribute to facilitating the work, save time and alleviate the pressure of all individuals and public administrations as well.

4- In Lebanon, there are no laws that directly address **the prevention of monopoly, the development of free competition foundations** and the fight against the emergence of so called «Monopole» or «Oligopoly». And therefore



the "competition law" does not exist in Lebanon despite the fact that this law is one of the main branches of public laws in Europe (Droit de la concurrence) and in the United States of America (Anti-Trust Law).

This issue forms a major gap in the Lebanese legislation which tends to grant monopolies and privileges instead of reducing them and this is clearly visible in the telecommunications sector, especially since there are only two companies entitled to deal in this area.

5- The **protection of Intellectual Property (IP)** is organized in Lebanon by law No. 75 related to the protection of literary and artistic property dated 3/4/1999, and Law No. 240 on patents dated 7/8/2000, as well as Law No. 538 dated 24/7/1996 concerning the formation of Intellectual Property Protection Department in the Ministry of Economy and Trade Directorate General for Economy and Trade.

But the basic problem remains in the true implementation of these texts, especially since the protection of intellectual property culture is not at all disseminated in Lebanon, but on the contrary, the culture of purchasing counterfeit goods and piracy is widespread, which is due in particular to the remarkable decline in the price of the latter, which often ranges between a couple of Dollars for a music CD or software and others while the price of the original may exceed hundreds of dollars.





The fact is that Lebanese industries directly involved in the intellectual property that are based on copyright (Copyright Industries), contribute approximately to 1,044 million USD in gross national product, where 49,666 employees operate in such sectors.

These sectors produce 52, 555 million USD of the added value in the following areas: media and literature (29.8%), music, theatre, opera (13%), movies and video (11.6%), radio and television (13.3%), photographs (1.8%), software and databases (15.3%) visual and graphic arts (9.1%), advertising (6.1%), and the copyright companies (5.1%).

This reality reflects Lebanon's urgent need to apply already issued intellectual property laws.

Despite some legislative shortcomings of these laws, and that Lebanon is working to address them to fit with the requirements of accession to the World Trade Organization, the provisions set forth in the domestic laws and in international treaties to which Lebanon has acceded such as the International Rome Convention for the protection of artists and performers, executors and producers of phonograms and broadcasting institutions on 26/10/1961 which the government was allowed to conclude according to Law No. 585 date of 24/7/1996, are sufficient to provide substantial protection to intellectual property rights if applied literally, strictly and seriously.

Indeed, the Lebanese law related to the protection of intellectual property is one of the most advanced laws in this area in the Arab countries. But the



problem lies in the judicial measures and slow investigation procedures as well as the ridiculously low compensations required by the courts.

1) **The Labor and workers system** is organized in Lebanon by Labor law dated 23/9/1946 and its amendments, and the Social Security law dated 26/9/1963 and its amendments.

According to Article 73 of the Social Security Law, business emergency, occupational diseases, family and educational allowances system and the retirement compensation system are the responsibility of the employer contributions whereas sickness and maternity security are the responsibility of the employers, the insured parties and the State.

The employer shall declare each Lebanese or foreign employee (after obtaining a work permit for the latter) and register him/her in the National Social Security Fund. In Lebanon there is no maximum number of workers which the employer can employ without announcing, similar to all countries. The employer shall announce each worker working in his enterprise.

Violating the announcement and payment of due contributions imposes on the employer severe fines by the National Social Security Fund via specialized observers. But irregularities remain myriad in this area and the administrative control system is inadequate and/or ineffective in many times, allowing some employers to evade their legal obligations.



In general, the Lebanese labor law balances between rights and obligations of both the employee and employer. Perhaps the most important of which is Article 50 dealing with the terms and rules of dismissal from service and resignation, especially as far as warning notice (Préavis) and way of calculation and the amount of compensation and cases of arbitrary dismissal and so on.

This article is characterized by a high level of clarity, which preserves the right of both the employer and the employee and pushes many institutions to refer this right explicitly in the concluded contracts.

2) As for **alternative means dispute resolution, such are available in Lebanon**, most importantly arbitration in its domestic and international sectors is provided for in articles 762 to 821 of the new Code of 'Trials' Principles.

Since the amendment of article 762 of this law under article I of Law No. 440 dated 29/7/2002 the Lebanese state and public law persons can resort to arbitration regardless of the nature of the contract subject of the dispute.

But this article adds a prerequisite as follows:

*"The arbitration provision or the arbitration agreement shall only take effect in the administrative contracts after clearance by a decree adopted by the Council of Ministers upon the proposal of the competent minister with regard to the State or the custodial authority for the moral persons of public law."*



That means, as from the amendatory law adoption, the arbitration agreements in the administrative contracts are allowed in principle and not nullified but they need an authorization from the Cabinet to be in force.

### **Section III - The effects of legislation on promoting an investment environment**

The legislative obstacles facing Lebanon reflect **(Second)** on the investment status in the country which led to wasting significant investment opportunities to the country especially during the past year which has seen a flurry of Arab investments as a result of soaring oil prices worldwide.

Nevertheless, these obstacles do not override the legislation incentives enjoyed by Lebanon **(First)**.

#### **First: Legislative Incentives for Investment**

Legislative incentives in the broad sense are divided into two parts: Objective environment for investment (Enabling framework) on one hand (1) and the investment incentives policy (Incentives policy) on the other (2).

##### **1) Objective environment for investment**

This can be summarized by the following factors:

**a- Its free economy and** the absence of conditions or legislative obstacles that restrict the movement and the free transfer of funds to and from Lebanon.



**b- Bank Secrecy Law** dated 3 September 1956, which is still strictly applied and executed,, it prevents disclosure of the identity of the account holder as well as any personal details related to his personal account unless there are specific and narrow reasons listed exclusively in the law which are: A written permission of the account holder or his heirs or curators (Article 2 of the law dated 3/9/1956), bankruptcy announcement of the account holder (Article 2 of the law dated 3/9/1956), the emergence of a lawsuit concerning a bank treatment between the bank and the client (Article 2 of law dated 3/9/1956), exchange of information related to credit accounts among banks and under confidentiality (Article 6 of the law dated 3/9/1956), requests from the judiciary to the banks in the context of cases of illicit enrichment under the legislative decree No. 38 dated 18/2/1953, and the Law of 14/4/1954 (Article 7 of the law dated 3/9/1956), "the Commission on Special Investigation " decision for lifting of bank secrecy of accounts for the suspicion of money laundering (Articles 6 and 8 of the anti-money laundering law No. 318, dated 4-20 / 2001)<sup>10</sup>.

**c- To allow residents and non-residents in Lebanon to open bank accounts** in foreign currencies, although the Central Bank's approval is necessary for the purchase of treasury bonds and some financial instruments (Instruments financiers).

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<sup>10</sup> Competence of this body was expanded in terms of suspension and the lifting of bank secrecy under law

No. 32 dated 16/10/2008 published in the Official Gazette No. 43 dated 20/10/2008 P. 4237.



**d- To allow foreign banks to enter the Lebanese market** and open branches, with some conditions which are particularly set forth in the articles 128 and what follows it and 133 and what follows it, which related to the Law of Money and Credit dated 1/8/1963 in terms of obtaining a license and the allocation of a certain capital etc....

**e- Advanced level of the legislation related to the protection of intellectual property** which grants Lebanese and foreigners the same rights, and fits with most of the requirements of the World Trade Organization in this area, particularly in terms of non-mandatory registration as a condition for the benefit of the writer from the legal protection accorded to him.

**f- The number of legal proceedings necessary to launch an investment project in Lebanon is relatively acceptable** compared with other countries, (6 procedures), while the rate in the region is 10.3 procedures<sup>11</sup>. In addition, the required capital spent on the project is approximately 56.5% of gross national income per capita (GNI) while the rate in the countries of the region amounts to 74.5%<sup>12</sup>.

**g- The adoption of FIDIC contracts in public construction contracts** which are imposed by the Lebanese Council of Development and Reconstruction (CDR).

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<sup>11</sup> U.S. Chamber Overview of Lebanon – Investment Overview of Lebanon, Business portal to Lebanon : [www.portaltolebanon.com/portal/lebanon/investment-overview](http://www.portaltolebanon.com/portal/lebanon/investment-overview)

<sup>12</sup> Same reference



## 2) Investment Incentives Policy

Below are the most prominent elements of this policy:

a- Law No. 360 dated 16/8/2001 established the **National Administration for the promotion of investments (IDAL)**, that replaced the institution established by Decree No. 5778 Date of 11/10/1994 and its amendments, which provided for easy procedures to obtain the permits necessary to start a business through special services provided by this administration to senior investors saving them a lot of time and effort.

Indeed, investment projects covered by the provisions of this law benefit from the following exemptions, reductions and facilitations, according to the areas of establishment:

- To obtain work permits necessary for the project through a decision taken by the institution's chairman after the consent of the Board of Directors to submit the project to the provisions of this law, on the stipulation to employ at least two Lebanese for every foreigner and register them in the National Social Security Fund.
- Exempt the Joint Stock Company established to own and/or manage the project, and which calls for public subscription of shares, of the income tax for two years from the date of the inclusion of its shares in the Beirut Stock Exchange, on the stipulation that the minimum percentage of the actual transferable shares does not decrease below 40% of the value of its capital.



- 50% reduction on the income tax and distribution of profits shares owned by the investor and resulting from the project for a period of five years.
- Full exemption from taxes on income and on distribution of profits shares owned by the investor for a period of ten years.
- The institution can conclude a Package Deal contract whereby the Lebanese state, represented by the institution, can grant the investor willing to implement a specific project, incentives, exemptions and reductions approved by the Board of Directors for this project, conditional upon the investor's commitment to implementing the project in accordance with the conditions and deadlines included in the contract. The contract is subject to the approval of the Cabinet.

The project can benefit from the following maximum incentives:

- Full exemption from taxation on income and on the distribution of shares of the profits resulting from the project for a period of up to ten years from the date of commencement of the investment project.
- The granting of work permits of all categories on the stipulation that the project benefiting from the Package Deal maintains national employment by recruiting at least two Lebanese for every foreigner and registers them in the National Social Security Fund.
- Reduce work permits and residence fees by up to a maximum of 50% and reduce the value of a certificate of deposit to the Housing Bank to the half.
- The possibility of relieving Anonymous Companies (SA) which are aimed at owning and/or managing an investment project benefiting from the





provisions of the Package Deal Contract from the requirement of having Lebanese natural or moral persons in their Administrative Boards.

- Reducing Fees for building permits for buildings to be constructed to achieve the investment project by up to a maximum of 50%.
- Exempting real estate in which projects are to be built on from the full registration fees in the Register and from all related fees as well as the fees for registering lease contracts in the commercial register on the stipulation to commit to its implementation within five years from the date of registration of real estate in the Land Registry.

**b- In general, the Lebanese tax legislation grants temporary tax exemptions** to new plants and factories and investments financed directly by the investor himself or through bank loans, medium-or long-term, as for the projects aimed to rebuild the areas and centers demolished by war. In addition, there are some types of companies, such as Off Shore companies that are exempted from corporate tax.

**c- The rates of taxes borne by companies in Lebanon are low** compared with other countries in the region.

Off Shore companies for example are subject to a tax cut of 1,000,000 L.L. annually, while tax rates of other companies amount to a total of 12% of their profits as maximum, noting that this tax is imposed on net profits (Net income) and not on the overall profits (Gross income), allowing the company to deduct all expenditures from the profit number which is subject to tax.



The Joint Stock Companies are subject to tax only in respect of profits earned and proceeds resulting from the operations carried out inside the Lebanese territory.

On the other hand, the Lebanese law does not impose taxes in the framework of towns or regions, on the profits realized by the companies, and the ratio of the value added tax is of 10%, which is relatively acceptable in view of the other rates in the Arab States and the world that much more exceed this ratio.

**d- The Lebanese law broadly protects investors in certain areas of business.** It is devoted for exclusive agencies system and grants the exclusive agent privileges and compensation under the Legislative Decree No. 34/67 and is also devoted for what is called “monopole” in some areas especially the cellular phone area.

We note here that the investor protection in the market blocks the other investor who is seeking areas of investment which must push Lebanon to shift from protecting monopoly to protecting free competition, a matter also in the interest of the consumer.

However, **legislative obstacles to investment** in Lebanon are still numerous.



## Second – Legislative Obstacles to Investment

The report of the World Bank for the year 2008 «Doing Business 2008»<sup>13</sup> noted the decrease of the doing business index in Lebanon from rank 77 in 2007 to rank 85 in 2008<sup>14</sup>, due to legislative and financial obstacles facing investors in the country, especially **in terms of multiplicity and complexity of transactions and procedures, in ten areas**<sup>15</sup>:

**1- Starting a business:** the process of setting up a company in Lebanon requires the implementation of 6 procedures: the appointment of a counsel, the deposit of capital in the bank, signature on the system and registering the company in the Commercial Register, stamping the books of the company by Head of the Court of First Instance<sup>16</sup>, inform the Ministry of Finance the commencement of business within two months from the date of

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<sup>13</sup> The World Bank and the International Finance Corporation, «*Doing Business 2008*», Comparing Regulation in 178 economies, 2008, also available on the following link: <http://www.doingbusiness.org/Documents/CountryProfiles/LBN.pdf>

<sup>14</sup> The World Bank and the International Finance Corporation, «*Doing Business 2008*», Comparing Regulation in 178 economies, 2008, also available on the following link: <http://www.doingbusiness.org/Documents/CountryProfiles/LBN.pdf>

<sup>15</sup> The World Bank and the International Finance Corporation, «*Doing Business 2008*», *ibid*.

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<sup>16</sup> It should be noted that the Court recently cancelled the requirement of ختم commercial books in accordance with paragraph 6 of Article 29 of the Tax Procedure Law approved by Law No. 44 Date of 11/11/2008 and published in the Official Gazette No. 49 Date 14/11/2008. This is considered an important legislative achievement.



registration, and registration in the National Social Security Fund, which by itself requires 35 days.

**2- Obtaining Licenses:** This requires the implementation of 20 applications that take up to 211 days, which is a major impediment to investors in view of a waste of time and effort and cost required.

These transactions include: obtaining a new planning map, the approval of the Syndicate of Engineers on the project (if the engineer is registered) and payment of due fees, submit a request to obtain building permits from the civil organization and obtaining preliminary approval thereof, payment of taxes to the municipality construction permit, obtaining the construction permit, obtaining a permit from the Engineers association to start the construction works and provide a copy for the police, submit requests to the Ministry of Public Works to detect water and means of disposal, electricity, telephone lines and the presence of an expert to complete the detection, requesting and obtaining the Housing license from the Syndicate of Engineers and from the civil organization, the presence of civil organization experts to make a physical inspection on the site, obtaining a housing license from the municipality, access to water supply, electricity and telephone line, the presence of experts from the Ministry of Finance to disclose on the site and estimate the rental value of the Foundation, and the registration of the construction in the Land Registry.

**3- Hiring Employees:** According to the World Bank report referred to above, the Index of Difficulty in Recruitment in Lebanon comes at 25, which is acceptable in comparison with neighboring countries, and is based on legal provisions that foster employment and duration and procedures



related to declaration of workers, firing and resignation and the amount of compensation and forewarning...

However, Lebanon has not achieved any progress or development in this area since 2005 despite the fact that the best developed countries in this area, such as China, has achieved zero in the Index of Difficulty in Recruitment.

**4- Registering Property:** The number of procedures that must be completed in this context is 8 and require 25 days. That number is not satisfactory in view of the neighboring countries, where the number of procedures in the United Arab Emirates for example is 3 (and requires 6 days) and in Turkey 6 (and takes 6 days). We should note that the strict terms of the registration of property ownership is imposed by the Lebanese real estate system, which entails on the process of registration an undisputed proof of the ownership of the plot.

These procedures include: obtaining a new real estate statement of the real estate and its official map and a statement from the Directorate of Civil Organization and from the municipality, conducting an inspection of the property from the tax department to estimate the rental value, obtaining the estimation of this rental value, obtaining quittance from the municipality, organizing the sales contract by a lawyer or a notary or a competent person, and applying for registration with the Land Registry.

**5- Getting Credit:** the legal rights associated with the process of obtaining loans in Lebanon are relatively acceptable compared with other countries in the region. The index of Lebanon in this area, according to the report of the World Bank is 4 while in Syria and the United Arab Emirates stands at 3 and



Jordan at 5. This index, which rises gradually from the worst to the best and ranges between 1 and 10, is calculated according to several data most importantly laws of bankruptcy, mortgage and insurance, which refers to the need to develop some of these laws in Lebanon to suit the requirements of international investment.

**6- Protecting Investors:** Lebanon's rank declined in this area from 81 to 83 in 2008. Indeed, in the context of the protection of investors, legislative gaps are significant in the following areas: corporate managers responsibility for poor management and the possibility of prosecution by the minorities in the company, the possibility of annulment of contracts that managers conduct damaging the interests of the company through the judiciary, the possibility to impose criminal or civil penalties on responsible managers in law and in fact, the possibility for partners to sue managers directly or indirectly, for the damages that affected their shares and parts, and the possibility for the partners to directly ask questions to witnesses and defendants during lawsuits, the possibility for partners who own more than one 10% of the company's shares to appoint a judicial auditor to investigate a suspicious transaction ...

**7- Paying Taxes:** According to the above mentioned World Bank report<sup>17</sup>, the investor in Lebanon must allocate 180 hours of work per year to pay all due taxes which amounts to nineteen payments. This is an acceptable figure compared with neighboring countries, but is considered generally very high

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<sup>17</sup> The World Bank and the International Finance Corporation, «*Doing Business 2008*», op.cit.



when compared to countries that attract the largest number of investments such as the UAE where paying taxes only requires 12 hours (14 payments).

**8- Cross Board Trading:** the export process in Lebanon requires the implementation of 5 transactions for 27 days, while the import process requires the implementation of 7 transactions for 38 days.

The required number of transactions and procedures is acceptable whereas duration is very long compared with neighboring countries and because of the speed requirements in international trade: in Syria, exportation requires the completion of 8 transactions in 19 days, and importation 9 transactions in 23 days, whereas in the UAE exportation requires 7 transactions in 13 days and importation 8 transactions in 13 days.

**9- Enforcing Contracts:** the enforcement of contracts process requires in Lebanon the completion of 37 transactions in 721 days which is very high and forms one of the key problems facing investors in Lebanon which is largely due to the slow pace of work in the courts as noted above.

**10-Closing a Business – Bankruptcy:** here lies the fundamental problem in the legislative system, where the closure of an institution or a company in Lebanon requires 4 years at a cost of 22% of the capital.

It is worth mentioning here that the Lebanese Ministry of Finance is in continuous contact with the Doing Business team in Lebanon, as it plays as the coordinator between this team and the concerned ministries, and it works with these ministries on the implementation of proposed action plans





of "Reforming the practice of business activities in Lebanon" following a workshop organized by the Ministry of Finance in cooperation with the World Bank and the International Finance Institution on 13/11/2008 in the Grand Serail under the patronage of HE the Prime Minister of Lebanon.

**In general, the most important problems and gaps that face investment in Lebanon are the following:**

**First: the administrative and practical part**

**A:** Provisions and regulations that foster the establishment and management of companies in Lebanon are **complex and costly** and time-consuming compared with other countries, forcing the investor to either bribe officials to speed up and facilitate the procedures or to manage his work on an unlawful basis without any declaration.

Indeed, the three problems that lie within this framework focus on:

- **Transactions to obtain licenses:** particularly in municipalities where the licensing system is not integrated, ineffective and too complicated.
- **Procedures for management and activation of companies:** tax, customs, labor law, social security, work permits, complex closure of business....
- **Lack of identification, limitation and organization of legally imposed procedures:** systems can change quickly and without previous warning, and some transactions are replicated and disclosures sensory on the institutions' sites are too many<sup>18</sup>.

<sup>18</sup> Frederic JENNY, *Competition law and competition policy: lessons from developing and transition economies*, 19/4/2007.





**B: Arbitral and irregular administration** without effective supervision and accountability, including but not limited to **administrative abuse within the framework of quittance** where all investment transactions are blocked or frozen until the investor obtains a quittance which is only awarded upon the department's confirmation that they meet all of the financial rights in various areas.

**C:** The possibility of **free competition** in the Lebanese market, given the proliferation of monopoly (Monopole, oligopole) and also the spread of bribery, corruption, political interference and nepotism in the public bidding. This fact is reflected in particular in the sectors of construction, telephone, electricity, water, public transport and real estate...

A study conducted in 2003 by the Ministry of Economy and Trade noted that about half of the Lebanese domestic markets are subject to monopoly and the third is subject to a company that manages more than 40% of it<sup>19</sup>. This is indeed very dangerous and urges to make efforts to open the way for free competition.

In order to keep abreast of these efforts, the Competition Authority must be established and its role must be activated in various fields, especially in the area of privatization<sup>20</sup>.

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<sup>19</sup> Joey GHALEB, ministry of economy and trade, *Global Forum on competition-the relationship between competition authorities and sectoral regulators*, 2003.

<sup>20</sup> Frederic JENNY, *Competition law and competition policy : lessons from developping and transition economies*, op. Cit.



## Second – The Legal Section

**A:** The majority of Administrative Laws are outdated, namely: public accounting law (1963) the auctions system (1959) the law of the establishment and organization of the central inspection (1959) and the conditions of participation in the public transactions (1966) these laws also suffer from the lack of clarity, complexity and centrality of transactions and procedures.

Moreover, many of the legislative incentives for investment in Lebanon were drafted before the Lebanese war such as the bank secrecy law, which calls for some re-consideration in order to improve it or for re-estimation of its advantages and disadvantages, which requires taking additional efforts to create and find new incentives without settling for the present inherited ones.

**B:** on the other hand, it is widely known that what matters most for the investor when choosing his investment place is **candor and clarity of the law** in order not to collide with legal surprises or arbitrary administrative practices. This is what the Lebanese legislature should ensure especially since numerous laws, such as the value added tax law No. 379 Date 14/12/2001, remain in many of its provisions unclear and vague.



### Three – The Judicial Part<sup>21</sup>

The key element which the investor seeks is the degree of confidence of the judiciary on the one hand and the speed of resolving disputes and the effectiveness of its decisions on the other hand. Lebanon, suffers from a fundamental problem in this context which forms a real impediment to investment, where its danger poses in the context that it might not be considered as such by the involved authorities that do not pay it appropriate attention and focus more on the creation of financial incentives to encourage investment.

The most prominent reasons for this judicial crisis, which we discussed previously, are the following: lack of number of judges, procrastination by the lawyers - and judges - and their lack of respect for the deadlines set forth in Laws of principles of **hearings**, most importantly deadlines to exchange their regulations which must take place in the Registry of the Court on the contrary of the arbitral proceedings where there is full commitment to these time limits subject to the imposition of sanctions, and rampant bias and corruption, and threatening judges to retaliate and demand to step down and the inefficiency of some judges, especially since the training had decreased and that university education has become far behind in view of the business requirements and development.

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<sup>21</sup> Prof. Ghaleb Mahmassani's word during a national workshop on "Commercial Laws as a Means of Promoting Economic Development in Lebanon" organized by the Arab Center for the development of the rule of law and integrity in close cooperation with the Ministry of Justice, Beirut, 26-27 January 2009.



#### **Section four – Proposed Amendments and Legislative Additions<sup>22</sup>**

The legislator must play a great role in the adoption of legislations that ensure “unity” between various economic sectors which shall be based on a comprehensive study on the state and needs of the Lebanese economy, including the state of the labor sector and securing new business opportunities on the one hand, and to ensure that these legislations are based on the idea of the investor’s interest instead of blind interest of administration on the other hand.

The problem of legislative amendments or additions to be made on the Lebanese legal system shall be put in an objective manner, if we set the goals that must be assigned to all incentives in the framework of law and investment.

In other words, one of the problems could lie on knowing whether the legal development must address the State, i.e. the public sector (**first**) itself or the private sector (**second**).

#### **First – The Need to Develop Legislation in the Public Sector**

The development of legislation towards the development of the State’s capacities is different in substance and objectives from the legislation that should be sought in the private sector.

For example, we find that a number of concluded contracts in a variety of fields have been handled in the private field i.e. everything related to financial

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<sup>22</sup> MENA-OECD Investment program, *National investment reform agendas – partnering for investment*, Draft, OECD, 10/5/2006, also available on: [www.oecd.org/dataoecd/58/40/36655809.pdf](http://www.oecd.org/dataoecd/58/40/36655809.pdf)



relations between the private institutions or in international trade relations, while the legal frameworks on the basis of which the State administration operates are obsolete to a large extent.

For instance, the ToR established for contracting of work remained without modification in Lebanon due to the fact that the official ToR adopted in the laws in force dates back to 1941, whereas the recent contracts such as General Deposits Receipts (GDR), Leasing, Franchising, Factoring, Titrisation and others outran the official Lebanese legislation by years.

Hence, the Lebanese state had to resort to the assignment of most development activities, to the Council of Development and Reconstruction (CDR) that can enter into purchase and contracting agreements and implement projects and study the structure of development plans without abiding by rules sponsored by the laws in force and thus the Council, for example, has secured the possibility of concluding international and developmental contracts similar to the private sector, especially since this Council applies the FIDIC system in the conclusion of international construction contracts which constitutes an important incentive for international investors due to the protection provided by such FIDIC contracts. Nevertheless, matters such as the of supervision of disbursement of funds, mechanisms to win tenders, feasibility of some existing contracts, are still to be observed since the methods of supervision and examination of transparency and corruption are not yet clear.

Such type of problems is almost entirely absent in the private sector, where legitimate speculation eases the disadvantages of monopoly and restriction.



## **Second – The Need to Develop Legislation in the Private Sector**

In this context and in general, the legislative amendments and additions needed are the following:

**1- Amending the Lebanese commercial law<sup>23</sup>** to suit the following requirements:

- enforce contracts more promptly and effectively
- protect investors
- facilitate procedures and transactions related to business and commerce
- develop the bankruptcy system and failure to pay

**2- Developing a Competition Law:** addressing means to protect the consumer and the Anti-dumping policy and modern E-commerce transactions and establishing an authority to control the market practices. This law also addresses limiting the abuse of dominant position and contracts that encourage monopoly and hinder free competition<sup>24</sup>.

**3- Developing the Anti-corruption law:** To activate the existing sub-laws including the law of illicit enrichment dated February 18, 1958, and the need for Lebanon's accession to the Convention of the Organization for Economic Cooperation and Development (OECD) to combat bribery, dated

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<sup>23</sup> Euro-med partnership, Lebanon, *Country strategy paper 2002-2006 & national indicative program 2002-2004*, Euro-med publications, also available on: [http://ec.europa.eu/external\\_relations/lebanon/csp/02\\_06\\_en.pdf](http://ec.europa.eu/external_relations/lebanon/csp/02_06_en.pdf)

<sup>24</sup> Marwan MIKHAEL, Ministry of Economy and trade, «*Doing Business in Lebanon : Improving competition and Streamlining administrative barriers*», 19/4/2007; also available on : [www.oecd.org/dataoecd/23/18/38471987.pdf](http://www.oecd.org/dataoecd/23/18/38471987.pdf)



21/11/1997<sup>25</sup>, with reference to the outstanding development in terms of the accession of Lebanon to the United Nations Convention against Corruption (UNCAC) according to Law No. 33 Date 16/10/2008<sup>26</sup> approved by the United Nations General Assembly in its resolution No. 58/4 Date 31 / 10/2003<sup>27</sup>.

**4- Updating and Amending Taxation and Financial Laws:** with a view to introduce the unification of income tax system, on the one hand, and to ensure the activation of the provisions Law of Taxation Procedures recently approved<sup>28</sup>, which essentially aims to:

- Defining the rights and obligations of tax payers.
- Defining the rights and obligations of the tax administration.
- Rationalizing of the procedures of tax registration standards and standardize them such as registration, collection, payment, objections and appeals<sup>29</sup>.

As for the project on unifying the income tax, this is aimed at modernizing the tax system of Lebanon, and achieving equity and justice in addition to issuing

<sup>25</sup> To review the text of this convention you can visit the following website: [http://www.oecd.org/document/21/0,3343,en\\_2649\\_34859\\_2017813\\_1\\_1\\_1\\_1,00.html#Text\\_of\\_the\\_Convention](http://www.oecd.org/document/21/0,3343,en_2649_34859_2017813_1_1_1_1,00.html#Text_of_the_Convention)

<sup>26</sup> Law No. 33 issued on 16/10/2008 is published in the official gazette issue no. 44 dated 23/10/2008

<sup>27</sup> To review the text of this convention you can visit the following website:

<http://www.unodc.org/unodc/en/treaties/CAC/index.html#textofthe>

<sup>28</sup> The Tax Procedure Law No. 44 date 11/11/2008 was issued and published in the Official Gazette issue No. 49 date 14/11/2008 and came into on 1/1/2009.

<sup>29</sup> Loay Al-Hajj Shehadeh, Director of imports- Ministry of Finance, "the Modernization and Development of the Tax Administration in Lebanon"



clear regulations and restructuring of current tax laws and strengthening tax revenues and implementing social projects<sup>30</sup>.

**5- Updating a Corporate Governance Law:** by modernizing accounts and organizing the foundations of accounting and auditing in the financial accounts. Especially since the local practices still vary from the international standards of the ISA (International Standards Auditing) and IFS (International Financial Reporting Standards) that have not been formally adopted in Lebanon, but introduced in the banking systems, financial institutions and listed companies.

Such "Corporate governance" must be based on the organization of auditing bodies, the development of the responsibilities associated with corporate governance, internal control (by commissioners control), modernization of accounting and controlling and listing on the stock market, and finally the dissemination of the independence culture within the framework of the management of companies (more than 51% of the Board of Directors shall be independent members as is the case in developed country<sup>31</sup>).

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<sup>30</sup> Same reference

<sup>31</sup>Nasser SAIDI, «*Corporate governance in MENA countries: improving transparency and disclosure*», the second Middle East and North Africa regional corporate governance forum, Beirut June 3-5 2004, the Lebanese transparency association, also available on:

[http://www.cipe.org/regional/mena/pdf/CG\\_MENA\\_TransparencyDisclosure.pdf](http://www.cipe.org/regional/mena/pdf/CG_MENA_TransparencyDisclosure.pdf)





**6- Amending the legal provisions and articles in the Laws of Trade, Construction, Labour and so forth to reduce the administrative barriers to investment** through reducing cost and duration, especially in the areas of registration, licenses and permits.

In this framework, we can suggest the following steps:

- Replacement of the licensing system with a detection system to ensure respect of laws and regulations.
- Issuance of work permits for a minimum of 3 years.
- Integration of the work permit with the residence.
- The selection of public officials on the basis of efficiency and the establishment of laws and regulations for the public responsibility.
- Limitation of all administrative transactions in one location such as Beirut port and/or airport, for example.
- Adoption of the immediate registration at the social security as soon as the registration in the Commercial Register.
- Reorganization of Health insurance and pensions.

**7- Adopting a law to modernize and develop the financial markets** to accommodate with the similar laws in the European and global financial markets, and establishing and activating the role of the market monitoring institution.

In this context, the following steps must be taken:

- Adopting more modern and integrated laws that regulate products and modern financial instruments (Produits et instruments financiers).
- Modernizing laws related to financial markets (such as financial institutions, cash and credit, and the organization of the Beirut stock exchange ...).



- Modernizing financial and tax regulations to encourage investments and make them commensurate with those set by the International Financial Reporting Standards (IFRS)<sup>32</sup>
- Establishing a special efficient, fast and effective tribunal for disputes arising from the financial markets<sup>33</sup>.

**8- Amending article 199 of the new Code of Civil Procedure** relating to the rule: "Penalty Curbs Right" (الجزاء يعقل الحقوق) to prevent litigants from filing criminal proceedings to delay adjudication, commercial disputes and the implementation of commercial contracts.

**9- Reviewing Legislative Decree No. 34 Date 5/8/1967 on Commercial Representation** in terms of appropriateness of maintaining or abolishing the system of exclusive agencies in Lebanon and its compatibility with the promotion of free competition. Some of these reforms already began taking place in an attempt to attract and promote investments in Lebanon.

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<sup>32</sup> [www.ifrs.com](http://www.ifrs.com)

<sup>33</sup> Jean RIACHI, «*The ongoing reforms to regulate the financial markets*», National Investment reform agenda workshop – Lebanon, 19/4/2007, also available: [www.oecd.org/dataoecd/23/39/38472018.pdf](http://www.oecd.org/dataoecd/23/39/38472018.pdf), noting that the draft law of the financial markets, which is currently under consideration in the House of Assembly provides for the establishment of such court.



## Part Three – Major Reform Activities and Programs Launched in Lebanon

The reform activities and programs include legislation and regulation on the one hand (**Section One**) and the practical field and on the other (**section Two**).

### Section One: Legislative Reforms

The current era is witnessing signs of a legislative workshop in various areas directly involving the Commission on Updating Laws that convenes at and under the patronage and supervision of the Ministry of Justice as well as the competent parliamentary committees that examine and discuss the proposals and projects assigned by decision of the Speaker of the House.

If projects and proposals were examined to identify those that affect directly or indirectly on the areas of business and investment in Lebanon, we will find that there are at least 69 draft laws affecting them<sup>34</sup> related to broad and narrow investment which concerns small and medium-sized enterprises (PME).

The most prominent of these reform projects in the process of study and work fall under three headings: Updated general laws (**One**), Laws of Administrative Development (**Two**) and the laws that allow the Government to accede to international conventions (**Three**).

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<sup>34</sup> Statement by the Minister of Justice delivered by the Director-General of the Ministry of Justice, Judge Omar Natour in a national workshop on “Commercial Laws as a Means of Promoting Economic Growth in Lebanon”, organized by the Arab Center for the development of the rule of law and integrity in close cooperation with the Ministry of Justice, Beirut, 26-27 January 2009.



### **One: Updated Laws in General**

**1- The draft law on financial markets** referred by the President of the Republic on the proposal of the Ministry of Economy and Commerce, Justice, and Finance and after the consent of the Cabinet during its meeting convened on 1/3/2006, to the House of Parliament pursuant to Decree No. 16690, Date 30/3/2006.

The most important achievements of this Law is the establishment of a special tribunal to the financial markets as well as a disciplinary body, the organization of the inclusion of financial instruments in the stock market and the establishment of the Investors Guarantee Fund in the financial markets and the organization of "Collective Investment Organizations" (Fonds communs de placement) and of the creation of stock exchange markets and the establishment of the Financial Markets National Authority (Autorité de marché).

**2- A draft law banning the personal exploitation of the privileged information in financial markets**, which was referred to the parliament on 21/12/2004 and ratified by the Finance and Budget Committee on 23/12/2004 and approved by the Board (committee) of Administration and Justice as amended on 9/1/2006.

The purpose of this law is to codify one of the most important legal principles in financial markets transactions which is to ensure the non-exploitation of the privileged information (Information privilégiée) in a view



to acquire profitable positions and to achieve illicit profits in the financial market (Délit d'initié).

**3- Proposal of the "Information Technology Law"** approved by the Parliamentary Information Technology Committee in December 2007 and adopted by the Lebanese Government in its project presented during the Paris 3 Convention.

It includes the latest provisions derived from most recent international developed laws related to electronic signature, electronic check, electronic transfer of funds in cash, bank cards, the organization of e-commerce in general and the introduction of e-crimes sanctions.

**4- The draft law amending the Code of Land Commerce** which dates back to 1999 when the Cabinet referred it by decree No. 1270 date 10/9/1999 to the House of parliament and was subject of discussion in the Commission on National Economy, Trade, Industry and Oil. In 2006 a subsidiary body of the Administration and Justice Committee was established to study all projects, proposals and amendments related to the land trade law and to prepare a consolidated version to amend and present it to the Administration and Justice Committee for further study and discussion.

The major proposed amendments are as follows<sup>35</sup>:

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<sup>35</sup> This information was mentioned in the word of the representative of the Minister of Economy and Commerce, Professor Ghada Safar in a national workshop on “Commercial Laws as a Means of Promoting Economic Growth in Lebanon” organized by the Arab Center for the development of the rule of law and integrity in close cooperation with the Ministry of Justice, Beirut, 26-27 January 2009.



- Cancelling the stamping of trade books. In this context, the necessity to stamping trade books at the competent court was recently annulled pursuant to paragraph 6 of Article 29 of the Law on Tax Procedure ratified by Act No. 44, the date of 11/11/2008 and published in the Official Gazette No. 49 Date 14/11/2008.
- Reducing publishing and advertising means in order to avoid companies' draining.
- Exempting small businesses from appointing an additional auditor (amendment of article 172 of the Code of Commerce).
- The Possibility of annulling the principle of seniority of shares in respect of the right to vote (amendment of article 117 of the Code of Commerce).
- Reducing the majority of the Lebanese in the company's board of directors of the Joint Stock Company to the third and exempting the foreign non-resident Head of the Board of Directors from the work permit (amendment of article 144 of the Code of Commerce).
- Amending functions and risk for managers of companies and consider them as individually and collectively responsible for damages resulting from breach of their duties (amendment of articles 166 and 167 of the Code of Commerce).
- Developing means for the protection of minorities in companies by allowing the shareholder or group of shareholders representing 10% of the capital to resort to the specialized Chairman of the Chamber of First Instance to appoint an expert in order to verify issues relating to the management of the company and the rights of the minorities (amendment of article 192 of the Code of Commerce).



- Developing a new section in the mentioned law related to the detailed regulation of the mergers and separation of companies.
- Identifying financial crimes, elaborating sanctions against them and introducing the crime of misuse of the company's funds (Abus de biens sociaux), and the crime of dissemination of incorrect budget and accounts as well as the crime of the use of corporate managers of funds they know of the wrongfulness of their origin.

**5- Draft Competition Law** which was referred to the House of Parliament in accordance with the enforced decree No. 1021 date of 24/11/2007 and published in the Official Gazette, No. 77 Date 7/12/2007.

**6- Draft Law of Unfair Competition** which is still subject study and preparation. The Ministry of Public Health has requested to wait until consulting the World Health Organization, and the Ministry of Justice requested the reformulation of the project.

**7- Proposal of the Anti-Corruption Law in the Public Sector:** The drafting of this law was completed by the committee for law modernization in the House of Parliament.

**8- Draft Law on the Establishment of the Lebanese Export Development Agency** which was referred to the House of Parliament on 28/9/2006, and approved by the Foreign Affairs and Emigrants Committee on 20/12/2006 and was also approved by the Commission on National Economy, Trade, Industry and planning, on 12/10/2006 as amended, and is still under





consideration in other parliamentary committees. The draft law forms an important step towards the promotion of trade in general in Lebanon.

## **Second – Administrative Development Laws**

**1- Draft Law on the Unified Income Tax** set by the Ministry of Finance in 2007<sup>36</sup>, noting that the tax procedures draft law has been recently approved and issued pursuant to Law No. 44 on 11/11/2008 and published in the Official Gazette issue No. 49 on 14/11/2008 and became effective starting 1-1 - 2009. This law is one of the most important financial laws designed to regulate the tax relationship between the administration and the citizen<sup>37</sup>.

**2- Bill of Public Transactions** which aims to amend the law of public accounting by the Office of the Minister of State for Administrative Reform<sup>38</sup>.

**3- Draft Law on the Establishment of the "Directorate of public transactions"** to amend and develop the legislative decree for the establishment of the Central Inspection and its regulatory Decree<sup>39</sup>.

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<sup>36</sup> Loay Al-Hajj Shehadeh, director of imports - Ministry of Finance, "*the modernization and development of tax administration in Lebanon*" National Investment reform agenda workshop, MENA-OECD Investment Program, 19/4/2007, also available on: [www.oecd.org/dataoecd/23/31/38472141.pdf](http://www.oecd.org/dataoecd/23/31/38472141.pdf)

<sup>37</sup> For more details on the law: Dr. Habib Abu Saqr, *the law of procedures and the rights of tax charge*, Al-Nahar, 7/3/2009, issue No. 23632, political localities.

<sup>38</sup> Youssef SAAD, Office of the minister of state for administrative reform, «*Advancement in reforming the procurement update and key features*», 19/4/2007, also available on: [www.oecd.org/dataoecd/23/37/39120679.ppt](http://www.oecd.org/dataoecd/23/37/39120679.ppt)

<sup>39</sup> Same reference





### Three – Laws allowing the government to accede to international conventions

#### **1- Law allowing the Government to accede to the United Nations**

**Convention against Corruption** which was referred to the House of parliament by Decree No. 17451 Date 15/7/2006 and recently approved, Hence Lebanon acceded to the UNCAC pursuant to law No. 33 issued on 16/10/2008 and published in the Official Gazette No. 44 on 23/10/2008.

**2- Draft law allowing the Government to conclude an agreement between the Government of the Lebanese Republic and the Government of the Islamic Republic of Iran on mutual administrative cooperation in customs issues** included in Decree No. 17557 which includes important investment incentives between the two countries. The Lebanese foreign ministry sent a memo on 26/9/2008 to the Iranian Embassy to inform the Iranian party that the Lebanese party has finished procedures to conclude the Convention and is awaiting a response from the Iranian party on this issue.

**3- Draft law allowing the Government to accede to the Treaty on the WIPO Copyright and to accede to the Treaty on the WIPO Performances and Phonograms** were returned to the Cabinet on 19/5/2008 after the new government was formed and after completing exploring the views of the concerned ministries on 6/10/2008, and are still under preparation.



- 4- **Draft law allowing the government the accession to the Singapore Treaty on Trademark Law** and was submitted to the Parliament under the provision of the effective Decree No. 371 on 31/5/2007 and published in the Official Gazette, No. 33 on 7/6/2007.
  
- 5- **Draft law allowing the Government to accede to the Paris Convention for the Protection of Industrial Property and the ratification of the Stockholm document in 1967, in its amended version in 1979**, was referred to the Parliament under the effective Decree No. 570 on 27/7/2007, and published in the Official Gazette, issue no. 46 Date of 2-8-2007.
  
- 6- **Project law allowing the Government to accede to the Nice Treaty on the International Classification of Goods and Services for the Purposes of the Registration of Marks: ratification of the Geneva document for 1977, as amended in 1979**, has been referred to the Parliament in accordance with effective decree No. 565 on 27/7/2007 and published in the Official Gazette number 46 on 2/8/2007.
  
- 7- **Project law allowing the Government to accede to the Berne Convention for the protection of literary works: the ratification of the Paris document on 24/7/1971 in its amended version on 28/9/1979**: was referred to the Parliament according to the effective decree No. 684 on 28/8/2007, and published in the Official Gazette issue number 53, on 3/9/2007.



**8- Project law allowing the Government to accede to the Treaty on cooperation on patents: the ratification of the Treaty and amending some provisions of Law No. 394 Date of 5/6/2002 and the provisions of the executive list, has been submitted to the Parliament under the provision of the effective Decree No. 183, date of 21/3/2007, and published in the Official Gazette, issue number 17 Date 26/3/2007.**

**9- Project law allowing the Government to accede to the Madrid Protocol for the International Registration of Marks** was transmitted to the Parliament under the provision of the effective Decree No. 991 on 24/11/2007 and published in the Official Gazette No. 77 on 7/12/2007.

However, all these texts are still drafts and proposals and haven't been approved in the parliament due to the former and current political status of the country and especially since the Parliament had closed doors for more than two years, which prevented the possibility of ratification of new legislation in all areas and particularly in the areas of business and trade. Moreover, all the bills (draft laws) which were referred to the Parliament under what is called the "effective decrees" in light of the resignation of a number of ministers from the previous government, and since they consider that government is unconstitutional, are still pending and waiting to resolve the problem of their legality and legitimacy, especially since the Speaker of the House still refuse to consider them effective.

Nevertheless, and with the return of the Parliament convening in regular sessions and after the formation of a new Cabinet, the legitimacy of which is



undisputed, these projects and other new projects are supposed to see the light soon. The question of practical implementation remains the greatest challenge.

## **Section Two: Practical Reforms**

The Ministries of Economy, Trade and Finance are most concerned in this area and are endeavored to promote the role and status of Lebanon to attract international investments and to improve its classification in the World Bank's "Doing Business" evaluation in particular.

In this context, the most important steps taken by these departments<sup>40</sup> are those relating to the simplification of procedures of the protection of intellectual property department (**First**) the work of Companies Department (**Second**) facilitating and reducing the cost of the establishment of companies (**Third**) and fighting against piracy and ensuring the implementation of intellectual property laws (**Fourth**).

### **First: Simplification of procedures of protection of intellectual property department**

The Ministry of Economy and Trade in Lebanon simplified administrative procedures and reduced the number of days to complete transactions and made available within the hands of individuals necessary models on the website of the Ministry as well as database related to registered trademarks published in the official Gazette which consequently facilitated and speed up the work of traders and limited the dispute over the use of trademarks.

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<sup>40</sup> Word of the representative of the Minister of Economy and Commerce, Professor Ghada Safar in a national workshop on "Commercial laws as a means of promoting economic development in Lebanon" organized by the Arab Center for the development of the rule of law and integrity in close cooperation with the Ministry of Justice, Beirut, 26-27 January 2009.



A program has been developed to provide the service of mark registration on line to the category of 35 services. This ministry is also working in cooperation with the European Patent Office to prepare a database for the search service on the patents registered in Lebanon with priority and is also seeking to link database of intellectual property protection department with the Department of Customs.

### **Second - Facilitating work procedures of the companies department:**

The Companies Administration Department at the Ministry of Economy dealing with Information and Notification Provision by registering a foreign company's branch or representative office or exclusive agency in Lebanon, and in accordance with Circular No. 1-1 /AT/ Dated 12/1/2007, exclusively took responsibility of estimating the cost of publication in the Official Gazette and the issuance of order to receive funds directly without stopping by the Official Gazette department which led to the shortening of the administrative procedures of the mentioned Service from six to two stages only.

It is important to note that Article 32 of the draft general budget and the budgets attached to 2007 cancelled the registration fee of the foreign companies branch, in addition article 51 of the draft general budget and the budgets attached to 2008 cancelled Information and Notification in the registration or amendment or cancellation of registration of branches or representative offices of foreign companies in Lebanon instead of the publication in the Official Gazette, on the stipulation that the Ministry of Economy, immediately after completion of procedures فور استكمال إجراءات



information and notification, sends it to the Official Gazette Department for publication.

The ministry is also seeking to link the companies' department with the commercial register to facilitate transactions relating to exclusive agencies.

### **Three: facilitating procedures for establishing companies and reducing their costs**

On 28/9/2007, the Ministry of Economy and Trade signed with the Ministry of Justice and the Ministry of Finance and Libanpost a memorandum of understanding (MOU) related to the service of management of procedures related to registration national and foreign companies through post.. Accordingly, these companies of any size have the opportunity to complete their registration transactions easier, faster and more transparent and less costly noting that this optional measure did not require the introduction of any amendment to the existing laws, but reduced the duration of the registration of companies from 46 days to 11 which led to the improvement of Lebanon's position according to the World Bank's "Doing Business" report in 2009.

### **Four: Fighting against piracy and ensuring the implementation of the intellectual property laws**

Indeed, the competent departments in Lebanon and in particular the Ministry of Economy and Trade are working to fight against piracy and to control unlawful activities. In collaboration with the Department of Customs, they are within the framework of data entering the Lebanese markets and seizing counterfeited goods on the borders on the one hand, and with the Office for



Combating computer-related crimes and protection of property related to the judicial police in regard to controlling domestic markets and combating crime in areas of technology and information and Cable Piracy. They rely on the complaint of the affected party and working to reduce re-broadcasting without obtaining permission from the owner of the right as well as controlling equipments causing violations. The Security forces are also assisting the protection of intellectual property officers.

#### **Part four – challenges and road map towards legislative reform**

Legislative reform in the framework of business and trade in Lebanon is facing various challenges (**First**) however, there are some recommendations aiming to deal with them (**Second**).

##### **First – Major Challenges**

The major challenges facing the process of legislative reform and development in Lebanon in general is the proliferation of the culture of impunity and lack of prestige of the State which is still in jeopardy, as well as the spread of a culture of nepotism and corruption and bribery in public and private sectors.

The most prominent challenges facing Lebanon today is represented in activating the role of its departments and institutions, ensuring their organization, controlling their work, re-launching a wide process of accountability and disseminating a culture of individual and administrative accountability. Laws, even if developed and modernized, will remain ineffective unless the Department and institutions entrusted with their implementation become effective.





With respect to the intellectual property in Lebanon in particular, the absence of great conviction on the importance of intellectual property protection and the need to protect is the greatest challenge.

Maybe what encourages the continuation of this approach and logic is the dissemination of the impunity culture in the framework of the rule of law and the disrespect of the creation of others and lack of comprehension that it belongs to the other. This issue should particularly focus on civic education which must therefore be paid attention to and comprehend its significance.

It is clear that there is a series of risks<sup>41</sup> that add up to the above-mentioned factors which threaten the status of Lebanon as a trade and investment pole. The most important of these risks are related to political, geographical, social, labor and financial (taxes, customs, the lack of balance in Corporate governance), judicial and legislative instability in some cases.

Lebanon shall also re-examine the private sector institutions and the legal and institutional frameworks for investment in general. In addition, there should be a study of forms and types of companies established overseas and whether it is useful for Lebanon to adopt and introduce them in its legal system. This is one of the major requirements and challenges facing globalization: the commercial law is an international law by nature and is not limited by any geographical and national boundaries and therefore should form the basis and foundation of a

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<sup>41</sup> Intervention by the director of the Arab Center for the development of the rule of law and integrity, Dr. Wassim Harb during the opening session of the national workshop on “Commercial Laws as a Means of Promoting Economic Development in Lebanon”, organized by the Arab Center in close cooperation with the Ministry of Justice, Beirut, January 26, 2009.





new scientific debate that brings together decision-makers along with stakeholders and traders.

## **Two – Main Recommendations**

The first question to be primarily asked in Lebanon is the following: Can the State apply any law or impose a sanction to any law or any obligation? Can the State control works of its departments and institutions and hold them accountable effectively away from political and non-political interferences?

This issue is a priority, and we can not come up with or even think of any solution, before securing this initial condition: imposing the respect of the state and the rule of law.

Based on this condition and with regards to the development of intellectual property in Lebanon in particular, we can begin to envision a solution and consider a number of suggestions and recommendations which are as follows:

- There should be a role model in the political and civil society that the community looks up to in general with respect to implementing the law by everyone without any discrimination and while respecting and protecting the intellectual property.
- Providing a practical possibility for control and prosecution and imposing penalties to reduce the gross abuses which are often conducted in public too.



- Even nowadays, satellite channels for example still steal the broadcast and transmission and distribute them to the subscribers without even paying the legal subscription fee! This chaos of impunity is unprecedented in any country in the world!
- Ensuring that the judicial authorities and public prosecutors are truly convinced that information piracy is a punishable crime and that the protection of literary and intellectual and literary property is useful and also ensuring that punishment is imposed perfectly, publicly and in a clear manner.
  - Persevering the punishment and continuing to anchoring the rule of law regardless of the change or replacement of this Attorney General or that, or this judge or the other.

In general the road map towards launching and completing the legislative workshop and legal renaissance in Lebanon can be summarized in one word: **militancy**, not only in the legislation but also especially in the prosecution and punishment. Moreover, militancy should persist so that the community will be convinced of and believes in the effectiveness of the laws in force. Militancy should also include the implementation and should not tolerate offenders on all levels.

To this end, actions must include four pillars: legislation and training of Public Prosecution offices, training security forces, specializing some of their teams in the suppression of offences, especially those relating to intellectual property, and allocating a database to track this piracy that is concentrated on three areas: satellite channels, software, music CDs, films and television programs (CDs and DVDs).



### **Conclusion:**

1- This presentation may be one of the few studies that provide an overview combining history, assessment, and horizontal contact of the Lebanese law that is looking forward to modernity and modernization on one hand and preserving the heritage of freedom of contracting on the other.

However, there is an obsession to legally put the laws of business in a mobile framework that is interactive with social and economic imperatives in Lebanon and its surroundings. Consequently, this reading may be the entrance to the Lebanese law, or an introduction to a comprehensive study of the Lebanese law.

2- Despite the fact that the information contained in this study is the result of views exchanged and benefited from the rich and pure information and comments received from several parties, a vertical approach reigned over the logic of this study that may be summarized in one phrase: “a legislative modernization revolution must accompany what is stronger than our reality that sometimes stresses up before relaxing. It is an unlimited will demanding that Lebanon remains a hub for culture, law, freedoms, openness and progress for those who love him.



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