



Husseini & Husseini

Attorneys and Counselors at Law

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MIDDLE EASTERN LAW
LAWS OF PALESTINE

Prepared by: Attorney Dr. Hiba Husseini

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53 Irsal St. Awwad Bldg, 3rd Floor, Ramallah, Palestine
Tel (970/972) (2) 296-1733, Fax (970/972) (2) 296-0244
info@husseini.com, www.husseini1.com



LAWS OF PALESTINE IN BRIEF

THE YEAR 2004 IN PALESTINE MARKED HISTORICAL INTERNAL POLITICAL CHANGE. PRESIDENT YASSER ARAFAT PASSED AWAY ON NOVEMBER 11, 2004 FOLLOWING REIGN ECLIPSING OVER 40 YEARS. THE BATON WAS PASSED TO HIS INTERIM SUCCESSOR IN ACCORDANCE WITH THE BASIC LAW (CONSTITUTION) AND THE SUCCESSION WAS SMOOTH. ACCORDING TO THE BASIC LAW, THE SPEAKER OF THE PALESTINIAN LEGISLATIVE COUNCIL (PARLIAMENT) TAKES OVER FOR A PERIOD OF 60 DAYS DURING WHICH PRESIDENTIAL ELECTION ARE TO BE HELD. INDEED, THE ELECTIONS WILL TAKE PLACE IN JANUARY 2005. VARIOUS CANDIDATES ARE RUNNING INCLUDING THE FORMER PRIME MINISTER, MR. MAHMOUD ABBAS. IN THE MEANTIME THE PALESTINE LIBERATION ORGANIZATION (PLO) ELECTED MR. MAHMOUD ABBAS AS CHAIRMAN. MR. AHMAD QUIRE, THE CURRENT PRIME MINISTER, ASSUMED THE CHAIRMANSHIP OF THE NATIONAL SECURITY COUNCIL. IN LIGHT OF THESE CHANGES, THE ELECTIONS LAW IS PENDING AMENDMENT.

IN TERMS OF RECENTLY ENACTED LEGISLATION. THE PALESTINIAN LEGISLATIVE COUNCIL ADOPTED THE CAPITAL MARKET AUTHORITY LAW, THE SECURITIES LAW AND THE INCOME TAX LAW. THE PALESTINIAN AUTHORITY IS CONSIDERING THE FOLLOWING NEW LAWS:

A. SECURED TRANSACTIONS

THE ESSENTIAL PURPOSE OF THIS LAW IS TO IMPROVE ACCESS TO CREDIT IN THE PALESTINIAN BUSINESS AND INDUSTRIAL SECTORS. ACCESS TO CREDIT AT REASONABLE RATES IS PERHAPS THE MOST IMPORTANT REQUISITE FOR CAPITALIZATION OF NEW BUSINESSES AND GROWTH OF EXISTING BUSINESSES AND INDUSTRIES. ACCESS TO CREDIT IS ALSO IMPORTANT TO CONTINUING OPERATIONS OF BUSINESSES THAT CARRY INVENTORY AND TO AGRICULTURAL PRODUCERS. AND FINALLY, ACCESS TO CREDIT BY CONSUMERS ENABLES PURCHASE OF GOODS FROM RETAIL BUSINESSES, THEREBY IMPROVING THE VIABILITY OF RETAILERS AND THEIR SUPPLIERS.

ACCESS TO CREDIT AT REASONABLE RATES IS A FUNCTION OF THE RISK OF LENDING AS PERCEIVED BY LENDERS. THAT IS, THE HIGHER THE RISK, THE LESS WILLING LENDERS ARE TO LEND, AND WHEN THEY DO LEND, THE RATES OF INTEREST MUST BE HIGH TO COVER RISK. RISK CAN BE LOWERED BY PROVIDING A MEANS TO RECOVER ON A LOAN AFTER THE BORROWER DEFAULTS. THE COMMON METHOD OF PROVIDING FOR RECOVERY UPON DEFAULT IS TO SECURE LOANS WITH GUARANTEES OR COLLATERAL. IN THE PALESTINIAN SITUATION, AVAILABILITY OF GUARANTEES IS NOT SUFFICIENT TO SECURE MOST OF THE LENDING NEEDED TO GROW BUSINESSES, SO COLLATERALIZED LENDING IS THE MEANS TO WHICH PALESTINIANS MUST LOOK.



THE MOST ESSENTIAL CONCEPT FOR A LAW ON INTERESTS IN MOVABLES IS THE UNIFIED COLLATERAL INTEREST. A UNIFIED COLLATERAL INTEREST INCLUDES ALL TYPES OF INTERESTS SECURED BY MOVABLE PROPERTY, REGARDLESS OF FORM OF THE TRANSACTION. OTHER TYPES OF TRANSACTIONS THAT MAY DEFEAT A COLLATERAL INTEREST IN MOVABLE PROPERTY SUCH AS OPERATING LEASES, CONSIGNMENTS AND SALE OF ACCOUNTS, SHOULD ALSO BE INCLUDED IN THE NOTICE AND PRIORITY PROVISIONS OF THE LAW.

THE REGISTRY SHOULD BE MINISTERIAL RATHER THAN REGULATORY IN ITS OPERATION. IT SHOULD HAVE ONLY TWO PURPOSES: (1) TO PROVIDE NOTICE OF PRIOR COLLATERAL INTERESTS IN MOVABLE PROPERTY OF THE DEBTOR, AND (2) TO PERMIT A LENDER TO ESTABLISH THE PRIORITY OF ITS COLLATERAL INTEREST IN MOVABLE PROPERTY. THE REGISTRY SHOULD CONFORM TO BEST PRACTICE PRINCIPLES FOR REGISTRIES THAT HAVE BEEN DEVELOPED BY COUNTRIES THAT HAVE SUCCESSFULLY IMPLEMENTED MODERN SECURED TRANSACTIONS LAWS. THOSE PRINCIPLES ARE:

ACCURACY. THE REGISTRY ARCHIVE MUST REFLECT EXACTLY THE INFORMATION THAT IS PROVIDED. THE POSSIBILITY OF ERROR BY REGISTRY STAFF SHOULD BE ELIMINATED TO THE EXTENT POSSIBLE.

SPEED AND TIMELINESS. A SEARCH OF THE REGISTRY ARCHIVE MUST REFLECT ALL NOTICES AS SOON AS THEY ARE EFFECTIVE, SO A SEARCHER CAN FIND ALL EFFECTIVE NOTICES OF A COLLATERAL INTEREST. A LENDER'S NOTICE MUST BE EFFECTIVE AS SOON AS IT IS REGISTERED SO ITS PRIORITY IS ASSURED.

ACCESSIBILITY. THE FILING OFFICE SHOULD BE ACCESSIBLE TO ALL USERS ANY TIME AND ANY PLACE.

UNITY. THE REGISTRY SHOULD INCLUDE NOTICES OF ALL TYPES OF INTERESTS IN ALL TYPES OF MOVABLE PROPERTY.

COST EFFECTIVENESS. THE TRANSACTIONAL COST OF REGISTRATION AND SEARCHING SHOULD BE LIMITED TO THE COSTS OF OPERATION OF THE REGISTRY.

SIMPLICITY. REGISTRATION REQUIREMENTS MUST BE KEPT AS SIMPLE FOR THE USER AS POSSIBLE IN ORDER TO ELIMINATE ERRORS AND TO ENCOURAGE USE.

LIMITED TO PURPOSES OF REGISTRATION. INFORMATION IN NOTICES SHOULD DO NO MORE THAN TO PROVIDE NOTICE OF POTENTIAL COLLATERAL INTERESTS AND TO SECURE PRIORITY.

RULE-BASED DECISION-MAKING FOR ACCEPTANCE OF NOTICES. THE REGISTRY SHOULD APPLY A FIXED, CONSISTENT SET OF RULES TO ACCEPT OR REJECT NOTICES AND TO IDENTIFY NOTICES FOR A SEARCH REQUEST.



THIS LAW IS DESIGNED TO PROVIDE ALL OF THESE FEATURES. WITH ITS ADOPTION, LENDERS WILL BE ABLE TO CONFIDENTLY LEND TO BUSINESS AND INDUSTRY, SECURED BY MOVABLE ASSETS. CREDIT WILL BE AVAILABLE TO ENTREPRENEURS AND ESTABLISHED BUSINESSES AND INDUSTRIAL ENTERPRISES, ENABLING THEM TO GROW AND EMPLOY THE PALESTINIAN WORK FORCE. THE LAW IS, THEREFORE, AN ESSENTIAL PART OF THE ECONOMIC FUTURE OF PALESTINE.

B. COMPETITION LAW

THE DRAFT TEXT OF THE COMPETITION LAW AIMS TO PROVIDE PALESTINE WITH A SIMPLE AND EFFECTIVE COMPETITION LAW THAT REFLECTS A COMPETITION POLICY DESIGNED TO ENCOURAGE INWARD INVESTMENT INTO PALESTINE WHILE CONTROLLING BEHAVIOR THAT IS CONSIDERED DETRIMENTAL TO PALESTINE'S OVERALL ECONOMIC WELL BEING. IN FURTHERANCE OF THIS OVERALL OBJECTIVE, THE DRAFT TAKES THREE BROAD APPROACHES.

FIRST, IT USES A VERY SIMPLE PROCEDURAL STRUCTURE IN WHICH THE MINISTER IN CHARGE (MINISTER OF NATIONAL ECONOMY) HAS RESPONSIBILITY FOR ADMINISTERING THE LAW. THERE IS NO SEPARATE COMPETITION AUTHORITY, ALTHOUGH THE LAW DOES ENABLE THE MINISTER TO DELEGATE HIS RESPONSIBILITY TO A THIRD PARTY. COMPETITION LAW CAN BE ESTABLISHED AND DEVELOPED IN PALESTINE WITHOUT THE NEED FOR COMPLEX OR ONEROUS STRUCTURES. OBVIOUSLY, THERE MAY BE SOME CONCERNS ABOUT THE MINISTER'S INDEPENDENCE WHEN MAKING DECISIONS UNDER THE LAW. HOWEVER, PALESTINE'S NEEDS AND THE SIZE OF MARKET CALL FOR SIMPLE AND EFFECTIVE STRUCTURES.

THE SIMPLE INVESTIGATORY PROCEDURE IS BALANCED TO SOME EXTENT BY A SPECIALIST COURT FOR JUDICIAL REVIEW. AS COMPETITION LAW IS COMPLEX, IT WAS FELT THAT JUDICIAL REVIEW SHOULD BE PLACED INTO A SPECIALIST COURT WITH SPECIALIST JUDGES. HOWEVER, IT IS HOPED THAT THE COURT CAN USE QUICK AND SIMPLE PROCEDURES.

SECOND, THE LAW PROHIBITS CERTAIN ANTI-COMPETITIVE ACTIVITIES BY "COMMERCIAL UNDERTAKINGS", THESE BEING CARTELS AND CARTEL-LIKE ACTIVITY, AND ABUSE OF MARKET POWER. A "COMMERCIAL UNDERTAKING" WOULD BE ANY ENTITY (INCLUDING AN INDIVIDUAL OR SOLE PRACTITIONER) WHICH WAS ENGAGED AT THAT TIME IN COMMERCE, AND WOULD APPLY EQUALLY TO PUBLIC AS WELL AS TO PRIVATE UNDERTAKINGS. THEREFORE, A HOSPITAL WOULD BE A COMMERCIAL UNDERTAKING WHERE IT WAS UNDERTAKING OPERATIONS FOR WHICH IT WAS BEING PAID BY THE PATIENT, BUT IT WOULD NOT BE A COMMERCIAL UNDERTAKING WHERE IT WAS PROVIDING OPERATIONS AT THE PUBLIC EXPENSE AS PART OF ITS PUBLIC FUNCTION. THE TWO PROHIBITIONS ARE SUPPORTED BY PRIVATE RIGHTS OF ACTION IN RELATION TO BOTH, AND A RIGHT TO IMPOSE CORRECTIVE MEASURES AND FINANCIAL PENALTIES FOR BREACH. IN ADDITION, THE LAW PROVIDES THAT THE MINISTER MAY INVESTIGATE ANY OTHER TYPE OF ANTI-COMPETITIVE ACTIVITY, BUT HE MAY ONLY USE CORRECTIVE MEASURES AND MUST NOT IMPOSE FINANCIAL PENALTIES. FINALLY, IT IS MADE CLEAR THAT THE BASIC PROHIBITIONS WILL



APPLY TO BUSINESSES OPERATING UNDER SPECIAL OR EXCLUSIVE RIGHTS GRANTED BY PALESTINE, UNLESS THE MINISTER HAS PROVIDED A PRIOR EXEMPTION IN RELATION TO SUCH RIGHTS.

THIRD, THE LAW TAKES A PERMISSIVE APPROACH TO MERGER CONTROL. RATHER THAN REQUIRING PRIOR NOTIFICATION OF ALL MERGERS OVER A CERTAIN SIZE, THE LAW PERMITS THE MINISTER TO REVIEW CERTAIN LARGE MERGERS AFFECTING PALESTINE FOR A PERIOD OF UP TO 30 DAYS AFTER THE MERGER IS MADE PUBLIC. BUSINESSES WILL HAVE TO COME TO A VIEW AS TO WHETHER PRIOR NOTIFICATION WILL FACILITATE THE MERGER, OR, ALTERNATIVELY, TO RISK *EX POST FACTO* REVIEW.

C. CONSUMER PROTECTION LAW

THE DRAFT PALESTINIAN CONSUMER PROTECTION LAW IS BEING INTRODUCED IN LINE WITH INTERNATIONAL DEVELOPMENTS AND IMPROVEMENTS IN CONSUMER PROTECTION, AND THE INCREASED AWARENESS IN PALESTINIAN SOCIETY CONCERNING CONSUMER PROTECTION RIGHTS. CONSUMER PROTECTION IS NOT NEW TO PALESTINIAN SOCIETY, THE FIRST CONSUMER GROUP GOES BACK TO 1920.

THE PA IS AMONG THE FIRST COUNTRIES IN THE ARAB WORLD TO INTODUCE A CONSUMER PROTECTION LAW. BY RAISING THE STANDARDS OF LOCAL PRODUCT AT THE TECHNICAL, ENVIRONMENTAL AND SAFETY LEVELS, PALESTINIAN PRODUCTS WOULD BECOME MORE ATTRACTIVE LOCALLY AND MORE COMPETITIVE. THE LAW IS IN LINE WITH INTERNATIONAL UNITED NATIONS TRENDS AND STANDARDS. IT PROVIDES FOR:

- PHYSICAL SAFTEY FOR CONSUMERS WHICH INCLUDES PRECAUTIONARY SAFETY MEASURES AS WELL AS NATIONAL AND INTERNATIONAL STANDARDS.
- GUARNTees FOR THE SAFETY AND QUALITY OF CONSUMER GOODS AND SERVICES.
- PROVIDE METHODS AND MECHANISMS FOR CONSUMERS LODGE COMPLAINTS AND PROCEDURES TO RECEIVE COMPENSATION.
- PROVIDE A RELIABLE ADMINISTRATIVE AND JUDICIAL GRIEVENCES PROCESS.

THE PA WILL INTRODUCE A VIGROUS PUBLIC EDUCATION AND AWARENESS PROGRAM TO CREATE AND FOSTER PUBLIC AWARENESS .A CONSUMER PROTECTION INSTITUTION IS EXPECTED TO BE ESTABLISHED.