



**Husseini & Husseini**

Attorneys and Counselors at Law

## **Middle East Commercial Law Developments**

### **2001 Year-in-Review Summary**

#### **Palestine**

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1



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The Palestinian National Authority, led by the Ministry of Economy and Trade (MET) and in full coordination with the Ministries of Finance and Justice and in consultation with other concerned members of the executive, e.g., Ministry of Industry or independent authorities, e.g., Palestine Monetary Authority, Investment Promotion Agency and the Industrial Zones Authority has embarked on a Program of Commercial and Financial Sector Legal Reform (“Program”). The program was set in motion in 1997 and the year 2000/2001 witnessed significant steps.

The underlying policy to the reform is two main factors:

- **Harmonization between Gaza and West Bank**

Key to the development of the Palestinian economy is the harmonization between the Gaza and the West Bank laws. The legacy of various systems from the Ottoman phase to the peace process in 1994 left historical residuals that had to be methodically addressed. The existing system combines Islamic rules as codified in the Ottoman Code (Mejllah), Anglo-Saxon English Common Law and French Civil Code principles, an amalgamation of Jordanian legislation and a rich tradition of customary practices. The complexity of legal reform arises from the fact that over the last three centuries new legal principles were layered atop old ones without any effort to resolve the philosophical and procedural discrepancies between them, and new laws were promulgated that neither repealed nor superseded earlier laws governing the same subject matter. Today, legislators pay special attention to these issues.

- **Domestic Development and Regional/Global Integration**

The Program has been designed to ensure a proper legal development to enhance, support and advance the economic and financial development of Palestine. The Program takes into consideration the sensitivities and political concerns of Palestine both as an emerging economy, and its competitive advantage vis-à-vis Israel, Egypt, Jordan, the region and the global markets. Notwithstanding the political situation, Palestine continued to make advances towards integrating its laws, legal system and participation in the world economy.

To support its development and integration, Palestine has created a free-market regime with privatized activities from the outset. With this critical decision, it has leaped to the fore and partook in global trends. Key infrastructure privatized activities include telecommunications, securities exchange, power generation, water management and industrial zones.

In 2001, Palestine launched the Palestinian Investment Promotion Agency, an independent official agency, as one-stop-shop to boost investments in the coming years. It has also established a program to develop industrial zones and created in 2000 the Palestinian Industrial Zone Authority.



As to trade, Palestine has a hybrid trade regime with Israel consisting of both customs union and free-trade area. Palestine participates in observer status at the World Trade Organization. It has signed various bilateral free trade agreements with the U.S., E.U., Egypt, Jordan, among others.

Capital markets represented today by the Palestine Securities Exchange, a privately held entity, plays a critical role in channeling investments towards projects. As lending in Palestine is conservative, the PSE is becoming an instrument for raising capital. There are no restrictions on foreign investment at the PSE and investments are not subject to capital gains tax. The PSE regulates membership of brokers on the Stock Exchange, Clearing and Central Securities Depository and listing of traded companies.

## **INVESTMENT LAW**

Due to the national commitment of encouraging investors and building a modern market economy, the new Law on the Encouragement of Investment 1998 superseded the 1994 Law. The Law creates a system of guarantees to protect all investors, grants specific incentives for projects creating or expanding economic activities in certain sectors, prohibits discrimination against any investor on the basis of nationality, prohibits expropriation of investment. It offers a regime of incentives including exemption from Income Taxation and customs duty. The income taxation exemption is a progressive rate applying to investments ranging from US\$100,000 to those exceeding US\$20 million. All investments are charged 0% income tax for the first 5 years. Thereafter, a flat income tax rate of 10% is charged for additional 8, 12, or 16 years depending on the invested capital as detailed in the Law.

Benefits include free transfers of foreign currency and freedom for repatriation of income generated from investment in Palestine. Investors may invest in any sector of the Palestine economy under the free admission principle. Confirmations are speedy and free involving a smooth process for acquiring official approval. Enterprises already benefiting from incentives may be freely transferred to a new owner who can benefit from the same incentives.

## **TAXATION LAW**

The PNA is concerned with creating a fair, simple, clear and non-arbitrary tax system by establishing a tax regime intent on removing or reducing the unequal burdens on individuals and on companies. The PNA, in March 1999, passed the income tax brackets treating individuals and companies alike and assessing a rate of 20%. For companies this is a change from the 38.5% rate applicable prior to March. For individuals this is also a significant change as the bracket is a progressive one, from 5% to 20%, versus the old regime which was 5% to 48%. Dividends, gifts, capital gains and inheritance are not taxable in Palestine. A full income tax law is presently under consideration by the legislator.



## **SECURITIES LAW**

The Securities Law regulates the public offering of securities in Palestine, mutual funds and other investment vehicles. The law provides rules for dealing in securities as well as rules for the protection of securities holders, investors and the public from fraud, deceit and unfair practices.

The Law regulates public offering of securities, disclosure and financial reporting. It is under consideration by the legislation, expected to pass this year.

## **CAPITAL MARKETS AUTHORITY LAW**

The Capital Markets Authority Law establishes an independent autonomous governmental institution (Capital Markets Authority “CMA”) that shall be responsible for the Non-bank Financial Institutions (“NBFI”) in Palestine. The law aims to encourage investments in Palestine within a climate that insures transparency, accountability, and protection for investors, as well as regular disclosure of information or data pertaining to the NBFI sector by the key players in such sector.

The CMA will be responsible for regulating and supervising Mortgage Finance, Leasing, Insurance, Pensions, and Securities sectors, amongst others. Pursuant to the law draft, each directorate to be established in the CMA will be responsible for the institutions that fall within its jurisdiction, which shall abide by the licensing requirements and regulations issued by such directorates. The law draft also contains provisions on finances and budget of the CMA, investigation, civil liabilities, prosecution and statute of limitations.

## **BANKING LAW AND REGULATIONS**

The Palestinian Monetary Authority Law contains extensive provisions for the licensing and supervision of banks by the Central Banking Authority (PMA). The PMA Law regulates and licenses all banks; local and foreign alike. The PMA supervises banking transactions and relations between banks, as well as regulating foreign currency exchange and setting financial and credit policies. A new banking law based on international standards is being presently adopted.

## **LEASING LAW**

The Leasing Law, expected to be enacted in this year, will facilitate and expand lending. All leases for more than one year or which extend to more than one year will be subject to registration. Lessor/Lessee have special obligations and warranties towards each other and risk of loss remains with lessor. A special tax treatment has been prepared in 2001, to be passed early this year.

## **COMPANY LAW**

The new revised Company Law is expected to be enacted by the end of 2002. It harmonizes the registration and incorporation process as well as applies uniform fees to



both the West Bank and Gaza. The Law is designed to enhance corporate transactions and follows international standards.

### **COMMERCIAL AGENCY LAW**

The Commercial Agency Law passed in January 2000. The Law contains provisions protecting the principal, the commercial agent/distributor and the consumer. It is structured to be as efficient as necessary for the operation of a free market system in Palestine. The law aims to unify the geographical areas of the West Bank and Gaza by making the appointment of a commercial agent direct for one jurisdiction.

### **ACCOUNTING/AUDITING PROFESSION AND STANDARD**

A new law regulating the accounting profession has been enacted. The accounting/auditing association is in the process of adopting international standards uniformly for all auditors.

### **Arbitration Law**

The Arbitration Law passed in mid 2000. It sets the procedures to be followed by arbitrators and the parties from the beginning of the arbitration process till a final verdict is issued. It also contains provisions pertaining to arbitration agreements, arbitral committees, and enforcement of foreign arbitral decisions.