

# Middle Eastern Law

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## I. Introduction

In 1996, the Middle East has finally emerged from the recession that had beset the region. Many countries in the region saw up to ten percent growth in their economies. This trend is likely to continue, and the economies of the area should grow at six percent a year until 2010 according to the World Bank.

The countries of the Middle East seemed to have also embarked on major infrastructure projects to upgrade and develop telecommunications, power, construction, and industry. While in the past Middle Eastern governments have tended to exclude the private sector from many of the infrastructure projects, in 1996 countries in the region were clamoring to attract private domestic and foreign investors. The World Bank has estimated the need for \$3.1 billion a year in private investment for infrastructure projects for the countries in the region (to achieve development target). Furthermore, many Middle Eastern states have embraced privatization as the means by which many of the infrastructure projects can be accomplished. Some estimates have put the potential total for privatization in the Middle East at \$100 billion.

Obviously, any significant economic development in the region is dependent in part on political stability and legal reforms. Without peace and the requisite legal system in place, international investors are not likely to invest substantial sums of money in the Middle East. Therefore, the survival of the Middle East peace process and the continuation of legal reforms (developments) in countries like Jordan, Oman, Egypt have come as welcome news for economic and legal observers of the area.

## II. The Middle East Peace Process<sup>1</sup>

In 1996, the Middle East peace process was still suffering from the blows it was dealt in 1995 by the assassination of Prime Minister Yitzhak Rabin (in November of 1995) and a series

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1. For good sources of information on the peace process, the following web sites contain useful information: (a) "The Israel Ministry of Foreign Affairs" (visited Mar. 10, 1997) <<http://www.israel-mfa.gov.il>>; (b) "The Palestinian Information Center" (visited Feb. 18, 1997) <<http://alguds.org>>; (c) "The U.S. Department of State" (last modified Mar. 19, 1997) <<http://www.state.gov>>.

of terrorist incidents in Israel. But the peace process survived and some progress between the Israelis and the Palestinians was even achieved.

The current peace negotiations between the Arabs and the Israelis are conducted within the framework laid out in the 1991 Madrid Peace Conference. That framework of negotiations consists of three basic elements:

1. A just, lasting, and comprehensive peace settlement based on UN Security Council Resolutions 242 and 338.
2. Direct bilateral negotiations between Israel and the Palestinians and Israel and the Arab states. The purpose of these bilateral negotiations is to resolve conflicts of the past and to conclude bilateral peace treaties. The bilateral negotiations were to be conducted along four separate tracks: Israel-Palestinian, Israel-Jordan, Israel-Lebanon, and Israel-Syria.
3. Multilateral negotiations aimed at addressing issues of concern to the entire Middle East regions, including water, environment, economic development, arms control, and regional security.

The breakthrough in the bilateral negotiations occurred on September 13, 1993, when the Israeli government and the PLO signed the Declaration of Principles on Interim Self-Government Arrangements, which was followed by a signing of the Agreement on the Gaza Strip and the Jericho Area (May 4, 1994) [includes Annex on Legal Matters], the Agreement on Preparatory Transfer of Powers and Responsibilities (August 29, 1994), the Interim Agreement on the West Bank and Gaza Strip (September 28, 1995) [Includes Annex on Legal Matters], and the just concluded Protocol concerning the Redeployment in Hebron (January 17, 1997).

It took most of 1996 to negotiate the Protocol under which the Israelis are to transfer both security and civil powers over most of Hebron (Area H-1) to the Palestinians, but are to retain control over a small part on which Israeli citizens live (Area H-2). The Protocol also contemplates certain shared responsibilities in security and civil administration in areas that are particularly sensitive. Yet the Protocol is significant in that it signals the continuation of the peace process. In fact, in connection with the signing of the Protocol, a Note for the Record (dealing with non-Hebron issues) through which the parties reaffirmed their commitment to the peace process and to the implementation of the Interim Agreement on the basis of reciprocity was agreed upon.

### III. Legal Developments

#### A. ACCESSION TO INTERNATIONAL CONVENTIONS<sup>2</sup>

Bahrain, Egypt, Israel, Kuwait, Morocco, Qatar, Tunisia, and the UAE were among the 130 governments that had accepted the Marrakesh Agreement establishing the World Trade Organization (WTO). The membership of Qatar and the UAE, however, did not become effective until 1996. Other middle Eastern countries, namely Algeria, Jordan, Oman, Saudi Arabia, and Sudan have filed applications to join the WTO.

In 1996, Bahrain became the latest Arab country to sign the 1965 World Bank Convention on the Settlement of Investment Disputes (ICSID Convention). Bahrain also, along with Oman and the UAE, signed the 1995 Protocol on Enforcement of Judgements, Letters Rogatory and

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2. One of the best web sites on international trade and law is "International Trade Law Monitor" (visited on Feb. 18, 1997) <[http://ra.irv.uit.no/trade law](http://ra.irv.uit.no/trade%20law)>.

Judicial Notices Issued by the Courts of the Member States of the Arab Gulf Co-operation Council. Also in 1996, the UAE signed the Paris Convention for the Protection of Industrial Property.

#### B. INTELLECTUAL PROPERTY RIGHTS LAWS

Oman became the latest country in the Gulf Cooperation Council Country (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, UAE) to enact a copyright law. The Copyright Law was issued under Decree No. 47 of 1996 which became effective in mid-June of 1996. The law protects the work of Omanis whether it is first published, performed, or displayed in Oman or in a foreign country. The work of foreigners receives protection if it is first published, performed, or displayed in Oman. If the work of a foreigner is first published outside Oman, it receives protection only if such work receives protection in the foreign country and then only upon reciprocal treatment with Oman.

On January 10, 1996, the Saudi Patent Office granted its very first patents since the implementation of Royal Decree No. M/38 for the year 1990. These patents, according to the TMP Bulletin which reported on this event, were issued to a Saudi citizen, a Swedish and a German companies.

The last five years have seen significant changes to the laws affecting intellectual property rights in the countries of the Gulf Cooperation Council. Under pressure from the United States and other Western European countries, GCC governments have not only passed IP laws but have undertaken more rigorous enforcement measures particularly in Saudi Arabia and the UAE where the governments have confiscated sizable quantities of counterfeit material.

#### C. PRIVATIZATION

The word "privatization" still creates uneasiness in many parts of the Arab World. Yet certain governments in the region including Egypt, Jordan, Oman, and Saudi Arabia have embarked on a clear path of encouraging private sector involvement in projects which previously were the sole domain of governments.

For example, Oman has issued Royal Decree 42/96 which encourages government agencies to establish privatization programs and to welcome foreign investment. The Decree gives priority to privatization in the utilities, telecommunications, and other infrastructure projects.

Similarly Egypt enacted Law Nos. 100 and 229 of 1996 amending prior laws to allow foreign investors direct participation in independent power projects and toll roads.

On June 2, 1996, the Egyptian Government approved legislation to allow private sector companies to build-own-operate power stations. Furthermore, Law No. 200 of 1996 amending Law No. 12 of 1976 concerning the establishment of the Egyptian Electricity Authority allowed the Authority to give concessions to domestic or foreign companies to establish, manage, and operate power plants. Egypt privatization plans, however, go well beyond power plants. By September 1996, the Egyptian Government had listed over 100 companies for privatization, and by December 1996, it had approved direct foreign investment in Egypt totaling \$910 million.

In 1996, the Jordanian government passed a number of amendments to its laws aimed at attracting foreign investors in the country. Thus, the 1995 Investment Promotion Law was followed by Regulation 1 of 1996 for the Promotion of non-Jordanian investment in the Kingdom. This law eliminated the distinction between Arab and non-Arab investment in terms of full ownership in projects of industry, agriculture, tourism, and housing. Non-Jordanian,

are still restricted however to fifty percent ownership in projects involving air transport, construction, contracting, trading and trade services, banking, insurance, and telecommunications.

## VI. Other Legal Developments

### A. KUWAIT

In August of 1996, the Kuwaiti Government passed a sweeping law to force disclosure of commissions paid to intermediaries, brokers, and middlemen in connection with government contracts. Law No. 25 of 1996, titled the Law Regarding the Disclosure of Commissions Paid in Connection with Government Contracts, mandates that all commissions, fees, or anything of value, paid or received in connection with government contracts exceeding 100,000 dinars, must be disclosed in writing to the government agency which is party to the contracts. The ultimate aim of the Kuwait Government seems to be to curb influence peddling and perhaps make it difficult to pay bribes. Although laudable in its aim, the law created many ambiguities which are likely to frustrate foreign and Kuwaiti businesses.

### B. JORDAN

In an effort to generate foreign investment and foster economic growth, Jordan has undertaken large-scale reforms of its securities law in collaboration with the World Bank. The reforms are designed to attract regional and international investors to the Jordanian financial market and represent the most important changes to the Amman stock market since its inception in 1978.

The cornerstone of this endeavor is the enactment of a new securities law whose ratification is anticipated before the end of the year. While lessening the role of the state, the new law is intended to enhance the efficiency, transparency, and overall performance of the stock market, whose current capitalization is approximately \$5 billion. At present, international investment in this emerging market has not surpassed a few million dollars, although foreign investors can currently own up to forty-nine percent of the roughly 150 listed firms. In addition, the draft law penalizes companies that delay announcements and makes insider trading illegal. Jordanian traders, enthusiastic about the proposed law, anticipate that it will energize and revitalize the Amman bourse.

Among the law's most prominent features is the creation of a government Securities Exchange Commission (SEC). The SEC will be responsible for regulating all trading in securities as well as licensing brokerage firms, a role previously occupied by the Amman Financial Market (AFM), a quasi-government entity that falls under the Ministry of Finance. The SEC will also monitor the actions of two newly created private sector bodies, the Amman Securities Exchange and a central depository whose task will be to facilitate the settlement and clearing of stock. The two bodies will be presided over by separate boards of directors composed of representatives of licensed financial brokerage firms. Moreover, under the draft law, the AFM will work closely with the Paris bourse and SICOVAM, the central depository and clearing body of the French stock market. This association is intended to maximize the effectiveness of the contemplated reforms. Apart from intending to boost investor confidence, such measures also aim to increase access to the market by brokers, whose number pursuant to the new law will no longer be limited.

### C. PALESTINIAN TERRITORIES

On October 3, 1996, President Clinton signed legislation that will expand duty-free treatment for products imported from the West Bank and Gaza Strip. This legislation grants special trade

status to products imported from the West Bank and the Gaza Strip, identical to those accorded products of Israel under the Israel-U.S. Free Trade Agreement. In return, the Palestinians have agreed to grant free access on U.S. imports to the West Bank and Gaza Strip and national treatment within the territories, to assist the United States in verifying compliance with U.S. trade laws, and to prevent unlawful transshipment of products not qualifying for duty-free access. In addition, the Palestinians will support all efforts to end the Arab Leagues Boycott of Israel in all its respects.

