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National Economic Dialogue Program

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Legal Framework Regulating the Palestinian Economy

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المجلس التنسيقي
لمؤسسات القطاع الخاص
The Private Sector
Coordination Council



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Executive Summary:

The Palestinian private sector has developed tremendously in the past few decades. This development was associated with an increase in obstacles, specifically in the regulatory and legislative arena which directly impacted its performance and competitiveness.

The growth in the commercial and economic sectors in any country is dependent on basic conditions and elements; amongst them is the availability of an appropriate environment whereby the private sector can work freely and effectively. This is especially apparent in terms of the legislative organizations, administrative procedures and a clear political commitment to the principals of free liberalized market economy. In addition, the public sector should concentrate on setting up public institutions to render effective services to the private sector, and moreover, to build transparent and effective consultation mechanisms between the public and private sectors.

Despite the fact that the Palestinian National Authority has committed itself from the beginning to develop and harmonize the legislation in Palestine, yet this commitment has not been completed in a comprehensive or effective manner. The general description to the legislative and regulatory practice for the private sector will range between the absence of a legislative policy and regulatory agenda for the government when it comes to economic legislation, in addition to the ambiguity, overlap and lack of legislative harmonization; the secondary legislations and the administrative procedures are still missing many laws thus hampering their proper application. This is all associated with the weakness in the administrative personnel in the public institutions and ministries who are responsible for the implementation of these laws. It is clearly noted that specific laws such as the company law or trade law do not correspond to the developments in this sector. Even the judicial laws are relatively underdeveloped *vis a vis* financial and commercial transactions; and the Law of Evidence in Civil and Commercial Matters in addition to the Law of Civil and Commercial Procedures have neglected to take on board the various rapid developments in the private sector transactions. Finally, there is a clear absence of specialized courts dealing with commercial and financial disputes, and the weakness in the administrative judicial review is limited to one and final case represented in the High Court of Justice.

Obstacles facing the private sector operations under the existing legal framework:

The private sector suffers from several obstacles that hinder a proper development and institutionalization. This paper and according to the terms of reference will tackle two major obstacles that directly affect the operations and contribute in specifying the legal framework organizing and regulating it. The first issue is related to the absence of a clear identified mechanism for consultation between the public and private sectors.

The second issue is focused on the complexity and ambiguity of the administrative procedures as well as secondary legislations. These red tape procedures are considered as investment risks with high, unjustified financial costs for businesses. These should be facilitated and clarified in order to function in a proper legislative and procedural environment without additional bureaucracy and constrains.

With regard to the consultation practice, the government does not have a regulated and consistent consultation policy with the private sector. Moreover the government did not set up institutional procedures and mechanisms to conduct consultation on a clear and organized basis with this sector. Each ministry may have its own consultation methods, which are usually manifested in the form of meetings or workshops on different levels. However; it is worthwhile mentioning here that lately the government has been committed to improving the consultation and dialogue practices, and in institutionalizing the partnership with the private sector. In turn, the private sector still has a general standpoint that consultation practice needs to be conducted in a more steady and effective manner and within clear and consistent procedures.

As indicated (*supra*) the common used consultation practice by the government is based on forming *ad hoc* consultative committees from the public sector staff together with representatives of the private sector to discuss specific topics within a certain delegation or even without such, and this is sometimes done by sending legislative proposals to a selected group from private sector institutions requesting their commentary on these proposals. This method of *ad hoc* consultative committees may be effective in bringing forward at an early stage the point of views from related stakeholders in the consultation process, and may lead to a dialogue regarding the legislative options and policy plans. Nevertheless; this method needs improvement and clarification and a proper management mechanism – as will be detailed later – since it is a temporary one. Usually such a method needs much preparation and is associated with high costs and is usually neither efficient enough nor obligatory.

As for the array of the administrative procedures and fees; professional international reports about the regulatory and administrative activity for the Palestinian National Authority is full with a bundle of challenges and concrete obstacles. These are considered a high cost for conducting business in Palestine: beginning from business start up procedures and acquiring import licenses and approval for exports; moving towards obtaining necessary permissions and licenses to conduct a business from related ministries or specific institutions, as well as problems that are associated with the implementation of the current tax system especially with regards to the bylaws and instruction related to this law, and finally, dealing with the administrative and technical obstacles inside the ministries which are hampering the performance and the development of the economic sector. At this point, the need to simplify and clarify these procedures which are requested to conduct various commercial transactions,

by reducing the number of needed procedures and the days requested to conduct them, and providing a one stop shop to reduce these procedures should be addressed.

Areas for Public Sector intervention to improve the legal framework regulating the economic sector:

The public sector represents the state with all the authorities and privileges it enjoys; thus it should take into consideration and apply on the ground basic principles in its regulatory relationship with the private sector. For example, it should deviate from complexity and bureaucracy in regulating this sector, in light of the needed speed and flexibility for commercial and financial transactions. It should also maintain transparency and establish a kind of balance between its role as a regulator and its supervisory role. Finally; there should be a kind of unified organizational procedures implemented by the public sector institutions that enables it to function clearly and in conformity with the private sector.

Moving ahead, we can identify three basic areas for governmental intervention to remove the obstacles facing the private sector within the existing legal framework.

First aspect: building a consultation model that ensures the establishment of a real partnership amongst the public and private sectors in the process of formulating regulatory decisions. Whereby; following a specific consultation model based on identified criteria from the government, which is clear to the private sector, will lead to the reduction of the legislation costs and improve the efficiency of the public administration and build the requested balance amongst the public and private sectors. Therefore, it is crucial to utilize the current situation to establish an institutionalized consultation mechanism through the Prime Minister Initiative of establishing the Ministerial Committee for dialogue with the private sector. This Committee may become the institutional model for constructive consultation and dialogue at the time of preparing the policies and developing the legislation, it will constitute a cornerstone in supporting the partnership between the public and private sectors in issues that are directly affecting the latter.

This aspect will include a series of practical steps to build this consultation model; which are necessary in order for this consultation to be transparent, institutional and efficient between the two sectors:

- 1- The government will issue a regulation regarding all draft legislations including laws, bylaws, and even instructions and decisions that have regulatory or legislative impact on the services rendered from the ministries or public institutions to the private sector. This regulation will indicate the role of the Ministerial Committee which will include:
 - a. Organize the consultation issue and coordinate with the Private Sector Coordination Council and other related stakeholders in Palestine.

- b. Review drafts that are presented from various ministries with an impact on the business sector and its operations. Render advice to reduce legislation costs, and improve its quality.
 - c. Initiate reform activities to reduce legislation costs and risks.
 - d. Monitor and evaluate the quality of the consultation process in various ministries and render advice on improving it.
- 2- The regulation will clarify the consultation process which will include:
- a. Send various legislation drafts and decisions on all the participants of the consultation meetings, and send an invitation to Private Sector Coordination Council representatives to participate in the sessions of the Ministerial Committee to discuss these legislations or decision drafts.
 - b. The technical committee in the Private Sector Coordination Council shall prepare replies to the drafts submitted by the Ministerial Committee, and also initiate in presenting other issues that concern the private sector on the discussion agenda with the Ministerial Committee.
 - c. Publish the legislation and decision drafts on the ministry website.
- 3- The related stakeholders will be given 60 days to comment or respond to the drafts; thereafter the ministry may proceed with the draft but keep the door open for receiving and discussing comments thereto.
- 4- There should be a unified form for consultation within the consultation requests for the sake of clarity and an easy and direct access to the request from related stakeholders. This form will be prepared by the related party in each ministry and will be published along with the drafts.
- a. The Consultation Form will include a summary to the general policy of the draft, and the basic issues it will tackle, and questions posed to the stakeholders requesting specific information.
 - b. In most instances the related ministry will request information similar to the following:
 - i. Do we need this regulation to organize the market?
 - ii. What is the number of companies or businesses that will be affected by this legislation (provided that the status of the company as related to size, number of employees, capital, investments, exports...etc is clear)
 - iii. The financial cost expected from applying this legislation and the impact of such associated cost on investments, work opportunities and export opportunities...etc.
 - iv. Alternative regulatory solutions that may reduce the cost of implementing the legislation.

- v. Means for reducing the costs for medium and small enterprises
 - vi. The harmonization of this law with the international best practices and other commitments such as the membership in the World Trade Organization
 - vii. The harmonization of this draft or its overlap or contradiction with other national legislation.
- 5- The government should establish a Policy Unit following the Ministerial Committee, authorized with the following competencies:
- a. Monitor the consultation process in the ministries, manage the website of the consultation, participate in the consultation process if needed, support the ministries' staff to abide by the process through drafting written guidelines and training,
 - b. Review consultation reports referred from the related departments in the ministries at the end of the consultation process and give advice
 - c. Participate in organizing meetings and various consultation methods, aiming to improve the quality of this practice, and to ensure that certain interests such as small and medium enterprises are represented adequately,
 - d. Maintain the electronic records for all government's legislation and decision drafts.
- 6- Ministries responsible for the new draft, and after finalizing the draft law or regulation will prepare a consultative report giving a summary about the purpose of this legislation and a summary about the various points of view received and discussed during the consultation process, and the response of the ministry to those suggestions within the following criteria:
- a. The Policy Unit at the Ministerial Committee review this report and decide if the consultation process was conducted according to the requirements, and if there is any need for further consultation.
 - b. The consultation report shall be published on the ministry's website after the final draft is ready and has been adopted.
- 7- A special record at the Prime Ministry website should be dedicated to include all laws, regulations, decisions and instructions. This record should be updated regularly and be managed to ensure an easy and direct access to all legislations by the private sector and all other related parties.

Second Aspect: It is also an immediate aspect that can be implemented through a bundle of decisions that are issued by the Council of Ministers, aiming to remove any procedure or financial cost or administrative regulation that is illegal and not necessary and only constitutes a burden for doing business.

The government should start implementing a practical reform program, to conduct the legal and legislative reforms necessary to develop an appropriate business environment, and make it encouraging for investment. This will be done by quick practical procedures that aim to remove the formal bureaucracy and obstacles that hamper the promotion of the private sector and discourage Arab and foreign investors from entering the market. In this process it can retain the services and expertise of local and foreign experts in this field to implement legal reform programs on the Palestinian economy and on different levels.

The reform process for secondary legislation and regulation can be implemented according to the following steps.

- 1- The government will make a decision on the scope of reform. This means a clear identification of the legislation (regulation, instructions, decisions ...etc) and the regulating agencies, ministries or other public institutions that will be included under the scope of this reform.
- 2- The government will adopt a program that will clarify and detail the whole process in terms of timing and the institutions involved, given that the whole process should not take more than 12 months.
- 3- The government will establish a central unit in the Council of Ministers to manage the reform process and make necessary neutral evaluation on the proceedings.
- 4- During this process the government with the help of experts and specialized personnel will identify and set up the criteria to choose the necessary legislation that will remain effective after the review and assessment based on the mentioned criteria. In this case the burden of proof is on the regulating agency to indicate that the legislation is in conformity with the listed criteria and shall remain in force. From the classical criteria that are usually used in such cases are the following questions: Is the related secondary legislation constitutional and legal? Is it necessary for any future purposes? Is it adequate for the private and business sector? Is it increasing the costs of doing business without proper justification?
- 5- After finalizing this last step, all secondary legislation will undergo a three phase review. First, the review will be conducted by the related ministry; second the Private Sector Coordination Council will convene along with the Ministerial Committee for dialogue. Finally, the Central Unit at the Council of Ministers will conduct a final review and put forth final recommendations as to the process. In each stage of review, the old complicated, unnecessary and illegal legislation according to the aforementioned criteria are identified to be disposed in order to reduce the unnecessary burdens it adds.

- 6- The final recommendations will be sent as a one final package from the Central Unit to the government to approve and adopt.

- 7- The remaining secondary legislation should be compiled and placed in a comprehensive electronic file and on the website in order to improve transparency and the quality of future legislation.

This paper recommends that for the needed governmental intervention in the area of reforming the secondary legislation, there should be an eminent need to bring to an end the current legislative chaos in this area. Whereby there are several secondary legislations that were drafted and ratified by competent parties and are assumed to be in effect, but were never published in the Palestinian Official Gazette where all legislations should be published in accordance to the law to become in effect.

There are other secondary regulations that were stated in respective laws to be issued in order to implement these laws; but were never drafted or issued despite their importance and the need for them to detail or clarify certain aspects in the law. These of course should be drafted and published immediately.

Finally, there are laws that provided for secondary legislation; but when these were later drafted they were in contradiction and not in conformity with the law itself. This makes their implementation even more difficult and complex.

Examples on the secondary legislation that were drafted, approved, ratified, and which are presently in effect within the related institutions, yet never published in the official gazette, are the following:

- Regulation on licensing insurance companies to practice insurance
- Regulation on fines and procedures related on the violation of obligatory fees on insurance.
- Mandatory Technical Instructions for implementing the Palestinian specifications and measures.
- Regulation on conformity certificates.

Examples on the secondary legislation that were not drafted or issued but were mentioned in laws and need to be issued are the following:

- Regulation organizing commercial agents
- Insurance regulation against acts of theft

- Regulation for special procedures challenging the decisions of the Palestinian Capital Market Authority
- Regulation on the confidentiality of information inside the Palestinian capital market.
- Regulation on secrecy of bank accounts.
- Internal regulations and instructions for the law on Industrial Zones
- Internal regulation organizing work inside Industrial Zones
- Instructions on the process of collecting taxes – Income Tax Law
- Instructions on deduction from source - Income Tax Law
- Instructions on tax statements

From the practical problems that arise from the ambiguity and lack of harmonization in the secondary legislation is for instance a potential problem that may rise from the arbitration law and its regulation. The Palestinian Arbitration Law was issued in the year 2000 to accommodate developments in the alternative dispute resolution mechanisms; both on the local and international levels. Obviously one of the directly affected sectors from this law and its practical implementation on the ground is the private sector with its different industrial, commercial, financial and construction sectors, etc.

In order to implement the provisions of this law, the law should be issued on several regulations and decisions. Article (54) stated the Justice Minister will issue decisions and instructions and regulations related to credited arbitrators' lists referred to in article (11). Article (55) stated that the Council of Ministers will issue regulations and decisions needed to implement this law within a maximum period of six months after its publication.

Practically, a decision from the Council of Ministers no. (39) for the year 2004 for the executive regulation of the Arbitration Law, came after four years of publishing the law and not within the six month period. (I DON'T UNDERSTAND THIS SENTENCE) In our opinion this regulation included in content the regulations, decisions and instructions related to the arbitrator's list that was stated by law to be under the mandate of the Minister of Justice, as all of these issues were detailed in the cabinet regulation.

The crucial point is what was stated in this executive regulation in article (18): the institutional arbitration in Palestine shall be conducted by the Chamber of Commerce and Industry in Jerusalem. A special decision from the Minister of Justice towards that end will be issued and published in the official gazette.

This exclusivity for the institutional arbitration to one institution is completely contradicting the law in spirit and provision, and is even violating the constitution. Although one may say, that any person affected may logically go and challenge its legality and constitutionality; but this regulation de facto cancelled the competence of arbitration institutions on the ground duly established and licensed.(I DON'T UNDERSTAND THIS SENTENCE) More

important, that in the opinion of the Ministry of Justice staff; under this regulation there is no room for some of the serious initiatives from the private sector currently on the ground. Most notable is the proposal from the Businessmen Association to establish Palestine Center for International Commercial Arbitration. The other initiative is from the Contractors' Union along with the Bar association and the Engineering association to establish the Palestinian chamber for arbitration, which already allocated significant Italian funding and preparations which are taking place.

In such similar instances, what is requested from the government with the support and consultation of the private sector is to:

- Review such regulation and its conformity with the law.
- Review the list of accredited arbitrators and its conformity with the regulation.
- Review the law and any needed secondary legislation to implement it.
- Conduct any necessary changes, cancellation, or drafting that ensure a proper harmonization of all related pieces of legislation.

Third Aspect: Set up and use modern legislative and regulatory tools when organizing the legal framework for the Private sector.

This aspect is based on urging the Palestinian Government and policy makers to utilize and apply the best practices in regulating the activities of the Palestinian private sector. Due to the special factors of the Palestinian regulatory environment that is marked with interlaced historical layers of legislation and absence of political and security stability most of the times, the government is required to create a more stabilized regulatory framework to compensate these factors and to attract foreign investment. It is also very critical for policy makers to deploy modern regulatory techniques and concepts such as E-Government and Regulatory Impact Analysis (RIA) so as to ensure better quality of new legislation and improved administrative and regulatory environment for the business sector in Palestine.

This aspect includes a number of basic steps that the government is recommended to adopt and apply:

- 1- Work on accomplishing legislative agenda for the year 2009, through direct consultation between the government and the private sector, for the best regulatory framework for Palestinian economy.
- 2- Propose a practical mechanism to modernize and harmonize the economic laws in the form of legislative packages according to economic activities, in order to obtain a harmonized legal system, and in order to avoid conflicts with new drafts.
- 3- Instruct the responsible unit at the prime minister's office to work on legislative development and quality control of the new legislation and equip this unit with the necessary regulation to work on monitoring the legislative policy-making process.

- 4- Propose the policy options for the unpublished or unprepared legal tools, especially as many important drafts such as civil, companies and commercial codes which might not be issued in the near future, in order to create the legal infrastructure necessary for the work of the private sector.

Recommendations

The recommendations for redefining the regulatory framework governing the Palestinian economy and private sector could be accomplished in two phases: phase one is a short term immediate phase and could be implemented within six months after being approved by the Council of Ministers. The second phase can be implemented within 12 months after phase one is completed. These recommendations can be summarized as follows:

Recommendations for phase one:

- 1- The Government shall adopt the private sector's proposal on the consultation model in accordance with the steps and mechanisms suggested as advised in this paper in order to institutionalize the dialogue between the public and private sectors.
- 2- The Government shall adopt the private sector's proposal on the administrative and regulatory reform as advised in this paper in order to remove regulatory obstacles.
- 3- Assign technical committees through the Ministerial Committee for dialogue to finalize the legislative agenda for the year 2009, and propose legal drafts on the legal environment supporting the business sector.
- 4- Assign the technical committee of the Private Sector Coordination Council to prepare detailed lists of the secondary legislation and its financial and administrative burdens, and review the legality and necessity of such permits and licenses within these regulations through the Ministerial Commission.
- 5- Terminate the state of chaos within the secondary legislation in Palestine, by issuing and publishing the regulations that were prepared but not issued and preparing the regulations that are requested by laws but have not been prepared or issued.
- 6- Issue a decree from the Council of Ministers to clarify and explain the role of regulatory authorities within the government and to work on eliminating the duplication of such regulatory and supervisory authorities whenever it exists.
- 7- To apply strictly the policy of publication of new secondary regulations in the Palestinian Official Gazette as provided by law. Those that were adopted but not published shall be immediately published therein.
- 8- Issue a decree by the Council of Ministers in each ministry to explain and clarify the licensing and any requirements thereto and not to leave this issue for the discretion of the civil servants.
- 9- Activate the role of the private sector in developing the legal, regulatory and commercial activities of the Palestinian Investment Promotion Agency (PIPA) through issuing a regulation that states their role in developing such plans.
- 10- Issue a decree by the Council of Ministers to adopt the concept of corporate account at the Ministry of Finance in order to unify the business' tax accounts for corporate clients.

- 11-Create a one stop shop facility department in three geographical areas in the Ministry of National Economy to facilitate the time, costs and efforts required to license doing business.
- 12-Review all applied regulations to reduce all costs and levies and rationalize or justify them with the service provided.
- 13-Review companies and commercial draft laws through consultation with the private sector and cooperation with the secretary of the Coordination Council to ensure that it facilitates business promotion and proper development.
- 14- Pay special consideration to the execution of court decisions and implementation of the rule of law; through implementing faster case procedures to reduce time needed for cases at courts and activate execution assisting departments such as the judicial police.

As for the recommendations of phase two

- 1- Continue the modernization and harmonization of the legal system in the form of sectoral legislative packages; in accordance to the economic activity and related sectors.
- 2- Prepare and finalize a proper supporting infrastructure for the operation of the economic and private sector including most importantly Companies Law, Commercial Law and Civil Code.
- 3- Building the capacity of the public administration staff in relation to the preparation of public policies especially economic and commercial ones; through technical training for officials and preparing the needed technical manuals.
- 4- Create judicial review panels in the ministries to review all appeals and objections challenging administrative decisions as a first resort.
- 5- Launch a consultation process with the private sector on the licenses and administrative procedures through the Ministerial Committee for dialogue.
- 6- Request the Ministry of Finance to develop and computerize the tax system in order to reduce time and procedures for tax payers.
- 7- Establish specialized labor and commercial courts or at least chambers within the existing courts to settle labor and commercial disputes rapidly and efficiently.



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