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LAWS OF PALESTINE IN BRIEF

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In 1996, after the first historical Palestinian elections for the president and parliamentary representatives to the Palestinian Legislative Council ("PLC"), the Palestinian Parliament, the PLC assumed its duties and responsibilities and commenced the review and promulgation of legislation. The PLC was established pursuant to these elections as stipulated for in the Interim Agreement of 1995 signed between the Palestinians and Israelis.

Finding an urgent need to harmonize the laws in the West Bank and the Gaza Strip because the West Bank and the Gaza Strip are a single territorial unit and must have the same laws. Thus began the process of updating and modernization the legislation inherited from past systems including the Ottoman, the British mandate, Jordan, and Egypt and Israel. The PLC commenced the adoption of new laws that uniformly apply in Palestine. In this respect it has passed over 55 new laws in various areas ranging from commercial to civil to criminal between 1997-2002.

Despite these significant achievements since 1994, the PA faces great challenges in the law making process. The challenge facing Palestinian law reformers lies in deciding the course to chart in institutionalizing a comprehensive, cohesive and consistent legal system. This system should be based on all the existing Palestinian legal traditions, which will require deciphering, peeling away and reassembling the various layers. Palestine requires a system of laws to support the development and evolution of its own jurisprudence, interweaving its rich legal heritage into the fabric of modern legal concepts.

Nowhere is the need for legal reform more urgent than in the private law areas and, in any event, jurisprudential matters involving constitutional and public law issues will take more time to develop due to their complexity. Even to begin work on private law reform, however, will require an understanding of the world's two primary legal systems, Common Law and Civil Law, and a decision on which concept to follow during the course of preparing reform legislation.

There also so much more to for the Palestinian Authority to undertake to complete the basic requirements for a nation based on law and order. Infrastructure, institutions, and human resources need to be developed to meet the needs of the growing population of Palestine and for the future Palestinian state. The restructuring, including legal rehabilitation and freedom to make law, cannot be completed, however, unless Palestine is a sovereign state.

THE YEAR 2003 WAS SLOW YEAR OF LAW-MAKING IN PALESTINE EVEN THOUGH SOME 30 LAWS ARE PENDING ENACTMENT. THE POLITICAL SITUATION AS THE PA WAS



TRANSITIONING INTO A BIFORCATED SYSTEM OF GOVERNMENT PRECLUDED LAW-MAKING. RESTRICTIONS ON MOVEMENT AND CLOSURE PREVENTED THE MEMBERS OF PARLIAMENT TO REACH THEIR OFFICES. DURING THIS YEAR, HOWEVER, IT ESTABLISHED THE OFFICE OF THE PRIME MINISTER'S OFFICE TO ENSURE PROPER GOVERNANCE AND DECENTRALIZATION OF THE POWERS OF THE PRESIDENT.

ON THE OTHER HAND, IT HAS SUCSESSED IN IMPLEMENTING THE LAW ADOPTED IN 2002 ON THE INDEPENDENCE OF THE JUDICIARY AS ADDITIONAL NEW COURTS WERE ESTABLISHED AND NEW JUDICIAL APPOINTMENTS WERE MADE TO MEET THE GROWING NEEDS OF THE JUDICIARY.

A. 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, AND 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 AS FOLLOWS:

- INVESTMENTS EXCEEDING U.S.\$5 MILLION ARE GRANTED AN ADDITIONAL TWENTY-YEAR PERIOD AT THE RATE OF 10 PERCENT.
- ANY SPECIAL INVESTMENT IN TYPE AND CAPITAL MAY BE ENTITLED TO AN ADDITIONAL TWENTY-YEAR PERIOD AT THE RATE OF 10 PERCENT.
- ALL INVESTMENTS WILL BE EXEMPT FROM INCOME TAX FOR THE FIRST FIVE YEARS.
- EXEMPTIONS BELOW U.S.\$1 MILLION TO U.S.\$5 ARE GRANTED AN ADDITIONAL TWELVE-YEAR PERIOD AT THE RATE OF 10 PERCENT.

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.

B. 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 PERCENT. FOR COMPANIES, THIS IS A CHANGE FROM THE 38.5 PERCENT RATE APPLICABLE PRIOR TO MARCH. FOR INDIVIDUALS, THIS IS ALSO A



SIGNIFICANT CHANGE AS THE BRACKET IS A PROGRESSIVE ONE, FROM 5 PERCENT TO 20 PERCENT, VERSUS THE OLD REGIME, WHICH WAS 5 PERCENT TO 48 PERCENT. DIVIDENDS, GIFTS, CAPITAL GAINS, AND INHERITANCE ARE NOT TAXABLE IN PALESTINE.

C. 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.

D. CAPITAL MARKETS AUTHORITY LAW

THE CAPITAL MARKETS AUTHORITY ESTABLISHES AN AUTONOMOUS GOVERNMENTAL INSTITUTION WITH FULL LEGAL PERSONALITY TO REGULATE THE FOLLOWING NON-BANKING-RELATED FINANCIAL INSTITUTIONS: PSE, CLEARING, DEPOSIT AND SETTLEMENT CENTER, MANAGEMENT OFFICERS, FINANCIAL ADVISERS, OTHER SECURITIES PROFESSIONALS, SECURITIES COMPANIES, ISSUERS, CUSTODIANS, CUSTODY SERVICES, MAJOR HOLDERS, PUBLIC OFFERS, TENDER OFFERS, SECURITIES HOLDERS, PRIVATE PLACEMENTS, INSTITUTIONAL PLACEMENTS, UNDERWRITERS, COLLECTIVE INVESTMENT SCHEMES, FUND ADMINISTRATORS, FUND CUSTODIANS, FUND OVERSEERS, FUND SPONSORS, PORTFOLIO MANAGERS, OFFERORS, INSURANCE AGENTS, INSURANCE BROKERS, INSURANCE INTERMEDIARIES, INSURANCE COMPANIES AND OTHER INSURANCE DEALERS, VENTURE CAPITAL COMPANIES, LEASING COMPANIES, AND OTHER NON-BANKING FINANCIAL INTERMEDIARIES.

E. BANKING LAW AND MONETARY AUTHORITY LAW

THE BANKING LAW ENACTED IN 2002 SUPPLEMENTED THE CENTRAL BANKING AUTHORITY (PMA) LAW AND SET CLEAR GUIDELINES FOR BANKING ACTIVITIES AND TRANSACTION. IT SET THE STANDARDS FOR REQUIRED CAPITAL, RESERVES, RULES FOR MERGERS AND ISLAMIC BANKING PRACTICES. THE PALESTINIAN MONETARY AUTHORITY LAW (CENTRAL BANK), ENACTED IN 1997, 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.

F. LEASING REGULATIONS

THE LEASING LAW, TO BE ENACTED IN 2003 PENDING THE COMPREHENSIVE REVIEW OF THE INCOME TAX LAW. LEASING WILL FACILITATE AND EXPAND LENDING. ALL LEASES OF MORE THAN ONE YEAR, OR THAT EXTEND MORE THAN ONE YEAR WILL BE SUBJECT TO REGISTRATION. THE LESSOR/LESSEE HAVE SPECIAL OBLIGATIONS AND WARRANTIES TOWARDS EACH OTHER AND THE RISK OF LOSS REMAINS WITH THE LESSOR.



G. COMPANY LAW

THE NEW REVISED COMPANY LAW IS EXPECTED TO BE ENACTED BY THE END OF 2003. IT ELIMINATES EXISTING REQUIREMENTS FOR PAR VALUE OF THE SHARE AND STATED CAPITAL, AND SIMPLIFIES THE INCORPORATION PROCEDURES. SPECIAL FEATURES OF THE NEW LAW INCLUDE: IT HARMONIZES THE REGISTRATION AND INCORPORATION PROCESS, AND IT APPLIES UNIFORM FEES TO BOTH THE WEST BANK AND GAZA.

H. 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.

1ST COMMERCIAL AGENT:

1. APPOINTED BY A MANUFACTURER OF PRODUCTS OR SUPPLIER OF SERVICES, I.E., THE PRINCIPAL.
2. CAN PROMOTE, DISTRIBUTE, OR SELL PRODUCTS OR SERVICES OF A PRINCIPAL IN PALESTINE, AND CAN WORK FOR COMMISSION OR PROFIT.
3. WILL BECOME DIRECT AGENT AS THE PRINCIPAL MUST APPOINT ONLY ONE AGENT FOR PALESTINE.
4. LAW APPLIES TO BOTH A MANUFACTURER AND SUPPLIER OF SERVICES OUTSIDE OR INSIDE OF PALESTINE.
5. CAN APPOINT MORE THAN ONE SUB-AGENT TO SELL, DISTRIBUTE AND/OR PROMOTE FOR PROFIT OR COMMISSION THE PRODUCTS OR SERVICES FOR THE COMMERCIAL AGENT.
6. WARRANTIES, DIRECT OR IMPLIED, GIVEN BY THE ORIGINAL SUPPLIER OR MANUFACTURER OF THE PRODUCT THAT THE AGENT HAS UNDERTAKEN TO DISTRIBUTE OR MARKET MUST BE PROVIDED TO THE CONSUMER.

ALL AGENCY AGREEMENTS MUST BE REGISTERED WITH THE COMMERCIAL AGENCIES REGISTRAR AT THE MINISTRY OF ECONOMY AND TRADE.

I. ARBITRATION LAW

THE ARBITRATION LAW WAS ISSUED IN 2000. IT AIMS TO MODERNIZE ARBITRATION PRACTICES AND PROVIDE A SPEEDY DISPUTE RESOLUTION MECHANISM. THE LAW SPECIFIES THE PROCEDURES FOR BINDING ARBITRATION AND ENFORCEMENT OF AWARDS. THE LAW PROVIDES FOR A MECHANISM FOR THE ENFORCEMENT OF FOREIGN AWARDS.

J. INDUSTRIAL ESTATES AND FREE ZONES LAW

THE INDUSTRIAL ESTATES AND FREE ZONES LAW WENT INTO EFFECT IN 1998. THE LAW CALLS FOR THE DEVELOPMENT OF INDUSTRIAL ESTATES AND FREE ZONES TO PROMOTE ECONOMIC DEVELOPMENT. THE LAW SETS OUT THE PROCEDURES FOR LICENSING DEVELOPERS AND THE SPECIAL TAX REGIME THAT GOVERNS ACTIVITIES IN THE ESTATES AND ZONES. IT SETS OUT THE RULES FOR ENTRY AND EXIST OF GOODS FOR EXPORT



PURPOSES.

K. LABOR LAW

THE LAW LABOR WENT INTO FORCE IN 2000 REPLACING OUTDATING LABOR LAWS IN GAZA AND THE WEST BANK. THE LABOR LAW SETS OUT THE RULES THAT APPLY TO EMPLOYMENT CONTRACTS, EMPLOYMENT BENEFITS, TERMINATION AND RESIGNATION OF EMPLOYEE , COLLECTIVE BARGAINING SCHEMES, AND WORKERS COMPENSATION. THE LAW REGULATES THE EMPLOYMENT OF WOMEN AND MINORS.

L. BASIC LAW

THE PROMULGATION OF THE BASIC LAW ON MAY 29, 2002 GAVE THE PA, A “CONSTITUTIONAL” BASIS FOR ITS POWERS. THE BASIC LAW WENT THROUGH VARIOUS DRAFTS OVER A PERIOD OF YEARS. THE WORK STARTED IN 1993 BY THE PLO’S EXECUTIVE COMMITTEE. THE CHANGES IN THE GEOPOLITICAL CONDITIONS, THE OSLO PROCESS, THE FIRST PALESTINIAN ELECTIONS IN 1996 AND THE FORMATION OF THE PLC IMPACTED THE SHAPE OF THE PRESENT BASIC LAW AND ITS OPERATIONS.

THUS, THE ENTRY INTO FORCE OF THE BASIC LAW WAS A TURNING POINT FOR THE PA ON THE INTERNAL LEVEL. THE BASIC LAW PROVIDES FOR A PARLIAMENTARY DEMOCRACY BASED ON THE RULE OF LAW AND SEPARATION OF POWERS. IT CALLS FOR A FREE MARKET AS THE BASIS OF THE PALESTINIAN ECONOMY. IT CALLS FOR FREEDOM OF SPEECH, GUARANTEED PERSONAL FREEDOM, AND FREEDOM OF RELIGION. IT UPHOLDS THE INDEPENDENCE OF THE JUDICIARY. IT CALLS FOR THE ESTABLISHMENT OF A CONSTITUTIONAL COURT AND PROVIDES FOR JUDICIAL REVIEW, IN THE MEANTIME, THE SUPREME COURT IS EMPOWERED TO ASSUME THIS ROLE. THE BASIC LAW GIVES THE PLC THE POWER TO HOLD THE EXECUTIVE ACCOUNTABLE AND THE SAME IS TRUE OF THE EXECUTIVE OVER THE PLC. IN OTHER WORDS, A SYSTEM OF CHECKS AND BALANCES IS CREATED. THE BASIC LAW EMPOWERS THE PLC TO LAUNCH INVESTIGATION IN THE CONDUCT OF MEMBERS OF THE EXECUTIVE.

M. LAW ON THE INDEPENDENCE OF THE JUDICIARY

AFTER SEVEN YEARS OF PALESTINIAN SELF-RULE, THE PNA PROMULGATED THE LAW ON THE INDEPENDENCE OF THE JUDICIARY WHICH, WENT INTO FORCE ON MAY 14, 2002 (“LAW”) WAS TREMENDOUS. THIS STEP WAS IMPORTANT BECAUSE IT CONFIRMED THE SEPARATION OF POWERS ISSUE ARTICULATED IN THE BASIC LAW AND ESTABLISHED AN INDEPENDENT JUDICIARY. THIS LAW CREATED THE HIGH INDEPENDENT JUDICIAL COUNCIL AND EMPOWERED THE JUDICIARY TO MAINTAIN ITS INDEPENDENCE FROM INTERFERENCES BY THE EXECUTIVE. THE LAW SPECIFIES THE TYPES AND JURISDICTION OF COURTS. THERE ARE RELIGIOUS COURTS FOR PERSONAL STATUS MATTERS, A CONSTITUTIONAL COURT, A SUPREME COURT AND THREE LEVELS OF LOWER COURTS THAT HAVE VARIED PERSONAL AND SUBJECT MATTER JURISDICTION. THE APPOINTMENT AND PROMOTION OF JUDGES IS INDEPENDENT. THE HIGH JUDICIAL COUNCIL RECOMMENDS AND THE PRESIDENT CONFIRMS. JUDGES CANNOT BE REMOVED EXCEPT FOR CAUSE, AS SPECIFIED IN THE LAW. THE HIGH JUDICIAL COUNCIL IS IN CHARGE OF THEIR PROMOTION. THE CRITICAL ASPECT



OF THE LAW IS THE CREATION OF AN INDEPENDENT JUDICIAL ORGAN CHARGED WITH THE ADMINISTRATIVE AND TRAINING OF JUDGES. THIS IS A MAJOR DEPARTURE FROM THE VACUUM THAT EXISTED PRIOR TO THE PROMULGATION OF THE LAW AND A SHIFT IN THE CONCENTRATION OF POWERS IN THE HANDS OF THE EXECUTIVE. THE PRESIDENT IS NO LONGER IN CHARGE OF THE JUDICIARY, HE HAS THE CONFIRMATION POWER ONLY. FURTHERMORE, THE NEWLY PROMULGATED BASIC LAW AND LAW ON THE INDEPENDENCE OF THE JUDICIARY WILL HELP TO CLEAR THE BLURRED LINES BETWEEN THE MINISTER OF JUSTICE, THE CHIEF JUSTICE AND THE ATTORNEY GENERAL. IT WAS THAT THE MINISTER OF JUSTICE AND THE CHIEF JUSTICE BELIEVED THAT THEY HELD THE SAME RESPONSIBILITIES, SUCH AS THE APPOINTMENT OF JUDGES, THE COMPOSITION OF THE JUDICIAL COUNCIL AND A NUMBER OF ADMINISTRATIVE JUDICIAL ISSUES.

N. POST AND TELECOMMUNICATIONS LAW

THE POST AND TELECOMMUNICATIONS LAW OF 1996 REGULATES THE POST AND TELECOMMUNICATIONS INDUSTRY. THE OPERATION OF THE FIXED AND CELLULAR SERVICES IS SUBJECT TO OVERSIGHT BY THE MINISTRY OF POST AND TELECOMMUNICATIONS (“MOPT”). MOPT SETS THE TARIFF STRUCTURE AND LICENSES OPERATORS.

O. CIVIL AND COMMERCIAL PROCEDURES LAW

THE LAW ON CIVIL AND COMMERCIAL PROCEDURES WAS ISSUED IN 2001. IT SETS OUT THE PROCEDURES FOR LITIGATION THAT REFLECT DEVELOPMENTS IN THE FIELD INCLUDING SPEEDY PROCEDURES FOR COMMERCIAL LITIGATION. THE LAW SETS OUT RULES FOR THE CONDUCT OF TRIAL AND THE APPEALS PROCESS.