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## ARAB BUSINESS COUNCIL

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### LEGAL AND JUDICIAL REFORM IN THE ARAB WORLD A PRIMER

By **Sharif Ali Zu'bi** and **Zeid D. Hanania**, Law Offices of Ali Sharif Zu'bi & Sharif Ali Zu'bi

## Introduction

The transformation of the global economy that has rapidly taken place over the last decade brings with it new challenges for the developing economies of the Arab world. The entry of an ever-increasing number of states into freer world trade, the explosion in information technology and the rising importance of foreign investment all mean that individual states can no longer exist in isolated cocoons, unaffected by global economic or political trends. Dominant economic theory today indicates that the keys to economic development (especially in the case of countries lacking in rich natural resources) lie in economic and trade liberalization, promotion of foreign investment and a reduction in the role of the state in national economies (by the privatization of state owned enterprises). Most Arab countries are still far behind in achieving any of these goals as they have failed to develop the proper legal and institutional framework to support their full entry into the global economic market. As the most ardent advocate of privatization, the economist Milton Friedman, recently expressed "it turns out that the rule of law is probably more basic than privatization. Privatization is meaningless if you don't have the rule of law."<sup>1</sup>

The need for reform of the legal sector in the Arab world is essential because it will not only allow Arab states to reap the benefits of global trade and economic trends but to also withstand the pressures and cycles of the world economy. While globalization has quantifiable positive benefits, it also poses severe sets of challenges for nascent economies such as those of most Arab states. Foremost among these is the fact that while the global economy is certainly more dynamic today than it was twenty or thirty years ago, it is also much more turbulent. Just as an effective legal infrastructure is necessary if countries are to benefit from foreign trade and globalization during periods of global growth, it is equally important to protect and safeguard commercial relationships during times of global economic downturn and crisis. The direct correlation between the rule of law and economic development has never been more obvious than it is in the current global economic climate. Without the rule of law business relationships quickly dissolve into anarchy as former partners may choose to forget their original contractual obligations and seek new opportunities "without paying any regard to their first handshake."<sup>2</sup> More than ever, a streamlined legal framework that protects and guarantees the rights of market participants and safeguards commercial relationships between both private and public entities is an essential ingredient of any successful society, whether in the Arab World or elsewhere. Without the proper legal framework providing stability and security for investors and shareholders, economic reforms such as privatization of large state owned enterprises or projects requiring the injection of foreign capital will surely fail. However, simply passing and adopting appropriate legislation is by no means sufficient, as the experience of many developing economies (including some notable Arab states) with picture-perfect laws on paper but limited or ineffective enforcement mechanisms amply shows. The cornerstone for the rule of law is enforcement by the judicial system.<sup>3</sup> Experience of the world's successful economies proves that an independent and efficient judicial system not only facilitates commerce but helps foster a favourable investment climate as it provides the kind of transparency necessary to encourage investors to enter into a foreign economy.

One of the central reasons for the failure of Arab economies to properly integrate into this new economic climate is the primitiveness of the legal system and weakness of judicial process in many parts of the Arab world. In many parts of the Arab world, outdated state economic institutions, overstuffed and meddlesome government bureaucracies, antiquated legal processes and a slow, underpaid, overworked and uninformed judiciary all stifle and stunt economic development and contribute to keeping Arab countries at the bottom of the global economic cellar. Effective reform of the legal sector is, therefore, essential if Arab countries desire to catch up with the rest of the world rather than fall by the wayside as idle bystanders. The changes that must take place are two pronged: first, countries must undertake effective legal reforms to modernize and streamline their extant legal framework; and second, an overhaul of the judicial system and process is essential. This article will focus

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<sup>1</sup> Quoted by Robert Pollock in "In the Middle East, Arbitrary Government Feeds Rage", the Heritage Foundation website (2002), p.1.

<sup>2</sup> *ibid.*

<sup>3</sup> See "Legal and Judicial Reform: Strategic Directions" by the World Bank (2002), p. 27.

on briefly discussing the essential elements of each process and the correlation of both.

## **Legal Reform**

The ultimate objective of any effort at the reform of the legal sector has to be the creation of a legal system that protects and enforces property rights and economic opportunities in a fair and predictable manner. The central problem in many Arab societies is that the legal process is overshadowed by a parochial system of patronage whereby unofficial relationships such as family connections, personal ties with the state or elites replace the formal authority of the law in commercial relationships. This is in contrast to models of successful liberal market economies in which the success of business relationships is based on the authority and enforceability of the law. Legal reform must, therefore, aim to provide new market entrants and investors with the rules, structure and uniformity that allow such parties to take business risks and nurture legitimate business relationships. There are several important components to effective legal reform. These include (i) substantive reforms, (ii) legal education and (iii) legislative process reform.<sup>4</sup>

Substantive reform of antiquated laws and procedural regulations is essential in order for Arab states to enhance trade and investment with foreign parties. Such reforms must be crafted in a way that best encourages production and investment. The adoption of transparent and equitable rules for the governance of society, the legal empowerment of individuals and corporations and the enforcement of an individual's rights are essential caveats of any programme of legal reform. In particular, Arab states need to give special attention to the liberalization of areas of the law governing the relationship of local actors with foreign investors including trade, taxation, investment, antitrust and securities (to name a few). Perhaps the central most important element of reforming existing laws or drafting new ones is to ensure that the actual drafting is completed by experts in the relevant area in a way that is consistent with the existing legal culture of the specific society. The common practice, prevalent in numerous Arab states, whereby new laws and regulations are passed and drafted arbitrarily by unqualified civil servants or politicians without regard to expert opinion or economic need almost always tend to undermine the legal system and stunt the relevant society's economic development and progress. Furthermore, any programme of legal reform must aim to provide equality of opportunity and equal protection to all members of a particular society by removing discriminatory and arbitrarily enforced laws that deprive individuals of their individual and property rights.

The proper education of state officials and lawyers is another essential element of a modern functioning legal system. The legal profession should not be allowed to exist in a vacuum separate from developments in the law itself. It is essential, therefore, that attorneys and state officials are constantly involved in continuing legal education programmes and training. Bar associations and state agencies can both be involved in the promotion of training programmes. Such programmes should go hand in hand with any programme of legal reform to ensure that practitioners sufficiently develop, in both attitude and professional approach along with the development and reform of the legal system in which they operate.

## **Judicial Reform**

While actual substantive legal reform is essential, it is practically useless if undertaken on its own without effective reform of the judicial system. Many developing states, including those of the Arab world, tend to adopt comprehensive legal reforms that are practically worthless because they lack the proper enforcement mechanisms. The most important element for the functioning of any legal sector is a responsible, independent and efficient judiciary. A vibrant and modern economy requires a judicial system that has courts capable of interpreting and applying the laws fairly, efficiently and transparently. This is sorely lacking in most Arab states whose judicial system tends to suffer from poorly trained judges, overcrowded dockets,

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<sup>4</sup> For a more detailed discussion of these factors, see "Legal and Judicial Reform: Strategic Directions" by the World Bank (2002).

corruption and antiquated facilities. The key elements that are required for an effective judiciary include: independence, judicial training and efficiency of the court system.<sup>5</sup>

The central rationale behind judicial independence lies in the fact that an independent judiciary is the only effective way to limit government abuses and fully protect individual rights. To be effective the judiciary must be able to issue clear and impartial decisions that are at once respected and adhered to by the other branches of state power. Only when judges are fully independent from government meddling will private actors gain full confidence and trust in a society's legal system and it is only at that point that a legal system can function properly. Naturally, judicial conduct should be held accountable by a system of codes of conduct and appropriate investigative bodies.<sup>6</sup>

Corollary to the independence of the judiciary is the need to have judges who are adequately qualified and trained to handle their duties. Reform programmes must aim to train judges in the law continually and to evaluate judicial performance regularly. In this regard, demanding and rigorous training courses and strict evaluation techniques must be put in place and enforced. At the same time judicial corruption must be addressed by affixing, among other things, adequate salaries for judges and transparency in procedures for appointment and promotion of judges.

Finally, systems of court administration and management must to be overhauled. Many Arab courts are faced with consistent backlogs, poorly trained staff and inadequate technology. A court system cannot function efficiently in such circumstances and it is an absolute necessity for countries to dedicate sufficient funds for the revamping of the physical facilities of courts and the proper training of administrative staff in modern methods of court management.<sup>7</sup>

## **Conclusion**

The lack of equitable and efficient governance is a major obstacle to economic growth of the Arab world and its integration into the global economy. Consequently, Arab societies need to foster and encourage private enterprise with positive regulation that encourages foreign investment and protects individual rights. This can only be achieved by a transparent rule of law, a fair and fast legal framework and an independent and professional judiciary.<sup>8</sup>

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<sup>5</sup> *ibid*, p. 26.

<sup>6</sup> *ibid*, p. 28.

<sup>7</sup> *ibid*, p. 29-31.

<sup>8</sup> See Pollock, p.4.