

Middle Eastern Law

JIM PHIPPS, MARIAM A. NAWABI, BERNADETTE M. CHALA, BRIDGET MCKINNEY,
THE HONORABLE JOSEPH GHOUGASSIAN, CHRISTOPHER SCOTT MARAVILLA,
MOIN A. YAHYA, AMMAR AL-SALEH, HIBA HUSSEINI, AND ALON KAPLAN*

In this report, the Middle East Committee highlights some of 2003's most important legal developments in: (1) Afghanistan, where the ABA, in collaboration with Center for International Management Education (CIME), played a dramatic role in furthering the reform of Afghanistan's commercial law; and (2) Iraq, where legal developments have been dramatic, even if upstaged by the daily drama of the Coalition's efforts to defend Iraq from enemies, both foreign and domestic.

We also include reports on legal developments in Algeria, Egypt, Jordan, Tunisia, and Turkey. Themes in the Middle East continue to include: (1) World Trade Organization WTO compliance and accession issues; (2) lumbering privatization efforts; (3) the drive to become competitive internationally in terms of attracting investment and developing more robust export-oriented manufacturing and services industries; (4) a growing awareness of the need to get serious about protecting human rights; and (5) providing for greater public participation in governance and collaboration in the war of all civilized peoples against terror.

Algeria is struggling to address human rights abuses and to recover from the civil strife that engulfed the country during much of the last decade. Egypt has continued its drive to respond to its WTO commitments, make its bureaucracies more efficient, and address monetary concerns. Jordan, like Egypt, has pressed forward in an effort to create a pro-business, pro-investment climate, and has made progress relative to its intellectual property laws and WTO compliance. Tunisia changed its laws allowing for private radio, television, and mobile service providers to enter the Tunisian market. In addition, it has made progress towards enacting anti-terrorism and anti-money-laundering legislation, but there has been little or no progress on the privatization front. Turkey continued to make legal reforms aimed at ensuring the establishment of a timetable for its accession into the European Community by the end of 2004, including the enactment of laws focused on improving the lot of Turkey's Kurdish minority.

*Jim Phipps, Vice Chairman of the ABA Middle Eastern Law Committee and an attorney at Wiley Rein & Fielding LLP in Washington, D.C. prepared the report on Middle Eastern Law with the help of the country reporters identified below.

For its part, the ABA Middle Eastern Law Committee assisted in legal reform and education efforts in Iraq ranging from transitional justice initiatives, assistance in the drafting of constitutional language, and providing support to Iraqi law schools. Members of the Committee have assisted with the Afghanistan Commercial Law Project described in this report and have stepped forward to assist with other rule of law and judicial reform activities in the region. 2003 was a year of high drama, legal and otherwise, in the Middle East, and 2004 appears to be very similar.

I. Afghanistan*

Afghanistan has a unique legal system that has developed indigenously due to the absence of European colonial powers. Thus, although the country largely followed a civil code system, characterized by a Commercial Code and Civil Code, the common law tradition of precedent was also important. Legislative bodies in the country gradually passed statutory laws outside of these two codes. Alternative dispute resolution outside of the formal court system was commonplace, especially in rural areas, because a strong tradition of defense counsel did not exist.

During the period between the 1950s and mid-1970s, Afghanistan's legal system continued developing, and judicial institutions were becoming stronger. However, the Soviet invasion in 1979 and the resulting communist-influenced government began a quarter-century of conflict that not only unraveled the progress made in Afghanistan, but created new obstacles and challenges in the way of legal development.

Since the fall of the Taliban in November 2001, Afghanistan has experienced dramatic changes leading to a new period of legal development. The Bonn Agreement, agreed upon by Afghan stakeholders in Bonn, Germany in December of 2001, set forth the path that Afghanistan's political, legal, and judicial reform would follow until free and fair elections for a representative government are held in 2004. The first period of governance was characterized by an interim administration that was in place for six months prior to the assembly of an emergency *Loya Jirga*, or grand assembly that elected the President of the Transitional Administration. The Transitional Administration will govern until presidential and parliamentary elections are held. The Bonn Agreement also mandated the creation of a Constitutional Commission, which was responsible for drafting a new constitution for Afghanistan. Afghanistan's ninth constitution took effect on January 29, 2004, after having been discussed and debated by an elected 500 member Constitutional *Loya Jirga*.

During this period of legal and political reform, the Afghan government has sought to modernize and reform the law and regulations that affect commercial activity. One of the keys to Afghanistan's reconstruction is building sustainable economic progress. Thus, one of the Afghan government's top priorities has been to move Afghanistan towards privatization and create a climate that promotes Afghanistan's profile as an investment-friendly nation.

The Afghan government has worked in close cooperation with international organizations and donors in order to reform many areas of law. In this way, the country can benefit

*Mariam A. Nawabi, a native of Afghanistan, prepared the report on Afghanistan. Ms. Nawabi served as Coordinating Attorney for the Afghanistan Commercial Law Project throughout 2003 while an attorney at Dechert LLP. Ms. Nawabi continues to assist the Project in her new role as Commercial and Trade Counselor at the Embassy of Afghanistan in Washington, D.C.

from the knowledge and experience gained with various policies in other countries. The Afghan government has worked with many institutions, such as the World Bank, International Monetary Fund, International Law Institute, International Development Law Organization, United Nations Development Programme, as well as private consulting companies such as Crown Agents and Bearing Point to develop its reform program.

The Afghan government also initiated the Afghanistan Commercial Law Project (Project) in 2002, with the assistance of the Center for International Management Education (CIME) and the ABA's Asia Law Initiative (ABA-Asia) in order to improve Afghanistan's commercial laws and regulations. Ultimately, the Afghan government would like to revise its Commercial Code and Civil Code. The Ministries of Commerce, Justice, Finance, Foreign Affairs, Mines and Industries, Communications, Work and Labor, and Environment, among others in Afghanistan, have been working in conjunction with the Project's *pro bono* legal advisors.

The areas of law that were deemed essential to direct private foreign investment by the Afghan government and participants in the Project included not only the Law on Domestic and Foreign Private Investment, which Afghanistan amended in 2002, but many other areas including Contract, Real Property, Personal Property, Intellectual Property, Commercial, Agency, Banking, Customs/Trade, Taxation, Corporate, Partnership, Bankruptcy, Labor/Employment, Antitrust and Unfair Business Practices, and Environmental/Natural Resources.

Because there have been many changes affecting commercial and business activities in Afghanistan the past year, the following summary, in alphabetical order, has been provided.

A. BANKING

Before the Soviet invasion in 1979, Afghanistan had a system that included a central bank, "Da Afghanistan Bank," and also private commercial banks. After numerous years of war and political conflict, which led to the destruction of institutions, the country was so devastated that there were no private commercial banks during the Taliban reign. In 2003, the Central Bank enacted a very successful currency reform. The currency reform stabilized the Afghani, which continues to fluctuate between forty-seven to fifty-one Afghanis to a U.S. dollar (from 50,000 Afghanis to a U.S. dollar in 2001). In addition, this largely curbed the use of regional foreign currencies in the Afghan market.

Following upon the success of the currency reform, the Afghan government enacted a new commercial banking law in September 2003, with the assistance of the International Monetary Fund. Attorneys from Hogan & Hartson LLP, members of the Project, also provided advice to the Afghan government on this law. As a result, several commercial banking licenses were issued, and in less than five months, three private commercial banks opened branches in Kabul, including Standard Chartered from the United Kingdom, Afghanistan International Bank, a joint venture between Afghanistan Reconstruction Company, LLC, and ING, and the National Bank of Pakistan.

A. ANTITRUST AND COMPETITION

Although regulations in these areas will take time to implement, the Afghan government would like to enact the basic foundations for these areas to promote investment and business activity. Attorneys from Hogan & Hartson LLP, and Hunton & Williams LLP, have been assisting the Afghan government in this area.

B. CORPORATE AND PARTNERSHIP

Afghanistan's Civil and Commercial Codes included numerous provisions in these areas of law, but were in great need for reform. The Afghan government worked with attorneys from Hunton & Williams and Fredrickson & Byron LLP, to achieve the reformations. Last month, drafts were reviewed by the Afghan government and are currently under consideration.

C. DISPUTE RESOLUTION

An important part of the Project has encompassed the development of a means of fairly resolving disputes, and having the resolutions enforced. Afghanistan is already a member of the Washington Convention and is considering membership in the New York Convention. The Afghan government has recognized that until Afghanistan's court system is functioning properly, a system of private arbitration must be established to resolve disputes involving foreign parties in commercial transactions. The Afghan government is also considering a domestic arbitration law for the country. The system under review utilizes international rules of arbitration and arbitration awards. This system would be enforced by the Afghan Ministry of Justice and courts in Afghanistan without discretion. Attorneys from McGuire Woods LLP, and Cleary Gottlieb Steen & Hamilton LLP, members of the Project, have been advising to the Afghan government in this area.

D. ENVIRONMENTAL

Although environmental laws are not generally considered to be commercial, the Afghan government wanted to ensure basic practices were followed so as not to harm the environment and people in Afghanistan. Attorneys from Beveridge & Diamond, Dechert LLP, Altarum, WC Grace Company, and a professor from the University of South Dakota have been assisting the Afghan government with this area of law.

E. HYDROCARBONS LAW

The Afghan Ministry of Mines and Industries has been working on a hydrocarbons law in consultation with the World Bank and attorneys from Cleary Gottlieb Steen & Hamilton LLP, and Kelley Dryer Warren LLP. A draft has been completed and is being considered by the Afghan government. Because Afghanistan has this natural resource, it was important for the Afghan government to set forth the ground rules under which private companies would operate.

F. INTELLECTUAL PROPERTY AND TECHNOLOGY

The Afghan government recognizes that protection of intellectual property is important to the development of the country's economy. Thus, it has sought advice on reform of the areas of trademark, copyright, patents, and e-commerce law. Although Afghanistan had an existing Trademark Law of 1960, the law needed to be modernized. A draft copyright law, which the country did not have, and the Foreign Patent Recognition Act, will be reviewed by the Afghan government in the next few months. Attorneys from Goodwin Procter LLP, a law professor from Egypt, and the International Trademark Association, have been working with the Afghan government to reform this area of law.

G. INVESTMENT LAW

Although the Afghan government had enacted a liberal investment law in 2002, it needed improvement. Over the last year, the Afghan government has been working with attorneys from Cleary Gottlieb Steen & Hamilton and Kelley Drye Warren LLP, members of the Project, as well as an economic advisor from the German Technical Cooperation, to draft a new investment law. The draft has gone through a rigorous review process by Afghan government ministries and is currently under consideration for adoption.

H. INTERNATIONAL TRADE/CUSTOMS

In 2003, Afghanistan entered into several agreements with neighboring countries to facilitate transit trade, as well as improve the Afghan Trade Transit Agreement with Pakistan. The country has received trade preferences from the United States (GSP), Japan (LDC), and the European Union (EBA), which makes Afghanistan an attractive destination for manufacturing of goods destined for these areas. Although the country has applied for admission as a WTO member, it is currently an Observer State and is carefully planning the accession process in order to avoid entering into an agreement it cannot fulfill. The law firms of Hogan & Hartson LLP, Freshfields, and Fredrickson & Byron LLP, have provided advice and support to the Afghan government in these areas.

I. LABOR/EMPLOYMENT

Although Afghanistan does not intend to become a heavily regulated state in this area, it would like to adopt basic practices that protect the labor force and especially children. Attorneys from Dechert LLP, the Carnegie Foundation, and the University of Texas have been assisting the Afghan government with this area.

J. MINING LAW

The Afghan Ministry of Mines and Industries has been working for the past six months with the World Bank and an attorney from Allen & Overy, a member of the Project, to develop a mining law for the country. A draft is currently before the Ministry for consideration. Although the new constitution provides that mining resources are properties of the state, the Afghan government will likely develop public-private partnerships to develop Afghanistan's natural resources.

K. PROCUREMENT

Early in the reform process, the Afghan government began to establish a modern procurement process. With the assistance of crown agents of the United Kingdom and attorneys from Hogan & Hartson LLP, a new procurement law is being considered. Crown Agents has also helped to establish the Afghanistan Reconstruction and Development Service, an independent procurement agency that handles procurement for the Afghan government. Reforms in this area have helped streamline and modernize the governmental procurement process and have allowed for transparency and accountability when Afghan government funds are utilized to purchase goods and/or services.

L. PROPERTY

Due to the many years of conflict and lack of administrative capacity to uniformly register property records, the U.S. Agency for International Development (USAID) is currently sponsoring a program that will reform Afghanistan's land titling and property registration process. The new program will provide the certainty that investors need in order to secure land and property in Afghanistan. Attorneys from Katten Muchin Zavis & Rosenman have assisted by analyzing Afghanistan's current provisions in the area of secured transactions, loans, and mortgages, and have provided recommendations on how to improve law. The next step is for the recommendations to be reviewed and implemented.

M. TAX

The Afghan Ministry of Finance has successfully managed several reforms, including reform of the country's tax system. Currently, the Ministry is drafting an income and corporate tax law that will provide a tax base for the country, but that will be one of the lowest tax rates in the region in order to attract business and investment.

N. TELECOMMUNICATIONS

One of the most successful commercial ventures in post-conflict Afghanistan has been the area of wireless communications. Since Afghanistan is a mountainous country and its small landline system was largely destroyed in the various conflicts, laying new landlines was not a feasible solution for connecting Afghanistan's people. The Afghan government, with the assistance of the World Bank, enacted a new telecommunications policy and has been reforming this area of law and regulation to attract new wireless and landline carriers. Although a large percentage of Afghanistan's communications industry was state-owned, the Afghan government has worked with the private sector and developed public-private partnerships. Over the course of the next few years, the Afghan government may consider privatizing its holdings to allow the Ministry of Communications to become a regulator, rather than a manager and operator.

II. Algeria*

The legal system of Algeria is a mixture of French civil law and Islamic law.¹ As for litigation, civil and commercial cases are first tried before local tribunals, with provincial courts functioning as courts of appeal, and the Supreme Court acting as the final court of appeal.² The legislature is bicameral, with direct voting of lower assembly representatives and appointment by the President along with an indirect vote of individuals to the higher assembly.³ The executive branch is "strong" and is led by a president who is permitted to serve terms of five years, which is indefinitely renewable.⁴

*Bernadette M. Chala, an attorney at Lewis Brisbois Bisgaard & Smith LLP, in Costa Mesa, California 92626, prepared the report on Algeria.

1. *Reach 4 Algeria Country Information: Algeria: Government and Legal System*, at <http://www.reach4algeria.com> (last visited Apr. 20, 2004).

2. *Id.*

3. *Id.*

4. *Id.*

Algeria enjoys “macro-economic stability” because of its hydrocarbon energy resources, and it also enjoys strong ties with its former colonial power, France.⁵ Algeria also presents many investment opportunities to foreign-owned companies.⁶ However, amongst the civilian population, unemployment remains at around 30 percent, with as many as 80 percent of the unemployed under thirty years of age.⁷ Literacy is also low with the rate of illiterate adult females double that of adult males.⁸

The established Algerian legal framework has continued to struggle with the repercussions from its military-led coup in 1992, which was aimed at halting elections that threatened to return an overwhelmingly pro-Islamic government.⁹ The next decade witnessed major clashes between military backed government forces and pro-Islamic forces with the civilian population bearing the brunt of these clashes.¹⁰

Now much of the violence has subsided, and Algeria continues to face much international pressure to reform its laws and bring them into compliance with international standards, especially with regard to its human rights laws.¹¹ Of particular note is the state of “disappeared” persons in Algeria.¹² During the civil strife of the past decade, it is estimated that thousands of persons, mostly civilians, were kidnapped and suffered torture or were killed by groups sympathetic both to the military backed government and Islamic rebels.¹³ Information as to the whereabouts or fate of the “disappeared” remains murky at best.¹⁴

Despite efforts by the government to pass laws encouraging transparency and access to lawyers by accused persons and family members of accused persons, current reports indicate that kidnappings and torture of civilian detainees continue to occur. Although it occurs on a much smaller scale than before, there is little or no effort by the judiciary to enforce new laws and little or no accountability against members of the government-backed military police when they instigate such arrests.¹⁵

Among reforms the Algerian government has attempted is the establishment of a state commission on “disappearances.”¹⁶ However, the commission has faced criticism by civilian groups as being largely ineffectual and protecting government interests.¹⁷ Similarly, Algeria has also faced criticism for limiting freedom of the press, including intimidation measures

5. *Id.*

6. *Id.* See also, *Daewoo Eyes Investment Projects in Algeria*, MIDDLE E. & N. AFR. TODAY, Jan. 27, 2004, available at 2004 WL 62152454.

7. *Algeria: Steps Towards Change or Empty Promises?* AMNESTY INT’L (Sept. 16, 2003) available at www.web.amnesty.org/library.

8. *Id.*

9. Heba Saleh, *Algeria’s Decade of Bloody Conflict*, BBC News, Jan. 11, 2002, available at <http://news.bbc.co.uk>.

10. *Id.*

11. BBC News, *Algeria Led World in Forced Disappearances, Chirac Visit Should Spotlight Need for Accountability*, HUMAN RIGHTS WATCH PRESS RELEASE (Feb. 27, 2003).

12. *Id.*

13. *Id.*

14. *Id.*

15. *Time for Reckoning: Enforced Disappearances And Abductions In Algeria*, 15 HUMAN RIGHTS WATCH, No. 2(E) (Feb. 2003). See also *Truth And Justice On Hold: The New State Commission on ‘Disappearances,’* 15 HUMAN RIGHTS WATCH, No. 11(E) (Dec. 2003).

16. *Id.*

17. *Algeria: ‘Disappearances’ Commission Needs Broader Powers*, HUMAN RIGHTS WATCH, Dec. 9, 2003, available at <http://www.hrw.org/press/2003>.

and strengthening laws against ensuring an independent press, both of which are thought to have occurred in light of upcoming general elections in May of this year.¹⁸

Notably, at least one human rights activist was acquitted last year by a criminal court after being sentenced *in absentia* to twenty years imprisonment for “undermining the state” and “acts of terrorism and subversion.”¹⁹ Salaheddine Sidhoum, a doctor and human rights activist, remained in hiding for nine years while still documenting cases of torture and human rights abuses by Algerian authorities.²⁰ After presenting himself to authorities in September, he was re-tried and then acquitted of all charges.²¹

Thus, the Algerian government continues to make progress towards addressing concerns regarding its human rights laws and recovering from the civil strife which affected it for much of the last decade.

III. Egypt*

A significant number of laws intended to create more efficient regulatory authorities, to meet WTO commitments, and to address monetary concerns were promulgated in 2003. Chief among them:

A. LAW NO. 10 OF 2003

The new telecommunications law, establishes a national authority to manage telecommunications. While there were hopes that this law would more clearly articulate government policy and regulations with respect to electronic communications, Egypt was disappointed. The law does, however, detail procedures for establishing and operating the networks and spectrum licensing.

B. LAW NO. 12 OF 2003

The long anticipated labor law was gazetted on April 7, 2003. In contrast to the former law, the new law permits employees to strike under certain circumstances and permits employers to down size all or part of their workforce for economic necessity after following formal procedures, which includes the determination by a labor board of reasonable termination compensation for the employees.

C. LAW NO. 88 OF 2003

The new Central Bank Law gazetted on June 15, 2003 reorganizes the Central Bank of Egypt, giving it substantial supervisory power and control over the public and private bank-

18. *IJF Condemns ‘Surge of Political and Legal Attacks’ Against the Algerian Press*, INT’L FED’N OF JOURNALISTS, Apr. 12, 2003, available at <http://www.ifj.org>.

19. *Worldwide Appeal for August, 2003*, AMNESTY INT’L — WORLDWIDE APPEALS, Aug. 2003, available at <http://web.amnesty.org>.

20. *Algeria: Human Rights Defender Acquitted in Retrial*, HUMAN RIGHTS WATCH, Oct. 17, 2003, available at <http://www.hrw.org/press/2003>.

21. *Id.*

*Bridget McKinney, Managing Partner of the Cairo, Egypt offices of Denton Wilde Sapte in association with El Oteifi Law Office prepared the report on Egypt.

ing system. It also regulates bank secrecy and security including mortgages and pledges, and supersedes the foreign exchange laws.

D. LAW No. 94 OF 2003

A national council for human rights was established under Law 94. According to the law, its purpose is the promotion and development of the protection of human rights.

E. LAW No. 95 OF 2003

Following on Law 94, the government abolished the State Security Courts and transferred the jurisdiction of the State Security Court to the ordinary courts. It also abolished the criminal punishment of hard labor and replaced it with life imprisonment. Both Law Nos. 94 and 95 were welcomed changes by lawyers and human rights activists because they help to ensure basic due process rights available in ordinary courts, which were not available in the State Security Courts.

F. MINISTERIAL DECREE No. 506 OF 2003

This controversial decree took Egypt by surprise. It requires all companies operating in Egypt that receive revenue in hard currency to deposit such proceeds in licensed banks in Egypt and convert 75 percent of such proceeds into Egyptian pounds. Ministerial Decree No. 139 of 2003, which sets forth penalties for violation, including suspension of trading licenses, reinforced this decree. This is understood to be a temporary measure to bolster hard currency liquidity in the short term, but even now the decree's constitutionality is being questioned.

Decree of the Prime Minister No. 1366 of 2003 covers part of the Executive Regulations of the Law for the Protection of the Intellectual Property Rights (IP Law). This decree covers only patents, trademarks, and Botanic Species (Books 1, 2, and 4 of the IP Law).

G. DECREES ISSUED BY THE PRIME MINISTER NOS. 970, 982, 983, 984, 985, 1184 AND 1185 FOR 2003 AND MINISTERIAL DECREES NOS. 111-118, 120-128, 133-136, 145, 150-155 OF 2003

These decrees represent part of the Executive Regulations of the Labour Law.

H. PRIME MINISTER DECREE No. 951 OF 2003

This decree enacts the Executive Regulations of Law No. 80 for 2002, the Egyptian Anti-Money Laundering Law, organizing a governmental unit for supervision of required anti-money laundering reporting and recording procedures.

IV. Iraq*

A. THE NEW IRAQ FOREIGN INVESTMENT LAW

The war waged by the Coalition forces led by the United States against Saddam Hussein and his Ba'ath regime was not limited to armed conflict. It is also aimed at transforming the socio-economic, legal, and political institutions and ideologies that Saddam established over the last thirty-five years.

It is not easy to dismantle the many structures that the previous government created to protect its power base. Yet, the process of revising, eliminating, and reforming the social, political, legal, educational, and financial organizations legislated by the old guards, is proceeding at a fast pace. The liberation movement taking place in Iraq is an all out liberation in all facets of the individual and national life.

The current lexicon in Iraqi vernacular is "New Iraq." Politicians, religious leaders, academicians, courts, and the man on the street refer to the country as the "New Iraq," in contrast to the Old Iraq of Saddam's regime. Even the official currency is labeled the "New Iraqi Dinar."

The political climate in Iraq is promising with the belief that the future could never be worse than the situation during the last thirty-five years under Saddam. The security situation is problematic but improving, considering that the country is still under occupation and it was only on December 15, 2003, when Saddam was captured. The hope for a better political society resides in the national elections scheduled in January 2005 and the new constitution adopted by the Governing Council in February 2004. The Constitution recognizes the separation of powers, usher a bill of rights for individuals, protect ethnic and religious diversities, but does not acknowledge the separation of Church and State.

The bottom line is that the New Iraq will pursue policies that are friendly to America and will remain amenable to American persuasion and influence in such areas as economics, trade, foreign affairs, and security, to name a few.

This friendly advice can already be seen in the business and foreign investment sectors. On September 19, 2003, the Administrator of the Coalition Provisional Authority relying on UNSC Resolution 1483 (2003), and other legitimate sources, signed Order No. 39, titled Foreign Investment.

The goal of this new foreign investment is "to improve the life, technical skills, and opportunities for all Iraqis." The means to achieve these ends are through the development of infrastructure, the growth of businesses, job creation, capital formation, new technology, and the exchange of knowledge and skills. To accomplish these goals, Iraq desperately needs foreign investors.

In its preamble, the Order assuages the fears of foreign investors by declaring that the New Iraq is moving from a state controlled economy to a free market economy. Section 2 of the Order reassures foreign investors once again that their investment shall be protected and all regulations shall follow the rule of transparency. Gone are the days when the investors would wake up in the morning and find the assets seized or nationalized by frivolous decrees.

*Ambassador Joseph Ghougassian, Ph.D., J.D. (1980) prepared this part of the report on Iraq. Ambassador Ghougassian is president of Arabian Gulf Consultants Corp. in San Diego. He is the former U.S. Ambassador to Qatar. Currently he is Higher Education Advisor to the Coalition Provisional Authority in Baghdad assigned to the Iraq Ministry of Higher Education and Scientific Research.

Section 3 of the Order abrogates and terminates all previous existing foreign investment law in Iraq. None of these laws promoted a free market economy. The Order allows the foreign investor to own 100 percent of the business and to participate in all economic sectors, with the exception of natural resource activities involving extraction and initial processing. Also, banking and insurance companies are excluded from the reach of Order No. 39 (2003).

If the foreign investor decides to engage in retail sales, he will have to deposit \$100,000 within thirty days, in a non-interest bearing account. Failure to do so will subject the foreign investor to having his business suspended or cancelled. The deposit shall be returned to the foreign investor at the completion of the retail sales activity.

Under section 7, a foreign investor can manage, own, possess, use, transfer, or participate in a wholly foreign-owned business, or establish a branch office, or enter into partnership with an Iraqi investor. Order No. 39 authorizes total and complete repatriation of funds, shares, profits, and assets.

The Order does not require a foreign investor to appoint a local agent in order to conduct business in Iraq, as the case is in some Arab nations. According to section 5, for a foreign investor to open trade representation offices or branches, he must first register the businesses with the Iraqi Registrar of Companies.

Order No. 39 permits foreign investment in all parts of Iraq, including the provinces of Kurdish Iraq. Yet, the Order prohibits a foreign investor or a company with any degree of foreign investor participation from purchasing rights of disposal and usufruct of private real property. If the foreign investor violates this provision, he will have his business suspended or cancelled.

However, the foreign investor may use real property under the strictures of a license. The license shall be commensurate with the duration of operations related to the business, but under no circumstances could exceed forty years.

The Order does not compel a foreign investor transacting with an Iraqi investor to apply any specific law or resolve any dispute in accordance with the Iraqi legal system. Though unspoken, but clearly implied, the Order upholds the freedom of contract between the parties and permits them to elect to apply any choice of law and choice of forum.

Truly, Order No. 39 of 2003 is friendly to foreign investors. It is the most liberal law in the Arab world, and the most transparent and most attractive directive to foreign investment in the Middle East. The security conditions in the country, however, make it difficult to lure mid-size foreign companies or multinational and global corporations. Presently, the foreign business entities that operate in Iraq are mostly USAID contracts or projects approved by the Pentagon's Program and Contracting Office (PCO), but managed in Baghdad by the Iraqi Reconstruction Management Office (IRMO) under the auspices of the U.S. Embassy.

One of the weaknesses of Order No. 39 is the uncertainties it creates about its permanency. Section 3, article 2, declares that this Order is subject to replacement by an internationally recognized Iraqi government established by the people of Iraq. This statement may not be encouraging given the fact that the new Iraqi government will not be elected until January 2005.

Notwithstanding the cautionary aviso of section 3, article 2, it can be safely stated that until July 1, 2004, when the Coalition Provisional Authority (CPA) will cease to exist, those first into the market could well benefit the most, because the mammoth organization of CPA will be transformed overnight into a colossal American Embassy in Iraq. All the rights and privileges of foreign investors will be protected.

Iraq's market is virgin territory. There are great opportunities for foreign investors in agro-business, tourism, infrastructure projects, telecommunication, education products, and the downstream industries in gas and oil.

B. THE IRAQI SPECIAL TRIBUNAL FOR CRIMES AGAINST HUMANITY*

On December 10, 2003, the Iraqi Governing Council, under the auspices of the Coalition Provisional Authority, promulgated a statute establishing a war crimes tribunal to prosecute Saddam Hussein and other members of the former Ba'ath regime. Saddam Hussein, General Ali Hassan al-Majid "Chemical Ali," and Ribah Taha al-Azawi "Dr. Germ," are all already in U.S. custody. Saddam's flagrant violations of international and humanitarian law have been well documented. The crimes for which he and his regime have been implicated include using poison gas against Iranian troops during the Iran-Iraq War and against the Kurds in Northern Iraq, summary executions of prisoners of war, the pillaging of Kuwait, and in the last war, disguising troops as civilians in order to launch surprise attacks on coalition forces.

The Iraqi Special Tribunal for Crimes Against Humanity is designed to be independent of any Iraqi governing institutions. The Tribunal's structure is similar to the International Criminal Tribunal for the Former Yugoslavia (ICTY) with a Prosecutor's office, and separate Chambers for trials and appeals. It possesses broad jurisdiction to cover those residing in Iraq as well as Iraqi citizens charged with human rights violations and war crimes as defined in the statute. This, of course, is aimed at foreign terrorists like Al-Qaeda and other foreign belligerents who have entered the country with the specific aim of fighting a guerilla war against coalition forces. It also has jurisdiction over those crimes committed during both Gulf Wars, including those committed in Kuwait, and the Iran-Iraq war. Finally, the Tribunal possesses jurisdiction over its enumerated crimes since the Ba'ath Party came to power on July 17, 1968.

The Tribunal possesses jurisdiction to try the crimes of genocide, crimes against humanity, war crimes, and violations of Iraqi law enumerated in article 14. The violations of Iraqi laws covered include manipulating the judiciary in violation of the 1970 interim constitution, wastage of public assets and natural resources, and the pursuit of policies, threats of war, and overt acts of aggression that led to war against an Arab country in violation of article 1 of Law Number 7 of 1958. The national courts of Iraq possess concurrent jurisdiction over these crimes. The enumerated crimes against humanity and war crimes parallel those in The Hague and Geneva Conventions and those enumerated under the statutes of other international criminal tribunals most notably the ICTY.

The accused before the Tribunal possess identical rights under the law as do criminal defendants in a U.S. court. These include the presumption of innocence, the right not to testify against oneself, the right to be informed of all charges, examine witnesses and be tried without "undue delay." All sentences are to be brought and enforced by the Iraqi legal system in accordance with its laws.

*Christopher Scott Maravilla is a Clerk to Justice J. Dale Wainwright, Texas Supreme Court, Austin, Texas, prepared this part of the report on Iraq. Mr. Maravilla was formerly an attorney at Fried, Frank, Harris, Shriver & Jacobson. Mr. Maravilla participated in the Afghanistan Commercial Law Project.

C. LEGAL CLIMATE FOR DOING BUSINESS IN IRAQ*

The legal climate for international investment and commerce in Iraq is evolving rapidly. The trend in the legal environment is decidedly positive. Patient and regionally savvy businesses and investors not obsessively averse to risk are preparing to enter the Iraqi market. The legal climate for doing business in Iraq is not, however, at the top of the list of concerns when investing or doing business in Iraq. Basics, such as physical security and infrastructure top the list. The Iraqi Governing Council, the concerned Iraqi ministries, and the Coalition Provisional Authority understand this and have been working to make things better. More importantly, they have not been doing so to the exclusion of working on critical, long-term legal environment issues.

International sanctions were lifted in May 2003. Foreign investment restrictions have been greatly reduced as discussed above. Vital financial and banking institutions are being established. A new banking law was promulgated. Trade policy was liberalized. Improvements in the area of company formation and intellectual property protections are anticipated. The Iraqi currency has been reformed and, since pre-war days, has rebounded and stabilized to some extent. The civil courts are open and operating (they still use the Saddam-era laws, except when inconsistent with CPA orders and Iraqi Governing Council decrees). Judicial independence is being re-established for the first time in decades. The law schools have reopened, and their curriculum is the subject of reform efforts. The Iraqi Bar Association has reconstituted under fresh leadership and has been reaching out to the international legal community, including the ABA's Middle East Law Committee and the Section on International Law and Practice.

Because sovereignty has yet to be returned to Iraqis and Iraq's new constitution is still pending (in fact, by the end of 2003, the IGC had not yet been able to agree on how to hold the needed convention or on the process of ratifying the constitution once drafted), it is still not certain how long these improvements will last. Also, significant doubts remain as to such central business issues as property rights, the enforceability of contractual rights, and basic individual liberties, which are vital not just to personal happiness, but to the proper functioning of a modern economy. All of these issues must be addressed. Over time, the unseating of Saddam may prove to have been easy compared to uprooting a constitutional and legal system influenced by decades of Ba'athist socialist rule and corruption.

V. Jordan**

With the reconstruction of Iraq under way, Jordan will become an important country for economic development in the Middle East.²² Jordan seems committed to making its laws conducive for business. For example, a new securities law was implemented this year, with the aim of bringing the legal and institutional framework up to international standards.²³

*Jim Phipps, Vice Chairman of the ABA Middle East Committee and an attorney at Wiley Rein & Fielding LLP in Washington, D.C. prepared this part of the report on Iraq.

**Moin A. Yahya, an Assistant Professor of Law at the University of Alberta in Edmonton, Canada, prepared the report on Jordan.

22. Josh Martin, *Trade Boom for Iraq's Near Neighbours: in the Wake of the Lifting of UN Sanctions, and the Onset of The Multi-Billion Dollar US-Led Reconstruction Effort, Regional Trade is Expected to Soar*, MIDDLE E., July 1, 2003, available at 2003 WL 10504828.

23. *ASE Official Discusses ASE's Promising Future as Result of Securities Law Implementation*, IPR STRATEGIC INFO. DATABASE, June 9, 2003, available at 2003 WL 61287562.

Some advantages of securities laws in Jordan include no income taxes on dividends or capital gains.²⁴ Additionally, in order to facilitate the exports of Jordanian products, speed up customs transactions, and ensure that domestic Jordanian products conform to international standards, as required by the (WTO), the Jordan Institution for Standards and Metrology (JISM) and the French company Bureau Veritas (Bivac) agreed to implement the International Product Conformity Certification Program (IPCCP).²⁵ The program, known as Daman, will ensure that low quality and counterfeit goods are kept out of the market.²⁶ Jordan also updated its intellectual property (IP) laws by extending its copyright laws to cover the Internet, although there is a concern that law enforcement in the area of IP is still lacking.²⁷ Jordan has hinted that it will implement banking reforms, privatization of many state owned industries, and the elimination of petroleum subsidies.²⁸ Work on social security reform, however, has not been forthcoming.²⁹ Finally, the government also plans to issue additional mobile GSM licenses.³⁰

The government also seems concerned about the welfare of its citizens. For example, the House is expected to implement a national health insurance law, designed to cover all its citizens,³¹ and there are also discussions about legalizing home deliveries of medications.³² Additionally, Jordan extended the coverage of its labor laws to agricultural workers,³³ and passed laws regulating migrant workers.³⁴

On the other hand, Jordan seems to be pursuing a mixed-economy model. For example, it introduced a new investment law encouraging domestic investment so that domestic companies can compete internationally, but no details are available.³⁵ Similarly, the Jordanian cabinet approved custom duties exemptions for intermediary goods imported by state enterprises, but it hinted that such exemptions may be available in the future for all enterprises.³⁶

24. *Id.*

25. *JISM and Bivac Launch Daman Quality and Safety Program*, IPR STRATEGIC INFO. DATABASE, Sept. 1, 2003, available at 2003 WL 62524300.

26. *Id.*

27. *Copyright Protection Implementation Increasing but Long Way Ahead*, IPR STRATEGIC INFO. DATABASE, June 26, 2003, available at 2003 WL 61288707.

28. *IMF Published Jordan's Letter of Intent and Economic and Financial Strategy for 2003*, MIDDLE E. & N. AFR. TODAY, July 15, 2003, available at 2003 WL 64196552.

29. *Id.*

30. Neil Ford, *Middle East Telecoms. (Special Survey)*, MIDDLE E., Dec. 1, 2003, available at 2003 WL 10505027.

31. *National Health Insurance Law Set to be Finalized In Lower House*, IPR STRATEGIC INFO. DATABASE, Aug. 21, 2003, available at 2003 WL 61291965.

32. *Questions Raised over Possible Legalization of Pharmaceutical "Home Deliveries,"* IPR STRATEGIC INFO. DATABASE, Aug. 18, 2003, available at 2003 WL 61291957.

33. Valerie Mason, *Jordan—Agricultural Workers now Covered by Jordanian Labour Law*, WMRC DAILY ANALYSIS, Feb. 3, 2003, available at 2003 WL 4498113.

34. Carina I. Roncesvalles, *Middle East Beefing up Laws to Protect Workers*, BUS.WORLD (PHIL.), Feb. 5, 2003, available at 2003 WL 4283859.

35. *Jordanian GDP Grows 2.8% at Constant Prices and 3.9% at Current Prices in Q1/2003*, MIDDLE E. & N. AFR. TODAY, June 16, 2003, available at 2003 WL 64196389.

36. *Jordanian Cabinet Approves Tax Exemptions for State Enterprises*, MIDDLE E. & N. AFR. TODAY, Feb. 21, 2003, available at 2003 WL 8081907.

VI. Tunisia*

Tunisia has much to promise economically given its close relations with the United States and its cooperation in the war on terrorism.³⁷ The economic outlook for Tunisia is decent, but there are concerns about the lack of structural reforms such as privatization, growing cronyism, and growing political dissent.³⁸ For example, the money-losing Tunisair will remain state-owned.³⁹ Nonetheless, the government seems committed to move in the direction of economic reform, as evidenced by the continued appointment of western trained economists and technocrats to key positions.⁴⁰ Other signs of progress include the allowance of private radio, television stations,⁴¹ and private mobile phone companies.⁴² Additionally, Tunisia received a strong international credit rating due to the government's stable fiscal situation.⁴³ Finally, Tunisia announced a new anti-terrorism bill that also includes money-laundering provisions.⁴⁴

Bright spots in Tunisia's future include its electricity sector, which could benefit from trade with the European Union (EU), and is expected to be a large source of economic growth.⁴⁵ Telecommunications also promise to be a growth area, given the allowance of private companies and the fact that only twelve percent of Tunisians have landlines and only five percent have mobile service.⁴⁶

On other fronts, the minimum capital requirement for local insurance firms was raised to ten million Tunisian Dinars (\$7.47 million U.S. dollars),⁴⁷ while the minimum wage was increased for all sectors not subject to collective bargaining agreements.⁴⁸

VII. Turkey**

2003 marked the year in which Turkey celebrated its eightieth anniversary as a secular republic.⁴⁹ Celebrations focused on its identity as a modern, secular nation with strong

*Moin A. Yahya, Assistant Professor of Law on the Faculty of Law at the University of Alberta in Edmonton, Canada, prepared the report on Tunisia.

37. *US Assistant Secretary William Burns Meets with President Ben Ali, Describes Tunisia as "a force for tolerance and moderation in the region,"* M2 PRESSWIRE, Dec. 12, 2002, available at 2002 WL 103728573.

38. *Maghreb: Forecasts—Tunisia*, MEED Q. REP.—MAGHREB, Dec. 18, 2002, available at 2002 WL 19182877.

39. *Tunisair Remains State-Owned Despite Plans for Restructuring Tunisian Authorities are Considering*, MIDDLE E. & N. AFR. TODAY, Jan. 30, 2003, available at 2003 WL 8081889.

40. *Tunisia: Ghannouchi Stays on to Head Economists' Government*, MEED Q. REP.—MAGHREB, Dec. 18, 2002, available at 2002 WL 19182862.

41. *Private Radio Starts Broadcasting as New Private Radio and Television Stations Announced in Tunisia*, available at <http://www.tunisiaonline.com/news/071103-1.html>.

42. *Business Update*, MEED Q. REP.—MAGHREB, Mar. 5, 2003, available at 2003 WL 15876448.

43. *Fitch Affirms Tunisia's Long-Term Foreign and Local Currency Ratings at 'BBB'/'A-', Stable Outlook*, MIDDLE E. & N. AFR. TODAY, May 30, 2003, available at 2003 WL 8082511.

44. *Anti-terrorism Bill Adopted by Tunisian Parliament*, available at <http://www.tunisiaonline.com> (Dec. 10, 2003).

45. Neil Ford, *Tunisia's Window of Opportunity*, AFR. BUS., Mar. 1, 2003, available at 2003 WL 10847049.

46. *Business Update*, MEED Q. REP.—MAGHREB, Mar. 5, 2003, available at 2003 WL 15876448.

47. *Salim Insurance Company Raises Capital*, MIDDLE E., Feb. 1, 2003, available at 2003 WL 10504516.

48. *Increases in Minimum Wages Announced*, Tunis Online, May 1, 2003, available at <http://www.tunisiaonline.com/news/010503-1.html>.

**Bernadette M. Chala, an attorney at Lewis Brisbois Bisgaard & Smith LLP in Costa Mesa, California 92626, prepared the report on Turkey.

49. BBC NEWS, *Turkey Marks Eighty Years As Republic*, Oct. 29, 2003, available at <http://newsvote.bbc.co.uk>.

Islamic ties and how the new ruling party has worked to reconcile its openly pro-Islamic values with the secular state.⁵⁰ 2003 also witnessed Turkey's continued progress in reforming its laws to comply with its ultimate goal of jumpstarting talks aimed at securing its entry into the European Union. A decision as to Turkey's accession into the EU is expected at the next European Union summit in December 2004.⁵¹ Of particular note is Turkey's continuing attempt to resolve the ongoing problem of the reunification of Cyprus, whose internationally recognized southern half is scheduled to join the European Union in May of this year.⁵² For Turkey, the European Commission has made it clear that "settlement of the Cyprus problem will greatly help Turkey's EU aspirations."⁵³

Similarly, and also at the prompting of European Union officials, Turkey has attempted to reform laws aimed at its large minority Kurdish population, albeit with mixed results.⁵⁴ Although some progress has been made in reforms, actual application of laws has offered only mixed results.⁵⁵ For instance, Turkey is concerned that steps taken by Kurds in northern Iraq to ensure their autonomy may increase instability with neighboring Turkey, which has only recently enacted laws aimed at eliminating discrimination against ethnic Kurds.⁵⁶

Turkey has also struggled to reform its human rights laws in order to align itself with European standards.⁵⁷ Despite current efforts at reform, Turkey still faces "problems" in relation to executing judgments of the European Court of Human Rights, implementing basic freedoms such as the freedom of religion—including remedying restrictive property ownership rights for religious organizations—and a ban on ecclesiastical training.⁵⁸ This is true despite the secular nature of Turkish society.⁵⁹

Despite such acknowledged problems, Turkey has been recognized by the international community for its efforts to reform. For instance, Turkey enjoyed public recognition by the United States and the Bush administration for its progress in combating the illegal trafficking of persons within its borders.⁶⁰ In response to the problem, Turkey amended its Penal Code to include trafficking of persons as a criminal act. In addition, fines and sentences increased for those acting as part of an organized group and, early in 2003, a National Action Plan to Combat Human Trafficking was announced, including the implementation of awareness programs.⁶¹ Turkey also enacted laws restricting issuance of work permits to foreigners and established a probation period for foreign nationals to acquire Turkish cit-

50. *Id.*

51. Lally Weymouth, *Tough Talk About Terror*, NEWSWEEK, Feb. 2, 2004, at 44. [hereinafter Weymouth].

52. BBC News, *Turkey Dashes New Cypriot Hopes*, Jan. 5, 2004 available at <http://news.bbc.co.uk/1/hi/world/europe/3369229.stm>. See also, *AHI Applauds the European Commission Report on Turkey*, PHANTIS (Nov. 7, 2003), at <http://www.phantis.com>.

53. BBC News, *Prodi Presses Turkey Over Cyprus*, Jan. 15, 2004, available at <http://newsvote.bbc.co.uk>.

54. BBC News, *Country Profile: Turkey*, Nov. 12, 2003, available at <http://newsvote.bbc.co.uk>.

55. BBC News, *Kurds Wait For Turkish Sea Change*, Nov. 19, 2003, available at <http://newsvote.bbc.co.uk>; BBC News, *Rebel Move 'Sends Mixed Signals'*, Sept. 2, 2003, available at <http://newsvote.bbc.co.uk>.

56. *Id.* See also, Weymouth, *supra* note 51.

57. *Continuing Enlargement: Strategy Paper and Report of the European Union on the Progress Towards Accession by Bulgaria, Romania and Turkey*, at 30 (Nov. 5, 2003), available at http://www.europa.eu.int/comm/enlargement/report_2003 [hereinafter *Continuing Enlargement*].

58. *Id.* at 32.

59. *Country Profile: Turkey*, *supra* note 54.

60. Statement of Ambassador O. Faruk Logoglu, Response to President Bush's Notification on Progress in the Fight Against Trafficking in Persons, Turkish Embassy. (Sept. 2003), available at <http://www.turkey.org>.

61. *Id.*

izenship, both of which were designed to prevent illegal employment and to combat fraudulent marriages.⁶²

As for reform of its business laws, Turkey was recently praised for simplifying procedures to establish and register a company.⁶³ Turkey also ratified the Civil Law Convention on Corruption, effective January 1, 2004, meaning that Turkey will become a member of the Council of Europe's Group of States Against Corruption (GRECO).⁶⁴ Despite progress toward transparency, "corruption remains at a persistently high level and affects many spheres of public life."⁶⁵ Turkey also failed to pass the Public Financial Management and Financial Control law, leading to concerns about budget transparency and the efficacy of its accounting standards.⁶⁶

Similarly, it has only been in this past year that Turkey abolished military courts from entertaining concurrent jurisdiction with civil courts, thereby eliminating military judges from trying civilians.⁶⁷ For the first time, Turkey also established separate family law courts with jurisdiction over divorce, settlements, and other family disputes.⁶⁸

Thus, Turkey continues to make progress towards reform through change in its social, economic, and political laws, which demonstrates its drive to gain entry into the European Union.

VIII. United Arab Emirates*

It has become customary for the Rulers of the Emirate of Dubai to identify areas for development and investment, which has in turn helped distinguish Dubai as the most viable and innovative business center in the entire Middle East. Success stories have been witnessed in various areas such as information technology, tourism, infrastructure, media and healthcare. Most recently however, in an attempt to establish itself as a business hub, Dubai has initiated the launch of a world-class onshore financial center: the Dubai International Financial Centre (DIFC), which is estimated to involve a multi-billion dollar investment on approximately four million square feet.

The proposal to establish the DIFC first came about in the year 2002, as an effort to bridge the gap between the world's major financial centers located in Europe, Asia and North America, by availing a region estimated to hold one-third of the world's population, and comprising of the Middle East, North and East Africa, the Caspian states, and Indian subcontinent.

On July 13, 2003, the federal cabinet of the United Arab Emirates realized this end by approving a decree allowing for the full establishment of the DIFC as a Financial Free Zone, with a substantial degree of sovereignty. Since its inception, the DIFC has an estimated 100 financial institutions that have expressed an interest in establishing themselves within its boundaries.

62. *Id.*

63. *Continuing Enlargement, supra* note 57.

64. *Id.* at 31.

65. *Id.*

66. *Id.* at 35.

67. *Id.* at 30.

68. *Id.*

*Ammar Al-Saleh, a legal consultant at Al Tamimi & Co in Dubai, U.A.E., prepared the report on the United Arab Emirates.

Unlike analogous projects underway in neighboring countries, the DIFC is governed by its own legal and regulatory framework, which at the date of writing, is being drafted by the DIFC regulatory and supervisory body, the Dubai Financial Services Authority (DFSA). Through its independent legal framework, the DIFC will enjoy greater leverage from its counterparts, as it enjoys independence from national restrictions and impositions made by Central Banks.

The DFSA regulations have been modelled on international best practice, using principles followed in financial centers such as London and New York, and operates to standards that meet or exceed those in the world's major financial centres. Additionally, the DIFC legal independence is further upheld through the establishment of DIFC courts, which are autonomous of national judicial systems.

In tandem with the aforementioned benefit of regulatory independence, establishing under the DIFC allows for complete foreign ownership. This results in no municipal or local authority, personal or corporate taxes being levied for an initial period of fifty years, as well as the ability to repatriate profits and capital without any limitations.

Upon its inception, DIFC will focus on five areas of activity in the financial industry: (1) asset management and fund registration; (2) Islamic finance; (3) insurance and reinsurance; (4) back-office operations; and (5) the establishment of a Regional Financial Exchange. The DIFC will not include retail banking, nor will it be denominated in Dirhams.

Although some might describe this initiative as another attempt at apportioning the desert, the consensus seems to be that the DIFC will act as a catalyst and contribute to the growth of the whole region.

IX. Palestine*

2003 was a slow year of law-making in Palestine even though approximately thirty laws are pending enactment. Two of these laws are outlined below.

The political situation as the Palestine Authority (PA) was transitioning into a bifurcated system of government precluded law-making. Restrictions on movement and closure prevented members of parliament from reaching their offices. During this year, however, the PA established the office of the Prime Minister to ensure proper governance and decentralization of the powers of the president. To meet the growing needs of the judiciary, the PA successfully implemented the law adopted in 2002 on the independence of the judiciary, as new courts were established and new judicial appointments were made.

Despite significant achievements since 1994, the PA faces great challenges in the law-making process. The challenge facing Palestinian law reformers is 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.

The need for legal reform is most urgent in the areas of private law, where jurisprudential matters involving constitutional and public law issues will take more time to develop due

*Hiba Hussein of Hussein and Hussein, Ramallah, Palestine, prepared the report on Palestine. Hiba Hussein holds a Juris Doctor from Georgetown University in Washington, D.C. She is a member of the Palestine Bar Association and the Pennsylvania Bar.

to their complexity. Work on private law reform requires an understanding of the world's two primary legal systems, common law and civil law, and ultimately a decision must be made on which concept to follow during the course of preparing reform legislation.

There is much more for the PA to undertake to become 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 unless Palestine is a sovereign state.

A. LEASING REGULATIONS

The Leasing Law was 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, but the risk of loss remains with the lessor.

B. 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 harmonization of the registration and incorporation process and application of uniform fees to both the West Bank and Gaza.

X. Israel*

The modern State of Israel is a small country, about the size of Belgium or the state of New Jersey. Located on the eastern shore of the Mediterranean Sea, Israel is at the crossroads of Europe, Asia, and Africa, and maintains important political and economic ties with North America. Although located in the Middle East, Israel is culturally a European country with a secular democratic government and a legal system based on Anglo-American traditions. Since its foundation in 1948, the State of Israel has been blessed with massive numbers of highly skilled and motivated immigrants, including a current wave from the former Soviet Union. In the fifty-six years of its existence, Israel has absorbed 3.2 million new immigrants (600,000 of which left the country). Israel leads the Middle East region in gross domestic product, per-capita income, high-tech industry, technology transfer, and telecommunications.

According to Israel's Central Bureau of Statistics, on the eve of the country's fifty-sixth Independence Day, Israel's population was 6.7 million, eight times the country's population on the eve of the Declaration of Independence in 1948, when the population stood at 806,000. During these fifty-six years, 4.5 million babies have been born and the country's Jewish population is currently 5.4 million while the Arab population totals 1.3 million. *Sabras*, (Israeli born people) constitute two-thirds of the Jewish population compared with

*Alon Kaplan, a senior partner of Alon Kaplan, Law Firm from Tel-Aviv, Israel, prepared the report on Israel. Alon Kaplan holds a masters degree (LLM) in law from the Hebrew University in Jerusalem. He is a member of the Israeli Bar Association and the New York Bar.

35 percent when the country was established. The proportion of the Jewish population coming from Europe and the United States is 25 percent, compared with 55 percent in 1948. The proportion of Asia and Africa-born Israelis has hardly changed at 11 percent, compared with 10 percent in 1948.

The population grew by 152,000 last year, a 2.4 percent increase. This is higher than in most developed countries, where the population growth rates do not exceed 1 percent.

The Israeli business scene is heavily based on international commercial activity. While Israel is not a "tax shelter" in the same manner as the Cayman Islands, the Israeli government makes a strong effort to encourage foreign investment and trade. Locals face a heavy tax burden, but Israel provides generous tax exemptions for new immigrants and foreign investors.

A. ISRAELI TAX REFORMS

On July 24, 2002, the Israeli Knesset (Parliament) passed the Law for the Amendment of the Income Tax Ordinance, which adopted most of the recommendations of the Rabinowitz Government Commission published on June 12, 2002. The Commission was established to review and recommend reforms to the present Israeli tax system.

Until the end of 2002, the Israeli tax system was based on the territorial principle, that is, income liable for tax in Israel was income that was "accrued" or "received" in Israel. The new legislation set the principle of personal global taxation, which determines tax liability for an Israeli resident whether the income is accrued or received in Israel or abroad. The new tax rules became effective on January 1, 2003. The year 2003 has seen implementation of the tax reform which has covered most business and private activities.

1. *Foreign Residents*

Foreign residents who do not reside in Israel or are not doing business in Israel will continue to enjoy the range of exemptions that cover income from passive investments in Israeli banks. However, foreign residents will be subject to tax on capital gains derived from Israeli assets, with the exception of gains in stock market equities.

2. *Israeli Residents*

In principle, the purpose of the reform is to reduce the personal tax rates including social security payments from a maximum rate of about 60 percent to a lower rate of 49 percent.

Israeli residents, on the other hand, will pay tax on worldwide income, even if the income is received from assets located abroad, and even if the funds received overseas are not transferred to Israel. In this regard, a major change has occurred. Until now, such income was tax exempt in Israel. For example, income from a deposit in a bank account in Europe or the United States was exempt from tax for an Israeli residing in Israel. The change to personal taxation in Israel includes stock exchange taxation, which was previously exempt.

B. BANKING

Israel maintains a modern computerized banking system. Most banks provide private banking services and keep special centers for tourists and foreign investors. The five large Israeli banks have branches and subsidiaries in Europe and the United States and representative offices in various other countries.

C. TAXATION

The subject of taxation in Israel is very complex. The following describes a few aspects of taxation that are relevant to foreign investors.

1. *Tax System*

Companies in Israel are generally subject to company tax on their profits at the rate of 36 percent. Distributed profits after company tax are subject to dividend withholding tax at rates of up to 25 percent in the case of individual and non-resident shareholders. Interest and royalties are also generally liable to withholding tax of 25 percent unless reduced by a tax treaty. Lower tax rates and other benefits are applicable under Israel's investment incentive legislation.

2. *Other Taxes*

Value Added Tax (VAT) is generally imposed on transactions conducted in Israel, as well as on transactions relating to assets or activities in Israel and imports. The standard rate of VAT in Israel is currently 17 percent, but exports are generally zero-rated. Special provisions apply to financial institutions and not-for-profit bodies.

Israel has no inheritance or gift tax; however, on the subsequent sale by the recipient of an asset which is assessable for capital gains tax, the asset cost (net of depreciation where applicable) and acquisition date of the testator or donor are taken into account in the computation of tax due.

3. *Double Taxation Relief*

Israel is a party to thirty-five double taxation treaties. The foreign investor who takes advantage of double taxation treaties can often withdraw profits earned in Israel under favorable tax treatment. Where a taxpayer is taxable both in Israel and abroad on the same income, double taxation relief may be available either in accordance with a bilateral tax treaty (convention) or, in certain cases, unilaterally. In general, double taxation relief may take the form of a credit for overseas taxes (the credit method). Many of Israel's tax treaties allow investors to take a full foreign tax credit even if the rate has been reduced in Israel as an investment incentive under the Encouragement of Capital Investments Law. This is known as "tax sparing" relief.

Alternatively, double tax relief may take the form of an exemption in the source country where income or gains arise, or in the taxpayer's country of fiscal residency (the "exemption method" of double tax relief). In all cases, reference should be made to individual treaties (where applicable) and to local legislation to ascertain the exact details of the double taxation relief afforded and the conditions attaching thereto.

D. LAW OF INHERITANCE

Israeli inheritance law is generally governed by the Succession Law of 1965. It is the intent of this law that matters of succession be governed, as far as possible, by the deceased's last will and testament. There is no limitation upon the right to bequeath, and the law does not mandate a specific portion to family members. It does, however, protect the surviving spouse (as long as he or she remains single), children, and dependent parents by providing for maintenance payments from the estate. Israeli courts have jurisdiction over people who, at the time of death, were domiciled or left assets in Israel. A person can inherit either under a will or by law.

Illegal, immoral, or impossible provisions in a will, as well as agreements to make or refrain from making a will, are void. In addition, a vague will may be declared invalid.

Where no will exists, the law provides for the property to be divided among the surviving relatives. A common law spouse who was living with the deceased as husband or wife, is considered "married" under this law. A provision is also made for surviving relatives to share proportionately in the estate.

E. LAW OF TRUST

The trust institution has been recognized under the Israeli legal system since the 1920s. The enactment, in 1923, of the Charitable Trusts Ordinance set out the rules for a public trust. The private trust, on the other hand, was not regulated by statute until 1979, when the Trust Law was enacted. Nevertheless, the Supreme Court held that the concept of trust existed in Israel even prior to that date. After the enactment of the Trust Law, the courts no longer needed to rely on foreign laws, which formed the basis for the recognition of the trust before 1979. However, there remains a strong connection between the Israeli and Anglo-American systems in this field and a great resemblance between the trust institutions of these legal systems.

An Israeli trust has several specific features. The trustee is endowed with control over the assets, although there are no particular conditions as to the manner of control. A common means of control is acquired through title to the trust assets passing to the trustee. The trustee may, however, be vested with control over the assets by being empowered to deal with them, whether as an agent or otherwise. A trustee is deemed to have control if he can, by his acts, affect the way the trust assets will be dealt with, whether they are distributed, invested, or exchanged for other assets. The trustee must exercise his control over the assets for the attainment of the purpose of the trust. A trust will be valid and enforceable where there is a definite beneficiary. It will also be valid where there is no definite beneficiary, as long as there is some purpose to the trust.

One peculiar feature of the Trust Law is that it does not permit skipping generations, that is, one cannot create a trust that will survive the life beneficiary for the benefit of his successor, and a valid will and probate will be required.

Israeli law also provides for the establishment of a public endowment whose "objective or one of the objectives of which is the furtherance of a public purpose . . ." This applies mainly in the fields of education, culture, religion, scholarship, science, art, social welfare, health, and sports.