CORPORATE GOVERNANCE IN THE MIDDLE EAST & NORTH AFRICA

CHRIS PIERCE

COUNTRY-BY-COUNTRY ANALYSIS OF CORPORATE GOVERNANCE IN PRACTICE

Published in association with:
Hawkamah, The Institute for Corporate Governance and Mudara Institute of Directors

HAWKAMAH
THE INSTITUTE FOR CORPORATE GOVERNANCE

IOD
MUDARA
Institute of Directors

Corporate Governance in the Middle East and North Africa

GLOBAL MARKET BRIEFINGS

Corporate Governance in the Middle East and North Africa

Chris Pierce

Published in association with
Hawkamah, The Institute for Corporate Governance
and
Mudara Institute of Directors

GMB

Publishers' note

GMB Publishing Ltd.
Hereford House
23-24 Smithfield Street
London EC1A 9LF
United Kingdom
www.globalmarketbriefings.com

525 South 4th Street, #241
Philadelphia, PA 19147
United States of America

This edition first published 2008 by GMB Publishing Ltd.

ISBN-13 978-1-84673-080-1
E-ISBN-13 978-1-84673-081-8

British Library Cataloguing in Publication Data
A CIP record for this book is available from the British Library

Library of Congress Cataloguing-in Publication Data

Typeset by David Lewis XML Associates Ltd.

Endorsements

Oman Capital Market Authority

This book recognises that the Sultanate of Oman was the first country in the Middle East and North Africa (MENA) region to develop a corporate governance code and that the country is at the forefront of corporate governance developments in the region. We welcome this book as it provides all MENA countries with valuable information to benchmark their corporate governance performance.

Hamid Sultan Al-Busaidi,
Director of the Corporate Governance Department,
Oman Capital Market Authority

Mudara Institute of Directors

A timely summary. This unique and valuable reference helps us all track the dynamic and changing path of corporate governance development in the region.

William Foster,
Executive Director of the **Mudara Institute of Directors**

Egyptian Institute of Directors

I am sure that readers of this book will be surprised to see the large number of corporate governance developments that have taken place in the MENA region in recent years.

Ashraf Gamal El-Din,
CEO of the **Egyptian Institute of Directors**

Contents

Foreword

The focus of attention on Corporate Governance (CG) in the Middle East is a relatively new phenomenon. Only 7 years ago there were no CG Codes in the region. Now 11 countries have them and more are introducing them. Hawkamah, The Institute for Corporate Governance (http://www.hawkamah.org/) was established only 2 years ago as a regional organization to channel and focus the growing interest. It now boasts some 30 partnerships and Memoranda of Understanding with international, regional and local organizations sharing a common interest in bridging the CG gap in the region.

Some of the recent international attention naturally follows international economic and financial interest in the region, but much of it has been driven by the urgent need to improve the governance and performance of regional organizations to cope with the rapid growth that is accompanying the transfer of wealth to oil exporting countries, high investment levels, and increasing interaction of the region (through trade, tourism, investment and skill and knowledge transfers) with the rest of the world.

Traditional emerging economy structures of government and family owned businesses, with their associated values and ways of doing business, are being replaced by modern governance structures and practices of transparency, accountability and fairness that are needed for the efficient functioning of regional public capital markets, as the countries of the Middle East and North Africa (MENA) become more developed economies. The coming years will see regulators and companies grappling with changing governance structures and board practices to comply with new corporate governance requirements put in place in the previous years. As equity markets in the region mature and become increasingly integrated with the global economy, both domestic and foreign investors are requesting higher transparency and disclosure standards. Moreover, they are demanding that regional companies comply with the global corporate governance standards that are expected from companies in other emerging markets. Change is also being driven by the growing presence of international firms in the region, and larger numbers of western expatriates in senior management level positions, who themselves are subject to global corporate standards.

Attention is also being given to the requirement for more professional and independent directors to unleash the potential of regional business performance, encourage foreign investment and make it easier for companies to operate and invest in developed markets. New initiatives, such as the regional Mudara Institute of Directors, are engaging with directors and young leaders to develop the culture of good governance and directorship as a responsible profession.

The MENA financial sector must develop the capacity to channel a significant proportion of savings into long-term productive investment in the countries of the region. Domestic financial systems and, in particular, the banking sector, have undergone important reforms in recent years in order to address this challenge. However, progress has been uneven and related reforms need to be bolder if they are to bring a more modern equity culture. Furthermore, greater competition among sources of financing is needed. MENA financial institutions also need to face the competition of a global business and regulatory environment. Implementing the principles of corporate governance will be a major building block for sound financial markets and the banking industry. The stakes are high: better corporate and public governance improves the investment environment and creates better institutions, which enables diversification of economic activity and sustainable economic growth. The new regional focus provided by Hawkamah addresses these issues. More research is now available to show that good governance adds value to any enterprise. Good governance and good conduct is good business.

At the framework level (providing regulations and Codes), the corporate level (providing CG assessments, charters and processes) and at the individual level (skills, knowledge and standards of conduct), the regional transformation is taking hold.

In this timely book, Chris Pierce, who has been closely associated with Hawkamah in building corporate governance capacity in the region, shares his extensive experience within the region and brings together a standard view of the current state of Corporate Governance across the MENA countries. This book no doubt will require regular updates to keep up with the regional changes taking place, and we are happy to be associated with it.

Dr. Nasser Saidi
Chief Economist, Dubai International Financial Centre & Executive Director, Hawkamah, The Institute for Corporate Governance

Preface

This book describes the corporate governance context, systems and organizations in each and every country in the MENA (Middle East and North Africa) region. It is the first time that this information has been consolidated in one book.

Traditionally, the region has been viewed as lacking in corporate governance practices. However, the MENA region has recently become the fastest changing corporate governance environment in the world.

Recent significant initiatives, since the first Code of Corporate Governance was launched in the region in Oman in 2002, include:

- **Egypt.** Egypt has developed two Corporate Governance Codes, one for listed companies in 2005 and another for SOEs (state-owned enterprises) in 2006. It has been named by the World Bank in 2008 as the world's top reformer in the Doing Business rankings with improvements in 5 out of the 10 areas.
- **Lebanon.** The LCGTF (Lebanese Corporate Governance Task Force) published a code of corporate governance for non-listed companies in 2006.
- **Morocco.** Morocco is in the process of preparing a corporate governance code.
- **Oman.** The Capital Market Authority issued rules and guidelines on disclosure by issuer of securities and insider trading in 2007.
- **Saudi Arabia.** The Capital Market Authority introduced corporate governance regulations in 2006.
- **The UAE.** The Securities and Commodities Authority has issued a corporate governance code, setting a national governance standard, for both the Dubai Financial Markets and the Abu Dhabi Securities Market.
- **Declarations of Corporate Governance.** The Dubai Declaration on Corporate Governance was published in 2006.
- **The founding of leading corporate governance organizations.** Leading corporate governance organizations have recently been formed including the Egyptian Institute of Directors in Cairo, Hawkamah and Mudara in Dubai and the LCGTF in Beirut.

Undoubtedly, there have been a large number of corporate governance developments taking place over the past few years. This book chronicles the impact of these changes on corporate governance practices.

Who is this book for?

This book is written for those who are interested in corporate governance in the MENA region including:

- national policy makers who are interested in the comparative performance of corporate governance practices in their country and in the region;
- institutional and private investors who need to keep abreast of corporate governance best practice;
- company directors who need to keep up to date with corporate governance practices;
- business professionals that include accountants, lawyers, auditors and consultants;
- members of IoDs (Institutes of Directors), CGAs (Corporate Governance Associations) and other associated professional membership bodies;
- students who are studying newly created corporate governance modules on university and professional programmes.

What is corporate governance?

Corporate governance was defined by Sir Adrian Cadbury in the United Kingdom in 1992 as follows:

> Corporate governance is the system by which companies are directed and controlled….Boards of directors are responsible for the governance of their companies. The shareholders' role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board's actions are subject to laws, regulations, and the shareholders in general meeting.[1]

This definition stresses that companies should be led by boards, and it identifies key board tasks to enhance their leadership role. Mervyn King, a leading corporate governance practitioner in South Africa, puts leadership at the centre of his more recent definition of corporate governance.

---

[1] Cadbury, A (1992) *Report of the Committee on the Financial Aspects of Corporate Governance*, Gee and Co. Ltd., London p 14.

> Corporate governance is essentially about leadership:
>
> leadership for **efficiency** in order for companies to compete effectively in the global economy, and thereby create jobs;
>
> leadership for **probity** because investors require confidence and assurance that the management of a company will behave honestly and with integrity in regard to their shareowners and others;
>
> leadership with **responsibility** as companies are increasingly called upon to address legitimate social concerns relating to their activities; and
>
> leadership that is both **transparent** and **accountable** because otherwise business leaders cannot be trusted and this will lead to the decline of companies and the ultimate demise of a country's economy.[1]

This book deliberately takes an extremely broad definition of corporate governance to cover all parts of the system of structures and processes that direct and control companies. This includes for each and every one of the MENA countries:

- the ease of doing business;
- the role of the board;
- the role of shareowners and stakeholders;
- disclosure and transparency;
- directors' duties and liabilities;
- board composition, structure, practices and procedures;
- the governance of risk and the control environment;
- corporate responsibility;
- financial oversight and corporate reporting.

Does corporate governance matter?

Angel Gurría, Secretary-general of the OECD, has recently stated that:

> Good Governance is about improving efficiency, transparency, and accountability – three essential elements for building high performing economies and fair societies.[2]

---

[1] King, M (2002) *King Report on Corporate Governance for South Africa (King II Report)* Institute of Directors in Southern Africa, Parktown, South Africa p 18.
[2] Gurría, A (2007) *OECD Conference speech.*

Numerous studies conclude that well-governed companies worldwide perform better in commercial terms. Adopting corporate governance best practices:

- **Improves access to external financing.** Countries with good corporate governance systems have better access to external financing. The reason: good corporate governance systems encourage investment from global investors, which subsequently leads to greater efficiencies in the financial sector.
- **Lowers the cost of capital.** Investors who are provided with high levels of disclosure by well-governed companies are likely to provide capital to those companies at a lower cost to the company. This reflects the investors' improved knowledge of the company's strategy and expected future performance.
- **Improves operational performance.** Sustainable wealth creation within the private sector can only be achieved through good management, entrepreneurship, innovation and better allocation of resources. Effective corporate governance adds value by improving companies' performance through more efficient management and better asset allocation.
- **Increases firm valuation and improves share performance.** Many researchers have identified the existence of a 'corporate governance premium,' meaning an additional price that investors will pay for shares in well-governed companies.
- **Reduces the risk of corporate crises and scandals.** A company with good corporate governance practices will, by definition, have an effective risk-management system that is more likely to cope with corporate crises and scandals than those without. These companies will have implemented such processes as enterprise risk-management procedures, disaster recovery systems, media management techniques and business continuity procedures.

Some directors do not think that corporate governance is very important. A salutary example involves Conrad Black, a former global media tycoon, who stated at a shareowners annual meeting, which he was chairing, that:

> The corporate governance thing in the United States is a sideshow.
> It's just a publicity stunt.[1]

Four years later, Lord Black was convicted in the United States of three charges of fraud and obstructing justice and sentenced to more than six years in prison. In March 2008, he became inmate 18330-424 at a prison in Coleman, Florida, and began his six-and-a-half-year jail sentence. He is currently appealing against his sentence.

---

[1] Black, C, *Hollinger International AGM*, 26 June 2003.

About the Authors

Chris Pierce

Chris Pierce is the Chief Executive Officer of Global Governance Services Ltd. He is a director on a number of boards in the United Kingdom and overseas. He is internationally renowned for his work with policy makers, directors and boards in Europe, Asia, Africa, the United States and South America. Recent projects that he has led include:

- chairing corporate governance code workshops for the MENA region for the Global Corporate Governance Forum held in Jordan and Egypt;
- directing and chairing Global Governance Leadership Programmes for the Global Corporate Governance Forum (part of the World Bank) in Africa, South Asia and Latin America.

Prior to becoming CEO, he was the Director of Professional Standards and Professional Development at the IoD (Institute of Directors) in the United Kingdom. He has also held senior management positions in the Overseas Development Administration, British Airways and Leeds Business School.

Chris has written extensively on director and board development issues and regularly speaks at international conferences. His publications include:

- Directing your Business, Volumes 1 and 2 (Financial Times Management, 1997);
- Developing your Business, Volumes 1 and 2 (Financial Times Management, 1997);
- Managing Corporate Relations (Financial Times Management, 1998);
- The Effective Director: an essential guide to director and board development (Kogan Page, 2001);
- Building Director Training Organizations Toolkit (GCGF, 2004);
- The Handbook of International Corporate Governance (IoD, 2004);
- Developing Corporate Governance Codes of Best Practice (GCGF, 2005);
- Corporate Governance Standards (CFA, 2006);
- Governance Matters in Growing Businesses (CFA, 2006);
- Corporate Governance Teaching Resource Pack (GCGF, 2008).

His qualifications include an economics degree, a Post Graduate Certificate in Education, a master's degree in science, a master's degree in philosophy and an MBA. He is a Chartered Company Secretary and Administrator, an

Executive Fellow of Henley Management College, a Visiting Fellow at Cranfield Management School, a Fellow of the Caux Round Table and a Fellow of the Royal Society of Arts.

Samy Nathan Garas

Samy Nathan Garas is Professor of Accounting and Finance at the New York Institute of Technology – Bahrain Campus.

He has almost 17 years of experience in Accounting and Finance in both academia and practice in Egypt and Bahrain. He held senior positions in multinational firms in Egypt (Egyptian Engineering Agencies and International Publications Ltd.). He moved to Bahrain eight years ago to be a professor of Accounting and Finance in New York Institute of Technology. In 2005, he was awarded the professor of the year from NYIT. During the last four years, all his studies and writings have been focused on corporate governance in Islamic Financial Institutions (IFIs). He has written several academic papers with Emerald and Bahrain Center for Studies and Research as well as several chapters on corporate governance. Specifically, his recent studies cover the role of the Shari'a Supervisory Board in the corporate governance structure of IFIs and their relation to stakeholders. Recently, he participated in the CIPA training programme provided by the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI). He has also contributed to corporate governance conferences in the US through the Academy of Management, as well as in the UK with Henley Management College. He is a long standing member of such professional organizations as the Academy of Management and International Management Association.

About This Book

This book contains current information (as at 1 April 2008) on corporate governance practices in the MENA region.

The book is divided into two parts:

- **Part One** provides an overview of corporate governance practices in the region as a whole and reviews particular corporate governance issues impacting upon IFIs (Islamic financial institutions), banks, SOEs (state-owned enterprises), family businesses and SWFs (sovereign wealth funds).
- **Part Two** provides detailed descriptions of corporate governance practices in each of the 19 countries and territories in the region.

Readers should seek appropriate advice from their advisors about the applicability of this book to any particular matter or circumstance.

Acknowledgements

The author would like to thank all of the contributors to this book. The contributions have been provided during numerous conversations, training sessions and conferences over a number of years. In particular specific thanks are owed to Ghita Tijani Alderman, Yvonne Dungate, Bill Foster, Danya Greenfield, Richard Kraemer, Samy Nathan Garas, Sebastian Molineus, Nick Nadal, Dr. Nasser Saidi, Martin Steindl, Ka and Wendy Tung.

PART ONE:

The MENA Region

1.1

Regional Corporate Governance Developments

The MENA (Middle East and North Africa) region extends over 7,000 miles from Morocco in North West Africa to Iran in South West Asia. Within this region there are 19 distinctive territories: Algeria, Bahrain, Egypt, Iraq, Iran, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Syria, Tunisia, United Arab Emirates, the West Bank and Gaza and Yemen. Although these countries exhibit substantial differences from one another in terms of their business and social environments many of them share similar heritages shaped by Islamic, Arab, Persian, Ottoman and European cultures.

The MENA population

The population of the MENA region comprises about 6 per cent of the total world population, and is one and a quarter times larger than the population of the United States and almost equivalent to the population of the European Union. Egypt has the largest population with over 80 million, and Bahrain is the smallest in the region with a population below one million.[1] Unemployment currently stands at 10.8 per cent in North Africa and 11.8 per cent in the Middle East and is the highest in the world.[2] A recent survey of Arab attitudes cited unemployment as by far the most important issue to the MENA population.[3] Much of the GCC (Gulf Cooperation Council) labour force is comprised of non-nationals working in the private sector at near full employment levels. Unemployment persists amongst the nationals. For example, in Saudi Arabia, the average unemployment rate in 2002 was 5.3 per cent but only 0.8 per cent amongst expatriate workers as compared to 9.7 per cent amongst nationals.[4] MENA's labour force has been predicted to rise to 185 million by 2020 which will create employment pressures for all of the countries.[5]

---

[1] *The World Factbook*, CIA, 13 December 2007 (July 2007 est)
[2] International Labour Organization, 2007
[3] Zogby, J. (2005) *Attitudes of Arabs: An In-Depth Look at Social and Political Concerns of Arabs*, Arab American Institute, Washington, DC
[4] Kabbani, N. and Kothari, E. (2005) Youth employment in the MENA region, *World Bank Social Protection Discussion Paper No. 534*, p 5
[5] International Labour Organization, 2007

The MENA economy

GDP (gross domestic product) per capita in the MENA region varies dramatically: Yemen has a GDP of US $1,000 whereas the UAE's per capita GDP is nearly 50 times as large at US $49,700 (Table 1). The GDP growth in the region is the fastest in more than a decade.

FDI (foreign direct investment) has also been rising. In 2006, net FDI was nearly US $60 billion or about 4.6 per cent of the global total.

Arab countries trade represents only 4 per cent of world trade in 2005 and exports accounted for 5.5 per cent of the global total (with fuels comprising 90 per cent of MENA exports).[1] The MENA region has vast reserves of petroleum and natural gas with over 70 per cent of the world's oil reserves and 46 per cent of the world's natural gas reserves.[2] As a result of the large oil and natural gas reserves in this region, it has some of the fastest growing economies in the world. This is based upon a large gap existing between the international price of oil and its cost of production. The gap is not caused by the efficiency of organizations in the region. The oil countries have high-value export revenues that have led to high liquidity, and many are experiencing a building and investment boom. The growth rate of GDP for the region in 2007 was 6.6 per cent.

Table 1. GDP per capita and growth rates in the MENA countries

	GDP Per Capita (US $)	*GDP Real Growth Rate (%)*
United Arab Emirates	49,700	8.9
Qatar	29,800	7.1
Israel	26,800	5.1
Bahrain	25,600	7.1
Kuwait	23,100	12.7
Oman	14,400	6.6
Saudi Arabia	13,800	4.3
Libya	12,300	5.8
Tunisia	8,900	5.2
Iran	8,700	4.3
Algeria	7,600	2.9
Lebanon	5,900	-2.8
Jordan	5,100	6.4
Morocco	4,600	9.4
Egypt	4,200	6.8
Syria	4,100	4
Iraq	1,900	1.9
West Bank and Gaza	1,500	4.9
Yemen	1,000	2.6

Source: World Bank (2007)

[1] Sullivan, J. and Nadgrodkiewicz, A. (2008) *Economic Reform Issue Paper*, Center for International Private Enterprise, Washington, DC, p 9

[2] *Oil and Gas Journal*, 1 January 2007

However, it must also be noted that many countries in the region suffer from weak economies, illiteracy and high unemployment. Typically, these countries rely upon commerce which is often referred to as a bazaar or *souk* economy. Though a number of countries are seeking to enter the global economy by adopting market-opening reforms, they often lack the self-correcting market mechanisms and institutions necessary to create modern economies.

The countries in the region are characterized by:

- state enterprise, rather than private enterprise, dominating the economy with uncompetitive and inefficient resource allocation and low levels of free trade;
- weak private enterprise and overregulation of business activity;
- few secure property rights;
- high unemployment;
- a large informal sector with high levels of corruption and cronyism in some countries.

The public and private sectors

Many of the countries have a high level of state ownership. Public sector employment accounts for 32 per cent of the total employment in the region compared to 27 per cent world wide and only 13.5 per cent in the OECD (Organization for Economic Cooperation and Development) countries. There is a large diversity amongst the MENA countries. In some countries, the share is much higher than the regional average. Examples include: [1]

- The public sector accounts for 93 per cent of total employment in Kuwait (the highest in the region).
- The public sector accounts for 66 per cent of total employment in Libya.
- The public sector accounts for 60 per cent of total employment in Algeria.
- The public sector accounts for 44 per cent of total employment in Jordan.

In most countries, the central government provides the bulk of public sector jobs. Consequently, the state plays a major role in the economy rather than merely acting as regulator of the market.

Another distinctive feature of the MENA region is that the government wages in MENA are significantly higher than in the private sector. CIPE (Center for the International Private Enterprise) has recently argued that:

> This …skews labour market incentives and unproductively traps much of the region's capital. [2]

---

1 World Bank MENA (2005) *Economic Developments and Prospects – 2000 Data or Closest Available Year*, World Bank, Washington, DC

2 Sullivan, J. and Nadgrodkiewicz, A. (2008) *Economic Reform Issue Paper*, Center for International Private Enterprise, Washington, DC, p 3

Admittedly in many countries national structural reforms are being introduced to reduce the role of the state in the economy but these initiatives have a long way to go before the private sector becomes a major contributor to the economy. In many cases, the public sector in the MENA region appears to have had a negative impact on the growth of the private sector.

Family businesses

Family businesses constitute more than 85 per cent of non-listed companies in the region and many of these businesses have very weak corporate governance practices and are reluctant to change the 'old' ways of doing business. Nevertheless, if equity markets are to deepen in the region, it is important for authorities to introduce incentives and corporate governance reforms not just aimed at companies listed on the stock exchange but also focus upon family businesses that make up the core of the private sector.

Banks

Bank financing continues to be the largest source of external funding for many MENA businesses. Up to now, banks in the region have played a limited role in scrutinizing governance practices of borrowers. Banks are important stakeholders in MENA companies and can play a significant role in improving corporate governance practices in borrowing companies by requiring firms to provide governance-related information.

Stock exchanges

An active stock exchange in a country normally signifies that a country has achieved a major milestone in the development of a capital market. There are 13 countries with stock exchanges in the MENA region: Bahrain, Egypt, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, Saudi Arabia, Tunisia and the United Arab Emirates. In general, these exchanges are relatively new, small, inactive and underdeveloped. It is anticipated that these bodies will become more important in the region as the equity culture develops and the markets deepen.

Economic and political systems

The national economic systems in the region are either state run or mixed economies, and the political systems range between full authoritarian regimes to emerging democracies. In 2007, the Economist Intelligence Unit published an Index of Democracy that ranked the level of democracy around the world. The unit ranked the MENA region as the worst in the world. The region's index was 3.53 compared to the world average of 5.52. Out of 20 countries in the region, none was classified as a democracy. Two were classified as flawed democracies, two were hybrid regimes and 16 were authoritarian regimes. The study concluded that:

> Most of the world's authoritarian regimes are to be found in the Middle East.[1]

The ease of doing business in the MENA region

The ease of doing business in the MENA region varies dramatically (Table 2). On the one hand, Saudi Arabia is positioned 23rd in the world (out of 178 countries) whereas Iraq lags at position 141. Egypt and Iran, the two countries with the largest populations, are ranked 126th and 135th, respectively (ie. in the bottom part of the third quartile). This positioning includes the fact that Egypt has been the most improved country between 2006 and 2007.

Table 2. Ease of Doing Business ranking in the MENA countries

	Ease of doing business rank (out of 178 countries)
Saudi Arabia	23
Israel	29
Kuwait	40
Oman	49
United Arab Emirates	68
Jordan	80
Lebanon	85
Tunisia	88
Yemen	113
West Bank and Gaza	117
Algeria	125
Egypt	126
Morocco	129
Iran	135
Syria	137
Iraq	141
Average	**93**

Source: World Bank (2008)

Starting a business

Each year the World Bank identifies a number of measures that are required to start a business in each of the MENA countries.[2]

[1] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf, p 7

[2] *Doing Business, 2008* World Bank

- The number of procedures for starting a business varies dramatically. Israel has the least procedures with 5 and Algeria has the most with 14. In all cases, this is significantly below world class standards (Australia, Canada and New Zealand all have two procedures).
- The length of time for starting a business varies considerably. Egypt has the least time with 9 days and the West Bank and Gaza takes the longest with 92 days. In all cases, this is significantly below world class standards (Australia takes two days).
- The percentage of income per capita for starting a business varies substantially. Kuwait has the lowest at 1.6 per cent and the West Bank and Gaza is the highest at 280.4 per cent.
- The minimum capital required to start a business in each of the MENA countries (in terms of percentage of income per capita) also varies substantially. Israel and Egypt are 0 per cent and Syria is the highest at a staggeringly high figure of 3,673 per cent.

Employing workers

The World Bank also classifies labour regulations in each of the MENA countries. The number of procedures varies dramatically.[1]

- Saudi Arabia and Kuwait have the lowest rigidity of employment index at 13 whereas Morocco has the highest with 63.
- Israel has the lowest non-wage labour cost at 5.7 per cent whereas Algeria has the highest at 26.8 per cent.
- Iraq has the lowest firing cost at 0 weeks of salary whereas Egypt has the highest at a very high level of 132 weeks of salary.

Taxes

The MENA region has the lowest total tax rate as a percentage of profit in any of the regions around the world. It is about 44 per cent (compared to 58 per cent in the developing countries of Europe and Central Asia and 71 per cent in Sub-Saharan Africa). Recently, there have been some substantial changes to the tax regimes in some of the countries. For example, in Yemen, after eliminating its production tax, the total taxes that businesses pay fell from 170 per cent to 48 per cent between January 2005 and April 2006. The World Bank identifies that: [2]

- Iraq has the fewest tax payments per year at 13 whereas Tunisia has the highest with 46.

[1] *Doing Business, 2008* World Bank
[2] *Doing Business, 2008* World Bank

- Oman has the lowest time required to pay taxes in terms of hours per year at 62 whereas Egypt has the highest at 711 hours.
- The UAE has the lowest total tax rate as a percentage of profit at 14.4 per cent whereas Algeria has the highest at 72.6 per cent.

Trading across borders

Each year the World Bank classifies the ease of exporting and importing in each of the MENA countries:[1]

- Israel requires the lowest number of documents to import with 4 documents whereas Morocco has the highest requiring 11 documents.
- Israel requires the lowest number of documents to export with 5 documents whereas Iraq and Oman have the highest requiring 10 documents.
- Israel has the lowest time to import and export at 12 days whereas Iraq has the highest at over 100 days.
- The UAE has the lowest cost to import and export at US $462 per container whereas Iraq has the highest at US $3,400.

Closing a business

The World Bank classifies the ease of closing a business in each of the MENA countries each year:[2]

- Tunisia has the shortest time to close a business through insolvency at 1.3 years and the UAE has the longest at 5.1 years.
- Kuwait has the lowest cost of insolvency at 1 per cent of the estate whereas the UAE has the highest at 30 per cent.
- Tunisia has the best recovery rate at 51 per cent whereas Iraq has the worst at 10 per cent.

The legal system

Corporate governance writers are increasingly recognizing the importance of corporate law in providing the foundation of business activity.

> Markets cannot function without the predictability and elementary fairness of law, protection of property rights, and contract enforcement. The rule of law remains weak largely due to centralization of political and economic power and the persistent

[1] *Doing Business, 2008* World Bank
[2] *Doing Business, 2008* World Bank

> influence of the military over political systems fuelled by recurring violence.
>
> Sullivan and Nadgrodkiewicz (2008)[1]

The legal systems in the MENA region can be classified into three categories:

- **Civil Law.** This law system is based upon Roman Law and gives precedence to written law using a systematic codification of general law.
- **Common Law and Customary Law.** This system is based on English common law concepts and uses case-law (as opposed to legislation) as the normal method of expression of general law.
- **Religious Law.** Religious law is based upon holy writings. For example, the Muslim legal system is an autonomous legal system based on the Quran.

The distribution of legal systems in the region is shown in Table 3.

Table 3. Types of legal system in the MENA region

	Type of Legal System
Algeria	Mixed: Muslim Law and Civil Law
Bahrain	Mixed: Muslim Law and Common Law
Egypt	Mixed: Muslim Law and Civil Law
Iran	Mixed: Muslim Law, Civil Law and Common Law
Iraq	Mixed: Muslim Law and Civil Law
Israel	Talmudic Law
Jordan	Mixed: Muslim Law, Civil Law and Common Law
Kuwait	Mixed: Muslim Law and Civil Law
Lebanon	Mixed: Muslim Law and Civil Law
Libya	Mixed: Muslim Law and Civil Law
Morocco	Mixed: Muslim Law and Civil Law
Oman	Mixed: Muslim Law and Common Law
Qatar	Mixed: Muslim Law and Common Law
Saudi Arabia	Mixed: Muslim Law, Civil Law and Common Law
Syria	Mixed: Muslim Law and Civil Law
Tunisia	Mixed: Muslim Law and Civil Law
United Arab Emirates	Mixed: Muslim Law and Common Law
Yemen	Mixed: Muslim Law, Civil Law and Common Law

Source: Faculty of Law, University of Ottawa Website Available at http://www.doitcivil.uottawa.ca/world-legal-systems/eng-musul.php

The World Bank each year rates legal rights in the MENA region. The best performing country in the region is Israel with a score of 8.3 (out of 10).

[1] Sullivan, J. and Nadgrodkiewicz, A. (2008) *Economic Reform Issue Paper*, Center for International Private Enterprise, Washington, DC, p 9

In another survey, the World Bank[1] has identified that a higher percentage of managers in firms in the MENA region have confidence that their country's judicial system will enforce contractual and property rights in business disputes than in any other developing country region.

- In Oman, 87 per cent of managers have confidence in the judicial system.
- In Morocco, 77 per cent of managers have confidence in the judicial system.
- In Algeria, 73 per cent of managers have confidence in the judicial system.

However, confidence remains low in Lebanon where only 30 per cent of managers believe that the courts will enforce contracts and property rights.

The corporate governance framework

The OECD principles of corporate governance (2004) state that:

> The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.[2]

The countries within the MENA region have a wide diversity of regulation and codes relating to corporate governance practice. Table 4 shows the corporate governance codes that have been developed in the MENA region.

The OECD principles of corporate governance (2004) state that:

> The presence of an effective corporate governance system, within an individual company and across an economy as a whole, helps to provide a degree of confidence that is necessary for the proper functioning of a market economy. As a result, the cost of capital is lower and firms are encouraged to use resources more efficiently, thereby underpinning growth."[3]

A survey by the IFC (International Finance Corporation) and Hawkamah (2008)[4] identified that 68 per cent of 992 listed companies in the MENA region that responded to the survey considered corporate governance to be 'important' or 'very important'. The survey also identified the benefits of corporate governance which are listed in Table 5.

---

1 World Bank, 2007

2 OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 17 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

3 OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 11 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

4 *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

Table 4. Corporate governance codes in the MENA region

Algeria	No corporate governance code
Bahrain	A corporate governance code is currently being developed
Egypt	A code of corporate governance for listed companies was introduced in 2005 and a code of corporate governance for SOEs was introduced in 2006
Iran	No corporate governance code
Iraq	No corporate governance code
Israel	No corporate governance code
Jordan	Guidelines of the principles of corporate governance for listed companies were introduced in 2006
Kuwait	No corporate governance code
Lebanon	Corporate governance code for SMEs (Small and medium enterprises) was introduced in 2006
Libya	No corporate governance code
Morocco	Corporate governance code is in development and at a final consultative phase
Oman	Introduced the first corporate governance code in the MENA region in 2002. Introduced a corporate governance code for insurance companies in 2005
Qatar	Corporate governance code in development phase
Saudi Arabia	Corporate governance regulations introduced by the Capital Market Authority in 2006
Syria	No corporate governance code
Tunisia	Corporate governance code initiatives are currently being developed
United Arab Emirates	A corporate governance code was introduced in 2007
Yemen	Corporate governance code initiatives are currently being developed
West Bank and Gaza	A corporate governance code is in development

Table 5. The Benefits of corporate governance in MENA

	% of respondents
Corporate governance ensures compliance with legal and regulatory requirements	70
Corporate governance improves strategic decision making	68
Corporate governance builds and enhances the company's reputation	62
Corporate governance protects shareholder rights	59
Corporate governance mitigates risk	56
Corporate governance improves operational efficiency	52
Corporate governance improves sustainability over time	41
Corporate governance ensures that the company complies with banking requirements	38
Corporate governance prevents or resolves corporate conflicts	36
Corporate governance provides greater access to external capital	33
Corporate governance lowers the cost of debt	22
Corporate governance lowers the cost of equity	22

Source: Corporate Governance MENA Survey, Hawkamah/IFC (2008)

Shareowners

The corporate governance framework should protect and facilitate the exercise of shareholders' rights. The OECD principles of corporate governance (2004) state that:

> The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.[1]

A survey by the IFC and Hawkamah survey (2008)[2] identified that:

- shareholder attendance at general meetings was high. Respondents stated that attendance to their last shareholders meeting was 76 per cent of all shareholders;
- 40 per cent of respondents informed their shareholders at least 20 days ahead of the shareholders meeting;
- Over 56 per cent of listed companies have proxy voting mechanisms in place;
- Shareholders are usually responsible for approving the remuneration package of board members, usually in fixed terms. However, in the region there are still a significant number of non-remunerated boards (around 40 per cent).

Each year the World Bank rates the strength of investor protection in each of the MENA countries. The level of protection varies dramatically. Israel was found to have the highest protection at 8.3 whereas Iran and Morocco have the lowest at 3.0.[3]

The board

The OECD principles of corporate governance (2004) state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[4]

---

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 20 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

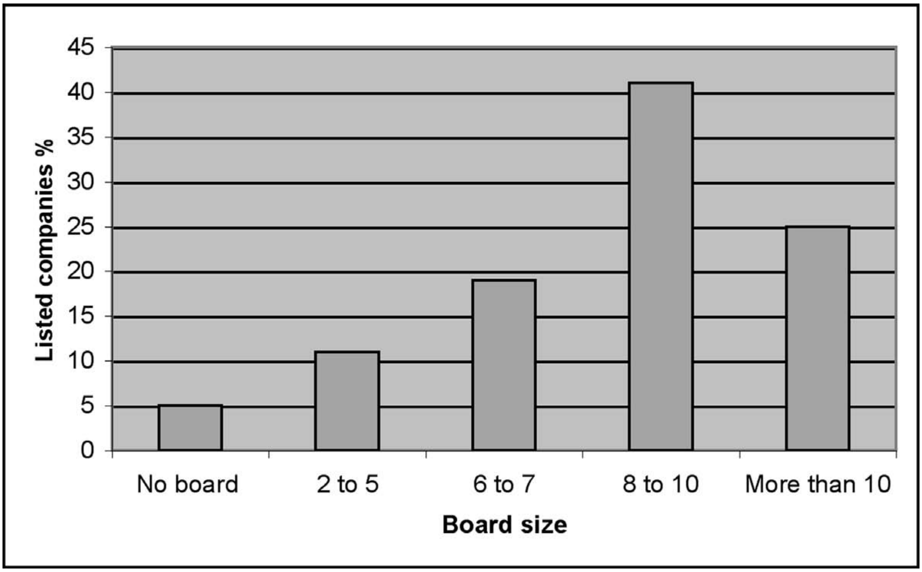
[2] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

[3] *Doing Business, 2008* World Bank

[4] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

The IFC and Hawkamah survey (2008)[1] identified that:

- 49 per cent of respondents assign the responsibility of developing the corporate governance policy to the board. The typical board size in the region was found to be between 8 and 10 directors. Graph 1 shows the variation in board size.
- 87 per cent of listed companies stated that the board was responsible for setting the corporate strategy.
- 89 per cent of listed companies' boards approve the remuneration of the CEO and board members.
- 87 per cent of listed company boards identify and evaluate risk management.
- Only 14 per cent of listed companies have a company secretary.



Source: Corporate Governance MENA Survey, Hawkamah/IFC (2008)

Figure 1. Board size

Independent directors

The OECD principles of corporate governance (2004) state that:

> Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the

---

[1] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

> integrity of financial and non-financial reporting, the review of related party transactions, nomination of board members and key executives and board remuneration.[1]

The IFC and Hawkamah survey (2008)[2] identified that over 50 per cent of respondents had either no independent directors or a solitary independent director (Table 6). There is obviously considerable need to increase the proportion of independent directors on boards if international best practice standards are to be attained in the region.

Table 6. The number of independent directors on listed company boards

The Number of Independent Directors	***Listed Companies (%)***
None	41
1	16
2–5	34
6–7	8
8–10	1
More than 10	0

Source: Corporate Governance MENA Survey, Hawkamah/IFC (2008)

Committees

The OECD principles of corporate governance (2004) state that:

> When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board.
>
> Board members should be able to commit themselves effectively to their responsibilities.[3]

The IFC and Hawkamah survey (2008)[4] identified that:

- 75 per cent of listed companies have audit committees.
- 22 per cent of listed companies have nominations audit committees.
- 29 per cent of listed companies have remuneration committees.

Since less than half of respondents have more than two independent board members (see above), these committees are unlikely to be composed of a

---

1 OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 25 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf
2 *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)
3 OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 25 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf
4 *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

majority of independent directors, as recommended by corporate governance best practice.

Board role, directors' duties, liabilities

The OECD principles of corporate governance (2004) state that:

> Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.[1]

The IFC and Hawkamah survey (2008)[2] found a general lack of knowledge by respondents of fiduciary duties of board members which was consistent with the general absence of formalization of governance policies and practices and infrequent training sessions on governance for board members.

Board practices and procedures

The OECD principles of corporate governance (2004) state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[3]

The IFC and Hawkamah survey (2008)[4] identified that:

- most listed companies had between 3 and 5 board meetings per year (Table 7);
- 42 per cent of listed companies separate their chairman from the CEO.

Table 7. Board meeting frequency

Number of Meetings	***Listed Companies (%)***
3–5	60
6–9	15
10–12	14
13–15	10
More than 16	1

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf
[2] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)
[3] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf
[4] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

Board evaluation

The IFC and Hawkamah survey (2008)[1] identified that:

- only 15 per cent of listed companies stated that their boards had conducted a formal evaluation of their performance;
- 21 per cent of listed companies train board members on corporate governance issues.

Disclosure, transparency and reporting

The OECD principles of corporate governance (2004) state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.[2]

A survey by IFC and Hawkamah (2008)[3] identified that there was a wide variety of disclosure practices in the annual report amongst companies. Most reports contained a report by the chairman (85 per cent) but few included corporate governance policies and procedures (28 per cent) (Table 8). In many international best practice regimes, the inclusion of corporate governance policies and procedures is mandatory.

Table 8. Information contained in the annual report

Information in the annual report	***% of respondents***
Report of the chairman of the board	85
Financial statements	82
Market share, sales and marketing	77
Ownership structure and dividend policy	72
Future plans of the company	64
Dividend history	54
Remuneration of the board	44
Biographical details of the board	41
Names of beneficial owners	36
Management discussion and analysis	30
Corporate governance policies and procedures	28
Environment, social and economic sustainability	27
Stock options policy	13

Source: Corporate Governance MENA Survey, Hawkamah/IFC (2008)

1 *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)
2 OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 11 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf
3 *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

CIPE argues that:

> The lack of transparency in markets hinders the region's economic prospects and limits its ability to attract investment.[1]

A survey by the IFC and Hawkamah survey (2008)[2] identified that:

- 82 per cent of banks and listed companies stated that the annual report was published on their website;
- 12 per cent of the responding companies do not have a website or do not provide any significant information in it;
- most respondents stated that large amounts of non-financial information were disclosed on their websites (Table 9);
- 71 per cent of listed companies had established procedures for dealing with conflicts of interest and related party transactions;
- 67 per cent of respondents state that they disclose information based on IFRS (International Financial Reporting Standards), along with the 59.6 per cent also reporting based on local standards, while only 4.6 per cent report according to US GAAP (generally accepted accounting principles);
- 76 per cent of listed companies boards oversee the internal audit function and 70 per cent oversee the internal control system;
- In almost half of the listed companies surveyed (49 per cent) the external auditor has provided services in addition to audit, these services include tax and advisory services (Table 10). This is contrary to international best practice.

Table 9. Non-financial information disclosed in the website–listed companies

Company objectives	48
Affiliated parties	32
Beneficial owners	26
Company charter	19
Dividend policy	19
Policy of corporate social responsibility	17
Risk factors	9
Remuneration of the board as a collective group	8
Remuneration of key executives	6
Remuneration of the board as individuals	5

Source: Corporate Governance MENA Survey, Hawkamah/IFC (2008)

1 Sullivan, J. and Nadgrodkiewicz, A. (2008) *Economic Reform Issue Paper*, Center for International Private Enterprise, Washington, DC, p 9

2 *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

Table 10. Additional services provided by the external auditor

No additional services provided	51
Tax consulting	39
Legal services	14
Business consulting	13
Other services	11

Source: Corporate Governance MENA Survey, Hawkamah/IFC (2008)

Stakeholders

The OECD principles of corporate governance (2004) state that:

> The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.[1]

> The board should apply high ethical standards. It should take into account the interests of stakeholders.[2]

Few MENA companies have joined either the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption) or the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

Regional corporate governance policy initiatives

There have been a number of recent high-level corporate governance policy initiatives in the MENA region. These have included:

- Corporate Governance Advocacy Roundtables;
- Steering Group Meeting at Ministerial Level of the GfD (Good Governance for Development) in Arab Countries Initiative.

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 21 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

[2] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Corporate governance advocacy roundtables

Three roundtables have been held in the past four years.

First roundtable

The first roundtable was held in Egypt in 2003 and was sponsored by GCGF (Global Corporate Governance Forum), CIPE and local partners.

Second roundtable

The second roundtable was held in Beirut in 2004 and focused on developing a programme to disseminate corporate governance in the MENA region countries.

Third roundtable

The most recent roundtable was held in Dubai in November 2006. It involved business leaders and policy makers from the Middle East and North Africa, including Bahrain, Egypt, Jordan, Kuwait, Lebanon, Morocco, Oman, Palestine National Authority, Qatar, Saudi Arabia, Yemen and the UAE, and international and regional experts. It was sponsored by the IFC, the OECD and Hawkamah, The Institute for Corporate Governance. The 'Dubai Declaration on Corporate Governance' was agreed by the roundtable participants.

The following key initiatives were agreed:

- The creation of two task forces: one focusing on the corporate governance of banks and a second focusing on the corporate governance of SOEs.
- The issuance of two policy briefs: one for banks and a second for SOEs; both to be approved by the relevant task forces.
- The consideration of issues relating to the corporate governance of Shari'a compliant banks and financial institutions and the importance of ensuring that regional corporate governance frameworks and standards are in line with international codes and standards, while at the same time remaining consistent with Shari'a rules.
- The preparation of a corporate governance survey of SOEs.
- The recognition of a need to tackle issues surrounding insolvency and corporate restructuring.

OECD Steering Group meetings

There have been three Steering Group Meetings at Ministerial Level of the GfD in Arab Countries Initiative. The third and most recent one took place in Cairo, Egypt in November 2007. The meetings bring together high-level repressentatives from international organizations.

- **GfD I (Good Governance for Development I).**
  GfD I was a three-year implementation plan for governance programmes in the MENA region (2005–2007). The initiative has contributed to a better understanding of common challenges, to improved public policies and produced reform outcomes in the areas of e-government, administrative simplification, regulatory reform, budgeting, human resource management and anti-corruption.
- **GfD II (Good Governance for Development II).**
  GfD II was the second three-year implementation plan for governance programmes in the MENA region (2008–2010). The initiative involves further innovative reform, implementation and benchmarking projects including the proposed launch of a Regional Tax and Financial Management Centre in Cairo, a Regional Centre for Public Policy Evaluation in Rabat and a Regional Centre of Expertise for Quality in Regulation in Tunis.

Key organizations in the MENA region

The AAOIFI (Accounting and Auditing Organization for Islamic Financial Institutions)

The AAOIFI was founded in 1991 in Bahrain and has 155 members from 40 countries including central banks and IFIs. It is an Islamic international non-for-profit corporate body that prepares accounting, auditing, governance, ethics and Shari'a standards for IFIs. These standards have been adopted in Bahrain, Dubai International Financial Centre, Jordan, Lebanon, Qatar, Sudan and Syria. Saudi Arabia has issued guidelines that are based on AAOIFI's standards. The AAOIFI runs professional qualification programmes. These include the CIPA (Certified Islamic Professional Accountant), the CSAA (Certified Shari'a Adviser and Auditor) and the corporate compliance programme. For further information: www.aaoifi.com.

The Arab Business Council

The Arab Business Council is composed of representatives from the Arab private sector who are committed to enhancing economic competitiveness in the Arab World. The council aims to facilitate cooperation among the leading business institutions and corporate leaders in the Arab world in order to help equip their societies to compete in the global economy and to contribute to the development of an equitable society.

The Council assists in the founding of national competitiveness councils which benchmark countries' competitive indicators and promote competitiveness. To date, competitiveness councils have been established in Egypt, Bahrain and Kuwait.

The Council has conducted outreach programmes to government and business. National coordinators responsible for driving the reform agenda in government have been appointed to ministerial level in government in Jordan, Egypt, Morocco and the UAE. For more information visit: www.weforum.org/en/communities/arabbusinesscouncil/index.htm.

The Arab League

The League of Arab States or Arab League is a voluntary association of countries whose population are mainly Arabic speaking. It aims to strengthen ties among member states, coordinate their policies and direct them towards the common good. It has 22 members: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates and Yemen.

The League was founded in March 1945. The highest body of the League is the council, composed of representatives of member states, usually foreign ministers, their representatives or permanent delegates. Each member state has one vote, irrespective of its size. The council meets twice a year and may convene a special session at the request of two members. On a day-to-day basis, the League is run by the general secretariat. Headed by a secretary general, it is the administrative body of the League and the executive body of the council and the specialist ministerial councils.

Decisions made by the Arab League are binding only on the members who voted for them and therefore the League has experienced great difficulty in coordinating Arab policies. For more information visit: www.arableagueonline.org.

CIPE (Center for International Private Enterprise)

CIPE was founded by the US Chamber of Commerce in 1983 in the belief that economic and political freedoms are intertwined. CIPE partners with business associations, think tanks and other private sector organizations in countries where there is both a need for progress and an opportunity for reform. These strategic partnerships allow CIPE to provide management assistance, practical experience and financial support to local organizations to strengthen their capacity to implement democratic and economic reforms. CIPE programmes are supported primarily by the National Endowment for Democracy and USAID (US Agency for International Development).

CIPE initiates and supports programmes to educate corporate directors on fundamental corporate governance principles, educate shareholders on their rights and responsibilities and raise public awareness of the need for effective corporate governance practices. CIPE also works to create and strengthen institutions of accountability, increase public participation in government, reform government agencies and strengthen judicial systems.

CIPE supports business association development by providing executive management courses and educational materials, assistance on advocacy strategies and organization governance and support for market-oriented member services. CIPE focuses on building skills through entrepreneurship programmes and management courses; supporting associations that provide networking, services and forums for women and youth and educating future leaders. For more information visit: www.cipe.org.

The Council of Arab Economic Unity

The Council of Arab Economic Unity was established in 1957. The council's main goal is the achievement of economic integration through the framework of economic and social development. In 1964, an agreement within the Council established the Arab Common Market. The Arab Common Market was originally between Jordan, Egypt, Iraq and Syria. Yemen, Mauritania and Libya joined the market at later dates. The member states of the Arab Common Market facilitate the international movement of capital, goods and people. For more information visit: www.caeu.org.eu.

The GCGF (Global Corporate Governance Forum)

The GCGF is a multi-donor trust fund co-founded by the WBG (World Bank Group) and the OECD to promote global, regional and local initiatives that aim to improve the institutional framework and practices of corporate governance. The forum promotes sustainable economic growth and poverty reduction within the framework of agreed international development targets.

The forum focuses on practical, targeted corporate governance initiatives at the local, regional and global level. This involves:

- raising awareness and building consensus through meetings, briefings, policy papers, dialogue, etc;
- sponsoring research;
- disseminating best practices through case studies, focus reports, guidelines;
- technical support, capacity building through training programmes, toolkits.

For more information visit: www.gcgf.org.

The GCC (Gulf Cooperation Council)

The GCC is also known as the CCASG (Cooperation Council for the Arab States of the Gulf). It was founded in 1981 and is a trade bloc involving Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE. (Yemen is currently in negotiations for GCC membership and hopes to join by 2016.) A common market was launched on 1 January 2008. The objectives of the GCC include:

- formulating regulations in areas such as economy, finance, trade, customs, tourism, legislation and administration;
- fostering scientific and technical progress in industry, mining, agriculture, water and animal resources;
- establishing scientific research centres;
- setting up joint ventures;
- encouraging private sector cooperation;
- establishing a common currency, the Khaleeji, by 2010.

For more information visit: www.gcc-sg.org.

Hawkamah, The Institute for Corporate Governance

The Institute was launched in 2006 with the aim of advancing corporate governance practices in the Middle East, North Africa and Central Asia. Hawkamah is a construction that combines three Arabic root words: 'Hukuma', meaning 'government', 'Hukm' – 'judgement' and 'Hikmah' – 'wisdom'.

To promote the cause of corporate governance, Hawkamah offers a range of services and member benefits, including producing regular reports, providing development and training programmes and organizing and participating in conferences and events, advisory services for corporates, families and regulators. Since its launch Hawkamah has:

- developed and implemented a series of training programmes for directors, asset managers and corporate secretaries;
- partnered with a regional capital market authority and established a model for capital market corporate governance codes;
- developed and implemented a number of corporate governance surveys;
- worked with family firms and listed companies to develop a code of corporate governance based on international best practices;
- launched four regional task forces (banks, SOEs, insurance industry and insolvency);
- delivered corporate governance awareness programmes for economic journalists to improve corporate governance related reporting in the region.

In February 2008, Mudara split from Hawkamah. Hawkamah continues to be an organization for institutional and corporate members. It does have individual members, but the focus is on providing and advising on corporate governance frameworks and corporate governance and providing services and support, for entities, rather than on setting individual standards and codes of conduct and providing professional education. Mudara provides a membership organization for individual directors and aspiring directors. The remaining individual members of Hawkamah will be those who have no directorship aspirations but are still interested in corporate governance. The focus on individuals has shifted to Mudara from Hawkamah, and Mudara has taken over the running of the development programmes for directors in Jordan, Oman and the UAE. For more information visit: www.hawkamah.org.

The IAIGC (Inter-Arab Investment Guarantee Corporation)

The IAIGC was established in 1974 as a joint Arab agency encompassing all Arab countries and a number of Arab international organizations. The corporation specializes in guaranteeing capital shares, investors' profits and exporters' dues and is based in Kuwait.

The corporation aims to promote the transfer of Arab capital among Arab countries and enhance Arab exports worldwide. To achieve this goal, the IAIGC provides guarantee coverage to inter-Arab investments against non-commercial risks, and to Arab export credit, against commercial and non-commercial risks. For further information: www.iaigc.org.

The IFC (International Finance Corporation)

The IFC forms the private sector arm of the WBG. Its mission is to promote sustainable private sector investment in developing and transition countries in order to reduce poverty and improve people's lives. The IFC finances private sector investments in the developing world, mobilizes capital in the international financial markets, helps clients improve social and environmental sustainability and provides technical assistance and advice to governments and businesses. In 2005, the IFC invested US $315 million in the MENA region in 21 projects across a number of sectors. The IFC's investment programme in MENA is broad-based and includes the financial sector, manufacturing, oil and gas, education, agribusiness and infrastructure. Efforts in higher risk countries (such as Iraq) focus upon the financial sector and the basics of private sector development.

The PEP MENA (Private Enterprise Partnership in the Middle East and North Africa) was launched by the IFC in 2005. This programme enables the IFC to provide a wide range of technical assistance throughout the region, including corporate governance. For further information visit: www.ifc.org.

Islamic Chamber of Commerce and Industry

The Islamic Chamber was founded in 1977 and is an affiliated body of the OIC (Organization of Islamic Conference). The Chamber represents the private sector of 57 member Islamic countries. It aims to strengthen closer collaboration in the field of trade, commerce, information technology, insurance/reinsurance, shipping, banking, promotion of investment opportunities and joint ventures in the member countries. Its membership is comprised of the National Chambers, Unions and Federations of Chambers of Commerce and Industry of the member countries. For further information: www.icci-oic.org.

The Islamic International Rating Agency

The Islamic International Rating Agency was founded in 2005. The Agency is the sole rating agency established to provide capital markets and the banking sector in predominantly Islamic countries with ratings of Islamic financial products.

The Agency publishes professional analytical research and is sponsored by multilateral development institutions, leading banks, other financial institutions and rating agencies from 11 countries. The Agency has a board of directors, a completely independent rating committee and a Shari'a board. For further information: www.iirating.com.

The MEPI (Middle East Partnership Initiative)

MEPI is a US initiative which helps democracy to spread, education to thrive, economies to grow and women to be empowered. MEPI funding goes directly to partners such as non-governmental organizations, businesses and universities. In the last five years, MEPI has devoted more than US $430 million to over 350 projects in 17 countries and territories in the Middle East through its offices in Washington, Tunis and Abu Dhabi. For further information: www.mepi.state.gov.

The OECD

In September 2007, the PSD (Private Sector Development) Division was established at the OECD. It is located within the Directorate for Financial and Enterprise Affairs. The division aims at fostering sustainable growth and employment through better business climate policies.

The activities of the MENA–OECD investment programme will be managed within the new division. This programme has a rotating chairperson from a MENA and an OECD country and is made up of five working groups.

- **Working Group 1** addresses transparency and open investment policies.
- **Working Group 2** focuses on the role of investment promotion agencies and business associations.
- **Working Group 3** focuses on the tax frameworks needed for investment and investment incentives.
- **Working Group 4** focuses on the financial sector and enterprise development.
- **Working Group 5** focuses on improving corporate governance. This group builds on previous work done by the RCGF (Regional Corporate Governance Forum).

In November 2007, a task force on the corporate governance of banks in the MENA region developed a draft policy brief on corporate governance in banks. Working Group 5 has also recently established a MENA Task Force on corporate governance of SOEs.

In addition, the OECD has recently established a new task force on capital markets development and supervision to develop recommendations for capital market development and regulation, as well as broader financial sector development and stability. The QFCRA (Qatar Financial Centre Regulatory Authority) will co-chair the new task force. For more information visit: www.oecd.org.

The Union of Arab Banks

The Union of Arab Banks was founded in 1974. The Union has over 300 Arab financial and banking institutions as members. It is the largest banking and financial consortium in the region. The goals of the Union of Arab Banks are to:

- foster cooperation between Arab banks;
- develop Arab financial business;
- enhance the financing role of Arab banks in the Arab region.

The union's head office is in Beirut and has three regional offices in Egypt, Sudan and Jordan. For more information: www.uabonline.org.

Conclusion

Awareness of the importance of corporate governance in the MENA region has risen substantially in recent years and many countries have made significant progress including:

- **Oman.** The development of the first code of corporate governance in the region in Oman in 2002.
- **Egypt.** Egypt has developed two corporate governance codes, one for listed companies in 2005 and another for SOEs in 2006. It has been named by the World Bank in 2008 as the world's top reformer in the Doing Business rankings with improvements in 5 out of the 10 areas.
- **Morocco.** Morocco is in the process of preparing a corporate governance code.
- **Lebanon.** The LCGTF (Lebanese Corporate Governance Task Force) published a code of corporate governance for non-listed companies in 2006.
- **Oman.** The Capital Market Authority issued rules and guidelines on disclosure by issuer of securities and insider trading in 2007.
- **Saudi Arabia.** The Capital Market Authority introduced corporate governance regulations in 2006.
- **The UAE.** The securities and commodities authority has issued a corporate governance code, setting a national governance standard, for both the Dubai financial markets and the Abu Dhabi securities market.
- **Declarations on Corporate Governance.** The Dubai Declaration on Corporate Governance was published in 2006.
- **The founding of leading corporate governance organizations.** Leading corporate governance organizations have recently been formed including the Egyptian Institute of Directors in Cairo, Hawkamah and Mudara in Dubai and the LCGTF in Beirut.

In order for the MENA region to further develop and strengthen its economies many of the countries need to empower the private sector and allow companies to be the engine of economic growth. This involves making the countries easier places to do business in (the 2008 average ranking for MENA countries is below average at 93rd out of 178 countries). It will involve building and developing further market institutions and reducing the role of state involvement in the economy. Many of the countries will need to develop a more dynamic job market to deal with the prospect of rising unemployment. In addition, policy makers in many of the MENA countries need to develop initiatives to reduce informal business activity and combat corruption.

1.2

Islamic Financial Institutions

Co-author, Samy Nathan Garas
New York Institute of Technology, Kingdom of Bahrain

Introduction

Islamic financial activity commenced in the MENA (Middle East and North Africa) region relatively recently. Arguably the first bank in the region to be founded on Islamic principles was the Arab Bank of Palestine in 1930. There are currently more than 300 IFIs (Islamic financial institutions) in over 50 countries and over 250 mutual funds that comply with Islamic principles.[1]

In 2006, the Islamic banking assets and assets under management were approximately US $750 billion, and they are expected to exceed US $1 trillion by 2010.[2] This exceptional growth has been made by around 300 financial institutions around the world offering Islamic products through:

- **New entrants to the market**. For example new Islamic banks that have recently been launched include the Inmaa Bank (Saudi Arabia), Al Hilal Bank (UAE), Al-Noor Islamic Bank (UAE); a new unit of the Bank of Kuwait and the Middle East (Kuwait), Al Masraf Bank (Bahrain) and the Global Banking Corporation (Bahrain).
- **Conventional western banks have converted.** Some conventional western banks have converted into Islamic banks. For example recent conversions include the Al Jazira Bank (Saudi Arabia), the National Commercial Bank (Saudi Arabia) and the Kuwait Real Estate Bank (Kuwait).
- **Conventional western banks have established 'Islamic Windows'.** These 'Islamic Windows' in conventional western banks provide Shari'a compliant products.
- **Increased cross-border transactions.** For example in Bahrain, the ABG (Al-Baraka Banking Group) has recently acquired a license to operate a new subsidiary in Syria; in Saudi Arabia, the NCB (National Commercial Bank) recently acquired 60 per cent of Turkiye Finans in Turkey and in the UAE, the Emirates Global Islamic Bank recently commenced operations in Pakistan.

---

[1] *IMF Survey Magazine* (2007) Available at www.imf.org/external/pubs/ft/survey/so/2007/res0919a.htm
[2] McKinsey & Company (2008)

- **The issuing of Sovereign Islamic Bonds.** The issuing of Sovereign Islamic Bonds has witnessed a massive leap from US $12 billion in 2005 to US $39 billion in 2007.

There are few empirical research studies of corporate governance in IFIs. Algaoud and Lewis (1999)[1] have focused upon the strategies and investment policies of SSBs (Shari'a supervisory boards). Gambling *et al* (1993)[2], Baydoun *et al* (1997)[3], Banaga *et al* (1994)[4] and Bucheery and Hood (1997)[5] have examined the accounting and auditing aspects of corporate governance of IFIs. Erol *et al* (1990)[6] and Grais and Matteo (2006)[7] have focused on transparency and disclosure of market relevant information. El-Hawary *et al* (2007)[8] have researched the diversity in the regulation of IFIs. However, there are many areas of research in this field that are unexplored.

Countries in the MENA region are at different stages of development. Table 1 classifies the MENA countries into those that are developing IFIs, have established IFIs, have established IFIs and mutual funds and those that have an established Islamic Capital Market.

Table 1. The stage of development of Islamic finance in the MENA region

Stage of Development	*Country*
Developing IFIs (Islamic Financial Institutions)	Algeria, Lebanon, Oman and Syria
Established IFIs	Morocco, Palestine, Qatar, Tunisia and Turkey
Established IFIs and Mutual Funds	Egypt, Iran, Jordan, Kuwait, Saudi Arabia and UAE
Established Islamic Capital Market	Bahrain

Example of an established Islamic Financial Market: Bahrain

Bahrain hosts 34 Islamic banks and financial institutions involved in commercial banking, investment banking, offshore banking and fund management. These banks are governed and controlled by the CBB (Central

[1] Algaoud, LM and Lewis, MK (1999) Corporate governance in Islamic banking: The case of Bahrain, *The International Journal of Business Studies*, **7**(1), pp 56–86

[2] Gambling, T, Jones, R, Karim, R (1993) Credible organisations: Self regulation versus external standard setting in Islamic banks and British charities, *Financial Accountability & Management*, 9(3), pp 195–208

[3] Baydoun, N, Nishimura, A and Willett, R (eds) (1997) *Accounting in the Asia-Pacific Region*, John Wiley, London

[4] Banaga, A, Ray, G and Tomkins, C (1994) External Audit and Corporate Governance in Islamic Banks, London, Ashgate

[5] Bucheery, R and Hood, KL (1997) *The audit expectation gap between the religious auditors and the external auditors: The case of Bahrain* , 1st International Conference in Accounting and Auditing: Islamic Perspective, Sydney, Australia

[6] Erol, C, Kaynak, E and El-Bdour R (1990) Conventional and Islamic banks: Patronage behaviour of Jordanian customers, *International Journal of Bank Marketing*, **8**(4), pp 25–35

[7] Grais, W and Matteo, P (2006) Corporate governance in institutions offering Islamic financial services: Issues and options, *World Bank Policy Research Working Paper No. 4052* Available at http://ssrn.com/abstract=940709

[8] El-Hawary, D, Grais, W and Iqbal, Z (2007) Diversity in the regulation of Islamic financial institutions, *The Quarterly Review of Economics and Finance*, 46(5), pp 778–800

Bank of Bahrain). The CBB ensures that all the rules and regulations are fair to the Western and Islamic banks and that fair competition exists between the banks.

The Islamic framework

Islamic beliefs provide a framework that determines the relationships between human beings and god, and between human beings. Shari'a Law governs all economic and social activities and undertakings of Muslims and is derived from the Quran and Sunnah which are the sayings and practices of Prophet Muhammad.

According to Shari'a Law, the Islamic financial system aims to enhance the economy of the country through purchasing and selling of physical assets (investment activities), and building the infrastructure.

The framework for Shari'a Law involves:

- **Fairness.** The fairness principle requires anyone involved in a transaction to make an informed decision without being misled or cheated.
- **The Right to Pursue Personal Economic Well Being.** Shari'a Law permits the right to seek economic well being. However, Islam makes a clear distinction between what is *halal* (lawful) and what is *haram* (forbidden) in pursuit of economic activity. In general terms, Islam forbids all forms of economic activity which are morally or socially injurious. For example, transactions involving alcohol, tobacco, pork-related products, armaments, gambling, pornography and other activities that are deemed to be socially detrimental.
- **The Strict and Explicit Prohibition of *Riba* (usury or interest).** Borrowing and lending cash and achieving gain through interest is totally prohibited, because money is considered to be an intermediate commodity that does not have gain in itself. This means that the concept of time value of money cannot be applied in Islamic financial activities.

  Shari'a Law does not permit charging any type of interest between Muslims. It is acceptable to charge interest to non-Muslims but it is not allowed to pay interest to non-Muslims. Islamic banks have developed mechanisms to allow interest income to be replaced with cash flows from productive sources, such as returns from wealth generating investment activities and operations.

  Any transaction performed for speculative purpose is completely forbidden (*gharar*), but accepting necessary business risk due to market changes is allowed. Commercial insurance on various assets is prohibited because it trades on personal misfortune: however, mutual insurance (*takaful*) is allowed.
- **Risk and Profit-sharing and Loss-sharing Philosophy**. Shari'a Law requires that when profits are distributed more emphasis is placed on reward for effort rather than reward for merely owning capital. If losses

occur, the IFIs must share the risk with the investor. This type of risk management is normally defined between the two parties by signing contracts before the start of any transaction. These contracts are designed and standardized by the IIFM (International Islamic Financial Market) and act as a hedge against uncertainty.

- **Contractual certainty.** The principle of *gharar* (the concept of uncertainty) requires that the seller must own the asset before the exchange of contracts and must inform the buyer about any defect in the asset unless it is trivial. There must be complete transparency between the two parties during the exchange of assets and clear identification of the transfer of ownership. Uncertainties or ambiguities that can lead to disputes may render a contract void under Shari'a Law (Figure 1).

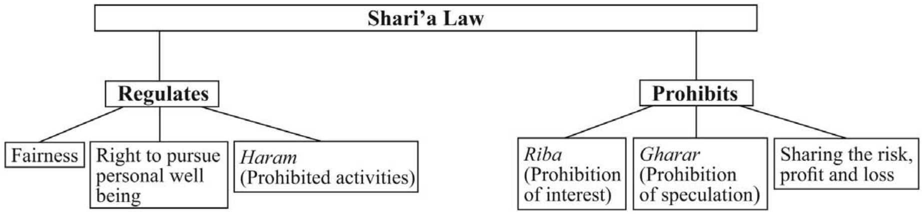


Figure 1. The framework for Shari'a Law

While some of the above principles and rules are based on clear and explicit rulings of Shari'a Law, others are derived from Shari'a Law scholars' interpretations and understanding of the Qur'an. These interpretations can and do differ between Shari'a Law scholars. For example, certain contractual terms deemed to be valid under Shari'a Law by the scholars of one school of *Fiqh* (Islamic jurisprudence) may not be acceptable to scholars from another school.

The role of the IFIs

IFIs require total compliance with Shari'a Law as a basis for all transactions. They prohibit interest and limit the channels of investments to specific activities. The Islamic banking practices cover the types of investments that are approved such as:

- managed funds;
- partnerships;
- cost-plus financing;
- leasing;
- futures contracts;
- different techniques of hedging.

Islamic assets account for less than 1 per cent of the world's total banking assets.[1] However, this sector of banking is currently growing at over 15 per cent per annum, with current funds in excess of US $150 billion.

Types of finance

There are two types of finance in IFIs:

- Equity finance
- Debt finance

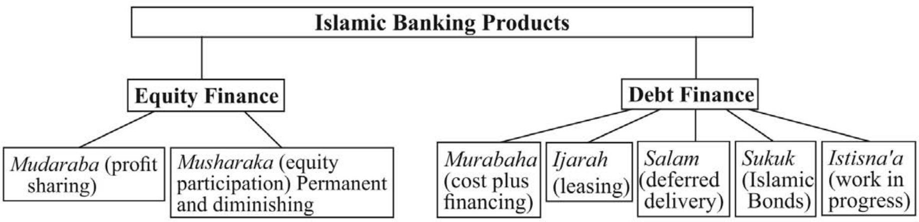


Figure 2. Islamic banking products

Equity finance

Mudaraba (managed funds)

The Accounting and Auditing Organization for Islamic Financial Institutions standards define *mudaraba* as:

> a partnership in profit between capital and work.[2]

Mudaraba are widely used as a form of equity financing in Islamic capital markets. They are similar to a mutual fund, where the investor provides the bank with working capital whether for a single investment or on a continuous basis. Two examples are listed below to illustrate the use of *mudaraba*:

- **Example 1:** A bank manages an investment on behalf of an investor and takes a predetermined share of the profit and may impose a fixed fee. However, if the bank makes any loss, the investor will bear the cost.

[1] Pace, D. *Islamic finance: A truly global industry*, Conference paper at the 14th World Islamic Banking Conference Bahrain, 10 December 2007

[2] AAOIFI (2004–05)

- **Example 2:** A bank provides the investor's capital to an entrepreneur and if the entrepreneur incurs any loss, the bank will bear it. Since it is risky for the bank to take this kind of deal, banks generally prefer the first example above.

Mudaraba involve investment account holders as providers of funds and an Islamic bank as a *mudarib*. The process involves:

- the Islamic bank announcing its willingness to accept the funds of investment account holders;
- the sharing of profits being divided as agreed between the two parties;
- the losses being borne by the provider of funds except if they were due to misconduct, negligence or violation of the conditions agreed upon by the Islamic bank.

An Islamic bank may be party to a *mudaraba* contract as a provider of funds, on behalf of itself or on behalf of investment account holders. Islamic banks use *mudaraba* contracts in syndicated loans, retail aggregation and aggregated funds for non-bank financial institutions. The number of Islamic funds has grown substantially in recent years (Table 2).

Table 2. Number of Islamic Funds (2000–2006)

2000	156
2005	300
2006	400

Source: Adil, A. *Assessing trends in asset and wealth management*, Conference paper at the 14th World Islamic Banking Conference Bahrain, 10 December 2007

Musharaka (partnership)

Musharaka is usually much more convenient for both parties than *mudaraba* since both the investor and the Islamic bank share the profits or losses.

The Accounting and Auditing Organization for Islamic Financial Institutions standards define *musharaka* as:

> a form of partnership between the Islamic bank and its clients whereby each party contributes to the capital of the partnership in equal or varying degrees to establish a new project or share in an existing one, and whereby each of the parties becomes an owner of the capital on a permanent or declining basis and shall have his due share of profits. However, losses are shared in proportion to the contributed capital. It is not permissible to stipulate otherwise.[1]

[1] AAOIFI (2004–05), p 187

There are two types of *musharaka*:

- **Constant *musharaka*.** Constant *musharaka* involves the percentage of ownership for each partner remaining constant during the project life.
- **Diminishing *musharaka*.** Diminishing *musharaka* involves the bank selling its ownership gradually to an investor.

The parties can only provide liquid capital into a *musharaka* contract. Any fixed assets that are contributed to the project will remain under the name of the original owner. Any profit or loss from the disposal of this asset will be referred back to the owner.

Debt finance

Murabaha (cost-plus financing)

The Accounting and Auditing Organization for Islamic Financial Institutions standards define *murabaha* as:

> the sale of goods at cost plus an agreed profit mark up …the seller should inform the purchaser of the price at which he purchased the product and stipulate an amount of profit in addition to this.[1]

Cost-plus financing is one of the traditional tools for generating profit by Islamic banks. It involves a bank purchasing goods on behalf of its clients and selling these goods to the client for deferred instalments. These payments will cover the cost plus a predetermined profit margin.

The Islamic bank is only permitted to buy commodities that are acceptable (eg aluminium, steel and diamonds) and the bank must store the commodity and settle the payment completely. The purchaser of the assets (ie the bank's client) acquires the goods from the bank using deferred payment.

The *murabaha* contract is different from a loan in conventional banks in the following ways:

- *Murabaha* must only be made on non-monetary commodities.
- The Islamic bank must have actual possession of the asset before it is transferred to the purchaser.
- If the purchaser fails to pay the bank the due amounts on time, the bank cannot impose delinquency penalties or increase the predetermined profit margin. However, a specified fee for services is added to the instalments. This differs greatly from conventional banks where the borrower would be charged for any delay in payment. Therefore *murabaha* carries a greater risk than a conventional loan.

---

[1] AAOIFI (2004–05), p 129

Since *murabaha* involves more risk than a pure loan of money Islamic banks normally ask for a letter of credit before the deal to ensure payment, draft tight delivery terms and monitor closely the outstanding payments in respect of non- or late payment. *Murabaha* has substantial applications in the MENA region in trade financing, consumer credit and short-term cash management.

Ijarah (leasing)

The Accounting and Auditing Organization for Islamic Financial Institutions standards define *ijarah* as:

> ownership of the right to the benefit of using an asset in return for consideration.[1]

In this case an Islamic bank must purchase the asset, lease it to the customer and collect the rent on a periodic basis. The ownership of the asset remains under the bank's name and so it is recorded as operating *ijarah* (similar to an operating lease). *Ijarah* does not charge penalties for late payment, although a specified fee for service is added to the instalments.

Ijarah has several applications. It can be used for leasing commercial and residential properties and any fixed asset. From the bank's perspective, *ijarah* is more flexible than *murabaha* because the price can be adjusted if a loss is made. However, if the lessee does not accept the asset, the bank will bear the total risk of keeping the asset.

There are some differences between Islamic and conventional leases such as:

- In the event of a termination of a lease an Islamic bank will waive any claim on the lessee as long as the reason for the termination is beyond the lessee's control. In the case of any loss incurred, an Islamic bank will only take sufficient insurance proceeds to recoup their investment as long as the loss is not due to negligence or misconduct by the lessee.
- Unlike traditional leases, *ijarah* contracts do not have 'put' or 'call' arrangements. If the lessor wishes to sell the asset at the end of the lease period, he should agree a 'put arrangement' separately from the lease contract. The price of the put arrangement must be specified.
- In the case of late payment, no penalty may be imposed by an Islamic bank as it would be considered to be interest on the delay of a payment. In the case of liquidating damages, an Islamic bank may claim an extra amount as a cost of collection. If the amount is higher than it should be, the excess over the cost of collection must be given to charity.
- With *ijarah* an Islamic bank is normally responsible for the insurance and maintenance during the lease period but it can appoint the lessee as

---

[1] AAOIFI (2004–05), p 258

an agent to pay the insurance and undertake the maintenance. In a traditional lease, the lessee would be responsible for this.

Salam (deferred delivery)

The Accounting and Auditing Organization for Islamic Financial Institutions standards define *salam* as:

> a purchase of commodity for deferred delivery in exchange for immediate payment according to specified conditions. Also, it includes sale of a commodity for deferred delivery in exchange for immediate payment.[1]

Unlike *murabaha* and *ijarah* where the goods or the use of goods are delivered before the actual payment, *salam* requires the due amount to be paid first before the delivery of goods. These contracts only cover primary commodities (eg agriculture and construction commodities). *Salam* typically involves a farmer or manufacturer notifying the bank and delivering the complete payment in advance to the bank. The bank subsequently authorizes a broker to be its purchasing agent and gives the broker the complete amount of cash. The broker searches for another selling broker and makes an agreement to take the cash now and deliver the commodity to the farmer or manufacturer.

Istisna'a (work in progress)

This typically involves an Islamic bank financing the construction of property and other fixed assets. *Istisna'a* is similar to *salam* except that *salam* involves the total amount being made in advance, whereas with *istisna'a* the payment can be made gradually over time.

Islamic bonds (sukuk)

The Accounting and Auditing Organization for Islamic Financial Institutions standards define *sukuk* as:

> certificates of equal value representing undivided shares in ownership of tangible assets, usufruct and services or (in the ownership of) the assets of particular projects or special investment activity, however, this is true after receipt of the value of the sukuk the closing of subscription and the employment of funds received for the purpose for which the sukuk were issued.[2]

---

[1] AAOIFI (2004–05), p 228
[2] AAOIFI – Shari'a Standards, (2004–05), p 298

Sukuk is the plural term for certificates evidencing their holders' ownership in one or more assets. The market for *sukuk* has grown significantly in recent years, from less than US $0.3 billion in 2002 to US $40 billion by 2007. Table 3 shows the global increase in *sukuk* issues. World wide *sukuk* debt outstanding is around US $90 billion but this is just 0.1 per cent of the global bond market.[1]

Table 3. Global *sukuk* issues (2000–2007)

	Corporate (USD millions)	*Sovereign (USD millions)*	*Total (USD millions)*
2000	0	336	336
2001	250	530	780
2002	19	800	819
2003	4,545	1,180	5,725
2004	5,468	1,479	6,947
2005	11,122	707	11,819
2006	24,000	1,793	25,793
2007	30,000	10,000	40,000
Total	75,404	16,825	92,219

Source: Calyon, P. *The way forward to Develop Primary and Secondary Islamic Primary Markets,* Conference paper at the 14th World Islamic Banking Conference, Bahrain, 10 December 2007

The substantial growth in *sukuk* can be attributed to:

- an increased expertise in financial instruments within IFIs and FIs (financial institutions) with Islamic windows in the MENA region;
- considerable innovation in the structuring of Islamic financial instruments. The AAOIFI has recently identified over 14 possible structures for *sukuk* and more instruments are currently being developed;
- an increase in the number of international exchanges providing opportunities for global Islamic capital market listings and secondary trading;
- a continued development of regulatory capital market infrastructure in Islamic countries;
- competitive pricing compared to the pricing of conventional Western financial instruments;
- strong investor demand from liquid investors in the MENA region.

Globally, most of the *sukuk* issues have been by issuers based in the Middle East and South East Asia. The Middle East is led by the Bahrain Government (which has the largest number of issues through its Treasury Programme). Most of the issues from the Middle East have not been rated and they have only recently started being rated in Dubai and London. Table 4 shows the *sukuk* issues in the Gulf Cooperation Council.

[1] Pace, D. *Islamic Finance: A truly global industry*, Conference paper at the 14th World Islamic Banking Conference, Bahrain, 10 December 2007

Table 4. Gulf Cooperation Council *sukuk* issues USD millions

2002	196
2006	10,919
2007 (estimated)	27,312

Source: Adil, A. *Assessing Trends in Asset and Wealth Management*, Conference paper at the 14th World Islamic Banking Conference, Bahrain, 10 December 2007

There are several types of *sukuk* that include:

- **The *ijarah sukuk*** is the most widely used *sukuk*. If the lessor sells a leased asset to a number of individuals, any one of the individuals or sub group can issue *ijarah* certificates and sell them to different investors who in return become the new owners of the leased asset and they assume all the obligations of the asset.
- ***Mudaraba* and *musharaka sukuk*** are called 'participation certificates' and issued with the objective of using the collected capital in financing a project on the basis of partnership. The certificate holders own the assets of the operation and share both profit and loss. The capital for *mudaraba sukuk* comes from one party, but for *musharaka sukuk* come from a group of subscribers.
- ***Istisna'a* and *salam sukuk*** are related to the complete payment of an asset in advance. If the asset has a large value the Islamic bank can issue these types of *sukuk* to collect the required amount of cash on time.
- **The Islamic Development *Sukuk*** are issued by governments or central banks to finance new projects such as roads, bridges, hospitals and ports through *istisna'a* contracts or 'lease to own' contracts. The higher the rent, the higher the stake in ownership will be. These *sukuk* can be traded on the secondary market because they represent mutual ownership in tangible assets.

The rating of Shari'a compliance of IFIs

Shari'a quality rating

The IIRA (Islamic International Rating Agency) provides a Shari'a quality rating for IFIs or conventional institutions that provide Islamic banking or financial services or Islamic financial products such as *sukuk*. The rating uses a scale of AAA to B (Table 5). For more information visit: www.iirating.com.

Hawkamah is currently setting up a task force devoted to the development Shari'a compliant corporate governance which will result in the development of Corporate Governance Guidelines and criteria for loans and investments. They are also developing a Corporate Governance Rating System for Shari'a Compliant Banks and Financial Institutions.

Table 5. The Islamic International Rating Agency's Shari'a Quality Rating

AAA	In IIRA's opinion, an entity/instrument rated AAA conforms to highest level of standards of Shari'a requirements in all aspects of Shari'a quality analysis.
AA	In IIRA's opinion, an entity/instrument rated AA conforms to very high level of standards of Shari'a requirements in all aspects of Shari'a quality analysis.
A	In IIRA's opinion, an entity/instrument rated A conforms to high level of standards of Shari'a requirements and has very few weaknesses in some areas of Shari'a quality analysis.
BBB	In IIRA's opinion, an entity/instrument rated BBB conforms to moderately high level of standards of Shari'a requirements and has few weaknesses in some areas of Shari'a quality analysis.
BB	In IIRA's opinion, an entity/instrument rated BB conforms to satisfactory level of standards of Shari'a requirements and has some weaknesses in some areas of Shari'a quality analysis.
B	In IIRA's opinion, an entity/instrument rated B conforms to adequate level of standards of Shari'a requirements and has weaknesses in some areas of Shari'a quality analysis.

IIRA's Corporate Governance Rating System

The IIRA also provides a Corporate Governance Rating System focusing upon conformance to corporate governance regulations and global corporate governance best practices. IIRA uses a scale of CGR-1 to CGR-10 to rate corporate governance with CGR-10 being the highest possible rating and CGR-1 being the lowest possible rating (Table 6). For more information visit: www.iirating.com.

Table 6. The Islamic International Rating Agency's Corporate Governance Rating

CGR-10	Strongest corporate governance processes and practices overall, with very few weaknesses in any of the major areas of governance analysis.
CGR-9	Very strong corporate governance processes and practices overall, with few weaknesses in any of the major areas of governance analysis.
CGR-8	Strong corporate governance processes and practices overall, with some weaknesses in certain of the major areas of governance analysis.
CGR-7	Moderately strong corporate governance processes and practices overall, with weaknesses in certain of the major areas of governance analysis.
CGR-6	Satisfactory corporate governance processes and practices overall, with some weaknesses in several of the major areas of governance analysis.
CGR-5	Adequate corporate governance processes and practices overall, with weaknesses in several of the major areas of governance analysis.
CGR-4	Moderately weak corporate governance processes and practices overall, with weaknesses in a number of the major areas of governance analysis.
CGR-3	Weak corporate governance processes and practices overall, with significant weaknesses in a number of the major areas of governance analysis.
CGR-2	Very weak corporate governance processes and practices overall, with significant weaknesses in most of the major areas of analysis.
CGR-1	Weakest level of corporate governance processes and practices overall, with significant weaknesses in most of the major areas of analysis.

IMF survey results (2007)[1]

A recent survey by IMF staff identified that:

- Islamic banking had grown by 10–15 per cent per year over the last decade;
- Large western commercial banks have less risk and are more stable than large Islamic banks;
- Small Islamic banks have less risk and are more stable than small western commercial banks.

As Islamic banks become bigger the credit risk monitoring system becomes significantly more complex. This is due to the fact that monitoring the various profit–loss sharing arrangements becomes more complex with bigger size associated with potential problems of adverse selection and moral hazard.

Basel 2 and risk management

Basel 2 is a revision of the existing Basel accord, which aims to make the banking frameworks more risk sensitive and representative of modern banks' risk management practices. The broad framework consists of three pillars:

- **Pillar 1.** This pillar sets out the minimum capital requirements that banks will be required in the areas of credit, market and operational risk.
- **Pillar 2.** Banks and regulators are required to decide whether a bank should hold additional capital against risks not covered in Pillar 1 and must take action accordingly. Examples of Pillar 2 risks include concentration, liquidity and reputational risk.
- **Pillar 3.** This pillar improves market discipline by requiring banks to publish certain details of their risks, capital and risk management.

Islamic financial practices are not specifically mentioned in either Basel 1 or Basel 2. If, in practice, certain risks affect IFIs more than conventional firms, it would be expected that these risks should be identified and quantified under Pillar 2. Where this is not possible or capital is not an appropriate mitigating tool other ways of managing these risks would need to be identified. Similar to conventional banks, all IFIs need to possess sound corporate governance practices and appropriate systems and controls.

The role of the central bank over the Islamic banks is crucial because according to the Islamic laws any reserve by the Islamic bank in the Central

[1] Hesse, H and Cihak, M (IMF) *Islamic Banks and Financial Stability*, Conference paper at the 14th World Islamic Banking Conference, Bahrain, 10 December 2007

Bank should be appropriately invested. Should Islamic banks be subject to reserve requirements similar to conventional banks? How can the central banks conduct open-market operations with securities that do not pay interest?

Corporate governance structures in IFIs

The Shari'a Supervisory Board (SSB)

The SSB reviews the operations of the financial institution to ensure that they comply with the Shari'a. This is, to a large extent, an investigatory role. In the increasingly complex and sophisticated world of modern finance, the religious board endeavours to answer the question whether or not proposals for new transactions or products conform to the Shari'a and offers constructive and creative recommendations. The role of the SSB is to:

- certify permissible financial instruments before issue through *fatwas*;
- verify that transactions comply with issued *fatwas*;
- approve calculation of *zakat*;
- disposing of non-shari'a compliant earnings.

An IFI is required to establish operating procedures to ensure that no form of investment or business activity is undertaken that has not been approved in advance by the SSB. Also, the management of the IFI is required to periodically report and certify to the SSB that the actual investments and business activities undertaken by the institution conform to forms previously approved by the SSB. The members of the SSB are:

- appointed by shareholders at the General Assembly;
- employed by the IFIs;
- report to the board of directors.

The various governance challenges of the SSB are:

- **Competence.** Since the Shari'a scholars on the SSBs carry great responsibility, it is important that only high-calibre scholars are appointed. There is currently a shortage of appropriately qualified scholars to provide rigorous challenge and oversight of a bank's products and services.
- **Independence.** Due to the shortage of scholars, many SSB members have positions on many different IFIs and have access to proprietary information. As a result the possibility of serious conflicts of interest exists. Little is currently known about how SSBs are dealing with this problem in practice.

- **Lack of professional certification.** IFIs currently experience difficulty in selecting between scholars due to the lack of professional certification in terms of shari'a expertise.
- **Consistency.** Some commentators argue that there is a lack of consistency among SSBs. In particular, *fatwas* that are issued by one SSB may conflict with *fatwas* issued by other SSBs.
- **Lack of disclosure.** There is a general lack of disclosure concerning shari'a scholars' duties, decision making, rulings and areas of competence. Some commentators argue that all *fatwas* issued by the SSB should be included in the annual report and if appropriate discussed at the General Assembly Meeting.

Investment account holders

There is also a particular category of account holder within Islamic banks called the investment account holders who are entitled to additional disclosures. The IFSB (Islamic Financial Services Board) Corporate Governance Standards treat investment account holders as quasi-shareholders and recommends that their interests need protecting.

Future challenges

There are major challenges currently facing the Islamic finance sector as described in the below sections.

Non-recognition of Shari'a finance

There are few accounting standards concerning such issues as disclosure and audit for IFIs. Neither Basel 1 nor Basel 2 recognize Shari'a financial instruments, particularly *murabaha* and *ijarah*. This international non-recognition of these types of contracts places them in a high-risk category and makes them less competitive in the global market.

The Central Bank of Bahrain has issued a disclosure standard covering Basel 2, Islamic Financial Services Board Standards and International Financial Reporting Standards (IFRS) requirements, however, more efforts are required by Accounting and Auditing Organization for Islamic Financial Institutions in the areas of:

- fair value accounting;
- provisioning;
- *ijarah*;
- risk management disclosures.

Shari'a expertise shortage

There is a general shortage amongst Islamic banks of staff with knowledge of Shari'a principles. Many banks are recruiting Shari'a trainees and sponsoring staff to gain qualifications in Shari'a finance.

Research

There is a need for more research in the field of Islamic finance to increase our understanding of Islamic practices.

Conclusion

There has been considerable growth in IFIs over the last decade. IFIs are likely to increase their expansion over the coming years. However, Shari'a financial instruments are not well understood and international standards such as Basel, IFSB and IFRS do not specifically cover these Islamic instruments. There are also significant governance issues that are specific to the role, structure and composition of the Shari'a Supervisory Board that need to be addressed over the next few years.

1.3

The Governance of SOEs (State-Owned Enterprises) and SWFs (Sovereign Wealth Funds) in the MENA Region

Definitions

SOEs are organizations with a distinct legal form (ie separate from public administration) and are involved in commercial activity with the bulk of their income coming from sales and fees whether or not they pursue a public policy objective.

SWFs are state-owned organizations that manage state savings for the purposes of investment.

Introduction

Many of the countries in the MENA (Middle East and North Africa) region have very high levels of state ownership that represents a substantial part of GDP, employment and market capitalization. Public sector employment accounts for 32 per cent of the total employment in the MENA region compared to 27 per cent worldwide and only 13.5 per cent in the OECD countries. There is a large diversity amongst the MENA countries. In some countries, the share is much higher than the regional average. Examples of public sector employment levels include:[1]

- 93 per cent of total employment in Kuwait (the highest in the region);
- 66 per cent of total employment in Libya;
- 60 per cent of total employment in Algeria;
- 44 per cent of total employment in Jordan.

In most countries the central government provides the bulk of public sector jobs. Consequently, the state plays a major role in the economy rather than merely acting as regulator of the market.

[1] World Bank MENA (2005) *Economic Developments and Prospects – 2000 Data or Closest Available Year*, World Bank, Washington, DC

Another distinctive feature of the MENA region is that government wages in MENA are significantly higher than in the private sector. CIPE (Center for International Private Enterprise) has recently argued that:

> This …skews labour market incentives and unproductively traps much of the region's capital.[1]

Admittedly, in many countries, national structural reforms are being introduced to reduce the role of the state in the economy but these initiatives have a long way to go before the private sector becomes a major contributor to the economy.

In many of the oil producing countries, the governments prefer to own the oil companies operating on their soil. A good example is the Saudi National Oil Company, Saudi Aramco, which the Saudi Government bought in 1988. The Saudi Government also owns and operates Saudi Arabian Airlines and owns 70 per cent of SABIC (Saudi Arabia Basic Industries Corporation), as well as many other companies.

The OECD Guidelines on Corporate Governance of SOEs

The legal and regulatory framework within which SOEs operate is often extremely complex. If these frameworks are not consistent and coherent they can easily result in costly market distortions and undermine the accountability of both management and the state as owner. In many cases corporate governance in SOEs can be improved by developing clear responsibilities and streamlining the regulatory framework.

In 2005, the OECD published Guidelines on Corporate Governance of SOEs. Principle 1 of the OECD Guidelines states:

> The legal and regulatory framework for state-owned enterprises should ensure a level-playing field in markets where state-owned enterprises and private sector companies compete in order to avoid market distortions.[2]

In order to carry out its ownership functions in an effective manner, all governments should be aware of existing private- and public-sector governance standards and best practices. Principle 2 of the OECD Guidelines states:

> The state should act as an informed and active owner and establish a clear and consistent ownership policy, ensuring that

---

[1] Sullivan, J and Nadgrodkiewicz, A (2008), *Economic Reform Issue Paper*, Center for International Private Enterprise, p 3

[2] *OECD Guidelines on Corporate Governance of State Owned Enterprises* (2005), p 12

> the governance of state-owned enterprises is carried out in a transparent and accountable manner, with the necessary degree of professionalism and effectiveness.[1]

It is in the state's interest to ensure that, in all enterprises where it has a stake, minority shareholders are treated equitably, since the SOE's reputation will influence its capacity to attract outside funding and impact on the value of the company. The SOE should therefore ensure that other shareholders do not perceive the state as an opaque, unpredictable and unfair owner. Principle 3 of the OECD Guidelines states:

> The state and state-owned enterprises should recognise the rights of all shareholders and in accordance with the OECD Principles of Corporate Governance ensure their equitable treatment and equal access to corporate information.[2]

SOEs can have a vital impact on economic development and on the communities in which they are active. SOEs, therefore, need to recognize the importance of effectively managing stakeholder relations for building sustainable and financially sound enterprises. Stakeholder relations are particularly important for SOEs as they are often critical to the fulfilment of general service obligations. SOEs should therefore develop and adequately disclose their stakeholder policies. Principle 4 of the OECD Guidelines states:

> The state ownership policy should fully recognise the state-owned enterprises' responsibilities towards stakeholders and request that they report on their relations with stakeholders.[3]

SOEs should publish annually an aggregate report on operations and activities. They should develop efficient internal audit procedures and establish an internal audit function that is monitored by and reports directly to the board and to the audit committee.

SOEs, especially large ones, should be subject to an annual independent external audit based on international standards. The existence of specific state control procedures should not substitute for an independent external audit. As a general rule, SOEs should be subject to the same accounting and auditing standards as listed companies. Large or listed SOEs should disclose financial and non-financial information according to high-quality internationally recognized standards. The annual report should include:

- a clear statement to the public of the company objectives and their fulfilment;

[1] *OECD Guidelines on Corporate Governance of State Owned Enterprises* (2005), p 13
[2] *OECD Guidelines on Corporate Governance of State Owned Enterprises* (2005), p 14
[3] *OECD Guidelines on Corporate Governance of State Owned Enterprises* (2005), p 15

- the ownership and voting structure of the company;
- any material risk factors and measures taken to manage such risks;
- any financial assistance, including guarantees, received from the state and commitments made on behalf of the SOE;
- any material transactions with related entities.

Principle 5 of the OECD Guidelines states:

> State-owned enterprises should observe high standards of transparency in accordance with the OECD Principles of Corporate Governance.[1]

SOE boards should be assigned a clear mandate and ultimate responsibility for the company's performance. The board should be:

- fully accountable to the owners;
- act in the best interest of the company;
- treat all shareholders equitably.

SOE boards should carry out their functions of monitoring of management and strategic guidance, subject to the objectives set by the government and the ownership entity. They should have the power to appoint and remove the CEO. SOE boards should be composed so that they can exercise objective and independent judgement. Good practice calls for the chair to be separate from the CEO. If employee representation on the board is mandated, mechanisms should be developed to guarantee that this representation is exercised effectively and contributes to the enhancement of the board skills, information and independence. When necessary, SOE boards should set up specialized committees to support the full board in performing its functions, particularly with respect to audit, risk management and remuneration. SOE boards should carry out an annual evaluation to appraise their performance.

Principle 6 of the OECD Guidelines states:

> The boards of state-owned enterprises should have the necessary authority, competencies and objectivity to carry out their function of strategic guidance and monitoring of management. They should act with integrity and be held accountable for their actions.[2]

The Egyptian Code of Corporate Governance for SOEs (2006)

The Egyptian Code of Corporate Governance for SOEs was designed by the Egyptian Institute of Directors specifically for SOEs. The code used the

---

[1] *OECD Guidelines on Corporate Governance of State Owned Enterprises* (2005), p 16
[2] *OECD Guidelines on Corporate Governance of State Owned Enterprises* (2005), p 17

OECD's 'Guidelines on Corporate Governance for SOEs' (2004) as a reference point. The principles in the code are divided into six groups:

- ensuring the existence of an effective regulatory and legal framework for the public enterprise sector;
- the state acting as the owner;
- equitable treatment of shareowners;
- relationships with stakeholders;
- transparency and disclosure;
- responsibilities of the board of directors of public enterprises.

For more information on the code visit: www.eiod.org.

Current OECD Task Force Activity

Most SOEs in the region have found the OECD guidelines to be extremely challenging. The OECD is currently developing mechanisms and vehicles to encourage SOEs to develop the effectiveness of their corporate governance practices.

A MENA task force on Corporate Governance of SOEs has been established consisting of approximately 20 representatives of the MENA region, OECD Secretariat and OECD member countries and including representatives of MENA agencies exercising the state ownership function, regulators, SOEs, institutes, associations and academics.

The task force is expected to develop a MENA Policy Brief on Corporate Governance of SOEs, identifying priorities and proposing concrete recommendations by late 2008. In preparation of the Policy Brief, the task force will issue a comparative overview of corporate governance of SOEs in the MENA region.

SWFs

SWFs are state-owned organizations that manage state savings for the purposes of investment. *The Economist*[1] estimates that SWFs market capitalization is about US $2.9 trillion. This means that they make up about 2 per cent of the world's traded securities.

Oil and gas related SWFs make up approximately 73 per cent of the total value of SWFs. There are seven funds that have assets over US $100 billion, and these funds are sometimes known as the 'super seven' (Table 1). Two out of the top seven funds are from the MENA region.

[1] Asset-backed insecurity, *The Economist*, 17 January 2008, p 70

Table 1. The world's largest SWFs (sovereign wealth funds) – 'The Super Seven'

Country	*Fund*	*Assets (US $ Billion)*	*Inception*	*Origin*
UAE	ADIA (Abu Dhabi Investment Authority)	875	1976	Oil
Norway	The GPF (Government Pension Fund) of Norway	350	1996	Oil
Singapore	GIC (Government of Singapore Investment Corporation)	330	1981	Non-commodity
Saudi Arabia	Various	300	n/a	Oil
Kuwait	KIA (Kuwait Investment Authority)	250	1953	Oil
China	CIC (China Investment Corporation)	200	2007	Non-commodity
Singapore	Temasek Holdings	159.2	1974	Non-commodity

Source: Asset-backed insecurity, *The Economist*, 17 January 2008, p 70

SWFs in the MENA region

SWFs in the MENA region have generally been created when governments have budgetary surpluses from the oil revenues and the country has little or no international debt. The government decides that it is not possible or desirable to hold such high levels of liquidity as money or to channel it into consumption immediately and instead international investment opportunities are sought.

Table 2 shows the largest SWFs in the region. The SWFs are growing fast. A research firm[1] has recently forecasted that the MENA SWFs could grow by US $300 million in 2008.

Table 2. MENA's largest SWFs

Country	*Fund*	*Assets (US$ Billion)*	*Inception*	*Origin*
UAE	ADIA (Abu Dhabi Investment Authority)	875	1976	Oil
Saudi Arabia	Various	300	n/a	Oil
Qatar	QIA (Qatar Investment Authority)	50	2000	–
Libya	–	40	2007	Oil
Iran	OSF (Oil Stabilization Fund)	12.9	1999	Oil

Source: Asset-backed insecurity, *The Economist*, 17 January 2008, p 70

ADIA (Abu Dhabi Investment Authority)

ADIA is the largest SWF in the world. It was founded in 1976 and is responsible for investing all of the Abu Dhabi government's oil revenues and assets in countries across the world. It is one of the most influential and

[1] *RGE Monitor Research* (2007)

wealthy players in the global market and its portfolio is reportedly growing at an annual rate of about 10 per cent.

ADIA has a veil of secrecy that shrouds its activities. It publishes no accounts and over the last 30 years since it was established, it has never publicly declared the amount of assets it has under management. Its website lists on a single page just its contact details, nothing more. The authority seldom makes any public statements.

QIA (Qatar Investment Authority)

QIA is a sovereign fund whose prime objective is to achieve revenue diversification for the state of Qatar. Its strategy is to minimize risk from Qatar's reliance on energy prices and so the fund predominantly invests in international markets particularly the United States, Europe and Asia and within Qatar (but only outside the energy sector). The fund focuses on three asset classes: real estate, private equity and investment funds.

QIA also has a veil of secrecy that shrouds its activities. It publishes no accounts and does not publicly declare the amount of assets it has under management. The Authority seldom makes any public statements. However, it has recently been in the news for a number of activities of public interest:

- **November 2007.** QIA announced that it would not be proceeding with a £10.6 billion indicative offer for Sainsburys, the UK supermarket chain.
- **January 2008.** Sheikh Hamad bin Jassem al Thani, the Qatari Prime Minister, told delegates at the World Economic Forum in Davos that the QIA saw US and European banks as potential investment targets.
- **February 2008.** QIA acquired a holding in Credit Suisse in the stock market. The stake is believed to have cost no more than US $500 million, and amounts to between 1 and 2 per cent of the bank.

QIA sold its entire 9.98 per cent stake in OMX, just weeks after it said it would not make a full takeover offer for the Nordic stock exchange and technology company.

Concerns about the impact of SWFs

The high level of secrecy associated with SWFs typified by ADIA and QIA (see above) concerns many commentators. As *The Economist* recently reported:

> The idea that secretive governments are up to no good exerts a powerful hold on the collective imagination.[1]

[1] Asset-backed insecurity, *The Economist*, 17 January 2008, p 72

Some critics worry that foreign investment by SWFs are growing very rapidly in size and importance and can substantially influence prices and markets. However, there is no evidence to date that SWFs have created turbulence in the markets. Critics counter this assertion with the point that the size of the funds undoubtedly has the potential to be used malevolently should the SWF choose to pursue such a strategy.

Other critics worry that foreign investment by SWFs are more motivated by power than money and that SWFs may be seeking to control strategically important industries for political rather than financial gain. For example, many in the United States were concerned at Dubai Ports World's potential take over of P&O's business in America which included terminals in New York and New Jersey even though this strategy was never realized.

Current international developments involving the governance of SWFs

There is currently no comprehensive list of what SWFs own, nor any mandatory reporting of their investment policies. Their high levels of secrecy are a matter of grave concern to many policy makers. As a result various international bodies are exploring initiatives to improve the transparency and disclosure regimes of SWFs. Current initiatives include:

- **the IMF** currently working on a voluntary guideline for SWFs to make them more transparent;
- **the OECD** currently examining how host countries treat sovereign investors;
- **the EU** developing a voluntary code of conduct to govern SWF investment activity which will be discussed by the EU Heads of State and Governments in mid-March 2008.

Useful websites

The situation concerning SWFs changes rapidly. To get an up-to-date assessment of the current situation concerning SWFs you are recommended to visit the following websites:

- www.ft.com/swf: The Financial Times website with a section devoted to the latest developments in SWFs.

- www.sovereigninvest.org: The Sovereign Investment Council is a trade group for sovereign investors and financial firms that serve sovereign investment funds. The Council is based in Washington, DC and is an advocacy, communications and research centre established to develop, analyse and distribute information about sovereign investors and their contributions to national and global economies.

1.4

The Governance of Banks in the MENA Region

Most corporate governance commentators believe that the governance of banks is different from other commercial enterprises.

> Banks are different from the generality of companies in that their collapse affects a far wider circle of people and moreover may undermine the financial system itself, with dire effects for the whole economy. This places a special responsibility upon a bank's directors. This responsibility remains with them even though they operate under the supervision of a regulatory authority whose task is to ensure their business is conducted in a way that is conducive to stability.[1]

Banks play a key role in the business, economic and financial system within the MENA (Middle East and North Africa) region. It has been argued that the equity culture in the MENA region is weak and that banks are regarded as an important source of funding for business activity.

Boards of directors of banks

The OECD (Organization for Economic Cooperation and Development) Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[2]

The boards of banks should:

- have clearly defined areas of responsibility and oversee authority levels and reporting lines within the bank;
- provide effective strategic direction to the bank;

---

[1] Charkham, J (2003) *Guidance for the Directors of Banks*, GCGF, p 15

[2] *OECD (2004) Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

- guide, approve and oversee the bank's strategic objectives, corporate values and policies;
- oversee the development of a code of conduct for the bank employees, management and board members that conforms to international standards;
- ensure that the bank has a reliable enterprise risk management system in place;
- ensure that they are properly informed.

The Union of Arab Banks has argued[1] that banks should develop a Code of Banking Ethics that consists of a series of rules dealing with ethical and sound conduct, setting a framework for the relationship between banking institutions and their clients. The 13 principles that a Code of Banking Ethics might contain are:

- Integrity and fairness.
- Confidentiality.
- Professionalism.
- Compliance with directives.
- Monitoring procedures.
- Sound implementation.
- Transparency of transactions.
- Good customer service.
- Promotion of banking services (advertising).
- Transactions giving rise to suspicion.
- Collecting and keeping information on customers.
- Handling customer complaints.
- Inter-bank relations and rotations with other parties.

Board size

An IFC (International Finance Corporation) and Hawkamah survey of banks in the MENA region (2008)[2] identified that over half of the respondents have boards with between 6 and 10 members (Table 1).

Table 1. Board size in MENA banks

	Banks %
No Board	3
2–5	3
6–7	23
8–10	25
More than 10	41

[1] Shaker (2005) *Union of Arab Banks – Regional Corporate Governance Forum Consultative Meeting*, Amman, Jordan

[2] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

Table 2. Frequency of board meetings

	Banks %
3–5	46
6–9	21
10–12	27
13–15	3
More than 16	1

The same survey indicated that most bank boards met between 3 and 5 times per year (Table 2).

Independent directors

The board should be able to exercise objective and independent judgement for monitoring managerial performance, preventing conflicts of interest and balancing competing demands. Independence and objectivity is extremely important with respect to management and controlling shareholders.

Very few MENA banks have independent directors on their boards (Table 3). An IFC and Hawkamah survey of banks in the MENA region (2008)[1] identified that 54 per cent of banks had less than two independent directors on their boards. This is contrary to international best practice.

Boards of banks should ensure that conflicts of interest are identified, managed and, depending on their materiality, disclosed. All conflicts of interest should be identified, managed and, depending on the materiality, disclosed internally or externally. The board and all members of staff should be subject to codes of conduct established and monitored by an independent compliance function. Abusive related party transactions (including lending) may be a serious threat for banks that have few independent directors.

Board diversity

An IFC and Hawkamah survey of banks in the MENA region (2008)[2] identified a lack of diversity amongst bank boards since they found that 78

Table 3. Independent directors

	Banks %
None	41
1	13
2–5	27
6–7	3
8–10	14
More than 10	1

[1] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)
[2] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

per cent did not have any female board members, and only 1 per cent of the respondents stated that there is more than one woman on the board.

Bank chairman/chief executive officer separation

Some corporate governance commentators argue that the chairmen of banks should not normally act also as the CEO. The separation of the positions of chairman and CEO is neither mandatory nor widespread in MENA. An IFC and Hawkamah survey of banks in the MENA region (2008)[1] identified that 28 per cent of banks separate their chairman from the CEO. However, many believe that the separation of these two posts might lead to a more appropriate balance of power, increased accountability and improvement in the board's capability for decision making that is independent of management.

Bank committees

Many bank boards have found it beneficial to establish board committees. The IFC and Hawkamah survey of banks in the MENA region (2008)[2] identified that:

- 81 per cent of banks have audit committees;
- 23 per cent of banks have nominations audit committees;
- 30 per cent of banks have remuneration committees.

The audit committee should be composed of independent directors with appropriate banking and financial expertise. However, the small number of independent directors on the boards of MENA banks does not make this a feasible possibility.

Company secretary

Banks having a qualified company secretary to support the board deliberations is neither mandatory nor widespread in MENA. The IFC and Hawkamah survey of banks in the MENA region (2008)[3] identified that only 23 per cent of banks have a company secretary.

Director and board evaluation and development

Director and board evaluation is neither mandatory nor widespread in MENA. The IFC and Hawkamah survey of banks in the MENA region (2008)[4] identified that:

---

[1] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)
[2] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)
[3] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)
[4] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

- only 20 per cent of banks conducted formal evaluations of their directors, board or board committees' performance;
- 34 per cent of banks train board members on corporate governance issues.

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[1]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

Very few banks in the MENA region have investor relations departments. The IFC and Hawkamah survey of banks in the MENA region (2008)[2] identified that:

- the vast majority of banks and listed companies had a very high level of attendance at their last shareholder meeting (76 per cent of respondents);
- half of the banks and listed companies have proxy voting mechanisms;
- 97 per cent of banks sent notice of their annual general meeting to shareholders at least 15 days prior to the meeting.

Stakeholder relations and corporate responsibility

Few boards of banks in the MENA region have developed many processes for managing their stakeholder relationships. The board's principal focus seems to be focused upon satisfying the needs of the block shareholders.

There is little use of triple bottom line reporting methods (ie financial, social and environmental performance). No banks have joined the UN Global Compact (a framework for businesses that are committed to aligning their

---

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

[2] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption) and there is not yet an organizational stakeholder for the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[1]

Public disclosure is crucial for ensuring sound corporate governance of banks and promoting financial stability. In general disclosure and transparency is relatively low in the MENA region. The IFC and Hawkamah survey of banks in the MENA region (2008)[2] identified information contained in a bank's annual report (Table 4). The survey also found that 52 per cent of banks have implemented International Accounting Standards.

Table 4. Information contained in a bank's annual report

	Banks (%)
Report of the chairman of the board	79
Financial statements	76
Ownership structure and dividend policy	61
Market share, sales and marketing	49
Future plans of the company	51
Dividend history	38
Remuneration of the board	39
Names of beneficial owners	42
Biographical details of the board	26
Environment, social and economic sustainability	39
Corporate governance policies and procedures	35
Management discussion and analysis	26
Stock options policy	10

The IFC and Hawkamah survey of banks in the MENA region (2008)[3] identified the types of non-financial information published on banks' websites (Table 5).

[1] *OECD (2004) Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf
[2] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)
[3] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

Table 5. Types of non-financial information published on banks' websites

	Banks (%)
Company objectives	68
Affiliated parties	36
Identity of beneficial owners	32
Dividend policy	30
Corporate social responsibility policy	27
Company charter	26
Material risk factors	26
Remuneration of the board as a collective group	26
Remuneration of key executives	18
Remuneration of the board as individuals	14

A survey by IFC and Hawkamah survey (2008)[1] identified that 80 per cent of banks had established procedures for dealing with conflicts of interest and related party transactions.

Internal control and risk

The codes should prohibit certain activities where conflicts arise or at least enforce self-disclosure to the compliance function. Material conflicts should be disclosed to the supervisor and, where appropriate, to shareholders in the annual report. Board members and staff subject to conflicts should not be party to any decisions in which their interest is involved.

MENA banks need to develop further their internal control processes and enterprise risk management systems. Sound risk management is built on a robust system of checks and balances, following clearly documented procedures and reporting lines. Professionally competent and independent internal and external audit functions are required to monitor and test the efficiency of the bank's control system. The IFC and Hawkamah survey of banks in the MENA region (2008)[2] identified that:

- the majority of banks' boards identify and evaluate risk (87 per cent);
- 90 per cent of banks' boards oversee the internal audit function;
- 80 per cent of banks' boards oversee the internal control system.

The survey results also show that the role of compliance is in place in many of the banks in the region (64 per cent). However, less than half (43 per cent) had a compliance officer or compliance department and only 23 per cent of listed companies reported have a compliance function.

[1] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)
[2] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

Basel 2 and risk

Basel 2 is the second of the Basel Accords, which are recommendations on banking laws and regulations issued by the Basel Committee on Banking Supervision. The purpose of Basel 2, which was initially published in June 2004, is to create an international standard that banking regulators can use when creating regulations about how much capital banks need to put aside to guard against the types of financial and operational risks banks face. Advocates of Basel 2 believe that such an international standard can help protect the international financial system from the types of problems that might arise should a major bank or a series of banks collapse.

Basel 2 sets up rigorous risk and capital management requirements designed to ensure that a bank holds capital reserves appropriate to the risk the bank exposes itself to through its lending and investment practices. Generally speaking, these rules mean that the greater risk to which the bank is exposed, the greater the amount of capital the bank needs to hold to safeguard its solvency and overall economic stability.

The first pillar

The first pillar deals with the maintenance of regulatory capital calculated for three major components of risk that a bank faces: credit risk, operational risk and market risk.

The second pillar

The second pillar deals with the regulatory response to the first pillar, giving regulators much improved 'tools' over those available to them under Basel 1. It also provides a framework for dealing with all the other risks a bank may face, such as systemic risk, pension risk, concentration risk, strategic risk, reputation risk, liquidity risk and legal risk, which the accord combines under the title of residual risk.

The third pillar

The third pillar greatly increases the disclosures that the bank must make. This is designed to allow the market to have a better picture of the overall risk position of the bank.

Banks' remuneration practices

International best practice recommends that:

- the details of remuneration packages should be overseen by a board committee staffed predominantly by independent directors and the

packages should be so designed as to recognize and reward medium- and long-term performance and should permit the removal of poor performers without undue compensation;
- the total remuneration paid to the chairman, board members and all senior executives should be disclosed in the annual report to shareholders;

A survey by the IFC and Hawkamah survey (2008)[1] identified that:

- 26 per cent of banks publish remuneration figures of the board as a collective group;
- 18 per cent of banks publish remuneration figures of key executives;
- 14 per cent of banks publish remuneration figures of the board as individuals.

Bank regulation

Bank supervisors should ensure that their supervisory regime is consistent with good governance principles and take every opportunity to promote good governance in their respective areas of responsibility. Supervisors should:

- provide guidance to banks on sound corporate governance;
- evaluate banks' implementation of policies and procedures;
- evaluate the expertise and integrity of existing and proposed directors and management. Evaluate whether the bank has in place effective mechanisms through which the board and senior management execute their oversight responsibilities;
- ensure that the internal audit function conducts independent, comprehensive and effective reviews of bank risk management and internal controls;
- ensure that all supervisory regulations place appropriate emphasis on transparency in the banks' governance processes;
- evaluate the potential dangers of the bank's group structure;
- bring to the board of directors' and management's attention problems that they detect through their supervisory efforts.

OECD MENA Bank Governance Task Force (2007)

In November 2006, the MENA OECD Working Group on Corporate Governance established a task force on the corporate governance of banks in the MENA region. The task force has produced a policy brief in late 2007 that concluded:

[1] *Corporate Governance MENA Survey*, Hawkamah/IFC (2008)

> Many MENA jurisdictions do not have in place sufficient institutional infrastructure (e.g. sufficient resources, experience, focus, and know-how) necessary for effective enforcement of a sound corporate governance policy framework.[1]

For more information on the work of the task force visit: www.oecd.org.

Corporate Governance Survey of the Arab Banking Sector by the Union of Arab Banks (2006)

A total of 67 banks from Qatar, Oman, the UAE (United Arab Emirates), Yemen, Jordan and Egypt participated in a corporate governance survey in 2006. The survey revealed the following key findings:[2]

- Banks have in place a good general framework for good corporate governance. More emphasis is needed in communicating the shareholders structure and conducting structured reporting on compliance with good governance practices since only 59 per cent of the respondents indicated that compliance reports are issued and published.
- Banks have in place written policies regarding corporate governance and codes of ethics.
- Banks ensure to a large extent equitable treatment of shareholders, and they protect to a considerable extent the rights of their stakeholders. More policies need to be in place in terms of protecting minority rights. Only 39 per cent of responding banks had rules and regulations in place to protect minority shareholders which permit minority stakeholders to take action against the bank to prevent activities that might be unfairly prejudicial to the minority. About 59 per cent of banks had restrictions on cross shareholding.
- Banks enjoy a high level of disclosure of material information and financial transparency in line with international standards.
- About 70 per cent of banks offer training on corporate governance and 67 per cent on internal control processes.
- Banks have specialized committees for supervising and monitoring major business functions.
- Banks have internal and independent persons in their board; however, independent directors do not have a majority presence in these boards.
- About 55 per cent of banks conduct board self-evaluation.
- Banks, in general, do not take into consideration the evaluation of clients' corporate governance practices in their credit risk assessment systems.

---

[1] *OECD MENA Bank Governance Task Force* (2007)

[2] Survey results are available at www.oecd.org

About 42 per cent of respondents indicated that the bank's system of credit risk assessment included an evaluation of the client's corporate governance practices.

1.5

The Governance of SMEs (Small- and Medium-Sized Enterprises) and Family Businesses in the MENA Region

Definition

An **SME** is a company whose number of employees (headcount) or turnover falls below certain limits. These limits vary between countries in the region. Lebanon in its corporate governance code defined an SME as:

> A private, relatively closely held company with a number of employees of approximately 100 persons and duly formed as a 'SAL' (a Lebanese joint-stock company).[1]

A **family business** is a company owned, controlled and operated by members of one or several families.

Not all SMEs are family businesses and not all family businesses are SMEs. Family businesses are normally associated with the SME sector; however, some family businesses can be quite large. Many companies that are now publicly held were originally founded as family businesses and retain many of the original 'family' features and values. Many family businesses have non-family members as employees, but, particularly in smaller companies, the top positions are normally held by family members.

Introduction

Both SMEs and family businesses constitute more than 85 per cent of non-listed companies in the MENA (Middle East and North Africa) region. In many sectors, SMEs are associated with innovation and intense competition. However, many of these businesses have very weak corporate governance practices and are reluctant to change their traditional ways of doing

[1] The Lebanese Corporate Governance Code (2006), p 8

business. Nevertheless, if the private sector is to expand and the equity markets are to deepen in the region, it is important for authorities to introduce incentives and corporate governance reforms to take place not just aimed at companies listed on the stock exchange but also focused upon encouraging growth of SMEs and family businesses that make up the core of the private sector. The Lebanese Corporate Governance Code (2006) provides the region with an excellent example of a corporate governance initiative that is focused upon SMEs.

SMEs

The governance of SMEs compared to the governance of larger companies listed on the stock exchange is critically different in a number of ways:

- In an SME, there are usually a small and limited numbers of owners whereas listed companies have a much wider and distributed ownership.
- In an SME, the owners are well known to each other whereas this is not the case with listed companies.
- The owners of SMEs may have personal relationships in addition to business relationships whereas this is not the case with listed companies.
- The ownership of the SME will often represent a large share of the owners' personal net worth whereas this is not normally the case with listed companies and therefore the success of the business is of crucial importance.
- Exit from ownership of an SME may often be difficult financially and emotionally.
- There may be a considerable overlap in terms of owner, director and management roles in SMEs and consequent widespread confusion throughout the business.

These realities sometimes make ownership of an SME complex, interdependent and intricate and make dealing with relationships difficult in order to minimize or avoid conflicts and tensions.

The Code of Corporate Governance Code for SMEs in Lebanon (2006)

The LTA (Lebanese Transparency Association), in partnership with CIPE (Center for International Private Enterprise) created a code of corporate governance for SMEs in Lebanon which was launched in May 2006. This Code provides the region with an excellent example of how corporate governance principles can be adapted to SMEs and family businesses. The Code targets:

- ‘SAL’ Joint-stock companies – closely held companies normally with about 100 employees. Many of them are family businesses.
- ‘SARL’ Limited liability companies.

The Code is divided into a number of parts:

1. **Part 1: Introduction**
2. **Part 2: Shareholders Rights and Obligations**
   1. general rights of shareholders and key ownership functions;
   2. the rights of shareholders with regard to shareholder meetings;
   3. equitable treatment of shareholders;
   4. the protection of minority shareholders in board composition.
3. **Part 3: Board of Directors**
   1. board structure, membership and functioning of the board;
   2. fiduciary duties of board members;
   3. monitoring board functions and accountability to shareholders;
   4. determining and disclosing the remuneration of the board of directors;
   5. the board and the role of stakeholders.
4. **Part 4: Auditing and Related Aspects of Corporate Transparency**
   1. internal audit;
   2. external independent auditors.

The Code also contains appendices covering:

- shareholder rights;
- shareholder rights to information;
- the rights of shareholders with regard to shareholders meetings;
- board composition and minority shareholders;
- governance of family-owned enterprises;
- board committees;
- directors charter and duties;
- related party transactions.

For more information visit: www.transparency-lebanon.org.

Family businesses

The governance of family businesses compared to the governance of companies listed on the stock exchange is critically different in a number of ways:

- In a family business, there are usually a small and limited number of owners whereas listed companies have a much wider and distributed ownership.

- In a family business, the owners normally take a long-term strategic perspective whereas listed companies may have owners with more short-term perspectives.
- The owners of family businesses are well known to each other whereas this is not the case with listed companies.
- The owners of family businesses will have family relationships in addition to business relationships whereas this is not the case with listed companies.
- There may be certain family conflicts which are brought to the family business whereas this is not normally the case with listed companies.
- The ownership of the family business will represent a large share of the family's net worth whereas this is not the case with listed companies and therefore the success of the business is of crucial importance.
- Their presence on the board stems from their family relation and not their exclusive knowledge about the industry in which they operate.
- Exit from ownership of a family business may often be difficult financially and emotionally.
- Members of the family may feel that they are obliged to collaborate for the benefit of the business.
- The family normally has extensive knowledge about each other which may cause difficulties in some situations.
- There may be a considerable overlap in terms of owner, director and management roles in family businesses and consequent widespread confusion throughout the business.

These realities sometimes make ownership of a family business complex, interdependent and intricate and make dealing with family relationships difficult in order to minimize or avoid conflicts and tensions.

Family participation can strengthen the business because family members are very loyal and dedicated. However, managing a family business, and particularly succession planning, can present some unique problems:

- **Family versus professional management.** Appointing, promoting or dismissing a family member who is less competent than a non-family member is a common dilemma facing many family businesses. Often consultants are appointed to help families to develop effective governance structures and processes to manage issues that affect both the family and the business.
- **Succession planning.** Many founders of family businesses experience great difficulty in retiring from the business and transferring the business responsibilities to the family's next generation.
- **Fewer societal and regulatory expectations.** Because ownership is concentrated the family set up their own governance systems which may differ from the governance systems in listed companies where the corporate governance system conforms to societal and regulatory expectations (the license to operate concept).

Typical corporate governance structures in family businesses

By setting prudent corporate governance structures, rules, procedures and checks and balances to define how the company should be ruled, the possibility of conflicts, abuses and internal clashes within family businesses can be reduced. This will have a positive impact upon the company's growth and profit-making abilities. In addition, well-governed companies are best positioned in today's global marketplace to attract investors and are more agile and flexible in their responses to the ever changing business and political environments.

Many family businesses select to develop the following corporate governance structure:

- **Family Constitution.** Many families develop a formal written document in which all areas of potential tensions and conflicts are dealt with. This document normally includes:
  - The family values, which includes the family philosophy, principles, values and beliefs;
  - The family members' employment policies. This normally includes recruitment and selection, terms of employment, compensation, benefits and perquisites, performance review, promotion, internships, dismissal, departure and re-entry, retirement and leaves of absences. As a general rule wherever possible the family members' policies should be identical to non-family members' policies. Employment issues should be based on merit rather than blood relationships in order to avoid nepotism, and encourage excellence and fairness within the business;
  - The family code of conduct;
  - The family decision making;
  - A policy on conflict of interest and self-dealing;
  - Strategies for philanthropy;
  - The inclination of the family to have family or non-family as a potential successor, and the preparation of successors to key positions. As a general rule, family businesses should have a written succession plan describing the process of succession. Normally the ultimate selection decision is made by the board with a recommendation from the Family Council;
  - The family training and education strategy;
  - The shareholders' agreement which should include policies concerning the role of family shareholders, their share ownership as well as the stock transfer and stock sale policies. The value of shares at a given time should be valued by an independent recognized auditing firm, or otherwise as provided by the terms of the succession plan.
- **The Board of Directors.** The OECD Principles of Corporate Governance state that:

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]
Essentially the role of the board in the family business is to ensure the success and prosperity of the company. However, the board must take into account the interests of the family and this occurs through family directors and regular reporting from the Family Council. The board's composition should be widely representative of the shareholders' base. Many corporate governance experts suggest that the board should have a specified minimum number of independent directors to ensure professionalism on board (the Lebanese Code suggests 20 per cent).

- **Family Council.** The Council is composed of a small group representative of the family that manages the continuity of family values, family identity, family education and family socialization. It also often provides guidance to the family directors about the family's interest. The Council serves as an executive committee of the Family Assembly and oversees and coordinates the work of any family committees. The Council often is responsible for constructing the agenda for the Family Assembly. The Family Council powers and responsibilities are different from those of the board of directors. The Family Council business is geared towards preserving and maintaining the family interest, whereas the boards of directors' focus is on the success and prosperity of the business. The Family Council normally reports decisions to the board of directors and to shareholders to provide awareness of the family aspirations and direction.
- **Family Assembly.** The Family Assembly structure should include all family members. In some extended families this may be problematic as it can be difficult to draw the boundary as to who is a member of the family and who is not (eg cousins, step relations, divorced partners, etc). The whole family is encouraged to participate in the meetings. The Assembly meeting should conform to the principles of equity, transparency and accountability embodied in the Family Constitution.
  The Assembly meetings normally include:
  - a presentation by the chairman of the board;
  - a presentation by the CEO;
  - family council reports;
  - family coordinating committee reports;
  - plans and objectives for the coming year;
  - elections for committees.
- **A Family Employment Committee.** Some family businesses form a family employment committee to deal with family employment issues. Typically, the family employment committee reports to the Family Council who in turn reports to the board.

---

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Useful organizations

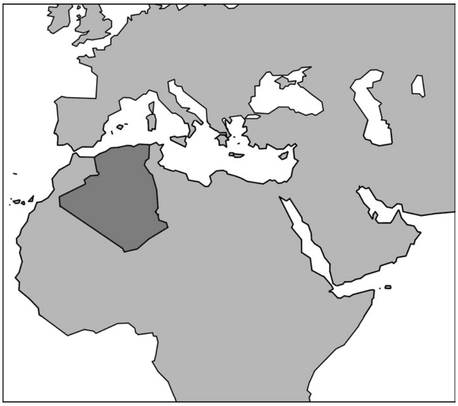
The IFB (Institute of Family and Entrepreneurial Business) at the Lebanese American University in Beirut is a resource centre and is providing thought leadership in terms of family business activities in the MENA region. It coordinates and manages research in family-owned businesses and was a contributor to the Code of Corporate Governance for SMEs in Lebanon (2006).

PART TWO:

Country Assessments

2.1

The People's Democratic Republic of Algeria



Location

The People's Democratic Republic of Algeria is bordered by Tunisia in the northeast, Libya in the east, Niger in the southeast, Mali and Mauritania in the southwest, the Western Sahara in the west, Morocco in the northwest and the Mediterranean Sea in the north.

Population

The population of Algeria is 33.3 million with a labour force of 9.3 million. It is the fourth largest country in the MENA region.[1] About 70 per cent of Algerians live in the northern, coastal area. A minority of the population inhabits the Sahara, and they are mainly concentrated in oases. Approximately 1.5 million of the population are nomadic or partly nomadic.

A total of 99 per cent of the population is Arab – Berber and Muslims.[2] Almost 30 per cent of Algerians are under 15. Languages spoken in Algeria include Arabic (official), French and Berber dialects.[3] The adult literacy rate is 70 per cent.[4]

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007

Economy

The GDP (gross domestic product) per capita in Algeria is US $7,600 and is the 11th highest in the MENA region. The economy is growing at 2.9 per cent.[1]

The major industries in Algeria are petroleum, natural gas, light industries, mining, electrical, petrochemical and food processing.[2] The oil and gas sector is the backbone of Algeria's economy, accounting for roughly 60 per cent of budget revenues, 30 per cent of GDP and over 95 per cent of export earnings.

The government's recent efforts to diversify the economy by attracting foreign and domestic investment from outside the energy sector have had little success in reducing high unemployment or improving living standards.

Legal, regulatory and corporate governance frameworks

System of government

Algeria is a Republic. The key government organs are:

- **The President.** The head of state is the president of the Republic, who is elected for a five-year term, renewable once. The president is the head of the council of ministers and of the high security council.
- **The Prime Minister.** The president appoints the prime minister who is also the head of government. The prime minister appoints the council of ministers.
- **The Parliament.** The Algerian Parliament consists of a lower chamber, the APN (National People's Assembly), with 380 members, and an upper chamber, the Council of the Nation, with 144 members. The APN is elected every five years.

Algeria is a multi-party state. All parties must be approved by the Ministry of the Interior. Currently Algeria has more than 40 legal political parties.

In 2007, the Economist Intelligence Unit's Index of Democracy ranked Algeria as an authoritarian regime and 132nd in the world in terms of democracy (out of 167 countries).[3]

---

1 *The World Factbook*, CIA, 13 December 2007
2 *The World Factbook*, CIA, 13 December 2007
3 Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates how well legal rights are enforced in all countries around the world. Table 1 provides the international comparative data for Algeria in 2008. The overall scores are relatively low and Algeria is 117th out of 178 countries in the world.

Table 1. Enforcement of contracts

	Algeria	***MENA Region minimum***	***Global minimum***
Procedures to enforce a contract	47	35 (Israel)	20 (Ireland)
Time to enforce a contract (days)	630	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to enforce a contract (% of claim)	17.4	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business 2008, World Bank

The World Bank has also ranked Algeria in terms of legal rights of borrowers and creditors. The overall scores are worse than average, and Algeria is 115th in the world ranking (out of 178 countries).

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. The programme has noted the following human rights difficulties and impediments in Algeria:[1]

- The context of combating terrorism leading to a reduction in human rights in Algeria.
- The lack of judicial independence leading to a rigorous enforcement of human rights.
- The prisons are overcrowded.
- The emergency law is restraining the right of association.
- Political parties in Algeria must be licensed by the Ministry of Interior.

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

Company and capital market legislation

The main laws in Algeria that focus upon companies and the capital markets are:

- **The Law on Currency and Credit (2003).** This law allows all foreign investors to repatriate profits, even if the revenues exceed the original amount invested. Foreign investors are also free to repatriate dividends, profits and real net income resulting from the transfer of assets or from company liquidation.
- **Ordinance No. 01 03 (2001).** This law provides the licensing regulations for domestic and foreign investment in Algeria. It recognizes the principle of freedom to invest in all activities, and there are no restrictions on the percentage of capital that can be held by a foreign investor (except for the case of hydrocarbons). The law allows the possibility of any state-owned enterprises to be privatized.
- **The Investment Code (2001).** This code established five free-trade zones in Algeria where investments are exempt from all customs, taxes and other fees.
- **The Constitution (1996).** The Constitution of 1996 permits the ownership of private property and recognizes freedoms of trade and industry.

Types of company

Companies can exist in a variety of formats in Algeria that include:

- joint-stock companies (SPA);
- limited liability companies (SARL);
- individual limited companies (EURL);
- holding companies (SP).

Business-related bodies

- **The ANDI (National Investment Development Agency).** The ANDI assists investors with facilitating administrative procedures. It provides a 'one-stop shop' in each region to simplify procedures and formalities for setting up new companies and implementing projects.
- **The CNI (National Investment Council).** The CNI is chaired by the president. The council's role is to strengthen the legal and regulatory framework for investment. It defines investment strategy and priorities, approves special investment incentives and gives final authorization for special investment schemes.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessens *et al* (2002)[1], Barca and Becht (1999)[2] and La Porta *et al* (1999)[3] have not covered this region.

Much of the industry in Algeria is carried out by SOEs (state-owned enterprises). Many of these are associated with slow growth and out-of-date machinery and infrastructure. There are some moves being made towards privatization. The Minister for State Shareholdings and Investment Promotion launched a new industry strategy in February 2007, with the aim of aligning Algeria with international standards and practices.

Cevital is Algeria's largest privately owned company and is currently pursuing a programme of diversification and is considering listing on the London Stock Exchange.

Shareholder rights and investor protection

The World Bank in its recent Doing Business 2008 study classified shareholder rights and investor protection for Algeria as average in the MENA region (see Table 2).

Table 2. Strength of investor protection

	Algeria	*MENA Region maximum*	*Global maximum*
Strength of investor protection (0-10)	5.3	8.3 (Israel)	9.7 (New Zealand)

Source: *Doing Business 2008*, World Bank

Algeria was classified as 125th out of 178 countries in the world in terms of protecting investor rights.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian Corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112

[2] Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

[3] La Porta, Rafael, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

> the corporation including the financial situation, performance, ownership and governance of the company.[1]

In general disclosure and transparency is relatively low in the MENA region. Developments are currently taking place to improve disclosure and transparency in Algeria. In particular, some countries are developing reports that comply with IFRS (International Financial Reporting Standards).

Stakeholder relations and corporate responsibility

Few Algerian private sector companies are known to have investor relations departments and no boards are known to have developed any processes for managing their stakeholder relationships. The board's principal focus seems to be focused upon satisfying the needs of the state who in many cases is the main block shareholder. There is no known use of triple bottom line reporting methods (ie reporting financial, social and environmental performance).

No Algerian companies have joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption), nor the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors, across the world.

Board structure and development

Little is known about board practices in Algeria. It is hoped that research into corporate governance will take place in this country in the near future.

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Algeria is ranked in their 2008 publication as 125th out of 178 countries in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produces data on what legal

---

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licenses and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 3 illustrates the comparative ease of starting a business in Algeria. The number of procedures involved is over double the number required in Israel and over six times that required in Australia, Canada and New Zealand.

Table 3. The number of procedures for starting a business

	Algeria	*MENA Region minimum*	*Global Best minimum*
Number of procedures	14	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: *Doing Business 2008*, World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 4 illustrates the comparative ease of starting a business in Algeria. There are many procedures involved. The time involved is over double the duration in Egypt. The cost involved is average and the required minimum capital is high at 45 per cent of per capita income.

Table 4. Starting a business statistics

	Algeria	*MENA Region minimum*	*Global Best minimum*
Time (days)	24	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	13.2	1.6 (Kuwait)	0 (Denmark)
Minimum capital (% income per capita)	45.2	0 (Israel, Saudi Arabia)	0 (Australia Canada, Ireland, Mauritius, New Zealand, Thailand, United Kingdom and the United States)

Source: *Doing Business 2008*, World Bank

Algeria is ranked 131st out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers restrictions on weekend and night work, requirements relating to working time and the work week and mandated days of annual leave with pay. The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).

- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation. The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 5 illustrates the comparative level of labour regulations in Algeria. The rigidity of employment index and the non-wage labour costs are relatively high. The firing cost, however, is average.

Table 5. Labour regulations

	Algeria	*MENA Region minimum*	*Global minimum*
Rigidity of employment index (0-100)	48	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non Wage labour costs (% of salary)	26.8	5.7 (Israel)	0 (Bangladesh Botswana, Ethiopia and Maldives)
Firing cost (weeks of salary)	17.0	0 (Iraq)	0 (Denmark)

Source: *Doing Business 2008*, World Bank

Algeria is ranked 118th out of 178 countries in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 6).

Table 6. Credit information

	Algeria	*MENA Region maximum*	*Global maximum*
Public registry coverage (borrowers / % adults)	0.2	22.2 (Iran)	67.1 (Portugal)
Private bureau coverage (% of adults)	0.0	91.6 (Israel)	100 (Argentina Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit information index (1-6)	2	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: *Doing Business 2008*, World Bank

Algeria is ranked 115th out of 178 countries in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Algeria has an average number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Algerian companies require high levels of staff time to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Algeria has an extremely high total tax rate.

Table 7. Paying taxes

	Algeria	*MENA Region minimum*	*Global minimum*
Payments (number per year)	33	13 (Iraq)	2 (Sweden, Maldives)
Time to pay taxes (hours per year)	451	12 (UAE)	12 (UAE, Maldives)
Total tax rate (% of profit)	72.6	14.4 (UAE)	8.4 (Vanuatu)

Source: *Doing Business 2008*, World Bank

Algeria is ranked a lowly 157th out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Algeria's import and export documentation requirements are average. The country's times to import and export are average. Its costs to import and export are relatively high (Table 8).

Table 8. Importing and exporting

	Algeria	*MENA Region best practice*	*Global best practice*
Documents to import	9	4 (Israel)	3 (Denmark, Sweden)
Documents to export	8	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada Estonia, Panama and Micronesia)
Time to import (days)	23	12 (Israel)	3 (Singapore)
Time to export (days)	17	12 (Israel)	5 (Denmark Estonia and Singapore)
Cost to import (US $ per container)	1,378	462 (UAE)	367 (Singapore)
Cost to export (US $ per container)	1,198	462 (UAE)	390 (China)

Source: *Doing Business 2008*, World Bank

Algeria is ranked 114th out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Algeria has a relatively fast process.
- **The cost** to go through the process. The cost of the insolvency process in Algeria is relatively low.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceedings. The Algerian rate is good relative to other countries in the region.

The statistics for Algeria are listed in Tables 9 and 10.

Table 9. Closing a business – time and cost

	Algeria	*MENA Region minimum*	*Global minimum*
Time to go through insolvency (years)	2.5	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of insolvency (% of estate)	7.0	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: *Doing Business 2008*, World Bank

Table 10. Closing a business – recovery rate

	Algeria	*MENA Region maximum*	*Global maximum*
Recovery rate (cents per US $)	41.7	51.5 (Tunisia)	92.6 (Japan)

Source: *Doing Business 2008*, World Bank

Algeria is ranked 45th out of 178 countries in the world in terms of ease of closing a business.

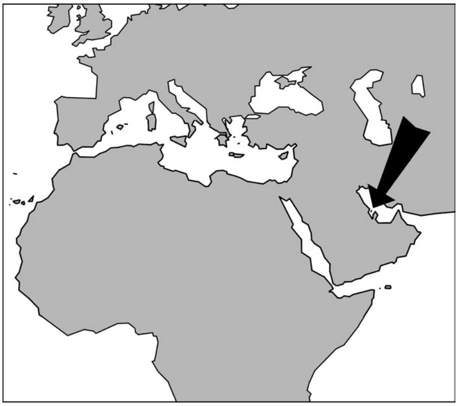
Summary

Algeria is a country which is heavily dependent upon oil and gas. The GDP per capita is the eleventh highest in the MENA region. The economy is growing at 2.9 per cent.

Algeria has a large public sector but steps are currently being taken to increase private sector activity. The importance of the private sector is expected to grow over the coming years. Company law and corporate governance are relatively undeveloped compared to international best practices. Further corporate and capital market legislation will be required in the near future. Algeria is ranked by the World Bank in 2008 as 125th out of 178 countries in the world in terms of ease of doing business.

2.2

The Kingdom of Bahrain



Location

The Kingdom of Bahrain is an archipelago of 33 islands in the Persian Gulf. It is the smallest of the Arab states. Saudi Arabia lies to the west and is connected to Bahrain by the King Fahd Causeway, and Qatar is to the south across the Gulf of Bahrain. The Qatar–Bahrain Friendship Bridge being planned will link Bahrain to Qatar as the longest fixed link in the world.

Population

The population of Bahrain is 0.7 million with a labour force of 0.4 million. It has the smallest population in the MENA region.[1] Eighty-one per cent of the population are Muslims and 62 per cent are Bahrainis. A large part of the population is of Iranian descent. In Bahrain, there are many immigrants and guest workers from South and South-East Asia.[2] Languages spoken in Bahrain include Arabic, English, Farsi and Urdu.[3] The adult literacy rate is 87 per cent.[4]

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007

Economy

The GDP (Gross Domestic Product) per capita in Bahrain is US $25,600. It is the fourth highest in the MENA region. The economy is growing at 7.1 per cent.[1]

The major industries in Bahrain are aluminium, oil and gas, ship building and repair, financial services and tourism.[2] Petroleum production and processing account for about 60 per cent of export receipts, 60 per cent of government revenues and 30 per cent of GDP.

Legal, regulatory and corporate governance frameworks

System of government

Bahrain is a constitutional monarchy. Bahrain became a kingdom when the Amir Hamad Bin Isa Al-Khalifa proclaimed himself king in 2002. The main organs of government are:

- **The Prime Minister.** The prime minister is the head of government and chairs the cabinet of 23 members. The prime minister, Sheikh Khalifa Bin Salman Al-Khalifa, is the longest serving prime minister in the world.
- **The Chamber of Deputies.** The chamber of deputies was established in 2002. It is an elected lower house and has 40 members. Members serve four-year terms.
- **The Shura Council.** The Shura council is the upper house and is appointed by the King. It has 40 members.
- **The Supreme Judicial Council.** The Supreme Judicial Council was established in 2002. It regulates the country's courts.

Women were granted the right to vote and stand in national elections for the first time in the 2002 election. The country's first female cabinet minister was appointed in 2004.

In 2007, the Economist Intelligence Unit's Index of Democracy ranked Bahrain as an authoritarian regime and 123rd in the world in terms of democracy (out of 167 countries).[3]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates how well legal rights are enforced in 178 countries around the world. Unfortunately, Bahrain is not included in the World Bank rankings and so international comparisons are not readily available.

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN (United Nations) documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in Bahrain:[1]

- Laws relating to terrorism, public assembly and demonstrations in 2006 have reduced basic freedoms.
- There is significant trafficking in people especially women.

Company and capital market legislation

The main laws focusing upon companies and the capital markets are:

- **Commercial Secrecy Law – Decree No. 7 (2003)**;
- **Implementing Regulations of the Commercial Companies Law – Ministerial – Order No. 6 (2002)** – The 'Companies Law';
- **Commercial Companies Law – Decree No. 21 (2001)**;
- **The Commercial Law – Decree No. 7 (1987)** – The 'Commercial Law';
- **Regulations of the Bahrain Stock Exchange – Decree No. 4 (1987)**;
- **Ministerial Order No. 25 (1977)**. This order created a specific entity known as the exempt company, an offshore company introduced in order to encourage foreign companies to locate their regional headquarters in Bahrain. Bahrain is an important financial centre and many of the offshore entities are banking units and investment banks;
- **The Law of Commercial Companies – Decree No. 28 (1975)**. This law contains provisions relating to the liquidation and winding-up of companies.

A new company law is currently being developed and will be introduced shortly.

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

Corporate governance code

A code is currently being developed by the National Committee on Corporate Governance. The code, once issued, will apply to listed companies and financial companies. The application is likely to be on the basis of comply or explain. The principles are likely to cover:

- the effective, collegial and informed board;
- directors' loyalty to the company;
- rigorous controls for financial audit, internal control and compliance with the law;
- procedures for appointment, training and evaluation of the board;
- remuneration of directors;
- management structures;
- the board's communication with shareholders;
- corporate governance disclosures.

The appendices cover:

- independent directors;
- audit committees;
- nominating committees;
- remuneration committees.

A website to disseminate corporate governance developments in the Kingdom is currently being planned and further research on corporate governance practices in the Kingdom is likely to take place over the course of 2008.

Types of company

In general all joint-stock companies, limited liability companies and partnerships have to have at least 51 per cent of the capital owned by Bahraini nationals. Offshore exempt companies and offshore banking companies relax these restrictions on foreign ownership.

The following types of companies are found in Bahrain:

- **Joint-stock companies**. A joint-stock company can take the form of an exempt joint-stock company, a closed joint-stock company or a public joint-stock company. A publicly listed joint-stock company requires a minimum of 51 per cent Bahraini ownership but the exempt and closed joint-stock companies may be completely foreign owned. All forms of joint-stock company must maintain permanent offices in Bahrain.[1]

[1] www.infoprod.co.il/country/bahrai2b.htm

- **Public stock companies.** Public stock companies may only be established by permission from the Ministry of Commerce and supported by a decree from the Amir. Seven founding shareholders are required in order to establish a public stock company who together must subscribe between 7 and 20 per cent of the shares of the company. The public stock company must have a board of directors composed of between 3 and 12 directors, each nominated for a three-year term. A majority of the directors must be Bahrainis who reside in the country. Bahraini shareholders can only sell their shares to other Bahraini nationals.[1]
- **Closed stock companies.** Closed stock companies are formed in the same manner as public stock companies and may be formed without a decree from the Amir provided that the founders submit an affidavit affirming that the company Memorandum and Articles of Association comply with the law; that all the shares of the company have been subscribed for by the founders and the value of the shares has been deposited in an authorized bank, and that the founders have established the necessary management for the company. Five founding shareholders are required to establish a closed stock company.[2]
- **Limited liability companies (WLL).** The limited liability company has shares which are not open to public subscription. The company must have at least 2 and no more than 50 shareholders who are liable for the debts of the company only to the extent of their respective interest in the capital.[3]

  At least one shareholder must be a Bahraini national, and the total shareholdings by Bahrainis may not be less than 51 per cent. The words 'With Limited Liability' must follow the name of the company. The limited liability company must have a limited life span not exceeding 25 years, which may be extended by a unanimous resolution of the shareholders. There is no legal requirement for a board of directors unless the number of partners exceeds two. A percentage of the company's profits must be allocated on an annual basis for depreciation and a certain rate of the net profits thereafter must be allocated to a legal reserve until such reserve equals 25 per cent of the company's capital. Limited liability companies may not engage in banking, insurance or brokerage activities.

  Companies must have a minimum capital of 20,000 Bahraini Dinars (BHD), with not less than 2 and no more than 50 shareholders. A Single-Owner Company can be owned by one person and has higher capital requirements (BHD 50,000). The WLL limits the liability of its shareholders to the amount of their paid capital. The WLL cannot make a public offering of either shares or debt, and its shares are non-negotiable. A WLL may not undertake banking or insurance business or investment funds for third parties. The memorandum of association will also contain full details of any capital and may provide for a board of managers and

[1] www.infoprod.co.il/country/bahrai2b.htm
[2] www.infoprod.co.il/country/bahrai2b.htm
[3] www.infoprod.co.il/country/bahrai2b.htm

specify the manner in which the board will operate; otherwise it must specify a supervisory board that should consist of at least three partners. If the number of shareholders is less than 10, and no supervisory board is specified, then the law provides that partners who are not designated as managers have the right to supervise the acts of the managers and have full access to the company's records.

Unlike joint-stock companies, the shareholders of a WLL are required to pay the capital in full prior to incorporation. The shares of a WLL are non-negotiable but may be sold subject to a written instrument, provided that other partners have the pre-emptive right of first refusal. The company is administered by one or more managers who are appointed initially by the promoters, but subsequently by a resolution of the general assembly meeting. The company must have a general assembly consisting of all partners, which must convene at least once every year within four months of the financial year end, and for which a greater than 50 per cent quorum is required. If this is not achieved then a second meeting may proceed after 10 days irrespective of the number attending.

Provisions in the Company Law

The Board

- Every listed company must adopt and publish its own corporate governance code. This is not required for unlisted companies. The required contents for the code are fairly detailed.
- A public company must comply or explain annually regarding its code.
- Director remuneration is subject to shareholder approval.
- Shareholders may nominate board candidates.
- A joint-stock company must have at least five directors appointed for a period of three years renewable.
- Three independent directors are required in public companies – independent directors are defined in detail.
- There is a three-year maximum term for directors with no limit on re-election.
- The chairman may also be the CEO.
- Three board committees are required: audit, nominating and remuneration, with independent director membership.
- Cumulative voting for board is specifically permitted but not required.
- The directors' duties of care and loyalty and the business judgement rule are stated in detail and are similar to the UK and US case law. The duties apply to directors, officers, controlling shareholders (in some cases) and WLL managers in all forms of company.
- Disclosure of conflicts of interest is required.

The shareholders

- An AGM (Annual General Meeting) is required. The agenda must include director election and remuneration, auditor approval, financial statement review.
- All listed companies are required to review the corporate governance code on a comply or explain basis.
- 10 per cent of shareholders can call an extraordinary shareholder meeting.
- There are detailed rules for notices, agenda, secret ballots, quorum and proxies for meetings.
- 5 per cent of shareholders may propose two-agenda items for the AGM.
- Certain major actions such as charter amendments or increases in authorized shares require a two-thirds majority vote, unless the charter reduces this to not less than a simple majority.
- There are two types of shares: common and preferred. Pre-emptive rights exist unless the charter provides otherwise.

Business-related bodies

Bahrain Chamber of Commerce and Industry

The first Chamber of Commerce in the Arabian Gulf was established in Bahrain in 1939. The Bahrain Chamber is considered one of the leading Chambers of Commerce and Industry in the region and has played an effective role in enhancing the importance of the private sector in the country's development.

For more information visit: www.bahrainchamber.org.bh.

BIBF (The Bahrain Institute of Banking and Finance)

In 1981, the BIBF was founded by the commercial banks in Bahrain to provide training for the banking community. The BIBF offers a wide range of banking, finance, insurance, management, marketing and information technology courses. The BIBF also organizes workshops and training programmes related to Islamic banking.

The Bahrain Stock Exchange

The stock exchange is a self-regulated, autonomous organization that was founded in 1989. Its board of directors is composed of representatives from the Bahrain Monetary Authority, the Ministry of Commerce and the Ministry of Finance.

There are 46 companies listed on the market. The capitalization of the market is US $37.5 billion and the average company capitalization is US $815 million.[1]

For more information visit: www.bahrainstock.com.

The CBB (Central Bank of Bahrain)

The CBB (formerly called the Bahrain Monetary Agency) regulates the capital market and is responsible for introducing corporate governance requirements for listed companies. The CBB has recently issued new regulations aimed at enhancing risk management by Bahrain's banks, including Islamic banks. The new regulations relate to the implementation of Basel 2, the new international regime on capital adequacy and risk management for banks. The CBB Basel 2 Pillar One regulations will come into effect in January 2008, when Basel 2 is implemented in Bahrain for locally incorporated banks.

For more information visit: www.cbb.gov.bh.

IIRA (The Islamic International Rating Agency)

The IIRA was founded in 2005, with CBB support, to assist in the development of the regional financial markets by providing an assessment of the risk profiles of Islamic organizations and financial instruments.

For more information visit: www.iirating.com.

IIFM (The International Islamic Financial Market)

The IIFM was founded in 2001 through the collective efforts of the central banks and monetary agencies of Bahrain, Brunei, Indonesia, Malaysia, Sudan and Saudi Arabia. The IIFM facilitates secondary markets for Islamic instruments. It has two primary roles: market education and Shari'a authentication, which contribute to greater self-regulation and promotion of Islamic money and capital markets.

For more information visit: www.iifm.net.

MOIC (Ministry of Industry and Commerce)

The MOIC acts as the registry of companies and ensures that the objects clause is fully complied with. The Ministry also attends General Assembly meetings of public companies when considered appropriate.

The Ministry is responsible as the regulator and commercial infrastructure architect for protecting investors, creditors and the general public against the acts of companies and to avoid damage to the national economy. It encourages inward investment as a means of promoting economic develop-

---

[1] The National Investor (TNI) (2008) *It's a family matter* Survey, TNI, Abu Dhabi

ment. The CBB and the MOIC have recently formed the National Committee on Corporate Governance Initiative to raise awareness of corporate governance in the Kingdom.

National Committee on Corporate Governance

The National Committee includes representatives from the Ministry of Industry and Commerce, the Central Bank, the Capital Market Supervision Directorate, the Bahrain Chamber of Commerce and Industry, the Bahrain Competitive Council, the Bahrain Accountants Association and a number of influential businessmen. The committee is currently finalizing a consultative draft of the corporate governance code.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessens *et al* (2002),[1] Barca and Becht (2002)[2] and La Porta *et al* (1999)[3] has not covered this region.

The vast majority of companies in Bahrain are privately owned. There are few listed companies in Bahrain and there is not a very rapid movement toward additional listings.

The World Bank Equity Markets Report identifies that Bahrain has 47 listed companies, the market capitalization to GDP ratio is 120 per cent and the market capitalization concentration in the top 10 listed companies is 95 per cent.[4] Table 1 provides details of equity market capitalization and concentration.

Table 1. Equity market capitalization and concentration

Market Capitalization as percentage of GDP	*Top 10 companies as a percentage of total market*	*Total number of companies*
126%	78%	47

Source: *Doing Business 2008*, World Bank

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations*, Journal of Financial Economics,* Volume 58 No. 1, pp 81–112

[2] Barca, Fabrizio and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

[3] La Porta, Rafael, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 1, pp 471–517

[4] World Bank Financial Indicators, *Equity Markets Report* [Accessed February 2008] Available at www.financial indicators.org

Bank finance and retained earnings are the main source of funds for Bahraini companies. Companies enjoy relatively easy access to capital from the banks and frequently lending covenants are weak.

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[1]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

In the Kingdom of Bahrain, shareholders have the following rights specified in the company law and listing rules:

- Shareholders have one share-one vote at general meetings.
- Only shareholders who own 10 per cent or more of share capital are allowed to appoint a proxy.
- Cumulative voting for director elections is not allowed.
- Shareholders with a minimum equity participation of 10 per cent may directly appoint a board member.
- Shareholders of the same class of stock are all treated equally regardless of their ownership participation.

The Institute of International Finance Inc and Hawkamah Survey (2006)[2]

In 2006, the Institute of International Finance Inc and Hawkamah rated minority shareholder protection in Bahrain. The ratings are shown in Table 2.

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf
[2] The Institute of International Finance Inc and Hawkamah *MENA Survey* (2006)

Table 2. Rating of minority shareholder protection

Voting rights	1.5
Changes to the company and its capital structure	1.5
Shareholder meetings and other rights	3.0
Minority shareholder protection overall	**2.0**

Scale: 1 = low rating; 5 = high rating

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[1]

In general, disclosure and transparency is relatively low in the MENA region.

The Institute of International Finance Inc and Hawkamah Survey (2006)

In 2006, the Institute of International Finance Inc and Hawkamah rated the transparency in Bahrain as 2.5 on a scale where 1 = low rating and 5 = high rating.

Stakeholder relations and corporate responsibility

Very few Bahraini companies have investor relations departments and few boards have developed many processes for managing their stakeholder relationships. The board's principal focus seems to be focused upon satisfying the needs of the block shareholders. There is little use of triple bottom line reporting methods (ie reporting financial, social and environmental performance). One company, Bahrain Maritime and Mercantile International, has joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption). No companies have yet become organizational stakeholders of the Global Reporting Initiative – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Board structure and development

The OECD Principles of Corporate Governance states that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

The Commercial Company Law requires:

- directors must own shares with a minimal nominal value of BHD 10,000;
- board members may not give a proxy to any other person unless so authorized by the Articles of Association and only to a member of the board;
- a director must declare any interest to the board and shall not participate in any debate or voting with respect to such issues where he is personally involved.

The National Investor (TNI) Survey (2008)[2]

The TNI conducted a census on all of the listed companies in Bahrain and identified that:

- The average board size was 8.8 (the minimum number of directors was 5 and the maximum number was 15).
- Bahrain had the following distribution of mandates per director on a listed company:
  - 90 per cent of directors sit on the board of only one company;
  - 6 per cent of directors sit on the board of two companies;
  - 3 per cent of directors sit on the board of three companies;
  - 0 per cent of directors sit on the board of four companies;
  - 1 per cent of directors sit on the board of five companies.

The survey identified that Bahrain had four women on boards of listed companies and that 41 per cent of listed companies had at least two directors from the same family.

Ease of doing business

The World Bank annually produces comparative international data on the following topics:

---

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

[2] The National Investor (TNI) (2008) *It's a family matter* Survey, TNI, Abu Dhabi

- starting a business;
- employing workers;
- getting credit;
- paying taxes;
- international trade;
- closing a business.

Unfortunately, the World Bank does not include Bahrain in its survey and so data is not available.

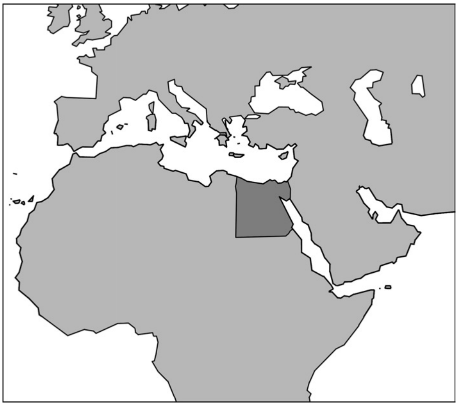
Summary

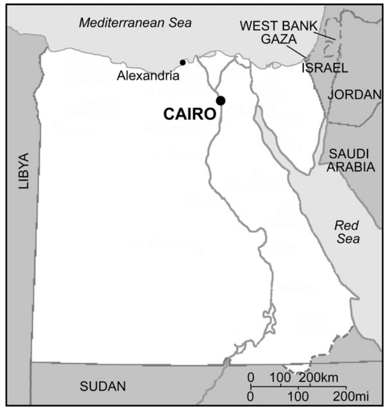
The GDP per capita in Bahrain is the fourth highest in the MENA region and the economy is growing at 7.1 per cent. The economy is heavily dependent upon petroleum production and processing.

Company law and corporate governance are relatively developed compared to other countries in the region. The Central Bank and the Capital Markets Supervision Directorate have been very proactive in raising the issue of corporate governance and incorporating it in their regulation. Further corporate and capital market legislation and a new corporate governance code will be introduced in the near future.

2.3

The Arab Republic of Egypt





Location

The Arab Republic of Egypt is in North Africa and borders Libya to the west, Sudan to the south and the Gaza Strip and Israel to the east. The northern coast borders the Mediterranean Sea and the eastern coast borders the Red Sea.

Population

Egypt has a population of 80.3 million with a labour force of 21.8 million. It is the most populated country in the MENA region.[1] About half of Egypt's residents live in urban areas, with the majority living in the densely populated centres of greater Cairo, Alexandria and other cities in the Nile Delta. The large areas of the Sahara Desert are sparsely inhabited. Egypt hosts a large number of refugees and asylum seekers are estimated to number between 500,000 and 3 million.

Ninety-six per cent of the population are Muslims (mostly Sunni) and the main language spoken is Arabic.[2] The adult literacy rate is 71 per cent.[3]

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007

Economy

The GDP (Gross Domestic Product) per capita in Egypt is US $4,200 and is one of the lowest (15th out of 19 countries) in the MENA region. The economy is growing at 6.8 per cent.[1]

The major industries in Egypt are agriculture, manufacturing, services, media and petroleum exports.[2] The major problems facing the Egyptian economy are a rapidly growing population, limited arable land and a dependence on the Nile for agricultural activity. The country's main revenues come from tourism and ships travelling through the Suez Canal.

Legal, regulatory and corporate governance frameworks

System of government

The Egyptian Republic was founded in 1953. The key government organs are:

- **The President.** The president has considerable powers. He or she has traditionally been elected in single-candidate elections for more than 50 years. The last presidential election, in which President Hosni Mubarak won a fifth consecutive term, was held in September 2005.
- **The Parliament.** The parliament of Egypt enacts laws, approves the general policy of the State, approves the general plan for economic and social development and the general budget of the State, supervises the work of the government, and has the power to impeach the president, or replace the government and its prime minister. The parliament consists of two legislative chambers:
  - The People's Assembly, a 454-member lower house.
  - The Shura Council, a 264-member upper house.

  The parliament meets for one nine-month session each year:
- **The Egyptian Judicial System.** The Egyptian Judicial System is an independent branch of the government which includes both secular and religious courts. The legal code is derived largely from the Napoleonic Code.

In 2007, the Economist Intelligence Unit's Index of Democracy classified Egypt as an authoritarian regime and ranked it 115th in the world in terms of democracy (out of 167 countries).[3]

---

1 *The World Factbook*, CIA, 13 December 2007
2 *The World Factbook*, CIA, 13 December 2007
3 Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the WB (World Bank) rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for Egypt in 2008. The overall scores are worse than average, and Egypt is ranked 145th in the world (out of 178 countries).

Table 1. Enforcement of contracts

	Egypt	*MENA Region minimum*	*Global minimum*
Procedures to enforce a contract	42	35 (Israel)	20 (Ireland)
Time to enforce a contract (days)	1,010	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to enforce a contract (% of claim)	25.3	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The WB has also ranked Egypt in terms of legal rights of borrowers and creditors. The overall scores are worse than average, and Egypt is 115th in the world ranking (out of 178 countries).

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in Egypt:[1]

- In April 2006, the People's Assembly extended the emergency laws of 1981 for a further two years which limit human rights in Egypt.
- Civilians are tried by military courts and the authorities continue to hear some cases in exceptional courts.
- There is a lack of judicial independence.
- Excessive use of force is often shown during demonstrations.
- Torture cases persist.

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

- Obstacles to the right of association persist.
- Laws restricting syndicates reduce human rights.
- Legal obstacles concerning the establishment of political parties reduce human rights.
- The licensing of rallies reduces the right of assembly.

Human rights organizations including Amnesty International and Human Rights Watch have for many years criticized Egypt's poor human rights record.

Company and capital market legislation

Egypt possesses a well-established legal and regulatory framework that focuses upon companies and the capital markets. The corporate legal framework has its origins in French Civil Law. However, Anglo-American common law concepts are prominent in the capital market and central depository laws. The major company and capital market laws and regulations are:

- **Manual on corporate governance executive rules for unlisted securities intermediaries Decision No. 62 (2007).** The CMA (Capital Markets Association) manual lists the regulatory requirements and identifies the main functions of the board, the obligations of directors and the role of the auditor. It has an annex about the internal monitoring system of a company.
- **CASE (Cairo and Alexandria Stock Exchange) Listing Rules (2002).**
- **The Investment Law No. 8 (1997).** This law allows joint-stock companies and limited liability companies to be wholly controlled by foreigners. In the case of limited liability companies at least one of the general managers must be an Egyptian citizen.
- **Capital Market Law No. 95 (1992)**. This law is the backbone of the legislative structure of the Egyptian financial market, it defines the regulatory role of the Egyptian CMA involving organizing and developing the capital market, supervising the efficient performance of its functions and observing market integrity, fairness and transparency. It also provides the legal framework for the CASE and regulates the operations of the market participants.
- **Company Law No. 159 (1981)**. This law establishes the basic company forms that include joint-stock companies, partnerships formed through the allocation of shares and limited liabilities companies.

Corporate governance codes

There are two corporate governance codes in Egypt:

- The Code of Corporate Governance for Listed Companies was developed by the EIoD (Egyptian Institute of Directors) and published in August 2005.
- The Code of Corporate Governance for Stated-Owned Enterprises was developed by the EIoD and published in July 2006.

The Code of Corporate Governance for Listed Companies (2005)

The principles are applicable to all joint-stock companies listed on the Egyptian Stock Market (both Egyptian and foreign companies). The code articulates corporate governance principles in the following areas:

- **The General Assembly.**
- **Board of Directors.**
- **Audit Committee.** An audit committee should be formed from the non-executive directors to check internal controls and the company's working practices. It should comprise not less than three non-executive members. One member should be a financial and accounting expert. In the case of an insufficient number of non-executives, one or more members may be appointed from outside the company. The committee should meet at least once every three months.
- **External Audit.** The external auditor must be independent from the company and the board.
- **Disclosure of Policies.** At least once a year the company should disclose environmental, social, safety and health policies to shareholders, customers and employees.
- **Rules to avoid conflicts of interest.**
- **Corporate governance rules for other companies.** Closed or family held joint-stock companies and limited liability companies should adhere to these rules as closely as possible.

For more information visit: www.eiod.org.

The Code of Corporate Governance for State-Owned Enterprises (2006)

This code used the OECD's 'Guidelines on Corporate Governance for State Owned Enterprises' (2004) as a reference point. The principles in the code are divided into six groups, ensuring the existence of an effective regulatory and legal framework for the:

- public enterprise sector;
- the State acting as the owner;
- equitable treatment of shareowners;
- relationships with stakeholders;
- transparency and disclosure;
- responsibilities of the board of directors of public enterprises.

For more information visit: www.eiod.org.

Business-related bodies

CASE (Cairo and Alexandria Stock Exchange)

The CASE is comprised of two exchanges, Cairo and Alexandria, both of which are governed by the same board of directors and share the same trading, clearing and settlement systems. The Alexandria Stock Exchange was officially established in 1888, with Cairo following in 1903.

For more information visit: www.egyptse.com.

The CMA (Capital Markets Authority)

The CMA is the securities market regulator. The authority also provides the training for obtaining a license to trade on the Egyptian Stock Exchange. The CMA holds monthly meetings with the stock exchange chairman, CMA chairman, the Minister of Investment and representatives from other ministries.

For more information visit: www.cma.gov.eg.

The Egyptian Association for Investment Management

The Association was founded in 2001. Its members include banks, insurance companies and asset managers. It provides training courses and workshops to improve the professionalism of its members. It also certifies portfolio managers to ensure performance quality.

For more information visit: www.eima.org.eg.

The EBA (Egyptian Businessman's Association)

The EBA was founded in 1975. It is a non-governmental, non-profit organization that aims at mobilizing the efforts of Egyptian businessmen to contribute efficiently to the economic and social development in Egypt.

For more information visit: www.eba.org.eg.

The ECMA (Egyptian Capital Markets Association)

The ECMA is an association of 220 members' organizations working in the capital market in Egypt. The Association has created a dispute resolution mechanism to help mediate conflicts between members, as well as between members and regulators.

For more information visit: www.ecma.org.eg.

The EIoD

The EIoD was established in 2003. It was the first institute to focus on corporate governance in the Arab region.

The activities of the EIoD are targeted at directors, key executives and shareholders in companies, FOEs (Family Owned Enterprises), financial institutions and state owned enterprises.

The EIoD is accountable to the Ministry of Investment. It collaborates with many leading international organizations such as the WB, IFC (International Finance Corporation), CIPE (Center for International Private Enterprise), the EU and the FSVC (Financial Services Volunteer Corps).

For more information visit: www.eiod.org.

The EJB (Egyptian Junior Business Association)

The EJB is an association of Egyptian Junior Business people who are committed to the development of a culture of excellence, ethics and public service. The Association has 350 members covering the majority of sectors in the Egyptian business community. A manual of Corporate Governance for Family Business was developed by the EJB and published in October 2006.

For more information visit: www.ejb.org.eg.

FEI (The Federation of Egyptian Industries)

The FEI coordinates the 16 Industrial Chambers that represent the most active sectors within the Egyptian business community. The Chambers facilitate the improvement in performance and productivity of their sector members.

For more information visit: www.fei.org.eg.

The GAFI (General Authority for Investment and Free Zones)

GAFI was founded in 2004 and is a 'One-Stop Shop' for investors in Egypt. Services provided by GAFI include company registration, site location, partner identification, contracts and license acquisition. GAFI's services are provided at no cost to the investor. GAFI also issues licenses on certain tax and custom exemptions granted to investors as well as prepares investment statistics.

For more information visit: www.gafinet.org.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessens *et al* (2002)[1], Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] did not cover this region.

The WB Equity Markets Report identifies that Egypt has 744 listed companies, the market capitalization to GDP ratio is 66 per cent and that the market capitalization concentration in the top 10 listed companies is 49 per cent.[4]

Bank finance and retained earnings are the main source of funds for Egyptian companies. Companies enjoy relatively easy access to capital from the banks and frequently lending covenants are weak.

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[5]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

Many Egyptian listed companies are held by relatively few shareholders. In many cases this is due to tax laws encouraging small companies that would not be listed in most other jurisdictions in the region.

---

1 Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112

2 Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

3 La Porta, R, Lopez de Silanes F, Schleifer A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No.2, pp 471–517

4 World Bank Financial Indicators, *Equity Markets Report* [Accessed February 2008] Available at www.financial indicators.org

5 OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

The state plays a major role in the ownership of many listed companies. In 2004, the WB report identified that 35 per cent of an average typical listed company is directly held by the state or by a public sector institution.[1]

The WB ROSC (Report on the Observation of Standards and Codes) – Egypt (2004)

In 2004, the WB ROSC corporate governance assessment for Egypt identified that the basic rights of shareholders were observed. The report noted that shareholders participated in most fundamental decisions with either a 66 or 75 per cent supermajority required. It identified that few takeover rules were observed and that it was uncommon for institutional investors to have voting policies.

The WB in its more recent Doing Business 2008 study classified shareholder rights and investor protection for Egypt as average in the MENA region (see Table 2).

Table 2. Strength of investor protection in Egypt

	Egypt	MENA Region maximum	Global maximum
Strength of investor protection (0-10)	5.0	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

Egypt is classified as 83rd out of 178 countries in the world in terms of protecting investor rights.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[2]

In general disclosure and transparency is relatively low in the MENA region.

The WB ROSC – Egypt (2004)[3]

In 2004, the WB ROSC for Egypt identified that quarterly and annual reports were produced but there was little forward looking management discussion and analysis (MD&A), risk management or governance reporting.

---

1 The World Bank Report on the Observation of Standards and Codes – Egypt (2004)

2 OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

3 The World Bank Report on the Observation of Standards and Codes – Egypt (2004)

Stakeholder relations and corporate responsibility

In 2004, the WB ROSC corporate governance assessment for Egypt identified that stakeholders have a number of legal protections and have access to legal process to obtain redress.

The Global Compact

The Global Compact has 10 principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus and are derived from:

- the Universal Declaration of Human Rights;
- the International Labour Organization's Declaration on Fundamental Principles and Rights at Work;
- the Rio Declaration on Environment and Development;
- the United Nations Convention against Corruption.

The Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of human rights, labour standards, the environment and anti-corruption:

- **Human Rights**
  - Principle 1: businesses should support and respect the protection of internationally proclaimed human rights;
  - Principle 2: make sure that they are not complicit in human rights abuses.
- **Labour Standards**
  - Principle 3: businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
  - Principle 4: the elimination of all forms of forced and compulsory labour;
  - Principle 5: the effective abolition of child labour;
  - Principle 6: the elimination of discrimination in respect of employment and occupation.
- **Environment**
  - Principle 7: businesses should support a precautionary approach to environmental challenges;
  - Principle 8: undertake initiatives to promote greater environmental responsibility;
  - Principle 9: encourage the development and diffusion of environmentally friendly technologies.
- **Anti-corruption**
  - Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

To date, 22 Egyptian organizations have become members of the Global Compact. This is the largest membership in the MENA region. The organizations are:

- Allied Soft;
- American Chamber of Commerce in Egypt;
- Arab African International Bank;
- B.Tech – Olympic Stores;
- Business Womens Association for Development;
- Cairo for Investment and Development;
- CompuMe;
- Egyptian Pharmacists Syndicate;
- Egyptian Traders Co;
- Environmental Quality International;
- FEI;
- Green Land International School;
- Hashem Brothers;
- Mansour Manufacturing and distribution Group;
- Orascom Construction Industries;
- Raya Holding;
- Saveco Science;
- Sekem Group;
- Talal Abu Ghazaleh & Co;
- TEA Computers;
- The Cabinet Information and Decision Support Center;
- Vacsera.

To date, there are no organizations that have become organizational stakeholders with the Global Reporting Initiative – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors, across the world.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

The WB ROSC

In 2004, the WB ROSC for Egypt identified that:

- boards were usually single tier with a minimum of three members;
- two experts were sometimes appointed to the board – they were full members of the board and had a vote;
- directors were shareholders;
- Frequently the chairman and the CEO were the same person;
- executive directors received an annual share of profits of 10 per cent of net income (after deducting 5 per cent for legal reserves and 5 per cent of paid in capital for dividends);
- directors served on a maximum of two boards and managing directors only on one;
- there was little or no disclosure of attendance at board meetings;
- there was limited legislative guidance on the director's duty of care and the duty of loyalty;
- in general, boards did not play a central strategic role and were not clearly different from management meetings;
- there were no rules that governed independence and few companies appointed independent directors.

The Code of Corporate Governance for Listed Companies (2005)

The Code refers to directors as 'representatives selected from different groups of shareholders'. However, Article 3.2 states that 'once appointed as a board member the director is considered a shareholders' representative and should commit to work in the best interests of the company, and not just for the group he/she represents or those who voted for him/her'.

The Code recommends that:

- the board should meet at least once every three months;
- the board should comprise a majority of non-executive directors;
- a remuneration committee with a majority of non-executives should be formed for proposing executives' remuneration and negotiating with them in consultation with the chief executive officer;
- executive members' payments, including salaries, allowances, in-kind benefits, incentive shares and other financial items should be disclosed. Performance-related payments should form the largest portion to motivate members' improvement;
- the terms of executive members' contracts should not exceed three years, unless there are specific circumstances that should be announced at the general meeting;
- In consultation with staff and customers, the company should draw up rules of professional code of conduct including:

- ○ dealing with the company by selling, buying or other techniques;
- ○ authorized authorities;
- ○ disclosure of new policies;
- ○ existing health and safety measures;
- ○ professional criteria for interaction between staff, directors and customers.

Board and director development

The BDS (Board Development Series) run by the EIoD consists of four related parts, where each part is composed of six modules (delivered over three days), making a total of 24 modules over a period of non-consecutive 12 days. A certificate of participation is issued by the EIoD for those who attended each part.

The programme comprises:

- **Part I: An Introduction to Board and Corporate Governance**
  - Module 1: The Definition of and Rationale for Good Corporate Governance.
  - Module 2: Building an Effective Board.
  - Module 3: Board Election, Composition and Structure.
  - Module 4: Executive and Non-Executive Remuneration.
  - Module 5: The Working Procedures of the Board and Its Committees, and the Role of the Corporate Secretary.
  - Module 6: Conducting a Board Self-evaluation.
- **Part II: Practical Tools for Strategic Guidance and Managerial Oversight**
  - Module 1: The Role of the Board in Setting Strategy
  - Module 2: What Every Director Needs to Know about Finance and Accounting.
  - Module 3: The Interaction between the Board and Management
  - Module 4: A Guide to Succession Planning.
  - Module 5: Choosing and Evaluating the CEO.
  - Module 6: The Board's Changing Role: From a Family-Owned to a Listed Company.
- **Part III: The Role of the Board in Disclosure and Transparency**
  - Module 1: An Introduction to the Board's Role in Information Disclosure and Transparency.
  - Module 2: The Board and Risk Management.
  - Module 3: Establishing Internal Audit and Control Procedures.
  - Module 4: The Board and Its Audit Committee.
  - Module 5: How to Interact with the External Auditor.
  - Module 6: Developing a Model Annual Report.
- **Part IV: The Role of the Board in Protecting Shareholder Rights**
  - Module 1: An Introduction to the Board's Role in Protecting Shareholder Rights.

- ○ Module 2: The Board's Role in Preparing for and Conducting the General Meeting of Shareholders.
- ○ Module 3: The Board's Role in Shaping the Company's Dividend Policy.
- ○ Module 4: The Board's Role in Related Party, Extraordinary and Control Transactions.
- ○ Module 5: The Board's Role in Managing Corporate Conflicts.
- ○ Module 6: Case Study: Building a Corporate Governance Improvement Plan.

The programme follows a similar format to Hawkamah's director development programme in the UAE, but the EIoD is the sole provider of this accredited programme in the MENA in both Arabic and English languages. The programme was designed and developed with the financial and technical support of the IFC. The programme is accredited by RiskMetrics formerly known as ISS (Institutional Shareholder Services). It is also recognized by the CMA.

Ease of doing business

Each year the WB rates countries in terms of doing business. Egypt is ranked in terms of ease of doing business by the WB in their 2008 publication as 126th out of 178 countries in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The WB annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licenses and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 3 illustrates the comparative ease of starting a business in Egypt. The number of procedures involved is relatively low.

Table 3. Number of procedures for starting a business

	Egypt	*MENA Region minimum*	*Global Best minimum*
Number of procedures	7	5 (Israel)	2 (Australia Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The WB also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 4 illustrates the comparative ease of starting a business in Egypt. The time involved is the lowest in the MENA region. The cost involved is high at over 15 times the cost in Kuwait and the required minimum capital is low at over 13 percent of per capita income.

Table 4. Starting a business statistics

	Egypt	*MENA Region minimum*	*Global Best minimum*
Time (days)	9	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	28.6	1.6 (Kuwait)	0 (Denmark)
Minimum capital (% of income per capita)	12.9	0 (Israel, Saudi Arabia)	0 (Australia Canada, Ireland, Mauritius, New Zealand, Thailand, the United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Egypt is ranked at 55th out of 178 countries in the world in terms of starting a business. Egyptian Authorities have been extremely concerned about these findings and urgent steps have been taken to remedy the situation. GAFI has recently:

- reduced incorporation time to three days maximum;
- reduced the minimum paid in capital for limited liability companies to 1,000 Egyptian Pounds (EGP);
- reduced incorporation fees;
- reduced publication fees.

Employing workers

The WB annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work;
  - requirements relating to working time and the work week;
  - mandated days of annual leave with pay.

  The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.

- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation.

The WB has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 5 illustrates the comparative level of labour regulations in Egypt. The rigidity of employment index and the non-wage labour costs are relatively high. The firing cost, however, is set at an extremely high level of over two year's salary.

Table 5. Labour regulations

	Egypt	*MENA Region minimum*	*Global minimum*
Rigidity of employment index (0-100)	27	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non Wage labour costs (% of salary)	24.6	5.7 (Israel)	0 (Bangladesh Botswana, Ethiopia and Maldives)
Firing cost (weeks of salary)	132.2	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

Egypt is ranked at 108th out of 178 countries in the world in terms of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The WB annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the

scope of information distributed, the ease of access to information and the quality of information.

In general the MENA countries have very low credit information sharing practices compared with global best practice (Table 6).

Table 6. Credit information

	Egypt	*MENA Region maximum*	*Global maximum*
Public registry coverage (borrowers / % adults)	1.6	22.2 (Iran)	67.1 (Portugal)
Private bureau coverage (% of adults)	0.0	91.6 (Israel)	100 (Argentina Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit information index (1-6)	4	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

Egypt is ranked at 115th out of 178 countries in the world in terms of credit information.

Paying taxes

The WB annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Egypt requires a high number of payments to be made.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Egypt has one of the highest times required to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Egypt has one of the highest total tax rates in the MENA region.

Table 7. Paying taxes

	Egypt	*MENA Region minimum*	*Global minimum*
Payments (number per year)	36	13 (Iraq)	2 (Sweden, Maldives)
Time to pay taxes (hours per year)	711	12 (UAE)	12 (UAE, Maldives)
Total tax rate (% of profit)	47.9	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Egypt is ranked at 150th out of 178 countries in the world in terms of paying taxes.

Importing and exporting

The WB annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally.

Egypt's import and export documentation is below average. The country's time to import and export is average. Its costs to import and export, however, are high compared to the other countries in the region (Table 8).

Table 8. Importing and exporting

	Egypt	*MENA Region best practice*	*Global best practice*
Documents to import	7	4 (Israel)	3 (Denmark, Sweden)
Documents to export	6	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada Estonia, Panama and Micronesia)
Time to import (days)	18	12 (Israel)	3 (Singapore)
Time to export (days)	15	12 (Israel)	5 (Denmark Estonia and Singapore)
Cost to import (US $ per container)	729	462 (UAE)	367 (Singapore)
Cost to export (US $ per container)	714	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

Egypt is ranked at 26th out of 178 countries in the world in terms of importing and exporting.

Closing a business

The WB annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Egypt is one of the slowest countries in the region.
- **The cost** to go through the process. The cost of the insolvency process in Egypt is average.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. Egypt's rate is extremely low and inefficient.

The statistics for Egypt are listed in Tables 9 and 10.

Table 9. Closing a business – time and cost

	Egypt	*MENA Region minimum*	*Global minimum*
Time to go through insolvency (years)	4.2	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of insolvency (% of estate)	22.0	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 10. Closing a business – recovery rate

	Egypt	*MENA Region maximum*	*Global maximum*
Recovery rate (cents per US $)	16.6	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

Egypt is ranked at 125th out of 178 countries in the world in terms of closing a business.

Summary

Egypt has a labour force of 21.8 million. It is the most populated country in the MENA region. The GDP per capita is one of the lowest (15th out of 19 countries) in the MENA region. The economy is growing at 6.8 per cent.

The major problems facing the Egyptian economy are a rapidly growing population, limited arable land and a dependence on the Nile for agricultural activity. Company law and corporate governance are relatively undeveloped compared to international best practices. Further corporate and capital market legislation will be required in the near future. The EIoD has developed training and development programmes for directors and boards. Egypt is ranked by the WB in 2008 as 126th in the world in terms of ease of doing business.

2.4

The Islamic Republic of Iran

Location

The Islamic Republic of Iran is located in the heart of the Persian Gulf. It is bounded by the Gulf of Oman to its south-east and the Caspian Sea to its north. Iran borders Armenia, Azerbaijan, Turkmenistan, Kazakhstan and Russia to the north, Afghanistan and Pakistan to the east and Turkey and Iraq to the west.

Population

The population of Iran is 65.4 million with a labour force of 24.3 million. It is the second largest country in the MENA region and the 18th largest country in the world.[1] Iran's population increased dramatically during the latter half of the 20th century but has recently dropped significantly. More than two-thirds of the population is under the age of 30.

About 98 per cent of the population are Muslims.[2] Iran has a diverse population consisting of people of many religions and ethnic backgrounds cemented by the Persian culture. Persians constitute the majority of the population. Languages spoken in Iran include Persian (official) and Persian dialects, Turkish and Kurdish.[3] The adult literacy rate is 77 per cent.[4]

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007

Economy

The GDP (gross domestic product) per capita in Iran is US $8,700. It is the 10th highest in the MENA region. The economy is growing at 4.3 per cent.[1]

Iran's economy is a mixture of central planning, state ownership of oil and other large enterprises, village agriculture and small-scale private trading and service businesses. The major industries in Iran are oil, gas, petrochemicals, mining, agriculture, car manufacturing, mineral products, metal fabrication and food processing.[2] Iran has very large reserves of petroleum and natural gas. Agriculture is one of the largest employers in Iran.

The government is currently diversifying Iran's oil-reliant economy. It is investing in automobile manufacturing, aerospace industries, consumer electronics, petrochemicals and nuclear technology. Iran has also developed a biotechnology, nanotechnology and pharmaceuticals industry.

Legal, regulatory and corporate governance frameworks

System of government

The political system of Iran is based on the 1979 Constitution. The main organs of government are:

- **The Supreme Leader.** The Supreme Leader of Iran, the Commander-in-Chief of the armed forces, controls the military intelligence and security operations and has sole power to declare war or peace. The Supreme Leader appoints the heads of the judiciary, state radio and television networks, the commanders of the police and military forces and 6 of the 12 members of the council of guardians.
- **The President.** The president is elected by universal suffrage for a term of four years and can be re-elected for an additional term. Presidential candidates must be approved by the council of guardians to ensure their allegiance to the ideals of the Islamic revolution. The president is responsible for the implementation of the constitution and for the exercise of executive powers, except for matters directly related to the Supreme Leader. The president appoints and supervises the council of ministers, coordinates government decisions and selects government policies to be placed before the legislature. Eight vice-presidents serve under the president, as well as a cabinet of 21 ministers, who must all be approved by the legislature.

---

[1] *The World Factbook*, CIA, 13 December 2007

[2] *The World Factbook*, CIA, 13 December 2007

- **The Assembly of Experts.** The Assembly of Experts is responsible for supervising the Supreme Leader in the performance of his legal duties. The Assembly of Experts meets for one week annually. It comprises 86 'virtuous and learned' clerics elected by adult suffrage for eight-year terms. The Assembly elects the Supreme Leader and has the constitutional authority to remove him from power at any time.
- **The Islamic Consultative Assembly.** The Islamic Consultative Assembly comprises 290 members elected for four-year terms. The Assembly drafts legislation, ratifies international treaties and approves the national budget. All Assembly candidates and all legislation from the assembly must be approved by the council of guardians.
- **The Council of Guardians.** The council of guardians comprises 12 jurists including 6 appointed by the Supreme Leader. The others are elected by the parliament from among the jurists nominated by the head of the judiciary. The council interprets the constitution and may veto parliament. If a law is deemed incompatible with the constitution or Shari'a (Islamic) law, it is referred back to parliament for revision.
- **The Expediency Council.** The expediency council has the authority to mediate disputes between parliament and the council of guardians and serves as an advisory body to the Supreme Leader.
- **Judiciary.** The Supreme Leader appoints the head of Iran's judiciary, who in turn appoints the head of the Supreme Court and the chief public prosecutor. There are several types of courts including public courts that deal with civil and criminal cases, and 'revolutionary courts' which deal with certain categories of offences, including crimes against national security. The decisions of the revolutionary courts are final and cannot be appealed.

In 2007, the Economist Intelligence Unit's Index of Democracy classified Iran as an authoritarian regime and ranked it 139th in the world in terms of democracy (out of 167 countries).[1]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for

---

[1] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

Iran in 2008. The overall scores are amongst the best in the region and Iran is 57th in the world ranking (out of 178 countries).

Table 1. Enforcement of contracts

	Iran	*MENA region minimum*	*Global minimum*
Procedures to enforce a contract	39	35 (Israel)	20 (Ireland)
Time to enforce a contract (days)	520	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to enforce a contract (% of claim)	17.0	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked Iran in terms of legal rights of borrowers and creditors. Iran is 68th in the world ranking (out of 178 countries).

Company and capital market legislation

The main source of law for companies and the capital markets is the Commercial Code. The Code states:

- Public companies must have a minimum share capital of 5 million Iranian Rials (IRR) on formation. Private companies must have a minimum share capital of IRR 1 million on formation (Article 5).
- The notice for shareholder general meetings must not be less than 10 days and not more than 40 days (Article 98).
- A quorum for board meetings is not less than 50 per cent of members unless the articles prescribe a higher percentage (Article 121).
- The board is required to set aside annually one-twentieth of its net profit for the creation of a legal reserve fund. When the legal reserve fund has reached one-tenth of the company's capital the transfer to the reserve will be optional (Article 140).
- The board of directors shall produce accounts and a report on an annual basis (Article 232).

Business-related bodies

ICCIM (Iran Chamber of Commerce, Industries and Mines)

The Chamber celebrated its 80th anniversary in 2006. It currently has 400 factories and industrial enterprises that are members. For more information visit: www.iccim.org.

Shareholders and stakeholders

Ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate governance ownership. The leading research in corporate ownership by Claessens *et al* (2002)[1], Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] has not covered this region.

State funding is the main source of funding for Iranian companies. Over 75 per cent of the economy is state run. The private sector is not very well developed.

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[4]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation and a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

The World Bank in its recent Doing Business 2008 study classified shareholder rights and investor protection for Iran as significantly below average in the MENA region (see Table 2).

Table 2. Strength of investor protection

	Iran	*MENA Region maximum*	*Global maximum*
Strength of investor protection (0–10)	3.0	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112
[2] Barca, Fabrizio and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford
[3] LaPorta, Rafael, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517
[4] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Iran was ranked as 158th out of 178 countries in the world in terms of investor protection.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[1]

In general, disclosure and transparency is relatively low in the MENA region. Iranian companies tend not to have high levels of disclosure and transparency.

Stakeholder relations and corporate responsibility

No Iranian companies are known to have investor relations departments and no boards are known to have developed any processes for managing their stakeholder relationships. The board's principal focus seems to be focused upon satisfying the needs of the state who is the main block shareholders.

There is no known use of triple bottom line reporting methods (ie reporting financial, social and environmental performance). No Iranian companies have joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption) or the Global Reporting Initiative – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors, across the world.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[2]

---

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

[2] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Little is known about board practices in Iran. It is hoped that research into corporate governance will take place in this country in the near future. There are no director or board development programmes in Iran.

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Iran is ranked in their 2008 publication as 135th out of 178 countries in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produce data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licences and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 3 illustrates the comparative ease of starting a business in Iran. The number of procedures involved is relatively low.

Table 3. Number of procedures for starting a business

	Iran	*MENA Region minimum*	*Global Best minimum*
Number of procedures	8	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 4 illustrates the comparative ease of starting a business in Iran. The time involved is over five times the duration in Egypt and over 20 times that required in Australia. The cost involved is relatively low and the required minimum capital is low as a percentage of per capita income.

Table 4. Starting a business

	Iran	*MENA Region minimum*	*Global Best minimum*
Time (days)	47	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	5.3	1.6 (Kuwait)	0 (Denmark)
Minimum capital (% of income per capita)	1.3	0 (Israel, Saudi Arabia)	0 (Australia Canada, Ireland, Mauritius, New Zealand, Thailand, United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Iran is ranked 77th out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers restrictions on weekend and night work, requirements relating to working time and the work week and mandated days of annual leave with pay. The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation.

The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 5 illustrates the comparative level of labour regulations in Iran. Both the rigidity of employment index and the non-wage labour costs are high. The firing cost, however, is set at extremely high levels of over 18 months' salary.

Table 5. Labour regulations

	Iran	*MENA Region minimum*	*Global minimum*
Rigidity of employment index (0–100)	40	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-wage labour costs (% of salary)	23.0	5.7 (Israel)	0 (Bangladesh Botswana, Ethiopia and Maldives)
Firing cost (weeks of salary)	90.7	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

Iran is ranked 141st out of 178 countries in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 6).

Table 6. Credit information

	Iran	*MENA Region maximum*	*Global maximum*
Public registry coverage (borrowers/% adults)	22.2	22.2 (Iran)	67.1 (Portugal)
Private bureau coverage (% of adults)	0.0	91.6 (Israel)	100 (Argentina Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit information index (1–6)	3	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

Iran is ranked 68th out of 178 countries in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Iran has an average number of payments required in the MENA region.

- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Iran requires large amounts of time to pay taxes.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Iran has high total tax rates.

Table 7. Paying taxes

	Iran	*MENA Region minimum*	*Global minimum*
Payments (number per year)	22	13 (Iraq)	2 (Sweden, Maldives)
Time to pay taxes (hours per year)	292	12 (UAE)	12 (UAE, Maldives)
Total tax rate (% of profit)	47.4	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Iran is ranked 97th out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Iran's import and export documentation is average. The country's time to import and export are high. Its costs to import and export are very high (Table 8).

Table 8. Importing and exporting

	Iran	*MENA Region best practice*	*Global best practice*
Documents to import	10	4 (Israel)	3 (Denmark, Sweden)
Documents to export	8	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada Estonia, Panama and Micronesia)
Time to import (days)	42	12 (Israel)	3 (Singapore)
Time to export (days)	26	12 (Israel)	5 (Denmark Estonia and Singapore)
Cost to import (US $ per container)	1,330	462 (UAE)	367 (Singapore)
Cost to export (US $ per container)	860	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

Iran was ranked 135th out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Iran is slow.
- **The cost** to go through the process. The cost of the insolvency process in Iran is average in the region.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. The Iranian rate is below average for the region.

The statistics for Iran are listed in Tables 9 and 10.

Table 9. Closing a business – time and cost

	Iran	*MENA Region minimum*	*Global minimum*
Time to go through insolvency (years)	4.5	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of insolvency (% of estate)	9.0	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 10. Closing a business – recovery rate

	Iran	*MENA Region maximum*	*Global maximum*
Recovery rate (cents per US $)	19.0	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

Iran is ranked 118th out of 178 countries in the world in terms of ease of closing a business.

Summary

Iran is the second largest country in the MENA region. The GDP per capita in Iran is the 10th highest in the MENA region. The economy is growing at 4.3 per cent and is dependent upon oil, gas and petrochemicals. State-owned organizations are the dominant business form and the private sector is relatively under-developed.

Company law and corporate governance are relatively undeveloped compared to international best practices. If the private sector is to expand further corporate and capital market legislation will be required in the near future. Iran is ranked by the World Bank in 2008 as 135th out of 178 countries in the world in terms of ease of doing business.

2.5

The Federal Republic of Iraq

Location

The Federal Republic of Iraq shares borders with Kuwait and Saudi Arabia to the south, Jordan to the west, Syria to the north-west, Turkey to the north and Iran to the east.

Population

The population of Iraq is 27.5 million with a labour force of 7.4 million. It is the sixth largest country in the MENA region.[1] There have been a number of large-scale waves ofemigrations from Iraq, beginning early in the regime of Saddam Hussein and continuing through to 2007. This dispersion of native Iraqis to other countries is known as the Iraqi diaspora.

About 97 per cent of the population are Muslims.[2] Many of the ethnic minority groups in Iraq such as the Kurds, Assyrians, Mandeans, Iraqi Turkmen, Shabaks and Roma have not enjoyed equal status with the majority Arab populations throughout Iraq's 85-year history. Languages spoken in Iraq include Arabic, Kurdish, Assyrian and Armenian.[3] The adult literacy rate is 74 per cent.[4]

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007

Economy

The GDP (Gross Domestic Product) per capita in Iraq is US $1,900 and is the 17th highest in the MENA region out of 19 countries. The economy is growing at 1.9 per cent.[1] However, the economy is very weak due to the political and social instability since the coalition occupation in 2003.

The major industries in Iraq were petroleum, chemicals, textiles, construction materials and food processing.[2] Iraq's economy has been dominated by the oil sector, which provided the majority of its foreign exchange earnings. Massive reconstruction of business is currently taking place within the country.

Legal, regulatory and corporate governance frameworks

System of government

In 2003, a multinational coalition of forces of mainly US and British troops invaded and occupied Iraq. The invasion has had wide-reaching consequences: increased civil violence, political breakdown, the removal and execution of former authoritarian President Saddam Hussein and national problems in the development of the political system, economy, infrastructure and the use of the country's huge reserves of oil. Under the control of the US military, Iraq is developing a parliamentary democracy composed of 18 governorates.

The Federal Government of Iraq is defined in the new Constitution as an Islamic, democratic, federal parliamentary republic. The Federal Government is composed of executive, legislative and judicial branches, as well as numerous independent commissions. Iraqi politicians are under significant threat by the various factions that have promoted violence as a political weapon.

In 2007, the Economist Intelligence Unit's Index of Democracy ranked Iraq as a hybrid regime and 112th in the world in terms of democracy (out of 167 countries).[3]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for Iraq in 2008. The overall scores are much worse than average, and Iraq is 150th in the world ranking (out of 178 countries).

Table 1. Enforcement of contracts

	Iraq	*MENA Region minimum*	*Global minimum*
Procedures to Enforce a Contract	51	35 (Israel)	20 (Ireland)
Time to Enforce a Contract (days)	520	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to Enforce a Contract (% of claim)	32.5	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

Table 2 illustrates the current World Bank's rating of legal rights in Iraq.

Table 2. Legal rights

	Iraq	*MENA Region maximum*	*Global maximum*
Strength of Legal Rights Index (0–10)	4.3	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked Iraq in terms of legal rights of borrowers and creditors. The overall scores are worse than average, and Iraq is 135th in the world ranking (out of 178 countries).

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in Iraq:[1]

- The occupation and its repercussions represent a major obstacle facing the enhancement of human rights in Iraq.
- The involvement of Iraqi authorities in wide-scale military operations.
- The rights to freedom and personal safety are low.
- The rights of minority groups are being violated.
- Women live under very adverse conditions.
- There are deficiencies in the judicial system.

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

- Journalists and other media are being targeted.
- Humanitarian conditions are deteriorating.

Company and capital market legislation

The main law focusing upon companies and the capital markets is:

The Coalition Provisional Authority Order 64 (2004)

This law revises Iraq Company Law (1997). It eliminates restrictive barriers to the formation of companies, encourages the infusion of capital into existing Iraqi companies and removes the remnants of Iraq's centrally planned and controlled economy. The law allows foreign investors to work with local nationals in setting up companies. It reduces the time and number of steps to set up a company. It also allows individuals to form single limited liability companies.

Business-related bodies

Iran–Iraq Joint Chamber of Commerce, Industries and Mines

The Chamber celebrated its 80th anniversary in 2006. The Iran–Iraq Joint Chamber of Commerce, Industries and Mines has recently adopted measures to encourage joint venture investment and exchange delegations between the two countries to explore grounds for economic co-operation. For more information visit: www.iccim.org.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessens *et al* (2002),[1] Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] has not covered this region. Few facts are currently known about corporate ownership and control in Iraq.

---

[1] Claessens, S, Djankov S, and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112

[2] Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

[3] La Porta, R, Lopez de Silanes, F, Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[1]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation and on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

The World Bank in its recent Doing Business 2008 study classified shareholder rights and investor protection for Iraq as average for the MENA region (see Table 3).

Table 3. Strength of investor protection

	Iraq	*MENA Region maximum*	*Global maximum*
Strength of Investor Protection (0–10)	4.3	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

Iraq is classified as 107th out of 178 countries in the world in terms of protecting investor rights.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[2]

In general, disclosure and transparency is relatively low in the MENA region. Due to the political and social turbulence few detailed annual reports are produced by companies in Iraq.

---

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

[2] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Stakeholder relations and corporate responsibility

No Iraqi companies are known to have investor relations departments and no boards are known to have developed any processes for managing their stakeholder relationships.

There is no known use of triple bottom line reporting methods (ie reporting financial, social and environmental performance). No Iraqi companies have joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption) or Global Reporting Initiative – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors, across the world.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

Little is known about board practices in Iraq. It is hoped that research into corporate governance will take place in this country in the near future. There are no director or board development programmes in Iraq.

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Iraq is ranked in their 2008 publication as 141st out of 178 countries in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licenses and completing all required inscriptions, verifications and notifica-

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

tions with authorities to enable the company to formally operate. Table 4 illustrates the comparative ease of starting a business in Iraq. The number of procedures involved is over double the number required in Israel and over five times that required in Australia, Canada and New Zealand.

Table 4. Number of procedures for starting a business

	Iraq	*MENA Region minimum*	*Global Best minimum*
Number of Procedures	11	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 5. illustrates the comparative ease of starting a business in Iraq. The time involved is over seven times the duration in Egypt and over 38 times that required in Australia. The cost involved is over 50 times the cost in Kuwait and the required minimum capital is very high at 65 per cent of per capita income.

Table 5. Starting a business statistics

	Iraq	*MENA Region minimum*	*Global Best minimum*
Time (days)	77	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	93.5	1.6 (Kuwait)	0 (Denmark)
Minimum capital (% of income per capita)	65.4	0 (Israel, Saudi Arabia)	0 (Australia Canada, Ireland, Mauritius, New Zealand, Thailand, United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Iraq is ranked 164th out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work;
  - requirements relating to working time and the workweek;
  - mandated days of annual leave with pay.

The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).

- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation. The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 6 illustrates the comparative level of labour regulations in Iraq. The rigidity of employment index and the non-wage labour costs are average for the region. The firing cost, however, is the lowest in the region.

Table 6. Labour regulations

	Iraq	*MENA Region minimum*	*Global minimum*
Rigidity of Employment Index (0–100)	38	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-wage Labour Costs (% of salary)	12.0	5.7 (Israel)	0 (Bangladesh Botswana, Ethiopia and Maldives)
Firing Cost (weeks of salary)	0	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

Iraq is ranked 60th out of 178 countries in the world in terms of ease of employing workers.

Getting credit

The World Bank annually measures the efficiency of procedures and administration of the credit process. However, the World Bank in 2007 was unable to identify any formal credit practices in Iraq.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Iraq has the lowest number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Iraq requires large amounts of time to pay taxes.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Iraq has relatively low total tax rate in the MENA region.

Table 7. Paying taxes

	Iraq	*MENA Region minimum*	*Global minimum*
Payments (number per year)	13	13 (Iraq)	2 (Sweden, Maldives)
Time to Pay Taxes (hours per year)	312	12 (UAE)	12 (UAE, Maldives)
Total Tax Rate (% of profit)	24.7	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Iraq is ranked 37th out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Iraq's import and export documentation is average. The country's time to import and export is well above average. Its costs to import and export are the highest in the region (Table 8).

Table 8. Importing and exporting

	Iraq	*MENA Region Best Practice*	*Global best practice*
Documents to Import	10	4 (Israel)	3 (Denmark, Sweden)
Documents to Export	10	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada Estonia, Panama and Micronesia)
Time to Import (days)	101	12 (Israel)	3 (Singapore)
Time to Export (days)	102	12 (Israel)	5 (Denmark, Estonia and Singapore)
Cost to Import (US$ per container)	3,400	462 (UAE)	367 (Singapore)
Cost to Export (US$ per container)	3,400	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

Iraq was ranked 175th out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. However, the World Bank in 2007 was unable to identify any formal insolvency practices in Iraq.

Summary

Iraq has a labour force of 7.4 million. It is the sixth largest country in the MENA region. The GDP per capita in Iraq is the 17th highest in the MENA region out of 19 countries. The economy is growing at 1.9 per cent.

The economy is very weak due to the political and social instability since the coalition occupation in 2003. Company law and corporate governance are relatively undeveloped compared to international best practices. If the private sector is to expand further corporate and capital market legislation will be required in the near future.

Iraq is ranked by the World Bank in 2008 as 141st out of 178 countries in the world in terms of ease of doing business.

2.6

The State of Israel

Location

The State of Israel is located on the southeastern edge of the Mediterranean Sea. It borders Lebanon in the north, Syria and Jordan in the east and Egypt on the southwest. The West Bank and Gaza Strip, which are partially administrated by the Palestinian National Authority, are also adjacent.

Israel has applied civilian law to the Golan Heights and East Jerusalem, incorporating them into its territory and offering their inhabitants Israeli citizenship. In contrast, the West Bank has remained under military occupation.

Population

The population of Israel is 6.4 million with a labour force of 2.8 million. It is the 10th largest out of 19 countries in the in the MENA region.[1]

[1] *The World Factbook*, CIA, 13 December 2007

About 76 per cent of the population is Jewish and 16 per cent are Muslims.[1] Israel's two official languages are Hebrew and Arabic. Hebrew is the primary language of the state and spoken by the majority of the population. Arabic is spoken by the Arab minority. Many Israelis can communicate reasonably well in English.[2] The adult literacy rate is 97 per cent.[3]

Economy

The GDP (gross domestic product) per capita in Israel is US $26,800 and is the third highest in the MENA region. The economy is growing at 5.1 per cent.[4]

The major industries in Israel are electronics, telecommunications, information technology, biotechnology, tourism, construction, diamonds and agriculture.[5] Despite limited natural resources, intensive development of the agricultural and industrial sectors over the past decades has made Israel largely self-sufficient in food production.

Legal, regulatory and corporate governance frameworks

System of government

Israel declared its independence in 1948. Israel is a democracy with a parliamentary system. The main organs of government are:

- **The President.** The president is the head of state whose duties are largely ceremonial.
- **The Prime Minister.** The prime minister is a parliament member supported by a majority in parliament. The prime minister is the head of government and head of the cabinet.
- **The Parliament.** The 120-member parliament is known as the Knesset. Membership in the Knesset is based on proportional representation of the political parties. Parliamentary elections are held every four years, but the Knesset can dissolve the government at any time with a no-confidence vote.
- **The Judiciary.** Israel has a three-tier court system. The Supreme Court is the highest court of appeal and the High Court of Justice. Below the Supreme Court are district courts and at the lowest level are magistrate

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007
[5] *The World Factbook*, CIA, 13 December 2007

courts. Israel's legal system combines English common law, civil law and Jewish law. It is based on precedent and is an adversarial system, where the parties in the suit bring evidence before the court. Court cases are decided by professional judges rather than juries. A committee of Knesset members, Supreme Court justices and Israeli Bar members carries out the election of judges.

In 2007, the Economist Intelligence Unit's Index of Democracy ranked Israel as a flawed democracy and 47th in the world in terms of democracy (out of 167 countries).[1]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates how well legal rights are enforced in all countries around the world. Table 1 provides the international comparative data for Israel in 2008. The overall scores are average by MENA standards (apart from the procedures to enforce a contract) and Israel is 102nd in the world ranking (out of 178 countries).

Table 1. Enforcement of contracts

	Israel	*MENA Region minimum*	*Global minimum*
Procedures to enforce a contract	35	35 (Israel)	20 (Ireland)
Time to enforce a contract (days)	890	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to enforce a contract (% of claim)	25.3	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked Israel in terms of legal rights of borrowers and creditors. The overall scores are the best in the MENA region and Israel is seventh in the world ranking (out of 178 countries). Table 2 illustrates the current World Bank's rating of legal rights in Israel.

[1] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

Table 2. Legal rights

	Israel	*MENA Region maximum*	*Global maximum*
Strength of legal rights index(0–10)	8.3	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

Company and capital market legislation

The main laws in Israel that focus upon companies and the capital markets are:

- **The Dual Listing Law (2000).** This law enables companies listed in the United States or London to dual list on the TASE (Tel Aviv Stock Exchange) without any additional regulatory requirements.
- **Companies Law 5759 (1999).** This law recognizes two forms of company: the private company and the limited company. All companies need to be registered with the Registrar of Companies. The law permits a one-man company.
- **The Trade Restrictions Law (1988).** This law sets up the Trade Restrictions Authority headed by a Commissioner. The Law covers three issues: restrictive contractual arrangements, mergers and prohibition of monopolies.
- **The Companies Ordinance (1983).** This law was modelled on British company law and permits private, public, limited by shares or guarantees, unlimited or foreign companies.
- **The Securities Law (1968).** This law governs the Tel Aviv Stock Exchange and the Ministry of Finance, and includes: the establishment, composition and powers of the Securities Authority; the rules relating to prospectuses and the permit for their publication; the manner and form in which the subscription to securities issued by prospectus has taken place; the possible liability for a misleading prospectus; rules concerning insider trading and class actions.

Types of company

Private companies

Private companies are limited by either shares or guarantee and may have between 2 and 50 shareholders. They may not offer their shares or debentures to the public, and any transfer of their shares is subject to board approval. It is not required to submit audited financial statements to the Registrar of Companies.

Public companies

Public companies must have a minimum of seven shareholders. They may offer shares and debentures to the public on the stock exchange and must also abide by the rules of the exchange and the laws relating to securities and the regulations promulgated by the Securities Authority. A public company must hold a general meeting of its shareholders at least once a year, at which its management report and audited financial statements must be presented. In these meetings, the shareholders approve dividends, elect directors and appoint auditors. A company whose securities are traded publicly must include two independent non-executive directors on the board.

Foreign companies

A foreign company may operate in Israel through a branch or through a subsidiary formed under Israeli law. A foreign company wishing to set up a branch in Israel must register as a foreign company with the Registrar of Companies.

No limitation is placed on the nationality of the shareholders or officers of an Israeli corporation. The shareholders, officers and directors all may be foreign residents.

Business-related bodies

The Tel Aviv Chamber of Commerce

The Chamber was established in 1919 and is the largest business organization in Israel. It is dedicated to promoting the interests of business, promoting free competition, the market economy, deregulation and globalization. The Chamber facilitates business interactions and networking throughout Israel. For more information view www.chamber.org.il.

TASE (Tel Aviv Stock Exchange)

TASE is Israel's only stock exchange and is based in Tel Aviv. TASE lists over 600 companies, and about 10 per cent of these companies are also listed on stock exchanges in other countries. As of 31 December 2006, the total market value of all listed equity securities was US $161.4 billion. International holdings are over 10 per cent of the total market capitalization of the shares and convertible securities tradable on the TASE.

The Dual Listing Law that took effect in October 2000 enables companies listed in the United States or London to dual list on the TASE without any additional regulatory requirements. As of 31 December 2006, 39 Israeli companies have dual listed on the TASE, in compliance with this framework.

The exchange is regulated by the Securities Law (1968), and is supervised by the Israel Securities Authority. For more information view www.tase.co.il.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessens *et al* (2002),[1] Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] did not cover this region.

Israel has the second largest number of start-up companies in the world (after the United States) and the largest number of NASDAQ-listed companies outside North America.

The World Bank Equity Markets Report identifies that Israel has 572 listed companies, the market capitalization to GDP ratio is 88 per cent and that the market capitalization concentration in the top 10 listed companies is 51 per cent.[4]

Bank finance and retained earnings are the main source of funds for Israeli companies. Companies enjoy relatively easy access to capital from the banks and frequently lending covenants are weak.

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[5]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;

---

1 Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112

2 Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

3 La Porta, R, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

4 World Bank Financial Indicators, *Equity Markets Report* [Accessed February 2008] Available at www.financial-indicators.org

5 OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

- elect and remove members of the board;
- share in the profits of the corporation.

The World Bank in its recent Doing Business 2008 study classified shareholder rights and investor protection for Israel as the best in the MENA region (see Table 3).

Table 3. Strength of investor protection

	Israel	*MENA Region maximum*	*Global maximum*
Strength of investor protection (0–10)	8.3	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

Israel is classified as fifth out of 178 countries in the world in terms of protecting investor rights.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[1]

In general, disclosure and transparency is relatively low in the MENA region.

Stakeholder relations and corporate responsibility

A few Israeli companies have investor relations departments and some boards have developed processes for managing their stakeholder relationships. The board's principal focus seems to be focused upon satisfying the needs of the block shareholders. There is little use of triple bottom line reporting methods (ie financial, social and environmental performance).

A few companies have joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption). The organizations are:

- A.Z. Industries Ltd;
- Emco Marine Ltd;

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

- Kedmor Engineers Ltd;
- Patho Lab Diagnostics Ltd.

Seven organizations in Israel have become organizational stakeholders with the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

Little is known about board practices in Israel. It is hoped that research into corporate governance will take place in this country in the near future.

Israeli law requires that:

- Directors must act competently, in good faith and in the interest of the company. They must not put themselves in a position that may create a conflict of interest between themselves and the company.
- Company directors may not take advantage of any business opportunity arising as a result of their position in the company and must disclose any personal interest they may have in a transaction to which the company is a party.
- Transactions with interested parties require board approval, approval of the audit committee, and transactions not in the ordinary course of business require shareholder approval. An interested party may not participate in the board meeting, the transaction and at least one-third of the non-interested shareholders participating in the shareholder meeting must vote for the resolution approving the transaction.

There are no director or board development programmes in Israel.

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Israel is ranked in their 2008 publication as 29th out of 178 countries in the world.

---

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licenses and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 4 illustrates the comparative ease of starting a business in Israel. The number of procedures involved is the lowest in the MENA region.

Table 4. Number of procedures for starting a business

	MENA Region minimum	*Global Best minimum*
Number of procedures	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 5 illustrates the comparative ease of starting a business in Israel. The time involved is over three times the duration in Egypt and 16 times that required in Australia. The cost involved is over double the cost in Kuwait and the required minimum capital is the lowest in the MENA region.

Table 5. Starting a business statistics

	Israel	*MENA Region minimum*	*Global Best minimum*
Time (days)	34	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	4.4	1.6 (Kuwait)	0 (Denmark)
Minimum capital (% of income per capita)	0	0 (Israel, Saudi Arabia)	0 (Australia Canada, Ireland, Mauritius, New Zealand, Thailand, the United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Israel is ranked 17th out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work;
  - requirements relating to working time and the work week;
  - mandated days of annual leave with pay.

  The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation. The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 6 illustrates the comparative level of labour regulations in Israel. The rigidity of employment index is relatively low and the non-wage labour costs are the lowest in the MENA region. The firing cost, however, is set at a very high level of over 18 months' salary.

Table 6. Labour regulations

	Israel	MENA Region minimum	Global minimum
Rigidity of employment index (0–100)	24	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-wage labour costs (% of salary)	5.7	5.7 (Israel)	0 (Bangladesh Botswana, Ethiopia and Maldives)
Firing cost (weeks of salary)	91.0	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

Israel is ranked 87th out of 178 countries in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice. Private bureau coverage is the best in the MENA region (Table 7).

Table 7. Credit information

	Israel	*MENA Region maximum*	*Global maximum*
Public registry coverage (borrowers/% adults)	0.0	22.2 (Iran)	67.1 (Portugal)
Private bureau coverage (% of adults)	91.6	91.6 (Israel)	100 (Argentina Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit information index (1–6)	5	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

Israel is ranked seventh out of 178 countries in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Israel has one of the highest number of payments required in the MENA region.

- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Israel has one of highest times to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Israel has one of the highest total tax rates in the MENA region.

Table 8. Paying taxes

	Israel	*MENA Region minimum*	*Global minimum*
Payments (number per year)	33	13 (Iraq)	2 (Sweden, Maldives)
Time to pay taxes (hours per year)	230	12 (UAE)	12 (UAE, Maldives)
Total tax rate (% of profit)	36.0	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Israel was ranked 69th out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Israel's import and export documentation is the lowest in the region. The country's time to import and export is also the lowest in the region. Its costs to import and export are below average in the region (Table 9).

Table 9. Importing and exporting

	Israel	*MENA Region best practice*	*Global best practice*
Documents to import	4	4 (Israel)	3 (Denmark, Sweden)
Documents to export	5	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada Estonia, Panama and Micronesia)
Time to import (days)	12	12 (Israel)	3 (Singapore)
Time to export (days)	12	12 (Israel)	5 (Denmark Estonia and Singapore)
Cost to import (US $ per container)	560	462 (UAE)	367 (Singapore)
Cost to export (US $ per container)	560	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

Israel was ranked eighth out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Israel has a relatively slow process.
- **The cost** to go through the process. The cost of the insolvency process is high.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. The Israeli rate is well above average for the region.

The statistics for Israel are listed in Tables 10 and 11.

Table 10. Closing a business – time and cost

	Israel	*MENA Region minimum*	*Global minimum*
Time to go through insolvency (years)	4.0	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of insolvency (% of estate)	23.0	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 11. Closing a business – recovery rate

	Israel	*MENA Region maximum*	*Global maximum*
Recovery rate (cents per US $)	43.6	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

Israel was ranked 40th out of 178 countries in the world in terms of ease of closing a business.

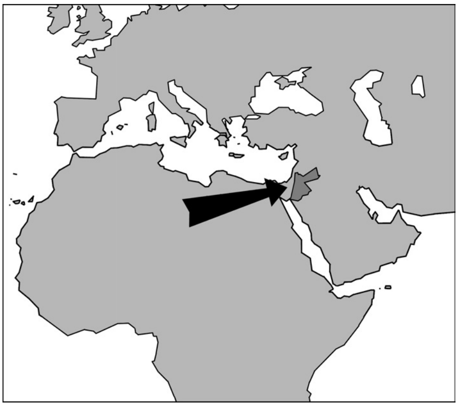
Summary

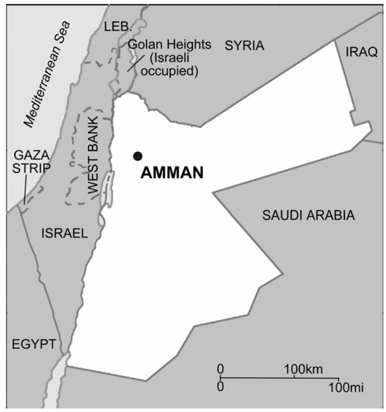
Israel has a labour force of 2.8 million. It is the 10th largest out of 19 countries in the MENA region. The GDP per capita in Israel is the third highest in the MENA region. The economy is growing at 5.1 per cent. The major industries in Israel are electronics, telecommunications, information technology, biotechnology, tourism, construction, diamonds and agriculture.

Apart from the NASDAQ-listed companies, corporate governance is relatively undeveloped compared to international best practices. Further corporate and capital market developments will be required in the near future. Israel is ranked by the World Bank in 2008 as 29th out of 178 countries in the world in terms of ease of doing business.

2.7

The Hashemite Kingdom of Jordan





Location

The Hashemite Kingdom of Jordan is bordered by Syria to the north, Iraq to the north-east, Israel and the West Bank to the west and Saudi Arabia to the east and south. It shares with Israel the coastlines of the Dead Sea, and the Gulf of Aqaba with Israel, Saudi Arabia and Egypt.

Population

The population of Jordan is 6.1 million with a labour force of 1.5 million. It is the 11th largest country in the MENA region.[1] About 92 per cent of the population are Sunni Muslims and 95 per cent of Jordan's population are Arabs.[2] The official language is Arabic, but English is used widely in commerce and government.[3] The adult literacy rate is 93 per cent.[4]

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007

Economy

The GDP (Gross Domestic Product) per capita in Jordan is US $5,100. This is the 13th highest (out of 19 countries) in the MENA region. The economy is growing at 6.4 per cent.[1]

The major industries in Jordan are commerce, hotels, restaurants, construction, transport, communications and agriculture. Jordan is a small country with limited natural resources. The country is currently exploring ways to expand its limited water supply. Jordan also depends on external sources for the majority of its energy requirements.

Legal, regulatory and corporate governance frameworks

System of government

Jordan is a constitutional monarchy. The key government organs are:

- **The Monarch.** The King signs and executes all laws. His veto power may be overridden by a two-thirds vote of both houses of the National Assembly. He appoints and may dismiss all judges by decree, approves amendments to the constitution, declares war and commands the armed forces. Cabinet decisions, court judgements and the national currency are all issued in his name.
- **National Assembly.** The National Assembly comprises:
  - A 110-member Chamber of Deputies, elected for a four-year term. Nine seats are reserved for Christians, six for women and three for Circassians and Chechens.
  - A 40-member Senate is appointed by the King for a four-year term.
- **The Council of Ministers.** The council of ministers is appointed by the King. The council is responsible to the Chamber of Deputies on matters of general policy and can be forced to resign by a two-thirds vote of no confidence.
- **The Judiciary.** There are three categories of courts: civil, religious and special. Jordan's legal system is based on Islamic Law and French codes. Judicial review of legislative acts occurs in a special High Tribunal.

In 2007, the Economist Intelligence Unit's Index of Democracy classified Jordan as an authoritarian regime and 113th in the world in terms of democracy (out of 167 countries).[2]

[1] *The World Factbook*, CIA, 13 December 2007

[2] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for Jordan in 2008. The overall scores are slightly below average, and Jordan is 128th in the world ranking (out of 178 countries).

Table 1. Enforcement of contracts

	Jordan	*MENA Region minimum*	*Global minimum*
Procedures to Enforce a Contract	39	35 (Israel)	20 (Ireland)
Time to Enforce a Contract (days)	689	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to Enforce a Contract (% of claim)	31.2	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked Jordan in terms of legal rights of borrowers and creditors. The overall scores are average – Jordan is 84th in the world ranking (out of 178 countries).

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in Jordan:[1]

- Combating terrorism that leads to a limitation in human rights.
- The use of torture that persists in the country.
- There is evidence of excessive use of force by security forces.
- The legal detention periods are frequently exceeded.
- Temporary detention centres do not meet minimum standards.
- The conditions for fair trials do not exist.
- Confiscation of personal documents by authorities is common.
- There are restrictions of the freedom of assembly.

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

Company and capital market legislation

The main laws focusing upon companies and the capital markets are:

- **Law 22 of 1997 (amended in 2002).** This law provides the basic company law for PSCs (public shareholding companies) in Jordan. All PSCs must be listed. PSC Boards must have an odd number of members with a minimum of 3 and a maximum of 13 members (Article 132). Directors must be shareholders (Article 133). Directors must be elected by secret ballot (Article 132). Board representation for government and corporate shareholders will be proportional to ownership as these directors are appointed, not elected. They cannot be removed by the general meeting (Article 135). Director compensation is fixed by law at 10 per cent of net profits up to a specified maximum (Article 162). Directors can sit on a maximum of three boards as a natural person, and up to three boards as a representative of a corporate entity but on up to five boards in total (Article 146).
- **PrSCs (Private shareholding companies).** PrSCs were created in 2002 and were designed to appeal to foreign investors and have very flexible governance rules. They can be listed.
- **The Securities Law (2002).** This regulates the capital market and provides the framework and supervision of ASE (Amman Stock Exchange) and the SDC (Securities Depository Centre).

Corporate governance code

In September 2006, the Securities Commission drafted guidelines of the principles of corporate governance for listed shareholding companies in the ASE. The Commission identified the following areas that needed to be included in the code that was not dealt with in existing legislation:

- Independent directors.
- A third of the board should be independent.
- Cumulative voting.
- Defining related party transactions and stating rules and principles.
- Separating the CEO and chairman positions.
- Three committees (audit, nominations and compensation, and supervision committees).
- The external auditor should be rotated every four years.
- The board should comprise at least 7 members and not exceed 13 (the current law stipulates three or more).
- A natural person shall be a member of no more than three boards.
- Invitations to AGMs (Annual General Meetings) should be sent out by e-mail at least 30 days before an AGM.

- CVs of prospective new board members must be sent out with the invitation to the AGM.
- The right of shareholders to vote on matters relating to the selling of a significant part or all of the firms assets.

A consultation took place in 2006, but there were no responses from any listed companies. The Commission is currently continuing its consultation.

Types of company

PSCs (public shareholding companies)

A PSC may be formed by two or more shareholders. The minimum authorized capital is set at a 500,000 Jordanian Dinar (JOD) minimum. The subscribed capital must exceed JOD 100,000 or 20 per cent of the authorized capital, whichever is greater. Banks, financial institutions and insurance companies may only be incorporated as PSCs. Companies operating franchises must also be incorporated in this form.

Business-related bodies

ACI (Amman Chamber of Industry)

ACI was established in 1962, as a non-profit organization representing the industrial sector of Jordan. The Chamber has about 7,500 members from the manufacturing, mining, energy and information technology production industries. The Chamber has 14 industrial sub-sector consultant committees. For more information visit: www.aci.org.jo.

Amman Chamber of Commerce

The Amman Chamber represents the private sector in Jordan and has more than 40,000 registered members. The Chamber was founded in 1923. It is dedicated to promoting the interests of business, promoting free competition, the market economy, deregulation and globalization. The Chamber facilitates business interactions and networking throughout Jordan. For more information visit: www. ammanchamber.org.

ASE (Amman Stock Exchange)

The ASE is Jordan's only stock exchange and was established in 1999 as a non-profit, private institution with administrative and financial autonomy. The exchange is regulated by the securities law. It can issue warnings, fines and suspend and delist issuers. The exchange is an active member of the

Union of Arab Stock Exchanges, FEAS (Federation of Euro-Asian Stock Exchanges), a full member of the WFE (World Federation of Exchanges) and an affiliate member of the IOSCO (International Organization for Securities Commissions). For more information visit: www.ase.com.jo.

CBJ (Central Bank of Jordan)

The CBJ commenced operations in 1964. The Bank is totally owned by the government but has an independent status. The objectives of the Central Bank are to maintain monetary stability in the Kingdom, to ensure the convertibility of the Jordanian Dinar and to promote the sustained growth of the Kingdom's economy in accordance with the general economic policy of the government. In 2004, the Central Bank issued a handbook for bank directors. For more information visit: www.cbj.gov.jo.

The Jordan Corporate Governance Association

The Association was founded in 2006 and has corporate and individual members. In 2008, it commenced a director development programme in association with Mudara. For more information visit: www.cga-jordan.org.

Jordan Forum for Business and Professional Women

The Jordan Forum for Business and Professional Women is a voluntary business association that was established in 1976. It is considered one of the most active non-governmental organizations in Jordan. The Forum's activities include training and development, legal guidance and advocating laws and regulations that will improve Jordanian society and business. For more information visit: www.bpwa.org.jo.

JSC (Jordan Securities Commission)

The JSC is the securities market regulator. It protects investors and ensures fairness and transparency. The Commission is appointed by the council of ministers and reports to the prime minister. For more information visit: www.jsc.gov.jo.

SDC (Securities Depository Centre)

The SDC is a public utility institution established by the Securities Law. The centre commenced operations in 1999 and is the only entity in Jordan that is legally empowered to manage the registration, depositing and transfer of securities. For more information visit: www.sdc.com.jo.

YEA (Young Entrepreneurs Association)

The association was established in 1998 as a non-profit organization dedicated to promoting and encouraging entrepreneurship in Jordan and educating Jordanian business people on the social and economic value of non-conventional ideas. For more information visit: www.yea.com.jo.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessens *et al* (2002)[1], Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] did not cover this region. The vast majority of companies in Jordan are privately owned.

The World Bank Equity Markets Report identifies that ASE has 201 listed companies, the market capitalization to GDP ratio is 219 per cent and that the market capitalization concentration in the top 10 listed companies is 86 per cent.[4] The listed companies on the exchange are dominated by banks and insurance companies.

Bank finance and retained earnings are the main source of funds for many Jordanian companies. Companies enjoy relatively easy access to capital from the banks and frequently lending covenants are weak.

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[5]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;

---

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No.1, pp 81–112

[2] Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

[3] La Porta, R, Lopez de Silanes, F, Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

[4] World Bank Financial Indicators, *Equity Markets Report* [Accessed February 2008] Available at www.financial-indicators.org

[5] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

- elect and remove members of the board;
- share in the profits of the corporation.

In 2004, the World Bank ROSC (report on the observation of standards and codes) corporate governance assessment for Jordan identified that:

- basic shareholder rights were being observed;
- some compliance gaps in share authentication and settlement were observed;
- shareholders were identified as participating in most of the fundamental decisions except large asset sales;
- there were burdensome rules to call an EGM (Extraordinary General Meeting);
- there were very limited takeover rules.

The World Bank in its recent Doing Business 2008 study classified shareholder rights and investor protection for Jordan as average for the MENA region (see Table 2).

Table 2. Strength of investor protection

	Jordan	*MENA Region maximum*	*Global maximum*
Strength of Investor Protection (0–10)	4.3	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

Jordan is ranked 107th out of 178 countries in the world by the World Bank in terms of investor protection.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[1]

In general, disclosure and transparency is relatively low in the MENA region. In 2004, the World Bank ROSC corporate governance assessment for Jordan identified that companies produce quarterly and annual reports but that there was little corporate governance disclosure.

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Stakeholder relations and corporate responsibility

In 2004, the World Bank ROSC corporate governance assessment for Jordan identified that stakeholders have a number of legal protections and have access to legal process to obtain redress. The report noted that the companies' annual reports usually contained some stakeholder information.

Some companies have investor relations department and a few boards have developed many processes for managing their stakeholder relationships, and there is some use of triple bottom line reporting methods (ie financial, social and environmental performance).

A few companies have joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption). The organizations are:

- ARAMEX PJSC;
- City of Salt;
- IDEA JWT (Amman);
- Naouri Group;
- Nuqui Group;
- Primus;
- Razor View Advisors;
- Schema;
- Tactix Strategic Consulting.

Three organizations in Jordan have become organizational stakeholders with the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world:

- ARAMEX PJSC;
- Genome Consulting;
- Sustainability Excellence Arabia.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Boards require at least three non-executives. The Civil Law (Article 841) provides a basic duty of care for directors to act in the best interest of the company. Little is known about board practices in Jordan. It is hoped that research into corporate governance will take place in this country in the near future.

In 2004, the World Bank ROSC corporate governance assessment for Jordan identified that:

- the usual form of board structure was a single-tier (unitary) boards;
- frequently the chairman and the CEO were the same person;
- the boards were typically dominated by insiders;
- director liability provisions were weak and never used;
- minimum basic standards are laid out in law but in practice the boards were not clearly different from management;
- no rules governed independence;
- lawsuits against directors are rare or non-existent.

Board development

Mudara have begun to run programmes in Jordan in 2008 in association with the Jordan Corporate Governance Association. Their director development programme comprises:

- **Part 1 – An Introduction to Board and Corporate Governance** (two days duration)
  - The Definition and Rationale for Good Corporate Governance.
  - Building an Effective Board.
  - Board Election, Composition and Structure.
  - Executive and Non-executive Remuneration.
  - The Working Procedures of the Board and Its Committees and the Role of the Corporate Secretary.
  - Conducting a Board Evaluation.
- **Part 2 – Practical Tools for Strategic Guidance and Managerial Oversight** (two days duration)
  - The Board's Role in Setting Strategy.
  - The Interaction between the Board and the Management.
  - Choosing and Evaluating the CEO.
  - What Every Director Needs to Know about Accounting and Finance.
  - A Guide to Succession Planning.
  - The Board's Changing Role.
- **Part 3 – The Role of the Board in Disclosure and Transparency** (two days duration)
  - The Board's Role in Information Disclosure and Transparency.
  - Enterprise Risk Management.
  - Establishing Effective Internal Audit and Control Procedures.
  - The Board and Its Audit Committee.

  - How to Interact with the External Auditor.
  - Developing a Model Annual Report.
- **Part 4 – The Role of the Board in Protecting Shareholder Rights** (two days duration)
  - The Board's Role in Protecting Shareholders' Rights.
  - The Role of the Board in Related Party Transactions.
  - The Role of the Board in Setting the Company's Dividend Policy.
  - The Role of the Board in Preparing for and Conducting the General Meeting of Shareholders.
  - The Role of the Board in Managing Conflict.
  - Corporate Governance Improvement Planning.

The programme follows a similar format to the programmes run by Mudara in the UAE and Oman and to the Egyptian Institute of Directors BDS (Board Development Series) in Cairo. The programme is accredited by RiskMetrics formerly known as ISS (Institutional Shareholder Services).

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Jordan is ranked in their 2008 publication as 80th in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licenses and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 3 illustrates the comparative ease of starting a business in Jordan. The number of procedures involved is double the number required in Israel and five times that required in Australia, Canada and New Zealand.

Table 3. Number of procedures for starting a business

	Jordan	*MENA Region minimum*	*Global Best minimum*
Number of Procedures	10	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 4 illustrates the comparative ease of starting a business in Jordan. The time involved is relatively low. The cost involved is relatively high and the required minimum capital is extremely high at over 750 per cent of per capita income.

Table 4. Starting a business statistics

	Jordan	***MENA Region minimum***	***Global Best minimum***
Time (days)	14	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	66.2	1.6 (Kuwait)	0 (Denmark)
Minimum Capital (% of income per capita)	795.4	0 (Israel, Saudi Arabia)	0 (Australia Canada, Ireland, Mauritius, New Zealand, Thailand, United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Jordan is ranked 133rd out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work;
  - requirements relating to working time and the workweek;
  - mandated days of annual leave with pay.

  The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation. The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 5 illustrates the comparative level of labour regulations in Jordan. The rigidity of employment index and the non-wage labour costs are average. The firing cost is also set relatively low.

Table 5. Labour regulations

	Jordan	*MENA Region minimum*	*Global minimum*
Rigidity of Employment Index (0–100)	30	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-Wage Labour Costs (% of salary)	11.0	5.7 (Israel)	0 (Bangladesh Botswana, Ethiopia and Maldives)
Firing Cost (weeks of salary)	4.3	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

Jordan is ranked 45th out of 178 countries in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 6).

Table 6. Credit information

	Jordan	MENA Region maximum	Global maximum
Public Registry Coverage (borrowers/% adults)	0.8	22.2 (Iran)	67.1 (Portugal)
Private Bureau Coverage (% of adults)	0.0	91.6 (Israel)	100 (Argentina Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit Information Index (1–6)	2	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

Jordan is ranked 84th out of 178 countries in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Jordan is average in terms of the number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Jordan has a high time to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Jordan has an average total tax rate in the MENA region.

Table 7. Paying taxes

	Jordan	MENA Region minimum	Global minimum
Payments (number per year)	26	13 (Iraq)	2 (Sweden, Maldives)
Time to Pay Taxes (hours per year)	101	12 (UAE)	12 (UAE, Maldives)
Total Tax Rate (% of profit)	31.1	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Jordan was ranked 19th out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Jordan's import and export documentation is below average. The country's time to import and export is below average. Its costs to import and export are average in the region (Table 8).

Table 8. Importing and exporting

	Jordan	***MENA Region best practice***	***Global best practice***
Documents to Import	7	4 (Israel)	3 (Denmark, Sweden)
Documents to Export	7	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada, Estonia, Panama and Micronesia)
Time to Import (days)	22	12 (Israel)	3 (Singapore)
Time to Export (days)	19	12 (Israel)	5 (Denmark, Estonia and Singapore)
Cost to Import (US $ per container)	1,065	462 (UAE)	367 (Singapore)
Cost to Export (US $ per container)	680	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

Jordan was ranked 59th out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Jordan is average in the region.
- **The cost** to go through the process. The cost of the insolvency process in Jordan is below average in the region.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. Jordan is average for the region.

The statistics for Jordan are listed in Tables 9 and 10.

Table 9. Closing a business – time and cost

	Jordan	*MENA Region minimum*	*Global minimum*
Time to go through Insolvency (years)	4.3	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of Insolvency (% of estate)	9.0	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 10. Closing a business – recovery rate

	Jordan	*MENA Region maximum*	*Global maximum*
Recovery Rate (cents per US $)	27.8	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

Jordan is ranked 87th out of 178 countries in the world in terms of ease of closing a business.

Summary

Jordan has a labour force of 1.5 million. It is the 11th (out of 19 countries) largest most populated country in the MENA region. The GDP per capita is the 13th highest (out of 19 countries) in the MENA region. The economy is growing at 6.4 per cent. Jordan is a small country with limited natural resources. Corporate governance developments are taking place (for example the Mudara director development programme). However, company law and corporate governance are relatively undeveloped compared to international best practices. If the private sector is to expand further corporate and capital market legislation will be required in the near future. Jordan is ranked by the World Bank in 2008 as 80th out of 178 countries in the world in terms of ease of doing business.

2.8

The State of Kuwait

Location

The State of Kuwait is located on the coast of the Persian Gulf. It has borders with Saudi Arabia to the south and Iraq to the north and west. It has nine islands, the largest of which is Bubiyan, which is linked to the mainland by a bridge.

Population

The population of Kuwait is 2.5 million with a labour force of 1.2 million. It is one of the smallest countries in the MENA region (17th out of 19 countries).[1] The country has a large number of expatriates as the government only rarely grants citizenship to non-citizens.

About 85 per cent of the population is Muslims and about 57 per cent is Arabs.[2] Kuwait's official language is Arabic although English is widely spoken.[3] The adult literacy rate is 93 per cent.[4]

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007

Economy

The GDP (gross domestic product) per capita in Kuwait is US $23,100. This is the fifth highest in the MENA region. The economy is growing at 12.7 per cent.[1]

The major industries in Kuwait are oil, food processing, textiles, furniture, fertilizers. Petroleum and petrochemicals account for nearly half of GDP, 95 per cent of export revenues and 80 per cent of government income. Kuwait depends almost wholly on food imports. About 75 per cent of potable water must be distilled or imported.

Legal, regulatory and corporate governance frameworks

System of government

The State of Kuwait is a constitutional monarchy. The main government organs are:

- **The Emir.** The head of state is the Emir or Sheikh. The nomination of a new crown prince or Emir by the ruling family has to be confirmed by the National Assembly. If he does not win the votes of the majority of the assembly, the Emir or the royal family members must submit the names of three candidates to the National Assembly, and the Assembly must select one of these to be the new crown prince.
- **The Prime Minister.** The prime minister is appointed by the Emir.
- **The Council of Ministers.** The council of ministers aids the prime minister in his task as head of government and must contain at least one elected member of the parliament. The number of ministers must not exceed one-third of the elected members of the National Assembly.
- **The National Assembly.** The National Assembly consists of 50 elected members, who are elected every four years. Sixteen government ministers are members of the Assembly. The National Assembly has the power to dismiss the prime minister and/or any member of the cabinet.

In 2005, the National Assembly permitted women's suffrage. Recent laws have been regarded by many as restricting the freedom of speech particularly for criticizing the government's performance.

In 2007, the Economist Intelligence Unit's Index of Democracy classified Kuwait as an authoritarian regime and Kuwait was ranked as 134th in the world in terms of democracy (out of 167 countries).[2]

---

[1] *The World Factbook*, CIA, 13 December 2007

[2] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for Kuwait in 2008. The overall scores are average (apart from the cost to enforce a contract) and Kuwait is 99th in the world ranking (out of 178 countries).

Table 1. Enforcement of contracts

	Kuwait	MENA Region minimum	Global minimum
Procedures to enforce a contract	50	35 (Israel)	20 (Ireland)
Time to enforce a contract (days)	566	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to enforce a contract (% of claim)	13.3	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked Kuwait in terms of legal rights of borrowers and creditors. The overall scores are average – Kuwait is 68th in the world ranking (out of 178 countries).

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in Kuwait:[1]

- The citizenship law contains many discriminatory provisions that prevent large groups of people from exercising their political rights.
- Combating terrorism has led to restrictions in human rights.
- Conservative traditions have obstructed women's advancement.
- Prisons are overcrowded and lack health care provisions.

Company and capital market legislation

The main laws focusing upon companies and the capital markets are:

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

- **The Commercial Law No. 68 (1980)**;
- **The Commercial Companies Law No. 15 (1960)** and amendments;
- **The Kuwaiti Commercial Code**.

Non-Kuwaitis cannot engage in commerce in Kuwait without having a Kuwaiti partner whose equity holding is at least 51 per cent (Article 23).

A foreign company cannot establish a branch in Kuwait and may not engage in commercial activities in Kuwait except through a Kuwaiti agent (Article 24). Specific sectors of the economy remain closed to foreign investment, including upstream oil development, insurance and real estate, with some limited exceptions for citizens from GCC (Gulf Cooperation Council) states.

Types of companies

Limited liability companies

A limited liability company with more than seven shareholders must have a supervisory board consisting of at least three members. The duties of the supervisory board are to review the company's balance sheet, the distribution of profits and the annual report. The supervisory board reports on these matters to the general meeting of shareholders.

A limited liability company is required to have at least one auditor to be appointed by the general meeting of shareholders. The auditor is responsible for the accuracy of the financial reports submitted to the general meeting regarding the company's accounts. The balance sheet must be sent to the Ministry of Commerce where it is open to public inspection.

Joint-stock companies

A joint-stock company may offer its shares to the public or remain a closed company. If the company deals in banking, insurance or finance activities, foreign ownership may not exceed 40 per cent.

A joint-stock company whose shares are offered to the public is formed by preparing and submitting a Memorandum and Articles of Association along with an application for a decree authorizing incorporation to the Ministry of Commerce and Industry. At least five founders must be registered. If the decree authorizing incorporation is granted, the company acquires legal personality as of the date of the decree, which must be published in the Official Gazette.

The founders must subscribe for at least 10 per cent of the capital, which must be paid for before public subscription starts; a minimum of 20 per cent of the capital must be paid for upon incorporation. Subscriptions are conducted through approved banking institutions.

Within 30 days of the completion of the public subscription, a general meeting of shareholders must be held to elect the initial members of the board and approve the founders' report on the corporation. Following this meeting the joint-stock company must be entered in the Commercial Register.

A closed joint-stock company, the shares of which are not offered to the public, does not require a decree authorizing incorporation. The incorporation documents must contain a declaration that the founders have subscribed for all the shares. The founders are required to pay at least 20 per cent of the nominal value of their shares upon incorporation and the remainder within the next five years.

A minimum investment of 37,500 Kuwaiti Dinars (KD) is required to establish a public joint-stock company, and a minimum of KD 7,500 is required to establish a closed joint-stock company. The capital must be divided into equal value shares having a minimum nominal value of KD 1 and maximum nominal value of KD 75. Shares may be issued at a premium but not at a discount. Kuwaiti shareholders may not sell to foreigners.

Business-related bodies

Kuwait Chamber of Commerce and Industry

Kuwait Chamber of Commerce and Industry was established in 1959. The Chamber represents business within the country. For more information visit: www.kcci.org.kw.

KFIB (Kuwait Foreign Investment Bureau)

KFIB (Kuwait Foreign Investment Bureau) was established in 2001 to implement the Law No. 08 (2001). The objective of the bureau is focused upon economic and social development. In 2003, the role of the KFIB was widened to include activities conducted by foreign investors and allowing them to establish new companies with 100 per cent foreign capital. For more information visit: www.kuwaitfib.com.

The Kuwait Stock Exchange

The stock exchange was founded in 1983 and is an autonomous organization that regulates itself. Kuwait does not have an independent regulator. There are 177 companies listed on the market. The capitalization of the market is US $178.8 billion and the average company capitalization is US $1,010 million.[1] For more information visit: www.kuwaitse.com.

[1] The National Investor (TNI) (2008) *It's a family matter* Survey, TNI, Abu Dhabi

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessans *et al* (2002),[1] Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] did not cover this region.

There are few listed companies in Kuwait. The World Bank Equity Markets Report identifies that Kuwait has 143 listed companies, the market capitalization to GDP ratio is 134 per cent.[4]

Bank finance and retained earnings are the main source of funds for Kuwaiti companies. Companies enjoy relatively easy access to capital from the banks and frequently lending covenants are weak. Table 2 provides details of equity market capitalization and concentration.

Table 2. Equity market capitalization and concentration

Market Capitalization as percentage of GDP	*Top 10 companies as a percentage of total market*	*Total number of listed companies*
154%	48%	161

Source: Doing Business, 2008 World Bank

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[5]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112
[2] Barca, F. and Becht, M. (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford
[3] La Porta, Rafael, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, 471–517
[4] World Bank Financial Indicators, *Equity Markets Report* [Accessed February 2008] Available at www.financial-indicators.org
[5] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

The general meeting of shareholders is obliged to require reports from the supervisory board, and the supervisory board must convene a general meeting of shareholders at least once a year. Members holding at least 25 per cent of the capital may also convene general meetings. Most resolutions of the general meeting are decided by majority vote, unless the memorandum provides otherwise. To amend the memorandum as well as to decrease or increase the capital a special majority of the shareholders holding 75 per cent of the shares of the company is required.

A general meeting must be convened at least once every year. In addition, the board must convene a general meeting of shareholders upon the request of shareholders holding at least 10 per cent of the capital. Quorum at a general meeting is satisfied when shareholders holding at least 50 per cent of the capital are present. Resolutions are decided based on simple majority vote.

Certain matters require extraordinary resolutions of shareholders holding at least 75 per cent of the shares, such as amending the incorporation documents, selling the entire operation, winding up or merger and reducing capital.

- Shareholders have one share one vote.
- Cumulative voting for director elections is not allowed.
- Formal takeover, buyout and merger procedures exist.
- Pre-emptive rights exist.
- There are limits to foreign investment in companies.

Institute of International Finance Inc and Hawkamah Survey 2006

In 2006, the Institute of International Finance Inc and Hawkamah rated minority shareholder protection in Kuwait the ratings are shown in Table 3.

Table 3. Rating of minority shareholder protection

Voting rights	3.5
Changes to the company and its capital structure	4.5
Shareholder meetings and other rights	3.5
Minority shareholder protection overall	4.0

Source: IIF/Hawkamah GCC Comparative Corporate Governance Survey (2006)
Scale: 1 = Low rating; 5 = High rating

The World Bank in its recent Doing Business 2008 study classified shareholder rights and investor protection for Kuwait as above average for the MENA region (see Table 4).

Table 4. Strength of investor protection

	Kuwait	*MENA Region maximum*	*Global maximum*
Strength of investor protection (0–10)	6.3	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

Kuwait is classified as 19th out of 178 countries in the world in terms of protecting investor rights.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[1]

In general, disclosure and transparency is relatively low in the MENA region.

In 2006, the Institute of International Finance Inc and Hawkamah[2] rated transparency in Kuwait at 3.5 out of 5.

Stakeholder relations and corporate responsibility

Few companies in Kuwait have investor relations departments and very few boards have developed many processes for managing their stakeholder relationships.

There is little use of triple bottom line reporting methods (ie financial, social and environmental performance). One company (Maqaleed Co) has joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption).

No organizations have become organizational stakeholders with the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

[2] IIF/Hawkamah *GCC Comparative Corporate Governance Survey* (2006)

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board and the board's accountability to the company and the shareholders.[1]

The following board practices are required in Kuwaiti companies:

- Directors are personally liable to the company, the shareholders and third parties for any mismanagement, breach of law or violation of the company's memorandum. The directors report to the general meeting of shareholders.
- The board of directors of a joint-stock company must consist of at least three members whose terms of office may not exceed three years but whose appointment may be renewed for successive terms.
- Directors are required to hold at least 1 per cent of the capital.
- A person may not serve on more than three boards of Kuwaiti joint-stock companies or be a managing director or chairman in more than one joint-stock company.
- Directors are elected by the shareholders by secret vote. Directors are prohibited from having any personal interest in the company's transactions, and they may not take part in the management of a rival company without the approval of the general meeting.
- Remuneration paid to directors may not exceed 10 per cent of net profits after deducting required reserves, depreciation and a dividend of at least 5 per cent.

TNI (The National Investor) Survey (2008)[2]

TNI conducted a census on all of the listed companies in Kuwait and identified that:

- The average board size was 6.2 (the minimum number of directors was 3 and the maximum number was 11).
- Kuwait had the following distribution of mandates per director on a listed company:
  - 85 per cent of directors sit on the board of only one company;
  - 12 per cent of directors sit on the board of two companies;
  - 3 per cent of directors sit on the board of three companies;

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

[2] The National Investor (TNI) (2008) *It's a family matter* Survey, TNI, Abu Dhabi

- 0 per cent of directors sit on the board of four companies;
- 0 per cent of directors sit on the board of five companies.

The survey identified that Kuwait had 30 women on boards of listed companies and that 33 per cent of listed companies had at least two directors from the same family. In at least one case the board was made up entirely of family members.

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Kuwait is ranked in their 2008 publication as 40th out of 178 countries in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licences and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 5 illustrates the comparative ease of starting a business in Kuwait. The number of procedures involved is over double the number required in Israel and over six times that required in Australia, Canada and New Zealand.

Table 5. Number of procedures for starting a business

	Kuwait	*MENA Region minimum*	*Global best minimum*
Number of procedures	13	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 6 illustrates the comparative ease of starting a business in Kuwait. The time involved is nearly 4 times the duration in Egypt and over 17 times that required in Australia. The cost involved is the lowest in the MENA region but the required minimum capital is very high at the annual per capita income.

Table 6. Starting a business statistics

	Kuwait	*MENA Region minimum*	*Global best minimum*
Time (days)	35	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	1.6	1.6 (Kuwait)	0 (Denmark)
Minimum capital (% of income per capita)	99.9	0 (Israel, Saudi Arabia)	0 (Australia Canada, Ireland, Mauritius, New Zealand, Thailand, the United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Kuwait is ranked 121st out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work;
  - requirements relating to working time and the workweek and
  - mandated days of annual leave with pay.

  The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation.

The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 7 illustrates the comparative level of labour regulations in Kuwait. The rigidity of employment index is the lowest in the MENA region. The non-wage labour costs are relatively low. The firing cost, however, is set at a very high level of over 18 months' salary.

Table 7. Labour regulations

	Kuwait	MENA Region minimum	Global minimum
Rigidity of employment index (0–100)	13	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-wage labour costs (% of salary)	11.0	5.7 (Israel)	0 (Bangladesh, Botswana, Ethiopia and Maldives)
Firing cost (weeks of salary)	78.0	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

Kuwait is ranked 39th out of 178 countries in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 8).

Kuwait is ranked 68th out of 178 countries in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

Table 8. Credit information

	Kuwait	*MENA Region maximum*	*Global maximum*
Public registry coverage (borrowers/% adults)	0.0	22.2 (Iran)	67.1 (Portugal)
Private bureau coverage (% of adults)	14.5	91.6 (Israel)	100 (Argentina, Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit information index (1–6)	4	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

- **Number of tax payments.** Kuwait has one of the lowest number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Kuwait has a high time to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Kuwait has the lowest total tax rate in the MENA region.

Table 9. Paying taxes

	Kuwait	**MENA Region minimum**	**Global minimum**
Payments (number per year)	14	13 (Iraq)	2 (Sweden, Maldives)
Time to pay taxes (hours per year)	118	12 (UAE)	12 (UAE, Maldives)
Total tax rate (% of profit)	14.4	14.4 (UAE and Kuwait)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Kuwait is ranked eighth out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Kuwait's import and export documentation is average. The country's time to import and export is average. Its costs to import and export are the above average in the region (Table 10).

Table 10. Importing and exporting

	Kuwait	MENA region best practice	Global best practice
Documents to import	11	4 (Israel)	3 (Denmark, Sweden)
Documents to export	8	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada, Estonia, Panama and Micronesia)
Time to import (days)	38	12 (Israel)	3 (Singapore)
Time to export (days)	27	12 (Israel)	5 (Denmark, Estonia and Singapore)
Cost to import (US $ per container)	810	462 (UAE)	367 (Singapore)
Cost to export (US $ per container)	1,027	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

Kuwait is ranked 99th out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Kuwait is very slow.
- **The cost** to go through the process. The cost of the insolvency process in Kuwait is the lowest in the region.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. The Kuwait rate is average for the region.

The statistics for Kuwait are listed in Tables 11 and 12.

Table 11. Closing a business – time and cost

	Kuwait	*MENA Region minimum*	*Global minimum*
Time to go through insolvency (years)	4.2	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of insolvency (% of estate)	1.0	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 12. Closing a business – recovery rate

	Kuwait	*MENA Region maximum*	*Global maximum*
Recovery rate (cents per US $)	33.6	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

Kuwait is ranked 67th out of 178 countries in the world in terms of ease of closing a business.

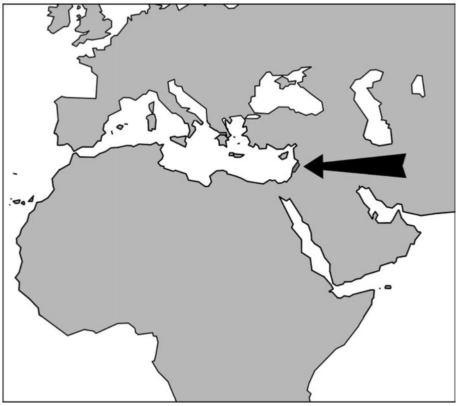
Summary

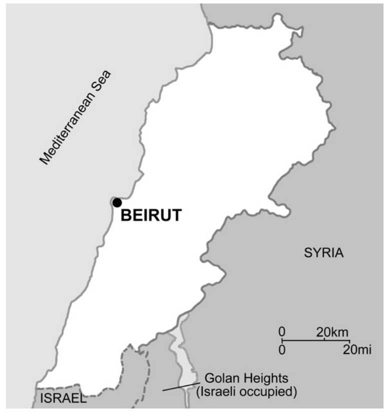
Kuwait has a labour force of 1.2 million. It is one of the smallest countries in the MENA region (17th out of 19 countries). The country has a large number of expatriates as the government only rarely grants citizenship to non-citizens. The GDP per capita in Kuwait is the fifth highest in the MENA region. The economy is growing at 12.7 per cent. The economy is dependent upon petroleum and petrochemicals.

Company law and corporate governance are relatively undeveloped compared to international best practices. If the private sector is to expand further corporate and capital market legislation will be required in the near future. Kuwait is ranked by the World Bank in 2008 as 40th out of 178 countries in the world in terms of ease of doing business.

2.9

The Republic of Lebanon





Location

The Republic of Lebanon is a small, mostly mountainous country on the eastern shore of the Mediterranean Sea. It is bordered by Syria to the north and east and Israel to the south.

Population

The population of Lebanon is 3.9 million with a labour force of 1.5 million.[1] It is one of the smallest countries in the MENA region (15th out of 19 countries).[2] About 60 per cent of the population are Muslims and 39 per cent are Christians. About 95 per cent are Arabs.[3] Languages spoken in Lebanon include Arabic, French, English and Armenian.[4] The adult literacy rate is 87 per cent.[5]

Economy

The GDP (Gross Domestic Product) per capita in Lebanon is US $5,900 and is the 12th highest in the MENA region. The economy is currently recovering

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007
[5] *The World Factbook*, CIA, 13 December 2007

from recent instability.[1]The major industries in Lebanon are banking, food processing, jewellery, textiles, mineral and chemical products.[2] Lebanon's strict financial secrecy and capitalist economy has given it significant economic status among Arab countries. Industry in Lebanon is mainly limited to small businesses concerned with reassembling and packaging imported parts. Although Lebanon possesses the highest proportion of cultivable land in the Arabic-speaking world, it does not have a large agricultural sector.

Legal, regulatory and corporate governance frameworks

System of government

Lebanon has recently experienced considerable political turbulence. In 2005, a former prime minister was assassinated in a car bomb explosion. This incident triggered a series of demonstrations, known as the Cedar Revolution that demanded the withdrawal of Syrian troops from Lebanon and the establishment of an international commission to investigate the assassination. Syria has begun to withdraw its army troops from Lebanon.

In July 2006, Hezbollah kidnapped two Israeli soldiers and that has led to a conflict, known as 'the July War'. This conflict lasted until the United Nations brokered a ceasefire which came into effect in August 2006. This war has led to significant civilian and military casualties, extensive damage to civilian infrastructure and massive population displacement.

- **The President.** The parliament elects the president.
- **The Prime Minister and Cabinet.** The prime minister and cabinet is appointed by the president.
- **The Parliament.** The parliament is also called *Le Parlement*. It is the Lebanese national legislature and is elected for a four-year term by universal adult suffrage in multi-member constituencies. Its major functions are to elect the president of the Republic and to approve laws and national budgets.

Lebanon has a unique 'confessional system'. This involves each religious community having an allotted number of deputies in the Parliament. The Taif Agreement (1989) provides for equal representation of Christians and Muslims, with each electing 64 of the 128 deputies. The system seems to encourage politicians to seek the support from outside of their own religious communities in order to increase their probability of being elected.

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007

Numerous political parties exist in Lebanon. Many parties are little more than ad hoc electoral lists, formed by negotiation among influential local figures representing the various confessional communities. These electoral lists usually function only for the purpose of the election and do not form identifiable groupings in the subsequent parliament. Some parties are personality-based, often comprising followers of a present or past political leader or warlord. No single party has ever won more than 12.5 per cent of the total number of seats in the parliament and alliances and coalitions are extremely common.

In 2007, the Economist Intelligence Unit's Index of Democracy classified Lebanon as a hybrid regime and ranked Lebanon as 85th in the world in terms of democracy (out of 167 countries).[1]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for Lebanon in 2008. The overall scores are worse than average, and Lebanon is 121st in the world ranking (out of 178 countries).

Table 1. Enforcement of contracts

	Lebanon	*MENA Region minimum*	*Global minimum*
Procedures to Enforce a Contract	37	35 (Israel)	20 (Ireland)
Time to Enforce a Contract (days)	721	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to Enforce a Contract (% of claim)	30.8	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked Lebanon in terms of legal rights of borrowers and creditors. The overall scores are above average – Lebanon is 48th in the world ranking (out of 178 countries).

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the

[1] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

core international human rights treaties. It has noted the following human rights difficulties and impediments in Lebanon:[1]

- Presidential elections have been postponed.
- Terrorist attacks and Israeli aggression against Lebanon and its human rights consequences.
- The split of Lebanese political groups and the system of political confessionalism.
- Uncovering the fate of missing citizens from the civil war.

Company and capital market legislation

The main law focusing upon companies and the capital markets is as discussed below.

The Lebanese Code of Commerce

The Code permits joint-stock companies and limited liability companies. Foreign investors may also be interested in establishing branch offices of foreign companies.

Corporate governance code

The LTA (Lebanese Transparency Association), in partnership with CIPE (Center for International Private Enterprise) created a code of corporate governance for SMEs (small and medium-sized enterprises) in Lebanon which was launched in May 2006.

The Lebanese Corporate Governance Code (2006) targets:

- 'SAL' (*Société anonyme libanais*) joint-stock companies – closely held companies normally with about 100 employees. Many of them are FOEs (family owned enterprises)
- 'SARL' (*Société anonyme à responsabilité limitée*) limited liability companies.

The Code is divided into a number of parts:

- **Part 1 – Introduction**
- **Part 2 – Shareholders Rights and Obligations**
    - General rights of shareholders and key ownership functions.
    - The rights of shareholders with regard to shareholders meetings.

---

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

  - Equitable treatment of shareholders.
  - The protection of minority shareholders in board composition.
- **Part 3 – Board of Directors**
  - Board structure, membership and functioning of the board.
  - Fiduciary duties of board members.
  - Monitoring board functions and accountability to shareholders.
  - Determining and disclosing the remuneration of the board of directors.
  - The board and the role of stakeholders.
- **Part 4 – Auditing and Related Aspects of Corporate Transparency**
  - Internal audit.
  - External independent auditors.

The Code also contains appendices covering:

- Shareholder rights;
- Shareholder rights to information;
- The rights of shareholders with regard to shareholders meetings;
- Board composition and minority shareholders;
- Governance of FOEs;
- Board committees;
- Directors Charter and duties;
- Related party transactions.

For more information visit: www.transparency-lebanon.org.

Types of companies

There are two types of company in Lebanon:

- **Joint-stock companies (SAL joint-stock companies).** A joint-stock company is a company with three or more persons and a minimum authorized capital of 30 million Lebanese Pounds (L£).
  The board of directors must set aside 10 per cent of net profits to create a statutory reserve fund until such time as this reserve fund becomes equivalent to one-third of the capital of the company.
  A joint-stock company must appoint an auditor. The board of directors must have at least 3 Lebanese members out of the maximum 12 allowed.
- **Limited liability companies (SARL limited liability companies).** A limited liability company has between 3 and 20 members. It cannot issue shares, debentures or bonds, nor can it invite the public to subscribe for ownership in the company. The trade name must be followed by the initials SARL and may include the names of the partners. Shares in a limited liability company cannot be transferred to third parties without the prior approval of members representing at least 75 per cent of the capital.

Business-related bodies

ALIND (Association of Lebanese Industrialists)

ALIND is an association involving all industries in Lebanon. The Association is playing a major role in enhancing the importance of the private sector in Lebanon's development.

Beirut Stock Exchange

The Beirut Stock Exchange is Lebanon's only stock exchange and was established in 1983. The Stock Exchange Commission is appointed by the Ministry of Finance and works under its authority. For more information visit: www.bse.com.lb.

CCIABML (Chamber of Commerce, Industry and Agriculture Beirut and Mount Lebanon)

The CCIABML was established in 1887. It currently represents over 10,000 Lebanese business firms most of which are SMEs. The Chamber promotes the country's exports and attracts foreign investment. The primary source of financing for the chamber is through membership and certification fees. The head office is situated in the centre of Beirut where it provides conference and meeting rooms. For more information visit: www.ccib.org.lb.

LACPA (Lebanese Association for Certified Public Accountants)

The accounting and audit profession in Lebanon is represented by the LACPA. It was established in 1994. For more information visit: www.lacpa.org.lb.

RDCL (The Lebanese Businessmen Association)

The RDCL was established in 1986. The Association defends economic liberalism and the interests of private enterprises. It currently has 300 members from all sectors of the Lebanese economy.

For more information visit: www.rdcl.org.lb.

LTA (Lebanese Transparency Association)

The LTA was founded in 1999. The association was the first Lebanese NGO (non-governmental organization) specialized in promoting transparency and fighting corruption. The LTA aims to curb corruption in its various forms in different sectors of society and state. It also aims to promote the principles of transparency and accountability, establish the rule of law and strengthen respect of basic rights as declared in international charters and the Lebanese Constitution.

In 2005, the LTA established the LCGTF (Lebanon Corporate Governance Task Force) that consists of private sector associations, institutions, representatives from civil society, academia and the public sector. The task force is facilitated by four committees:

- **The Accounting and Auditing Committee.** This committee promotes corporate governance from an auditing and accounting perspective. The Accounting and Auditing Subcommittee is currently working on the application of the international accounting standards and the international standards of auditing.
- **The Legal and Regulatory Committee.** This committee is working on amendments to the Code of Commerce. This includes strengthening minority and foreign shareholder rights, and implementing these changes proposed by the Auditing Committee (see above). It is also working on improving board of directors accountability, disclosure and transparency and bankruptcy procedures.
- **The Information, Communication and Media Committee**. This committee is responsible for disseminating information from the task force to the widest audience possible.
- **The Membership and Funding Committee**. This committee is responsible for the identification and raising of funds and to attract new members.

The LTA, in partnership with CIPE, created a code of corporate governance for SMEs in Lebanon. The LTA are currently helping the government to formulate governance standards for Lebanon's Commercial Code. For more information visit: www.transparency-lebanon.org.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessens *et al* (2002)[1], Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] did not cover this region.

The vast majority of companies in Lebanon are privately owned. There are few listed companies in Lebanon. The World Bank Equity Markets Report identifies that Lebanon has 11 listed companies. These are mainly banks, construction and trading companies. The market capitalization to GDP ratio is 16 per cent and the market capitalization concentration in the top 10 listed companies is 73 per cent.[4] Consequently there is not a strong equity culture. The Beirut Stock Exchange is not a very active market. It is not tightly regulated and there is little modern or effective capital market law.

Bank finance and retained earnings are the main source of funds for Lebanese companies. Companies enjoy relatively easy access to capital from the banks and frequently lending covenants are weak.

The LCGTF (Lebanon Corporate Governance Task Force) Survey on Corporate Governance in Lebanon (2004)

The survey found that:

- FOEs and SMEs constitute the backbone of the economy.
- 11 per cent of the companies were established prior to 1950. This is a low survival rate.
- The financial sector in Lebanon is dominated by the banking sector; the stock market and financial markets play a limited role in financing the corporate sector.
- The majority of companies had an external auditor. However, over 60 per cent of auditors also provided non–audit-related services.
- Over 50 per cent of companies did not have any rules to prevent board directors and managers from participating in decision making, where conflicts of interest arose.
- Over 75 per cent agreed that shareholders were 'furnished with sufficient information and timely information concerning the date, and agenda of general meetings'; and a similar percentage agreed that 'shareholders are sufficiently informed on decisions concerning fundamental issues like amendments of statutes or articles of incorporation, etc'.
- The results of the survey confirmed that the current judicial system requires reform. Also, the legal system in Lebanon was perceived as lacking efficiency and consistency in enforcement.

---

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112

[2] Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

[3] La Porta, R, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

[4] World Bank Financial Indicators, *Equity Markets Report* [Accessed February 2008] Available at www.financial-indicators.org

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[1]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

The World Bank in its recent Doing Business 2008 study classified shareholder rights and investor protection for Lebanon as average for the MENA region (see Table 2).

Table 2. Strength of investor protection

	Lebanon	*MENA Region maximum*	*Global maximum*
Strength of Investor Protection (0–10)	5.0	8.3 (Israel)	9.7 (New Zealand)

Source: Hawkamah/IFC Corporate Governance MENA Survey – Banks and Listed Companies (2008)

Lebanon is classified as 83rd out of 178 countries in the world in terms of protecting investor rights.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[2]

In general, disclosure and transparency is relatively low in the MENA region.

---

1 OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

2 OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Stakeholder relations and corporate responsibility

Few companies in Lebanon have investor relations departments and very few boards have developed many processes for managing their stakeholder relationships.

There is little use of triple bottom line reporting methods (ie financial, social and environmental performance). Two companies have joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption): LIBAN (Lebanese Businessmen Associations' Network) and the Media Association for Democracy Awareness.

No organizations have become organizational stakeholders with the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

Little is known about board practices in Lebanon. It is hoped that research into corporate governance will take place in this country in the near future. There are no director or board development programmes in Lebanon.

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Lebanon is ranked in their 2008 publication as 85th out of 178 countries in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

new company. The World Bank annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licenses and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 3 illustrates the comparative ease of starting a business in Lebanon. The number of procedures involved is relatively low.

Table 3. Number of procedures for starting a business

	Lebanon	*MENA Region minimum*	*Global best minimum*
Number of Procedures	6	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 4 illustrates the comparative ease of starting a business in Lebanon. The time involved is over 5 times the duration in Egypt and over 20 times that required in Australia. The cost involved is high and nearly equal to a year's per capita income and the required minimum capital is high in terms of per capita income.

Table 4. Starting a business

	Lebanon	*MENA Region minimum*	*Global best minimum*
Time (days)	46	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	94.1	1.6 (Kuwait)	0 (Denmark)
Minimum Capital (% of income per capita)	60.4	0 (Israel, Saudi Arabia)	0 (Australia Canada, Ireland, Mauritius, New Zealand, Thailand, the United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Lebanon is ranked 132nd out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility

of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work;
  - requirements relating to working time and the workweek;
  - mandated days of annual leave with pay.

  The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation. The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 5 illustrates the comparative level of labour regulations in Lebanon. The rigidity of employment index, the non-wage labour costs and the firing cost are relatively low.

Table 5. Labour regulations

	Lebanon	*MENA Region minimum*	*Global minimum*
Rigidity of Employment Index (0–100)	25	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-wage Labour Costs (% of salary)	21.5	5.7 (Israel)	0 (Bangladesh Botswana, Ethiopia and Maldives)
Firing Cost (weeks of salary)	17.3	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

Lebanon is ranked 53rd out of 178 countries in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 6).

Table 6. Credit information

	Lebanon	*MENA Region maximum*	*Global maximum*
Public Registry Coverage (borrowers / % adults)	4.7	22.2 (Iran)	67.1 (Portugal)
Private Bureau Coverage (% of adults)	0.0	91.6 (Israel)	100 (Argentina Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit Information Index (1–6)	5	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

Lebanon is ranked 48th out of 178 countries in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Lebanon has one of the lowest number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Lebanon requires large amounts of time to pay taxes.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. The Lebanese total tax rate is slightly above average in the MENA region.

Table 7. Paying taxes

	Lebanon	*MENA Region minimum*	*Global minimum*
Payments (number per year)	19	13 (Iraq)	2 (Sweden, Maldives)
Time to Pay Taxes (hours per year)	180	12 (UAE)	12 (UAE, Maldives)
Total Tax Rate (% of profit)	35.4	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Lebanon is ranked 33rd out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Lebanon's import and export documentation are low. The country's time to import and export is high. Its costs to import and export are high (Table 8).

Table 8. Importing and exporting

	Lebanon	*MENA Region best practice*	*Global best practice*
Documents to Import	7	4 (Israel)	3 (Denmark, Sweden)
Documents to Export	5	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada, Estonia, Panama and Micronesia)
Time to Import (days)	38	12 (Israel)	3 (Singapore)
Time to export (days)	27	12 (Israel)	5 (Denmark, Estonia and Singapore)
Cost to Import (US $ per container)	810	462 (UAE)	367 (Singapore)
Cost to Export (US $ per container)	1,027	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

Lebanon was ranked 83rd out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Lebanon is very slow.
- **The cost** to go through the process. The cost of the insolvency process in Lebanon is the highest in the region.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. Lebanon rate is well below average for the region.

The statistics for Lebanon are listed in Tables 9 and 10.

Table 9. Closing a business – time and cost

	Lebanon	*MENA Region minimum*	*Global minimum*
Time to go Through Insolvency (years)	4.0	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of Insolvency (% of estate)	22.0	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 10. Closing a business – recovery rate

	Lebanon	*MENA Region maximum*	*Global maximum*
Recovery Rate (cents per US $)	19.1	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

Lebanon is ranked 117th out of 178 countries in the world in terms of ease of closing a business.

Summary

Lebanon has a labour force of 1.5 million. The GDP per capita in Lebanon is the 12th highest in the MENA region. The economy is currently recovering from recent instability.

Company law and corporate governance are relatively undeveloped compared to international best practices. If the private sector is to expand corporate and capital market legislation will be required in the near future. Lebanon is ranked by the World Bank in 2008 as 85th out of 178 countries in the world in terms of ease of doing business.

2.10

The Great Socialist People's Libyan Arab Jamahiriya (Libya)

Location

The Great Socialist People's Libyan Arab Jamahiriya lies between Egypt to the east, Sudan to the southeast, Chad and Niger to the south and Algeria and Tunisia to the west. About 90 per cent of the country is desert. Libya is one of the least densely populated nations in the world.

Population

The population of Libya is 6.0 million with a labour force of 1.8 million. It is the 12th largest country in the MENA region.[1] About 90 per cent of the people live in less than 10 per cent of the area, mostly along the coast. More than half the population is urban.

About 97 per cent of the population are Sunni Muslims. Libyan Berbers and Arabs constitute 97 per cent of the population; the other 3 per cent are Greeks, Maltese, Italians, Egyptians, Afghanis, Turks, Indians and Sub-Saharan Africans.[2] Libya has a large illegal Sub-Saharan African population.

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007

Languages spoken in Libya include Arabic, Italian and English.[1] The adult literacy rate is 83 per cent. [2]

Economy

The GDP (Gross Domestic Product) per capita in Libya is US $12,300 and is the eighth highest in the MENA region. The economy is growing at 5.8 per cent.[3]

The major industries in Libya are oil, gas and petrochemicals.[4] The Libyan economy depends primarily upon revenues from the oil sector, which constitute practically all of the export earnings and about one-quarter of GDP. These oil revenues and a small population give Libya one of the highest GDPs per capita in Africa and have allowed the Libyan state to provide an extensive level of social security, particularly in the fields of housing and education.

Compared to its neighbours, Libya has a low level of poverty. GPC (General People's Committee) Decision No. 2 for 2007 of 1 January 2007 raised the minimum salary to 250 Libyan Dinars (LD) per month for employees in corporations not financed by the Central Government. This change impacted on both foreign and domestic companies. The government has also taken action to remove the pay cap for many types of work outside of the public sector.

Recently, Libyan officials have carried out economic reforms as part of a broader campaign to re-integrate the country into the global capitalist economy. In 2003, UN sanctions were lifted when Libya announced that it would abandon programmes to build weapons of mass destruction.

Climatic conditions and poor soils severely limit agricultural output, and Libya imports about 75 per cent of its food. A significant proportion of the population does not have access to safe drinking water.

The importance of the private sector is increasing. Many government-run industries are currently being privatized. In addition, many international oil companies are returning to the country. Tourism is rising and bringing increased demand for hotel accommodation and for capacity at the airports.

Legal, regulatory and corporate governance frameworks

System of government

The Libyan Arab Republic was formed in 1969. The main government organs include:

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007

- **The Brother Leader and Guide of the Revolution.** The country is currently led by Colonel Muammar al-Gaddafi, whose foreign policy has often brought him into conflict with the West and certain African countries. However, in 2003 Colonel Gaddafi publicly gave up nuclear aspirations, and Libya's foreign relations today are far less contentious.
- **The Revolutionary Command Council and the Revolutionary Committees.** The Council consists of 12 people. The council and committees are not elected and cannot be voted out of office. They are in power by virtue of their involvement in the revolution in 1969.
- **Local People's Congresses and Committees.** There are Local People's Congresses in each of the 1,500 urban wards. Every four years, the membership of the Local People's Congresses elect the Local People's Committees.
- **Regional People's Congresses and Committees (Sha'biyat People's Congress and Committees).** Every four years, the membership of the Sha'biyat People's Congresses elect the Sha'biyat People's Committees.
- **General People's Congress and Committee (the Cabinet).** Each year, the membership of the National General People's Congress elects the National General People's Committee (the Cabinet).

The government controls the media and political parties have been banned since 1972. Since 2003, the country has made efforts to normalize its ties with the European Union. In October 2007, Libya was voted to serve on the UN Security Council for two years starting in January 2008.

In 2007, the Economist Intelligence Unit's Index of Democracy ranked Libya as an authoritarian regime and 161st in the world in terms of democracy (out of 167 countries).[1]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Unfortunately Libya is not included in the world rankings.

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the

[1] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

core international human rights treaties. It has noted the following human rights difficulties and impediments in Libya: [1]

- Libya has no constitution.
- Many of the Libyan laws are in contravention of international conventions particularly in the area of freedom of speech.
- There has been a deterioration of prison conditions.
- Girls and women who are suspected of violating moral rules have been detained for indefinite periods in Social Rehabilitation Centres.
- The state owns all the media.
- There are restraints on the right of association.
- Many foreign workers have been abused during deportation.

Company and capital market legislation

The main laws focusing upon companies and the capital markets are:

- **GPC Decrees Numbers 1,171 and 443 (2006)**.
- **Law No. 5 (1997)**. This law set up the LFIB (Libyan Foreign Investment Board).
- **The Commercial Code (1953)**. The Code forms the basis for all commercial and business activity in Libya.

Types of company

Joint-stock companies

- A joint-stock company requires a minimum of LD 1 million capital.
- Libyan ownership in joint-stock companies must be at a minimum of 51 per cent.
- The majority of the company's board of directors, as well as its director, must be Libyan nationals.
- Required documentation for incorporation include:
  - Memorandum of Incorporation;
  - Board Resolutions;
  - Articles of Incorporation;
  - Certificate of Deposit from Libyan Bank confirming the receipt in transferable currency of not less than 30 per cent of subscribed capital of the company, including shares of any foreign partners.

---

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

Business-related bodies

CBL (Central Bank of Libya)

The CBL is state owned and is an autonomous corporate body. It was established in 1956. The law establishing the CBL stipulates that the objectives of the Central Bank shall be to maintain monetary stability in Libya and to promote the sustained growth of the economy in accordance with the general economic policy of the state. For more information visit: http://www.cbl.gov.ly/en/.

LFIB (Libyan Foreign Investment Board)

The LFIB was created as the implementing agency for Law No. 5 (1997). The board's mission is to oversee and regulate foreign investment in Libya. LFIB is a 'one-stop shop', assisting with issues related to customs, immigration, taxes and labour for those companies entering under Law No. 5. The function of the LFIB is essential as the screening mechanism for foreign direct investment. LFIB approval is required for a broad array of operational issues for projects undertaken under Law No. 5, including the disposal of imported materials, transfers of investment capital outside of Libya at project completion and employment of foreigners when qualified Libyans could be hired. For more information visit: www.investinlibya.com.

Libyan Stock Exchange

Libya's first stock exchange opened in 2007 with less than 10 companies listed on the exchange. It is a precursor to the future planned privatization in Libya. In 2007, the Libyan Authorities have decided to privatize up to 375 public companies and have made announcements calling for the privatization of two banks and two mobile phone operators.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessens *et al* (2002)[1], Barca and Becht (2001)[2] and

---

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112

[2] Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

La Porta *et al* (1999)[1] has not covered this region. The vast majority of companies in Libya are state owned. There are few large private companies in Libya.

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[2]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

NGOs (non-governmental organizations) are not allowed to operate in Libya, so no international, regional or NGO 'watchdog' organizations operate in Libya to monitor investor protection.

Stakeholder relations and corporate responsibility

Very few Libyan companies have investor relations departments and few boards have developed many processes for managing their stakeholder relationships. The board's principal focus seems to be focused upon satisfying the needs of the block shareholders. There is little use of triple bottom line reporting methods (ie reporting financial, social and environmental performance). No company has joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption), and no companies have yet become organizational stakeholders of the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

---

1 La Porta, R, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

2 OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

In Libya, the private sector is much weaker than the state-owned enterprises. Few companies in Libya exhibit well-developed board structures. Little is known about board practices in Libya. It is hoped that research into corporate governance will take place in this country in the near future. There are no director or board development programmes in Libya.

Ease of doing business

The World Bank annually produces comparative international data on the following topics:

- Starting a business;
- Employing workers;
- Getting credit;
- Paying taxes;
- International trade; and
- Closing a business.

Unfortunately, the World Bank does not include Libya in its survey and so no data is available.

Summary

Libya has a labour force of 1.8 million. It is the 12th largest country in the MENA region and has the eighth highest GDP per capita in the MENA region (out of 19 countries). The economy is growing at 5.8 per cent. The major industries in Libya are oil, gas and petrochemicals.

The importance of the private sector is starting to increase. Many government-run industries are currently being privatized. In 2007, the Libyan authorities decided to privatize up to 375 public companies and have made announcements calling for the privatization of two banks and two

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

mobile phone operators. In addition, many international oil companies are returning to the country.

Company law and corporate governance are relatively undeveloped compared to international best practices. If the private sector is to expand corporate and capital market legislation will be required in the near future.

2.11

The Kingdom of Morocco

Location

The Kingdom of Morocco has international borders with Algeria to the east, Spain to the north (a water border through the Strait of Gibraltar and land borders with two small Spanish autonomous cities, Ceuta and Melilla) and Mauritania to the south. Morocco annexed Western Sahara during the 1970s but final resolution on the status of the territory remains unresolved.

Population

The population of Morocco is 33.8 million with a labour force of 10.9 million. It is the third largest country in the MENA region[1]. About 96 per cent of the population are Muslims. Most Moroccans are of Arab, Berber or mixed Arab–Berber descent.[2]

Morocco's official language is classical Arabic. However, the country has a distinctive Arabic dialect. About 12 million (40 per cent of the population), mostly in rural areas, speak Berber.[3] The adult literacy rate is 52 per cent.[4]

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007

Economy

The GDP (Gross Domestic Product) per capita in Morocco is US $4,600 and is the 14th highest in the MENA region. The economy is growing at 9.4 per cent.[1]

Morocco's largest industry is the mining and processing of phosphates. Its second largest source of income is from nationals living abroad who transfer money to relatives living in Morocco. The country's third largest source of revenue is tourism. Other industries in Morocco include food processing, leather goods, textiles and construction.[2]

Legal, regulatory and corporate governance frameworks

System of government

Morocco obtained its independence from France in 1956. Morocco is a constitutional monarchy with an elected parliament. The main government bodies are:

- **The Monarch.** The King of Morocco has the right to suspend, dissolve and extend the parliament. In the past this right was used extensively. Until 1997, not a single elected parliament was able to complete its term under normal circumstances. The King appoints the prime minister and the members of government.
- **The Parliament.** The members of parliament come from Morocco and the Moroccan-held parts of Western Sahara. Since 1996, the national legislature has comprised:
  - the assembly of representatives which has 325 members elected directly for a five-year term;
  - the assembly of councillors or the senate which is elected indirectly for a nine-year term by two sets of electoral colleges.

Opposition political parties are legal, and several have been formed in recent years.

In 2007, the Economist Intelligence Unit's Index of Democracy ranked Morocco as an authoritarian regime and 115th in the world in terms of democracy (out of 167 countries).[3]

---

1 *The World Factbook*, CIA, 13 December 2007
2 *The World Factbook*, CIA, 13 December 2007
3 Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for Morocco in 2008. The overall scores are worse than average, and Morocco is 114th in the world ranking (out of 178 countries).

Table 1. Enforcement of contracts

	Morocco	*MENA Region minimum*	*Global minimum*
Procedures to Enforce a Contract	40	35 (Israel)	20 (Ireland)
Time to Enforce a Contract (days)	615	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to Enforce a Contract (% of claim)	25.2	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked Morocco in terms of legal rights of borrowers and creditors. The overall scores are below average, and Morocco is 135th in the world ranking (out of 178 countries).

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in Morocco:[1]

- Combating terrorism which has impacted on human rights.
- The judiciary is not independent.
- Prisons are overcrowded.
- The status of independent political candidates in elections.
- The Western Sahara territory dispute which remains unresolved.

Company and capital market legislation

The main law in Morocco that focuses upon companies and the capital markets is:

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

- **The Company Law (1995).** This law permits both unitary boards and the two-tiered board structure with a supervisory board and a management committee.

Public companies are listed companies and have more than 100 shareholders. This framework is specifically based on:

- **The Law on the Securities Commission.** This law defines the accounting framework in Morocco.
- **The Law on Organizations for Collective Investment in Securities.** This law defines the trading of securities practices.
- **The Law on Stock Exchanges.** This law defines the roles and powers of the Casablanca Stock Exchange.

Corporate governance codes

In 2007, a National Commission on Corporate Governance was established. This commission has developed a generic code that sets out the general principles of good governance in Morocco. The code has annexes that discuss in greater detail how to apply the code to specific types of enterprises.

Four subcommittees to the commission were created to examine specific aspects of governance. The subcommittees are:

- General Principles of Governance;
- State-owned enterprises (SOE) Governance;
- Small and medium-sized enterprises (SME) Governance;
- Bank and Financial Enterprise Governance.

The Moroccan Code of Good Corporate Governance Practices was published in March 2008. It contains four general principles of good practice for corporate governance and a charter for governing board members.

Types of company

Limited liability company (SA, Société anonyme)

Limited liability companies (SA) must have a minimum of five shareholders who can be either legal entities or individuals. The shareholders' liability is limited to the amount of share equity the shareholder hold. Upon incorporation of the limited liability company, a quarter of the equity capital must be paid in advance if paid in cash contributions. The minimum share value is 50 Moroccan Dirhams (MAD). There are generally no restrictions on the sale and transfer of shares to third parties.

Private limited company (SARL, Société anonyme à responsabilité limitée)

The private limited company (SARL) is a trading company with a minimum equity capital of MAD 10,000. It may be formed by two or more members. The private limited company must file a memorandum of association as part of its incorporation process.

Business-related bodies

CDG (Caisse de Depot et de Gestion)

The CDG is the government body that invests Morocco's pension funds and is one of the country's leading institutional investors. For more information visit: www.cdg.ma.

The Casablanca Stock Exchange

The Casablanca Stock Exchange is the only exchange in Morocco. The World Bank Equity Markets Report identifies that Morocco has 56 listed companies. For more information visit: www.casablanca-bourse.com.

The CGEM (Confederation Generale des Enterprises du Maroc)

The CGEM is Morocco's largest private sector business association with close to 2,000 company members (about 70 per cent of which are small- and medium-sized enterprises). The CGEM Foundation was established in 1998 with an economic and social development mission. The foundation is dedicated to promoting good governance and ethics in all levels of Moroccan society including business people, academia, media, NGOs and government. The foundation organizes seminars and conferences about corporate governance, economic and social issues affecting the private sector; develops and implements studies and surveys on corporate governance and economic issues and builds alliances with other civil society actors.

The Institute of Chartered Accountants (Ordre des Experts-Comptables)

This body represents the accountants and auditors in Morocco. For more information visit: www.oec-maroc.com.

The National Accounting Council (Conseil National de la Comptabilité)

The accounting standard-setting process relies on the National Accounting Council, established by decree in 1989 and made operational in 1991. The

National Accounting Council is a unique institution attached to a government agency. The council's attachment to the public sphere is a result of the nature of its mandate, which in the Moroccan context of a legal tradition of codified law, is akin to the mandate of general government. The National Accounting Council's mandate specifically encompasses the following tasks:

- Design, develop and propose accounting and sector standards;
- Recommend any and all measures likely to improve accounting information;
- Represent the government in international accounting standard-setting organizations.

In addition, National Accounting Council's mandate encompasses theoretical research in accounting, as well as accounting training and education.

The National Commission on Corporate Governance

In 2007, the National Commission on Corporate Governance was established. This commission has developed a generic code that sets out the general principles of good governance in Morocco which was published in March 2008.

The Securities Commission (Conseil Déontologique des Valeurs Mobilières)

The Securities Commission ensures that financial information from public companies is prepared and disseminated in accordance with legal and regulatory framework in effect.

The Société Moroccan des Analistes Financiers

The Société works to increase professionalism and adherence to international standards among financial analysts. It is currently working on a project on ethics and codes of conduct.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessens *et al* (2002)[1], Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] did not cover this region.

The vast majority of companies in Morocco are privately owned. SMEs constitute the bulk of the Moroccan enterprises market, with a 99 percent presence in terms of numbers. There are over 600,000 SMEs in Morocco, among which only 200,000 are linked to the formal sector, and the informal sector is dominant.

There are few listed companies in Morocco. The World Bank Equity Markets Report identifies that Morocco has 56 listed companies, the market capitalization to GDP ratio is 51 per cent and that the market capitalization concentration in the top 10 listed companies is 95 per cent.[4] Consequently there is not a strong equity culture.

Bank finance and retained earnings are the main source of funds for Moroccan companies. Companies enjoy relatively easy access to capital from the banks and frequently lending covenants are weak.

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[5]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

The World Bank in its recent Doing Business 2008 study classified shareholder rights and investor protection for Morocco as significantly below average for the MENA region (see Table 2).

---

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112

[2] Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

[3] La Porta, R, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

[4] World Bank Financial Indicators, *Equity Markets Report* [Accessed February 2008] Available at www.financial indicators.org

[5] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Table 2. Strength of investor protection

	Morocco	*MENA Region maximum*	*Global maximum*
Strength of Investor Protection (0–10)	3.0	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

Morocco is classified as 158th out of 178 countries in the world in terms of protecting investor rights.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[1]

In general disclosure and transparency is relatively low in the MENA region.

The CGEM (General Confederation of Moroccan Enterprises) Survey 2005

In 2005, CGEM conducted a survey of Moroccan businesses and identified that:[2]

- more than 50 per cent of companies had at least one person dedicated to disclosing and communicating corporate information;
- about 72 per cent of companies hold press conferences for disclosing their strategies, objectives and performance;
- few companies provide information in their annual report about the qualifications, the selection process, the compensation or the independence of directors;
- few companies disclose in their annual report foreseeable risk factors;
- few companies disclose related party transactions in their annual report.

Stakeholder relations and corporate responsibility

A 2005 survey identified that 74 per cent of respondents regarded corporate social responsibility as a serious and promising issue for Moroccan

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

[2] Belkahia, R Chairman of the Business Ethics and Corporate Governance Committee, CGEM, *Corporate Governance Survey Morocco 2005*, MENA Regional Corporate Governance Forum February 2005 in Amman, Jordan

companies.[1] Morocco companies have been at the forefront of CSR (corporate social responsibility). The first report was published by CDG (Caisse de dépot et de Gestion) in 2003. Other CSR companies include HOLCIM Maroc, Attijariwafa Bank, Banque Marocaine du Commerce Extérieur.

The Amcham Award in association with CGEM awards companies that observe CSR values. A social responsibility award was made in December 2005. For more information visit: www.lesintégrales.com.

A report by Abdesselam Aboudrar and Anas El Hasnaoui in 2006[2] identified Moroccan companies committed in the areas of:

- the environment;
- community;
- responsible human resource management;
- corporate governance;
- abiding by market rules;
- respect and development of individual freedoms.

The CGEM Survey 2005

In 2005, CGEM conducted a survey of Moroccan businesses and identified that:[3]

- a few companies had implemented mechanisms for environment protection;
- a few companies had implemented mechanisms for consumer protection;
- one-third of the boards had set up mechanisms for appraising the treatment of different shareholder groups.

Socially responsible activities are taking place in Morocco. A good example of this is the Moroccan Association of Textile Industry and Clothing (AMITH) that has developed a charter of corporate values. The charter includes a 'citizen fiber label' that is awarded to companies that abide by the industry's ethics charter and have accepted to submit their corporate performance to a CSR audit.

There is some use of triple bottom line reporting methods (ie financial, social and environmental performance). Twelve companies have joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption). The organizations are:

---

[1] Aboudrar, A and El Hasnaoui, A *Corporate Social Responsibilities in Morocco: Practices and Perspectives,* Mediterranean Development Forum 5 January 2006, p 44

[2] Aboudrar, A and El Hasnaoui, A *Corporate Social Responsibilities in Morocco: Practices and Perspectives,* Mediterranean Development Forum 5 January 2006, p 25

[3] Belkahia, R Chairman of the Business Ethics and Corporate Governance Committee, CGEM, *Corporate Governance Survey Morocco 2005*, MENA Regional Corporate Governance Forum February 2005 in Amman, Jordan

- APEBI;
- Telecommunications et de l'Offshoring;
- CGEM;
- ERAMEDIC;
- GERSA;
- Involys;
- LGMC Industries;
- MIFTAH SA;
- Norsys Afrique;
- Office National des Aeroports;
- Reseau Espace de Citoyennete; and
- Royal Air Maroc.

No organizations in Morocco have yet become organizational stakeholders with the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

The CGEM Survey 2005

In 2005, CGEM conducted a survey of Moroccan businesses and identified that:[2]

- boards met two or three times per year for half-day meetings;
- 44 per cent of companies had between 10 and 20 directors on the board;
- one-third of companies had independent directors;
- one-half of companies had board committees;
- directors did not systematically disclose to the board whether they had material interests in transactions that directly affected the company.

The corporate governance code, published in March 2008, is expected to increase the professionalization of directors and the practices of boards.

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

[2] Belkahia, R Chairman of the Business Ethics and Corporate Governance Committee, CGEM, *Corporate Governance Survey Morocco 2005*, MENA Regional Corporate Governance Forum February 2005 in Amman, Jordan

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Morocco is ranked in their 2008 publication as 129th out of 178 countries in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licenses and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 3 illustrates the comparative ease of starting a business in Morocco. The number of procedures involved is relatively low for the MENA region.

Table 3. Number of procedures for starting a business

	Morocco	*MENA Region minimum*	*Global best minimum*
Number of Procedures	6	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 4 illustrates the comparative ease of starting a business in Morocco. The time involved is low. The cost involved is average and the required minimum capital is high at over 50 per cent of per capita income.

Table 4. Starting a business

	Morocco	*MENA Region minimum*	*Global best minimum*
Time (days)	12	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	11.5	1.6 (Kuwait)	0 (Denmark)
Minimum Capital (% of income per capita)	59.8	0 (Israel, Saudi Arabia)	0 (Australia, Canada, Ireland, Mauritius, New Zealand, Thailand, the United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Morocco is ranked 51st out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work;
  - requirements relating to working time and the workweek;
  - mandated days of annual leave with pay.

  The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation. The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 5 illustrates the comparative level of labour regulations in Morocco. The rigidity of employment index is fairly high and the non-wage labour costs are average. The firing cost, however, is set at a very high level of over 18 months' salary.

Table 5. Labour regulations

	Morocco	*MENA Region minimum*	*Global minimum*
Rigidity of Employment Index (0–100)	63	13 (Saudi Arabia Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-wage Labour Costs (% of salary)	19.1	5.7 (Israel)	0 (Bangladesh, Botswana, Ethiopia and Maldives)
Firing Cost (weeks of salary)	85.1	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

Morocco is ranked 165th out of 178 countries in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 6).

Table 6. Credit information

	Morocco	*MENA Region maximum*	*Global maximum*
Public registry coverage (borrowers / % adults)	2.3	22.2 (Iran)	67.1 (Portugal)
Private Bureau Coverage (% of adults)	0.0	91.6 (Israel)	100 (Argentina, Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit Information Index (1–6)	1	6 (Saudi Arabia)	6 (Argentina and Bulgaria)

Source: Doing Business, 2008 World Bank

Morocco is ranked 135th out of 178 countries in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Morocco has a high number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Morocco has very high amounts of time to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Morocco has high total tax rate.

Table 7. Paying taxes

	Morocco	*MENA Region minimum*	*Global minimum*
Payments (number per year)	28	13 (Iraq)	2 (Sweden, Maldives)
Time to Pay Taxes (hours per year)	358	12 (UAE)	12 (UAE, Maldives)
Total Tax Rate (% of profit)	53.1	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Morocco was ranked 132nd out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Morocco's import and export documentation is average. The country's time to import and export is

Table 8. Importing and exporting

	Morocco	*MENA Region best practice*	*Global best practice*
Documents to Import	11	4 (Israel)	3 (Denmark, Sweden)
Documents to Export	8	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada, Estonia, Panama and Micronesia)
Time to Import (days)	19	12 (Israel)	3 (Singapore)
Time to Export (days)	14	12 (Israel)	5 (Denmark, Estonia and Singapore)
Cost to Import (US $ per container)	800	462 (UAE)	367 (Singapore)
Cost to Export (US $ per container)	600	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

below average. Its costs to import and export are also average in the region (Table 8).

Morocco was ranked 67th out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Morocco is fairly fast in terms of the region.
- **The cost** to go through the process. The cost of the insolvency process in Morocco is fairly high.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. The Moroccan rate is fairly low.

The statistics for Morocco are listed in Tables 9 and 10.

Table 9. Closing a business – time and cost

	Morocco	*MENA Region minimum*	*Global minimum*
Time to go through Insolvency (years)	1.8	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of Insolvency (% of estate)	18.0	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 10. Closing a business – recovery rate

	Morocco	*MENA Region maximum*	*Global maximum*
Recovery Rate (cents per US $)	35.3	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

Morocco was ranked 60th out of 178 countries in the world in terms of ease of closing a business.

Summary

Morocco has a labour force of 10.9 million. It is the third largest country in the MENA region. The GDP per capita in Morocco is the 14th highest in the

MENA region (out of 19 countries). The economy is growing at 9.4 per cent. Morocco's largest industry is the mining and processing of phosphates.

Company law and corporate governance are relatively undeveloped compared to international best practices. If the private sector is to expand corporate and capital market legislation will be required in the near future. Morocco is ranked by the World Bank in 2008 as 129th out of 178 countries in the world in terms of ease of doing business.

2.12

The Sultanate of Oman

Location

The Sultanate of Oman is on the southeast coast of the Arabian Peninsula. It borders the United Arab Emirates on the northwest, Saudi Arabia on the west and Yemen on the southwest. The coast is formed by the Arabian Sea on the south and east and the Gulf of Oman on the northeast. The country also contains Madha and Musandam exclaves enclosed by the United Arab Emirates.

Population

The population of Oman is 3.2 million with a labour force of 0.9 million. It is one of the smallest countries in the MENA region (16th out of 19 countries).[1] About 98 per cent of the population are Muslims. About 70 per cent are Ibadi Muslims, 18 per cent are Shias and 10 per cent are Sunnis.[2] The languages spoken in Oman include Arabic, English, Baluchi and Urdu.[3] The adult literacy rate is 81 per cent.[4]

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007

Economy

The GDP (Gross Domestic Product) per capita in Oman is US $14,400 and is the sixth highest in the MENA region. The economy is growing at 6.6 per cent.[1]

The major industries in Oman are oil, natural gas, agriculture and fishing.[2] Oman has a relatively stable economic and social system. The Sultan encourages market-oriented policies and private sector development as the mechanism for prosperity and growth. Oman is planning to diversify its economy and is placing a greater emphasis on other areas of industry, such as tourism and natural gas.

Legal, regulatory and corporate governance frameworks

System of government

Oman has a hereditary sultan who appoints a cabinet called the 'Diwans' to assist him. The sultan also has an elected advisory council. Universal suffrage for those over 21 was introduced in 2003.

In 2007, the Economist Intelligence Unit's Index of Democracy ranked Oman as an authoritarian regime and 143rd in the world in terms of democracy (out of 167 countries).[3]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for Oman in 2008. The overall scores are worse than average (apart from the cost to enforce a contract), and Oman is 110th in the world ranking (out of 178 countries).

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

Table 1. Enforcement of contracts

	Oman	*MENA Region minimum*	*Global minimum*
Procedures to enforce a contract	51	35 (Israel)	20 (Ireland)
Time to enforce a contract (days)	598	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to enforce a contract (% of claim)	13.5	13.5 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked Oman in terms of legal rights of borrowers and creditors. The overall scores are average – Oman is 97th in the world ranking (out of 178 countries).

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in Oman:[1]

- Racial discrimination exists in the basic law since it only applies to citizens of the Sultanate.
- There are no licensed political parties.
- The Government has powers to censor provocative political, cultural and sexual publications.
- The state owns the national radio and television stations. Private radio and television broadcasts are not permitted.
- Foreign workers have been arrested and deported including university professors and religious leaders.
- Some of the laws discriminate against women.

Company and capital market legislation

The main laws in Oman that focus upon companies and the capital markets are:

- **The Foreign Business and Investment Law (1974).** The Foreign Business and Investment Law allows foreign companies to incorporate local companies, establish branch offices and appoint commercial agents.
- **The Commercial Companies Code (1974).** At least one member of a company must be an Omani national and at least 35 per cent of the profits and capital of the enterprise have to be owned by Omani nationals. In the public transportation, utilities and real estate sectors, at least 51 per cent of the shareholdings must be held by Omani nationals. A director cannot

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

be on boards of more than four public companies and cannot chair more than two public companies. An amendment to the Commercial Companies Law in 1989 states that where a joint-stock company has capital in excess of 500,000 Omani Rials (RO) or where a joint-stock company increases its capital above that amount, at least 40 per cent and no more than 70 per cent of the shares must be offered to the Omani public.

- **The Commercial Register Law and the Commercial Agencies Law** as amended by Royal Decree 73/96.
- **The Capital Market Law (1998).** This law established the Capital Market Authority.
- **The Rules and Guidelines on Disclosure by Issuer of Securities and Insider Trading (2007).**

Corporate governance codes

Code of Corporate Governance for MSM listed companies (2002)

Oman was the first country in the GCC (Gulf Cooperation Council) to introduce a corporate governance code in 2002. The code was developed by the Capital Markets Authority and applies to companies listed on the MSM (Muscat Securities Market).

The code consists of 28 articles:

- **Article 1:** Director independence.
- **Article 2:** Public limited companies and mutual funds.
- **Article 3:** Non-executive directors.
- **Article 4:** Board meetings.
- **Article 5:** The powers, duties and responsibilities of board of directors.
- **Article 6:** The secretary to the board.
- **Article 7:** The audit committee.
- **Article 8:** Financial fraud.
- **Article 9:** Audit and internal control.
- **Articles 11 to 18:** The role of executive management.
- **Articles 19 to 25:** Related-party transactions.
- **Article 26:** Corporate governance reporting in annual reports.
- **Articles 27 and 28:** External auditors.

Code of Corporate Governance for Insurance Companies (2005)

The code consists of 12 articles:

- **Article 1:** Director independence.
- **Article 2:** Insurance company definitions.

- **Article 3:** Composition of board of directors.
- **Article 4:** Board meetings.
- **Article 5:** Role and responsibilities of board of directors.
- **Article 6:** Audit committee.
- **Article 7:** Audit.
- **Article 8:** The board meeting and the role of the secretary.
- **Article 9:** Role and responsibilities of the senior management.
- **Article 10:** Committees of the board.
- **Article 11:** Rules of related-party transactions.
- **Article 12:** Report on corporate governance.

Types of companies

Joint-stock companies

A joint-stock company requires a minimum share capital of RO 25,000. Shares of different classes are permitted. All Omani joint-stock companies must be members of the MSM. A joint-stock company must have at least three shareholders.

All joint-stock companies must be registered in the Commercial Registrar and must have the prior approval of the Minister of Commerce and Industry. Articles of association and other incorporation documents must be filed in the Commercial Registrar. A joint-stock company's board of directors must comprise of 3 to 12 members.

Limited liability companies

A limited liability company is a company with a minimum share capital of RO 10,000. It must have at least 2 shareholders and no more than 30 shareholders.

All limited liability companies must be registered in the Commercial Registrar and must have the prior approval of the Minister of Commerce and Industry. Articles of association and other incorporation documents must be filed in the Commercial Registrar.

Business-related bodies

The CMA (Capital Market Authority)

Oman was the first GCC country to have a separate regulatory body. It was formed in 1998 and regulates the Muscat Stock Market. The CMA developed and introduced the corporate governance code in 2002. The code applies to companies listed on the MSM and was the first corporate governance code in the GCC or MENA region. In January 2008, the CMA established a corporate governance committee to implement the corporate governance plan and adopt best international standards and applications. For more information visit: www.cma-oman.com.

The MSM (Muscat Securities Market)

The stock market was founded in 1988 and is regulated by the CMA. There are 128 companies listed on the market. The capitalization of the market is US $18.6 billion and the average company capitalization is US $145.3 million.[1] The corporate governance code developed by the CMA applies to companies listed on the MSM. For more information visit: www.msm.gov.om.

Oman Chamber of Commerce and Industry

The Chamber promotes the country's exports and attracts foreign investment. The primary source of financing for the chamber is through membership and training fees. For more information visit: www.chamberoman.com.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessens *et al* (2002)[2], Barca and Becht (2001)[3] and La Porta *et al* (1999)[4] did not cover this region.

The vast majority of companies in Oman are privately owned. There are few listed companies in Oman. The World Bank Equity Markets Report identifies that Oman has 96 listed companies, the market capitalization to GDP ratio is 23 per cent and that the market capitalization concentration in the top 10 listed companies is 73 per cent.[5] Consequently, there is not a strong equity culture.

Bank finance and retained earnings are the main source of funds for Omani companies. Companies enjoy relatively easy access to capital from the banks and frequently lending covenants are weak. Table 2 provides details of equity market capitalization and concentration.

---

[1] The National Investor (TNI) (2008) *It's a family matter* Survey, TNI, Abu Dhabi

[2] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112

[3] Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

[4] La Porta, R, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

[5] World Bank Financial Indicators, *Equity Markets Report* [Accessed February 2008] Available at www.financial indicators.org

Table 2. Equity market capitalization and concentration

Market Capitalization as percentage of GDP	*Top 10 companies as a percentage of total market*	*Total number of listed companies*
38%	71%	124

Source: IIF/Hawkamah GCC Comparative Corporate Governance Survey (2006), p 9

Shareholder rights and investor protection

The OECD (Organization of Economic Cooperation and Development) Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[1]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

In 2006, the Institute of International Finance Inc and Hawkamah rated minority shareholder protection in Oman, and the ratings are shown in Table 3. Oman received the highest ratings amongst the GCC.

Table 3. Rating of minority shareholder protection

Voting rights	3.5
Changes to the company and its capital structure	1.0
Shareholder meetings and other rights	3.5
Minority shareholder protection overall	3.0

Scale: 1 = Low rating; 5 = High rating
Source: IIF/ Hawkamah GCC Comparative Corporate Governance Survey (2006)

The World Bank in its recent Doing Business 2008 study classified shareholder rights and investor protection for Oman as above average for the MENA region (see Table 4).

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Table 4. Strength of investor protection

	Oman	*MENA Region maximum*	*Global maximum*
Strength of investor protection (0–10)	5.3	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

Oman is classified as 64th out of 178 countries in the world in terms of protecting investor rights.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[1]

In general disclosure and transparency is relatively low in the MENA region. However, Oman's disclosure regime is being developed. The corporate governance code requires the composite remuneration figure of the top five directors in a listed company to be disclosed.

In 2006, the Institute of International Finance Inc and Hawkamah rated transparency in Oman, and the ratings are shown in Table 5.

Table 5. Rating of minority shareholder protection

Transparency	3.5

Scale: 1 = Low rating; 5 = High rating
Source: IIF/ Hawkamah GCC Comparative Corporate Governance Survey (2006)

Stakeholder relations and corporate responsibility

There is no known use of triple bottom line reporting methods (ie reporting financial, social and environmental performance). No Oman companies have joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption), or the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

The Corporate Governance Code (2002)

The code states that for listed companies:

- All boards shall be comprised of a majority of non-executive directors.
- The board shall meet at least four times in a year with a maximum gap of four months between any two consecutive meetings.
- The roles of CEO/general manager and chairman shall not be combined.
- An independent director cannot: be an employee, have business relations or conduct business transactions with the company.
- One-third (minimum) of the total strength of a board (subject to a minimum of two) shall comprise independent directors.
- Independent directors shall be elected by a cumulative voting system.
- Non-executive directors and independent directors shall be identified in the annual report. If an independent director resigns or is terminated, the company should inform the CMA/MSM of the reasons.
- The board shall have an audit committee comprising at least three non-executive members, and a majority of them should be independent. The audit committee chairman should be an independent director and at least one member must have finance and accounting expertise. The audit committee should meet at least four times a year in the presence of majority of independent directors.

The TNI (The National Investor) Survey (2008)[2]

The TNI conducted a census on all of the listed companies in Oman and identified that the average board size was 7.2 (the minimum number of directors was 3 and the maximum number was 12). The survey identified that Oman had 21 women on boards of listed companies.

The survey also identified that Oman had the following distribution of mandates per director on a listed company:

---

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

[2] The National Investor (TNI) (2008) *It's a family matter* Survey, TNI, Abu Dhabi

- 80 per cent of directors sit on the board of only one company;
- 13 per cent of directors sit on the board of two companies;
- 6 per cent of directors sit on the board of three companies;
- 1 per cent of directors sit on the board of four companies;
- 0 per cent of directors sit on the board of five companies.

The survey also identified that Oman had 46 per cent of listed companies with at least two directors from the same family and the maximum percentage of board seats held by the same family was 60 per cent.

Board development

Mudara have begun to run programmes in Oman in March 2008. Their director development programme comprises:

- **Part 1 – An Introduction to Board and Corporate Governance** (two days duration)
  - The Definition and Rationale for Good Corporate Governance.
  - Building an Effective Board.
  - Board Election, Composition and Structure.
  - Executive and Non-Executive Remuneration.
  - The Working Procedures of the Board and Its Committees and the Role of the Corporate Secretary.
  - Conducting a Board Evaluation.
- **Part 2 – Practical Tools for Strategic Guidance and Managerial Oversight** (2 days duration)
  - The Board's Role in Setting Strategy.
  - The Interaction between the Board and Management.
  - Choosing and Evaluating the CEO.
  - What Every Director Needs to Know about Accounting and Finance.
  - A Guide to Succession Planning.
  - The Board's Changing Role.
- **Part 3 – The Role of the Board in Disclosure and Transparency** (two days duration)
  - The Board's Role in Information Disclosure and Transparency.
  - Enterprise Risk Management.
  - Establishing Effective Internal Audit and Control Procedures.
  - The Board and Its Audit Committee.
  - How to Interact with the External Auditor.
  - Developing a Model Annual Report.
- **Part 4 – The Role of the Board in Protecting Shareholder Rights** (two days duration)
  - The Board's Role in Protecting Shareholders' Rights.
  - The Role of the Board in Related Party Transactions.
  - The Role of the Board in Setting the Company's Dividend Policy.

- The Role of the Board in Preparing for and Conducting the General Meeting of Shareholders.
- The Role of the Board in Managing Conflict.
- Corporate Governance Improvement Planning.

The programme follows a similar format to the programmes run by Mudara in the United Arab Emirates and Jordan and to the Egyptian Institute of Directors BDS (Board Development Series) in Cairo. The programme is accredited by RiskMetrics formerly known as ISS (Institutional Shareholder Services).

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Oman is ranked in their 2008 publication as 49th out of 178 countries in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licenses and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 6 illustrates the comparative ease of starting a business in Oman. The number of procedures involved is nearly double the number required in Israel and over four times that required in Australia, Canada and New Zealand.

Table 6. Number of procedures for starting a business

	Oman	*MENA Region minimum*	*Global best minimum*
Number of procedures	9	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 7 illustrates the comparative ease of starting a business in Oman. The time involved is nearly 3 times the duration in Egypt and 17 times that required in Australia. The cost involved is over double the cost in Kuwait and the required minimum capital is very high at over 500 per cent of per capita income.

Table 7. Starting a business

	Oman	MENA Region minimum	Global best minimum
Time (days)	34	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	4.3	1.6 (Kuwait)	0 (Denmark)
Minimum capital (% of income per capita)	541.8	0 (Israel, Saudi Arabia)	0 (Australia, Canada, Ireland, Mauritius, New Zealand, Thailand, the United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Oman is ranked 107th out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work;
  - requirements relating to working time and the workweek;
  - mandated days of annual leave with pay.

  The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation.

The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 8 illustrates the comparative level of labour regulations in Oman. The rigidity of employment index and the non-wage labour costs are relatively low. The firing cost, however, is set at a very high level of over 18 months' salary.

Table 8. Labour regulations

	Oman	*MENA Region minimum*	*Global minimum*
Rigidity of employment index (0–100)	24	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-wage labour costs (% of salary)	17.0	5.7 (Israel)	0 (Bangladesh, Botswana, Ethiopia and Maldives)
Firing cost (weeks of salary)	79.8	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

Oman is ranked 26th out of 178 countries in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.

Table 9. Credit information

	Oman	*MENA Region maximum*	*Global maximum*
Public registry coverage (borrowers / % adults)	12.4	22.2 (Iran)	67.1 (Portugal)
Private bureau coverage (% of adults)	0.0	91.6 (Israel)	100 (Argentina, Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit information index (1–6)	2	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 9).

Oman is ranked 97th out of 178 countries in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Oman has one of the lowest number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Oman has a relatively high time to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Oman has low total tax rate in the MENA region.

Table 10. Paying taxes

	Oman	*MENA Region minimum*	**Global minimum**
Payments (number per year)	14	13 (Iraq)	2 (Sweden, Maldives)
Time to pay taxes (hours per year)	62	12 (UAE)	12 (UAE, Maldives)
Total tax rate (% of profit)	21.6	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Oman is ranked fifth out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Oman's import and export documentation is average. The country's time to import and export is average. Its costs to import and export are average in the region (Table 11).

Table 11. Importing and exporting

	Oman	MENA Region best practice	Global best practice
Documents to import	10	4 (Israel)	3 (Denmark, Sweden)
Documents to export	10	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada, Estonia, Panama and Micronesia)
Time to import (days)	26	12 (Israel)	3 (Singapore)
Time to export (days)	22	12 (Israel)	5 (Denmark, Estonia and Singapore)
Cost to import (US $ per container)	824	462 (UAE)	367 (Singapore)
Cost to export (US $ per container)	665	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

Oman was ranked 104th out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Oman is very slow.
- **The cost** to go through the process. The cost of the insolvency process in Oman is average in the region.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. Oman's rate is average for the region.

The statistics for Oman are listed in Tables 12 and 13.

Table 12. Closing a business – time and cost

	Oman	MENA Region minimum	Global minimum
Time to go through insolvency (years)	4.0	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of insolvency (% of estate)	3.5	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 13. Closing a business – recovery rate

	Oman	*MENA Region maximum*	*Global maximum*
Recovery rate (cents per US $)	35.5	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

Oman is ranked 59th out of 178 countries in the world in terms of ease of closing a business.

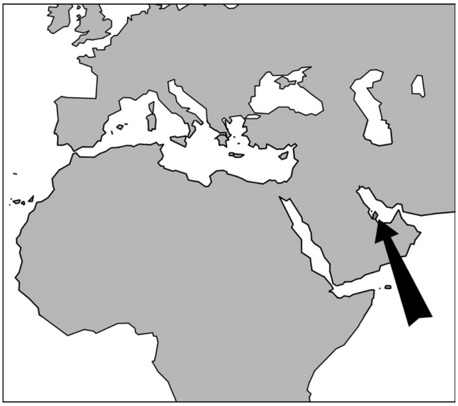
Summary

Oman has a labour force of 0.9 million. It is one of the smallest countries in the MENA region (16th out of 19 countries). The GDP per capita is the sixth highest in the MENA region and the economy is growing at 6.6 per cent. The major industries in Oman are oil, natural gas, agriculture and fishing. Oman has a relatively stable economic and social system.

Oman was the first country in the GCC and the MENA region to develop a corporate governance code. The rules and guidelines on disclosure by issuers of securities and insider dealings published in 2007 are best practice in the MENA region. Further corporate governance developments are currently taking place (for example the Mudara director development programme). Oman is ranked by the World Bank in 2008 as 49th out of 178 countries in the world in terms of ease of doing business.

2.13

The State of Qatar



Location

The State of Qatar is an Arab Emirate occupying the small Qatar Peninsula on the northeasterly coast of the Arabian Peninsula. It is bordered by Saudi Arabia to the south.

Population

The population of Qatar is 0.9 million with a labour force of 0.5 million. It is the second smallest country in the MENA region.[1] The petrochemical industry has attracted expatriates from all around the world. Most of the expatriates come from South Asia and from other Arab states. Because a large percentage of the expatriates are male, Qatar has the most heavily skewed sex ratio in the world, with 1.9 males per female.

[1] *The World Factbook*, CIA, 13 December 2007

About 78 per cent of the population are Muslims.[1] Arabic is the official language. However, English as well as many other languages are spoken in Qatar. The adult literacy rate is 89 per cent.[2]

Economy

The GDP (gross domestic product) per capita in Qatar is US $29,800 and is the second highest in the MENA region. The economy is growing at 7.1 per cent[3].

The major industries in Qatar are oil and natural gas.[4] The government is currently seeking to stimulate the private sector and develop a 'knowledge economy'. In 2004, it established the Qatar Science & Technology Park to attract and serve technology-based companies and entrepreneurs. Qatar has also established an Education City, which consists of international colleges. For the 15th Asian Games in Doha, it established a Sports City, consisting of a stadium, a sports academy, exhibition centres and many other sports related buildings. Qatar also plans to build an 'entertainment city' in the future.

Legal, regulatory and corporate governance frameworks

System of government

In 1971, Qatar became an independent sovereign state. An Emir rules Qatar. In the last 10 years, Qatar has enfranchised women, introduced a new constitution and launched Al Jazeera, a leading English and Arabic news source, which operates a website and satellite television news channel.

In 2007, the Economist Intelligence Unit's Index of Democracy ranked Qatar as an authoritarian regime and 142nd in the world in terms of democracy (out of 167 countries).[5]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights.

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007
[5] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Unfortunately, Qatar is not included in the world rankings.

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in Qatar:[1]

- The context of counter terrorist legislation impacting upon human rights.
- Restrictive laws concerning public freedoms.
- Discrimination against women.
- Lack of legal protection for foreign workers.
- Qatar Government's reservations on international treaties and agreements against torture.

Company and capital market legislation

The main law in Qatar that focuses upon companies and the capital markets is:

- **The Companies Law No. 11 (1986).** Foreigners are not allowed to hold more than 49 per cent of the shares in a company.

Types of company

Limited liability companies

A limited liability company must have between 2 and 30 members. Its minimum capital cannot be less than 200,000 Qatari Riyals (QR). The capital is divided into shares of not less than QR 1,000 each. If the number of members exceeds 10, a control council of at least 3 members must be appointed.

An auditor must be appointed if the capital is higher than QR 500,000. The company must keep a register of members.

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

Joint-stock companies

A joint-stock company requires at least five members. The minimum capital required is QR 500,000, and QR 200,000 in a private joint-stock company. The capital is divided into equal nominal shares of not less than QR 100 and not exceeding QR 1,000. The creation of a joint-stock company requires the drafting of a memorandum and articles of associations to be presented to the Minister of Economy and Commerce, signed by at least five founders. The incorporation is subject to authorization by decree, which must be published in the official gazette.

The board of directors must be between 5 and 11 directors, each appointed for a period of three years. The board's chairman represents the company to third parties and may transact business on their behalf. The chairman is responsible for the implementation of board resolutions. The authority of the board is restricted by the articles of associations and operation of law.

Business-related bodies

DSM (Doha Securities Market)

The DSM was founded in 1997 and has been regulated by the QFMA (Qatar Financial Markets Authority) since 2005. There are 38 companies listed on the market. The capitalization of the market is US $91.7 billion, and the average company capitalization is US $2,413.2 million.[1] For more information visit: www.dsm.com.qa.

The QBA (Qatari Businessmen Association)

The QBA promotes investment, entrepreneurialism and business development in Qatar. For more information visit: www.qataribusinessmen.org.

The QCCI (Qatar Chamber of Commerce and Industry)

The QCCI was established in 1963. In 1996, a statute was passed which allowed board members to be directly elected by the general assembly. The QCCI's membership is determined by the Minister of Finance based upon proportional representation of commerce and industry sectors following consultations with other ministers. For more information visit: www.qcci.org.

The QFC (Qatar Financial Centre)

The QFC provides financial institutions with a world class financial services platform situated in an economy founded on the development of its

[1] The National Investor (TNI) (2008) *It's a family matter* Survey, TNI, Abu Dhabi

hydrocarbons resources. It has been created with a long-term perspective to support the development of Qatar and the wider region, develop local and regional markets and strengthen the links between the energy-based economies and global financial markets. For more information visit: www.qfc.com.qa.

QFMA (Qatar Financial Markets Authority)

The QFMA regulates the DSM. It was established at the end of 2005.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessens *et al* (2002)[1], Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] has not covered this region. Table 1 provides details of equity market capitalization and concentration.

Table 1. Equity market capitalization and concentration

Market Capitalization as percentage of GDP	***Top 10 companies as a percentage of total market***	***Total number of listed companies***
175%	82%	33

Source: IIF/Hawkamah GCC Comparative Corporate Governance Survey (2006), p 9

Disclosure and transparency

The OECD (Organization for Economic Cooperation and Development) Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[4]

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, 81–112

[2] Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

[3] La Porta, R, Lopez de Silanes, F and Schleifer, A (1999). Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, 471–517

[4] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

In general, disclosure and transparency is relatively low in the MENA region.

In 2006, the Institute of International Finance Inc and Hawkamah rated transparency in Qatar, and the ratings are shown in Table 2.

Table 2. Rating of minority shareholder protection

Transparency	1.0

Scale: 1 = Low rating; 5 = High rating
IIF/Hawkamah GCC Comparative Corporate Governance Survey (2006)

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[1]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

In Qatar, shareholders have the following rights:

- Shareholders have one share one vote.
- No one shareholder or representative's vote can count for more than 25 per cent of total votes at a shareholders meeting.
- Only current shareholders can be appointed as proxies.
- Cumulative voting for director elections is not allowed.
- There are limits to foreign investment in companies.

In 2006, the Institute of International Finance Inc and Hawkamah rated minority shareholder protection in Qatar and the ratings are shown in Table 3. Qatar was found to have the weakest minority shareholder protection in the GCC region.

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Table 3. Rating of minority shareholder protection

Voting rights	2.5
Changes to the company and its capital structure	2.0
Shareholder meetings and other rights	3.0
Minority shareholder protection overall	2.5

Scale: 1 = Low rating; 5 = High rating
Source: IIF/Hawkamah GCC Comparative Corporate Governance Survey (2006)

Stakeholder relations and corporate responsibility

Very few companies have investor relations departments and few boards have developed any processes for managing their stakeholder relationships. The board's principal focus seems to be focused upon satisfying the needs of the block shareholders. There is little use of triple bottom line reporting methods (ie financial, social and environmental performance). One company, Oryx Enterprises, has joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption). There is not yet an organizational stakeholder for the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

The TNI (The National Investor) Survey (2008)[2]

The TNI conducted a census on all of the listed companies in Qatar and identified that:

- the average board size was 8.5 (the minimum number of directors was 4 and the maximum number was 12);

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf
[2] The National Investor (TNI) (2008) *It's a family matter* Survey, TNI, Abu Dhabi

- Qatar had one woman on a board of a listed company;
- About 76 per cent of listed companies had at least two directors from the same family and the maximum percentage of board seats held by the same family was 70 per cent.

It also identified that Qatar had the following distribution of mandates per director on a listed company:

- 78 per cent of directors sit on the board of only one company.
- 15 per cent of directors sit on the board of two companies.
- 6 per cent of directors sit on the board of three companies.
- 1 per cent of directors sit on the board of four companies.
- 0 per cent of directors sit on the board of five companies.

There are no director or board development programmes in Qatar.

Ease of doing business

The World Bank annually produces comparative international data on the following topics:

- Starting a business;
- Employing workers;
- Getting credit;
- Paying taxes;
- International trade; and
- Closing a business.

Unfortunately, the World Bank does not include Qatar in its survey and so no data is available.

Summary

Qatar has a labour force of 0.5 million. It is the second smallest country in the MENA region. The GDP per capita in Qatar is the second highest in the MENA region. The economy is growing at 7.1 per cent. The major industries in Qatar are oil and natural gas. The government is currently seeking to stimulate the private sector and develop a ‘knowledge economy’.

Company law and corporate governance are relatively undeveloped compared to international best practices. If the private sector is to expand further corporate and capital market legislation will be required in the near future.

2.14

The Kingdom of Saudi Arabia

Location

The Kingdom of Saudi Arabia is the largest country on the Arabian Peninsula. It is bordered by Jordan on the northwest, Iraq on the north and northeast, Kuwait, Qatar, Bahrain and the United Arab Emirates on the east, Oman on the southeast and Yemen on the south, with the Persian Gulf to its northeast and the Red Sea to its west. Most of the country is uninhabited, since much of the nation's land mass consists of desert and semi-arid regions. A significant length of the country's southern borders with the United Arab Emirates and Oman, is not precisely defined or marked.

Population

The population of Saudi Arabia is 27.6 million with a labour force of 6.3 million.[1] It is the fifth largest country in the MENA region.[2] Saudi Arabia's population is composed almost entirely of Muslims. Around 90 per cent of

[1] *The World Factbook*, *CIA*, 13 December 2007
[2] *The World Factbook*, *CIA*, 13 December 2007

Saudis are Arabs.[1] The language spoken in Saudi Arabia is Arabic.[2] The adult literacy rate is 79 per cent.[3]

Economy

The GDP (gross domestic product) per capita in Saudi Arabia is US $13,800 and is the seventh highest in the MENA region. The economy is growing at 4.3 per cent.[4]

The major industries in Saudi Arabia are oil, petrochemicals, financial services and construction.[5] Saudi Arabia is the world's leading petroleum exporter. Oil accounts for more than 90 per cent of exports and nearly 75 per cent of government revenues. The country has about 260 billion barrels of oil reserves, comprising about 24 per cent of the world's proven total petroleum reserves.

Saudi Arabia has faced nearly two decades of heavy budget and trade deficits and has many serious long-term economic challenges, including high rates of unemployment, one of the world's fastest population growth rates, and the consequent need for increased government spending. The government is attempting to promote growth in the private sector by privatizing industries such as power and telecom. To diversify the economy, Saudi Arabia launched six new economic cities on the western coast. They will be completed by the year 2020.

Legal, regulatory and corporate governance frameworks

System of government

The Kingdom was founded in 1932. The main government organs are:

- **The King.** The central institution of the Saudi Arabian Government is the Saudi monarchy. The king appoints the council of ministers, the consultative assembly and the judges. The king acts as the highest court of appeal and has the power to pardon.
- **The Council of Ministers.** The council of ministers is appointed by the king and advises on the formulation of general policy and directs the activities of the bureaucracy. The council consists of the prime minister and 20 ministers.

---

[1] *The World Factbook, CIA*, 13 December 2007
[2] *The World Factbook, CIA*, 13 December 2007
[3] *The World Factbook, CIA*, 13 December 2007
[4] *The World Factbook, CIA*, 13 December 2007
[5] *The World Factbook, CIA*, 13 December 2007

Legislation is by resolution of the council of ministers, ratified by royal decree and must be compatible with the Shari'a.

- **The Consultative Assembly.** A 150-member consultative assembly is appointed by the king and has limited legislative rights.
- **Supreme Judicial Council.** The Supreme Judicial Council is composed of 12 senior jurists. Independence of the judiciary is protected by law. The judges are appointed by the king on the recommendation of the supreme judicial council.

The Basic Law of Government adopted in 1992 states that the Quran is the constitution of the country, which is governed on the basis of the Shari'a (Islamic Law). Public audience and access to high officials and the right to petition them directly are well-established traditions.

Criminal cases are tried under Shari'a courts. These courts exercise authority over the entire population including foreigners (regardless of religion). Cases involving small penalties are tried in Shari'a summary courts. More serious crimes are adjudicated in Shari'a courts of common pleas. Courts of Appeal handle appeals from Shari'a courts.

Civil cases may also be tried under Shari'a courts. Other civil proceedings, including those involving claims against the government and enforcement of foreign judgements, are held before specialized administrative tribunals, such as the Commission for the Settlement of Labour Disputes and the Board of Grievances.

There are no recognized political parties or national elections. Saudi municipal elections took place in 2005, and some commentators saw this as a first tentative step towards the introduction of democratic processes in the Kingdom. Women were not allowed to vote.

In 2007, the Economist Intelligence Unit's Index of Democracy ranked Saudi Arabia as an authoritarian regime and 159th in the world in terms of democracy (out of 167 countries).[1]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for

[1] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

Saudi Arabia in 2008. The overall scores are worse than average, and Saudi Arabia is 136th in the world ranking (out of 178 countries).

Table 1. Enforcement of contracts

	Saudi Arabia	*MENA Region minimum*	*Global minimum*
Procedures to Enforce a Contract	44	35 (Israel)	20 (Ireland)
Time to Enforce a Contract (days)	635	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to Enforce a Contract (% of claim)	27.5	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked Saudi Arabia in terms of legal rights of borrowers and creditors. The overall scores are better than average, and Saudi Arabia is 48th in the world ranking (out of 178 countries).

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in Saudi Arabia:[1]

- The increase of terrorist activity in Saudi Arabia impacting upon human rights.
- Prison overcrowding and abuse of prisoners.
- Reduction in public freedoms.
- Discrimination against women.
- Foreign workers are exploited.

Company and capital market legislation

The main laws focusing upon companies and the capital markets are:

- **The Corporate Governance Regulations (2006).** These regulations were developed by the CMA (Capital Markets Authority) and contain the following articles:
  - **Article 2:** Independent directors are defined
  - **Article 3:** Rights of shareholders
  - **Article 4:** Shareholders rights to information
  - **Article 5:** Shareholders rights to the general assembly
  - **Article 6:** Voting rights
  - **Article 7:** Shareholder rights with respect to dividends
  - **Article 8:** Policies and procedures relating to disclosure

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

- **Article 9:** Disclosure in relation to the report of the board of directors
- **Article 10:** Main functions of the board of directors
- **Article 11:** Responsibilities of the board
- **Article 12:** Formation of the board of directors
- **Article 13:** Committees of the board and their independence
- **Article 14:** Audit committees
- **Article 15:** Nomination and remuneration committee
- **Article 16:** Meetings of the board and the agenda
- **Article 17:** Remuneration and indemnification of board members
- **Article 18:** Conflict of interest within the board

These regulations are issued by the CMA and are available at www.cma.org.sa.

- **The Capital Markets Law (2003).** This law established the Supreme Economic Council and the Saudi Arabian General Investment Authority.
- **The Regulations for Companies (issued in 1982, and amended in 1992).** These regulations list business forms and structures.

Types of company

Joint-stock companies

A joint-stock company is owned by five or more individuals or business entities. The minimum capital requirement is 2 million Saudi Riyals (SR) and no less than SR 10 million if its shares are offered for public subscription. The par value of each share cannot be less than SR 50, and upon incorporation, its issued paid-up capital must be no less than one-half of the authorized capital. A joint-stock company can issue non-voting preferred shares in an amount up to 50 per cent of its capital.

Prospective joint-stock companies involving businesses such as minerals exploitation, administration of public utilities, banking and finance require authorization by Royal Decree prior to incorporation.

The board of directors appointed by the shareholders must have a minimum of three members. Directors must own at least 200 shares of the joint-stock company.

Limited liability companies

Limited liability companies are privately held companies. They are specifically not permitted to conduct banking, insurance or savings operations. They cannot offer subscriptions to the public to raise capital, and partners cannot transfer their interest without the unanimous consent of the other partners.

Business-related bodies

CMA (Capital Markets Authority)

The CMA regulates the Tadawul (Saudi Arabia's Stock Market). It is a government organization but has financial, legal and administrative independence. The CMA developed the Corporate Governance Regulations (2006). For more information visit: www.cma.org.sa.

Council of Saudi Chambers of Commerce and Industry

The National Committee of the Saudi joint-stock companies within the Council of Saudi Chambers of Commerce and Industry coordinated the consultation of joint-stock companies when the CMA developed the draft of the Corporate Governance Regulations (2006). For more information visit: www.saudichambers.org.sa.

SOCPA (Saudi Organization for Certified Public Accountants)

SOCPA was established in 1992 and represents the accountants and the auditors in Saudi Arabia.

Tadawul

Tadawul is Saudi Arabia's stock market. It was established in 2001 and is an independent organization. It is the largest stock market in the Middle East. There are 94 companies listed on the market. The capitalization of the market is US $390.7 billion and the average company capitalization is US $4.156 billion[1] For more information visit: www.tadawul.com.sa.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading research in corporate ownership by Claessens *et al* (2002)[2], Barca and Becht (2001)[3] and La Porta *et al* (1999)[4] did not cover this region.

---

[1] The National Investor (TNI) (2008) *It's a family matter* Survey, TNI, Abu Dhai

[2] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112

[3] Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

[4] La Porta, R, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

The World Bank Equity Markets Report identifies that Saudi Arabia has 77 listed companies, the market capitalization to GDP ratio is 154 per cent and that the market capitalization concentration in the top 10 listed companies is 80 per cent.[1]

Bank finance and retained earnings are an important source of funds for Saudi Arabian companies. Companies enjoy relatively easy access to capital from the banks and frequently lending covenants are weak. Table 2 provides details of equity market capitalization and concentration.

Table 2. Equity market capitalization and concentration

Market Capitalization as Percentage of GDP	***Top 10 Companies as a Percentage of Total Market***	***Total Number of Listed Companies***
140%	75%	79

Source: IIF/Hawkamah GCC Comparative Corporate Governance Survey (2006), p 9

Shareholder rights and investor protection

The OECD (Organization for Economic Cooperation and Development) Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[2]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

The following shareholder rights exist in Saudi Arabia:

- Shareholders have one share one vote;
- Cumulative voting for director elections is gradually becoming more common;
- Formal takeover, buyout and merger procedures exist;

[1] World Bank Financial Indicators, *Equity Markets Report* [Accessed February 2008] Available at www.financial indicators.org

[2] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p. 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

- Pre-emptive rights exist;
- There are limits to foreign investment in companies.

In 2006, the Institute of International Finance Inc and Hawkamah rated minority shareholder protection in Saudi Arabia and the ratings are shown in Table 3.

Table 3. Rating of minority shareholder protection

Voting rights	2.0
Changes to the company and its capital structure	5.0
Shareholder meetings and other rights	3.0
Minority shareholder protection overall	3.5

Scale: 1 = Low rating; 5 = High rating
Source: IIF/Hawkamah GCC Comparative Corporate Governance Survey (2006)

The World Bank in its recent Doing Business 2008 study classified shareholder rights and investor protection for Saudi Arabia as above average for the MENA region (see Table 4).

Table 4. Strength of investor protection

	Saudi Arabia	*MENA Region maximum*	*Global maximum*
Strength of investor protection (0–10)	5.7	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

Saudi Arabia is classified as 50th out of 178 countries in the world in terms of protecting investor rights.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[1]

In general, disclosure and transparency is relatively low in the MENA region. In 2006, the Institute of International Finance Inc and Hawkamah rated transparency in Saudi Arabia 4.5 out of a maximum of 5.

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p. 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Stakeholder relations and corporate responsibility

Very few companies have investor relations departments and few boards have developed many processes for managing their stakeholder relationships. The board's principal focus seems to be focused upon satisfying the needs of the block shareholders. There is little use of triple bottom line reporting methods (ie financial, social and environmental performance). Two companies, Al Safi Club and Electronia Co WLL, have joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption). There is not yet an organizational stakeholder for the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

The CMA Corporate Governance Regulations (2006) state that:

- The minimum number of members is 3 and the maximum number is 11 (Article 12).
- The majority of the members shall be non-executive (Article 12).
- The chairman cannot be the same as the CEO (Article 12).
- A director cannot be a member of more than five boards of joint-stock companies (Article 12).
- The audit committee must have at least three members (Article 14).
- All audit committee members must be non-executive directors (Article 14).
- There must be a specialist financial and accounting expert (Article 14).
- There must be a nomination and remuneration committee (Article 15).

Little is known about board practices in Saudi Arabia. It is hoped that research into corporate governance will take place in this country in the near future. There are no director or board development programmes in Saudi Arabia.

---

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p. 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

TNI (The National Investor) Survey (2008)[1]

TNI conducted a census on all of the listed companies in Saudi Arabia and identified that the average board size was 8.4 (the minimum number of directors was 2 and the maximum number was 12). The survey identified that Saudi Arabia had one woman on a board of a listed company. The survey identified that Saudi Arabia had the following distribution of mandates per director on a listed company:

- 87 per cent of directors sit on the board of only one company;
- 9 per cent of directors sit on the board of two companies;
- 3 per cent of directors sit on the board of three companies;
- 1 per cent of directors sit on the board of four companies;
- 0 per cent of directors sit on the board of five companies.

The survey identified that Saudi Arabia had 33 per cent of listed companies with at least two directors from the same family and the maximum percentage of board seats held by the same family was 75 per cent.

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Saudi Arabia is ranked in their 2008 publication as 23rd out of 178 countries in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licenses and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 5 illustrates the comparative ease of starting a business in Saudi Arabia. The number of procedures involved is relatively competitive with other countries.

Table 5. Number of procedures for starting a business

	Saudi Arabia	MENA Region minimum	Global best minimum
Number of Procedures	7	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

[1] The National Investor (TNI) (2008) *It's a family matter* Survey, TNI, Abu Dhabi

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 6 illustrates the comparative ease of starting a business in Saudi Arabia. The time involved is relatively low. The cost involved is over 20 times the cost in Kuwait and the required minimum capital is very low.

Table 6. Starting a business statistics

	Saudi Arabia	***MENA Region minimum***	***Global best minimum***
Time (days)	15	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	32.3	1.6 (Kuwait)	0 (Denmark)
Minimum Capital (% of income per capita)	0	0 (Israel, Saudi Arabia)	0 (Australia, Canada, Ireland, Mauritius, New Zealand, Thailand, the United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Saudi Arabia is ranked 36th out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work;
  - requirements relating to working time and the workweek;
  - mandated days of annual leave with pay.

  The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation. The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 7 illustrates the comparative level of labour regulations in Saudi Arabia. The rigidity of employment index is the lowest in the region. The non-wage labour costs are low. The firing cost, however, is set at a very high level of over 18 months' salary.

Table 7. Labour regulations

	Saudi Arabia	*MENA Region minimum*	*Global minimum*
Rigidity of Employment Index (0–100)	13	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-wage Labour Costs (% of salary)	11.0	5.7 (Israel)	0 (Bangladesh, Botswana, Ethiopia and Maldives)
Firing Cost (weeks of salary)	80.1	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

Saudi Arabia is ranked 40th out of 178 countries in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies, covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 8).

Table 8. Credit information

	Saudi Arabia	*MENA Region maximum*	*Global maximum*
Public Registry Coverage (borrowers / % adults)	0.0	22.2 (Iran)	67.1 (Portugal)
Private Bureau Coverage (% of adults)	23.5	91.6 (Israel)	100 (Argentina, Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit Information Index (1–6)	6	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

Saudi Arabia is ranked 48th out of 178 countries in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Saudi Arabia has one of the lowest number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Saudi Arabia has relatively high times required to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Saudi Arabia has one of the lowest total tax rates in the MENA region.

Table 9. Paying taxes

	Saudi Arabia	*MENA Region minimum*	*Global minimum*
Payments (number per year)	14	13 (Iraq)	2 (Sweden, Maldives)
Time to Pay Taxes (hours per year)	79	12 (UAE)	12 (UAE, Maldives)
Total Tax Rate (% of profit)	14.5	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Saudi Arabia was ranked 7th out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Saudi Arabia's import and export documentation is relatively low. The country's time to import and export is below average for the region. Its costs to import and export are average in the region (Table 10).

Table 10. Importing and exporting

	Saudi Arabia	*MENA Region best practice*	*Global best practice*
Documents to Import	5	4 (Israel)	3 (Denmark, Sweden)
Documents to Export	5	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada, Estonia, Panama and Micronesia)
Time to Import (days)	20	12 (Israel)	3 (Singapore)
Time to Export (days)	19	12 (Israel)	5 (Denmark, Estonia and Singapore)
Cost to Import (US $ per container)	758	462 (UAE)	367 (Singapore)
Cost to Export (US $ per container)	1,008	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

Saudi Arabia was ranked 33rd out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Saudi Arabia is relatively slow in the region.
- **The cost** to go through the process. The cost of the insolvency process in Saudi Arabia is relatively high in the region.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. The Saudi Arabian rate is well below average for the region.

The statistics for Saudi Arabia are listed in Tables 11 and 12.

Table 11. Closing a business – time and cost

	Saudi Arabia	*MENA Region minimum*	*Global minimum*
Time to go Through Insolvency (years)	2.8	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of Insolvency (% of estate)	22.0	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 12. Closing a business – recovery rate

	Saudi Arabia	*MENA Region maximum*	*Global maximum*
Recovery Rate (cents per US $)	29.3	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

Saudi Arabia was ranked 79th out of 178 countries in the world in terms of ease of closing a business.

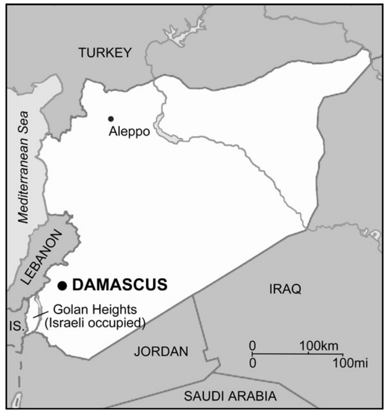
Summary

Saudi Arabia has a labour force of 6.3 million. It is the fifth largest country in the MENA region. The GDP per capita in Saudi Arabia is the seventh highest in the MENA region and the economy is growing at 4.3 per cent. Saudi Arabia is the world's leading petroleum exporter. Oil accounts for more than 90 per cent of exports and nearly 75 per cent of government revenues.

The government is attempting to promote growth in the private sector by privatizing industries such as power and telecom. Company law and corporate governance are relatively undeveloped compared to international best practices. If the private sector is to expand, corporate and capital market legislation will be required in the near future. Saudi Arabia is ranked by the World Bank in 2008 as 23rd out of 178 countries in the world in terms of ease of doing business.

2.15

The Syrian Arab Republic



Location

The Syrian Arab Republic borders Lebanon, the Mediterranean Sea and the island of Cyprus to the west, Israel to the southwest, Jordan to the south, Iraq to the east and Turkey to the north.

Population

The population of Syria is 19.3 million with a labour force of 5.3 million. It is the eighth largest country in the MENA region.[1] Most people live in the Euphrates River valley and along the coastal plain, a fertile strip between the coastal mountains and the desert.

Arabs make up over 90 per cent of the population and a similar percentage of the population are Muslims. The Kurds constitute the largest ethnic minority in Syria, making up about 9 per cent of the population. Most Kurds reside in the northeast corner of Syria and many speak the Kurdish language. Sizable Kurdish communities live in the major Syrian cities.[2]

Languages spoken in Syria include Arabic, Kurdish, Armenian and Aramaic.[3] The adult literacy rate is 80 per cent.[4]

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007

Economy

The GDP (gross domestic product) per capita in Syria is US $4,100 and is the 16th highest (out of 19 countries) in the MENA region. The economy is growing at 4.0 per cent.[1]

Syria has a diversified economy. The major industries in Syria are oil, textiles, cotton, petroleum, food processing, beverages, tobacco, phosphate rock mining and agricultural produce.[2] Although its oil reserves are small compared to those of many other Arab states, Syria's petroleum industry accounts for a majority of the country's export income.

Syria's economy is slowed by large numbers of poorly performing public sector firms, low investment levels and relatively low industrial and agricultural productivity. The government has recently begun to address structural deficiencies in the economy. In 2001, Syria legalized private banking and in 2004, four private banks began operations. In 2004, a committee was formed to supervise the establishment of a stock market. The Syrian Government is reportedly considering making changes to the commercial code and to other laws which will impact upon property rights.

The government has as an economic development priority to achieve food self-sufficiency. Syria has gone from being a net importer of many agricultural products to an exporter of cotton, fruits, vegetables and other foodstuffs. One of the prime reasons for this turnaround has been the government's investment in huge irrigation systems in northern and northeastern Syria.

Legal, regulatory and corporate governance frameworks

System of government

The modern state of Syria obtained independence from France in 1946. Syria is a parliamentary republic; however, the armed forces dominate the government and the country has been under a state of emergency since 1963.

The main government organs are:

- **The President.** Citizens vote for the president in unopposed elections. The president and senior aides, particularly those in the military and security services, ultimately make most basic decisions in political and economic life, with a limited degree of public accountability. The president has the right to appoint ministers, to declare war and states of emergency,

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007

to issue laws, to declare amnesty, to amend the constitution and to appoint civil servants and military personnel. Political opposition to the president is not tolerated. The Asad family has held power for a long time and their survival is due partly to a strong desire for stability and the regime's success in giving groups such as religious minorities and peasant farmers a stake in society. The president's continuing strength is due also to the army's continued loyalty and the effectiveness of Syria's large internal security apparatus.

- **The People's Council.** Every four years, citizens vote for members of the People's Council. The council has 250 members in 15 multi-seat constituencies. About 167 seats are guaranteed for the National Progressive Front. The council has no independent authority and may criticize policies and modify draft laws but cannot initiate laws.
- **The Arab Ba'ath Socialist Party.** Syria is a single-party state. The party advocates state ownership of the means of industrial production and the redistribution of agricultural land. Since 1963, the country has been governed by the Ba'ath Party. The government is guided by the views of the Ba'ath Party whose primacy in state institutions is assured by the constitution. The party holds a two-thirds majority in the Syrian Parliament. In recent years, there has been a gradual and slight decline in the party's pre-eminence. The party is dominated by the military.
- **The Judiciary.** Islamic jurisprudence is the main source of legislation. There are three levels of courts: courts of first instance, courts of appeals and the constitutional court, the highest tribunal. In addition, religious courts handle questions of personal and family law.

In 2007, the Economist Intelligence Unit's Index of Democracy ranked Syria as an authoritarian regime and 153rd in the world in terms of democracy (out of 167 countries).[1]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for Syria in 2008. The overall scores are much worse than average, and Syria is 171st in the world ranking (out of 178 countries).

---

[1] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

Table 1. Enforcement of contracts

	Syria	*MENA Region minimum*	*Global minimum*
Procedures to enforce a contract	55	35 (Israel)	20 (Ireland)
Time to enforce a contract (days)	872	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to enforce a contract (% of claim)	29.3	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked Syria in terms of legal rights of borrowers and creditors. The overall scores are well below average – Syria is 158th in the world ranking (out of 178 countries).

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in Syria:[1]

- There has been a persistent state of emergency since 1963.
- Many laws contravene human rights and public freedoms.
- The judiciary's independence has recently been reduced.
- Freedom of expression is very constrained.
- Freedom of association is very limited.

Company and capital market legislation

The main law in Syria that focuses upon companies and the capital markets is:

- **Legislative Decree No. 149 (1949).** This decree defines the types of business which may operate in Syria.

Types of companies

Shareholding companies

- A majority of the members of the board of directors must be Syrian nationals.
- Shareholding companies must set aside 10 per cent of their net profits annually, as a legal reserve that can be discontinued when its total reserves equal at least 50 per cent of the share capital of the company.

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

The legal reserves set aside may not exceed 25 per cent of the company's net profits per year.
- Foreign nationals who are members of the board may not exceed the proportion of their relative shareholding participation in the company's capital.
- At least two members of the board of directors are required to be representatives of the employees.
- Members of the board of directors are individually liable for any violation of laws, regulations or the terms of the company's articles of association.
- The board must convene once a month, in Syria, and at least one member more than half of the total number of board members must be present.
- Voting by proxy or by writing is not permitted.
- A general assembly of shareholders is required to convene at least once a year.

Limited liability company

- A limited liability company must deposit a copy of the company's constitution at the Primary Civil Court within a month of establishment.
- Capital investment of not less than 25,000 Syrian Pounds (S£) is required.
- An application to register a limited liability company should also be submitted to the Ministry of Supply and Interior Trade.

Business-related bodies

DCI (Damascus Chamber of Industry)

The mission of the Chamber is to promote the message 'Made in Syria'. It represents business interests. For more information view: www.dci-syria.org.

Federation of Syrian Chamber of Commerce

The Federation of the Syrian Chambers of Commerce was founded in Damascus in 1975. It comprises 14 Chambers of Commerce and Industry. The Federation promotes commercial, economic and trade activities, represents the Chambers of Commerce and holds economic conferences and trade fairs. For more information view: www.fedcommsyr.org.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading academic research in this field by Claessens *et al* (2002),[1] Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] did not cover this region.

Bank finance and retained earnings are the main source of funds for Syrian companies. Companies enjoy relatively easy access to capital from banks and frequently lending covenants are weak.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[4]

In general disclosure and transparency is relatively low in the MENA region.

World Bank Doing Business Survey (2008)[5]

The World Bank Doing Business Survey 2008 identified that the strength of investor protection was relatively low in Syria, scoring 4.3 on a scale of 1–10 (Table 2).

Table 2. Strength of investor protection

	Syria	*MENA Region maximum*	*Global maximum*
Strength of investor protection (0-10)	4.3	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

Syria is classified as 107th out of 178 countries in the world in terms of protecting investor rights.

---

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, 81–112

[2] Barca, F. and Becht, M. (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

[3] La Porta, R, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, 471–517

[4] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

[5] *Hawkamah CEO Survey* (2008)

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[1]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation and on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

Table 3 shows the enforcement of contracts in Syria. The World Bank have identified that Syria is 171st out of 178 countries in the world in terms of enforcing contracts.

Table 3. Enforcement of contracts

	MENA Region minimum	*Global minimum*
Procedures to enforce a contract	35 (Israel)	20 (Ireland)
Time to enforce a contract (days)	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to enforce a contract (% of claim)	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

Stakeholder relations and corporate responsibility

Very few companies have investor relations departments and few boards have developed any processes for managing their stakeholder relationships. The board's principal focus seems to be focused upon satisfying the needs of the block shareholders. There is little use of triple bottom line reporting methods (ie financial, social and environmental performance).

One company has joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption) – the Rayess Kingdom Group – but there is not yet an organizational stakeholder for the GRI (Global Reporting Initiative) – an

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

Little is known about board practices in Syria. It is hoped that research into corporate governance will take place in this country in the near future. There are no director or board development programmes in Syria.

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Syria is ranked in their 2008 publication as 137th out of 178 countries in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licenses and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 4 illustrates the comparative ease of starting a business in Syria. The number of procedures involved is over double the number required in Israel and over six times that required in Australia, Canada and New Zealand.

Table 4. Number of procedures for starting a business

	Syria	*MENA Region minimum*	*Global best minimum*
Number of procedures	13	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 5 illustrates the comparative ease of starting a business in Syria. The time involved is nearly 5 times the duration in Egypt and over 20 times that required in Australia. The cost involved is very high and the required minimum capital is extremely high at over 3,000 per cent of per capita income.

Table 5. Starting a business statistics

	Syria	*MENA Region minimum*	*Global best minimum*
Time (days)	43	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	55.7	1.6 (Kuwait)	0 (Denmark)
Minimum capital (% of income per capita)	3,673.3	0 (Israel, Saudi Arabia)	0 (Australia, Canada, Ireland, Mauritius, New Zealand, Thailand, the United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Syria is ranked 169th out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work;
  - requirements relating to working time and the work week;
  - mandated days of annual leave with pay.

  The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation.

The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 6 illustrates the comparative level of labour regulations in Syria. The rigidity of employment index and the non-wage labour costs are relatively high. The firing cost is set at a very high level of over 18 months' salary.

Table 6. Labour regulations

	Syria	*MENA Region minimum*	*Global minimum*
Rigidity of employment index (0–100)	37	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-wage labour costs (% of salary)	17.0	5.7 (Israel)	0 (Bangladesh Botswana, Ethiopia and Maldives)
Firing cost (weeks of salary)	79.8	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

Syria is ranked 126th out of 178 countries in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.

Table 7. Credit information

	Syria	*MENA Region maximum*	*Global maximum*
Public registry coverage (borrowers / % adults)	0.0	22.2 (Iran)	67.1 (Portugal)
Private bureau coverage (% of adults)	0.0	91.6 (Israel)	100 (Argentina, Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit information index (1–6)	0	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 7).

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Syria has an average number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Syria has a very high time to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Syria has a very high total tax rate in the MENA region (Table 8).

Table 8. Paying taxes

	Syria	*MENA Region minimum*	*Global minimum*
Payments (number per year)	21	13 (Iraq)	2 (Sweden, Maldives)
Time to pay taxes (hours per year)	336	12 (UAE)	12 (UAE, Maldives)
Total tax rate (% of profit)	46.7	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Syria is ranked 98th out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Syria's import and export documentation is average. The country's time to import and export is average. Its costs to import and export are high (Table 9).

Table 9. Importing and exporting

	Syria	*MENA Region best practice*	*Global best practice*
Documents to import	9	4 (Israel)	3 (Denmark, Sweden)
Documents to export	8	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada, Estonia, Panama and Micronesia)
Time to import (days)	23	12 (Israel)	3 (Singapore)
Time to export (days)	19	12 (Israel)	5 (Denmark, Estonia and Singapore)
Cost to import (US $ per container)	1,900	462 (UAE)	367 (Singapore)
Cost to export (US $ per container)	1,300	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

Syria is ranked 127th out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Syria is very slow.
- **The cost** to go through the process. The cost of the insolvency process in Syria is very high.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. The Syrian rate is average for the region.

The statistics for Syria are listed in Tables 10 and 11.

Table 10. Closing a business – time and cost

	Syria	*MENA Region minimum*	*Global minimum*
Time to go through insolvency (years)	4.1	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of insolvency (% of estate)	9.0	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 11. Closing a business – recovery rate

	Syria	*MENA Region maximum*	*Global maximum*
Recovery rate (cents per US $)	30.8	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

Syria is ranked 77th out of 178 countries in the world in terms of ease of closing a business.

Summary

Syria has a labour force of 5.3 million. It is the eighth largest country in the MENA region. The GDP per capita in Syria is the 16th highest (out of 19 countries) in the MENA region. The economy is growing at 4.0 per cent.

Syria has a diversified economy. The major industries in Syria are oil, textiles, cotton, petroleum, food processing, beverages, tobacco, phosphate rock mining and agricultural produce.

Syria's economy has been slowed by large numbers of poorly performing public sector firms, low investment levels and relatively low industrial and agricultural productivity.

The government has recently begun to address structural deficiencies in the economy. In 2001, Syria legalized private banking and in 2004, four private banks began operations. In 2004, a committee was formed to supervise the establishment of a stock market.

The Syrian Government is reportedly considering making changes to the Commercial Code. Company law and corporate governance are relatively undeveloped compared to international best practices. If the private sector is to expand corporate and capital market legislation will be required in the near future. Syria is ranked by the World Bank in 2008 as 137th out of 178 countries in the world in terms of ease of doing business.

2.16

The Tunisian Republic

Location

The Tunisian Republic is a country situated on the Mediterranean coast of North Africa. It is bordered by Algeria to the west and Libya to the southeast.

Population

The population of Tunisia is 10.3 million with a labour force of 3.5 million. It is the ninth largest country in the MENA region.[1]

About 98 per cent of the population are Arabs. Nearly all Tunisians (98 per cent of the population) are Muslims.[2]

Languages spoken in Tunisia include Arabic and French.[3] The adult literacy rate is 74 per cent.[4]

Economy

The GDP (gross domestic product) per capita in Tunisia is US $8,900 and is the ninth highest in the MENA region. The economy is growing at 5.2 per

---

1 *The World Factbook*, CIA, 13 December 2007
2 *The World Factbook*, CIA, 13 December 2007
3 *The World Factbook*, CIA, 13 December 2007
4 *The World Factbook*, CIA, 13 December 2007

cent. Increased trade and tourism have been key elements in this steady economic growth.[1]

Tunisia has a diverse economy. The major industries in Tunisia are agriculture, mining (particularly phosphate and iron ore), tourism, textiles, footwear, food and beverages.[2] Governmental control of economic affairs, whilst still heavy, has gradually lessened over the past decade with increasing privatization and a simplification of the tax structure. The government has completely or partially privatized approximately 160 SOEs (state-owned enterprises) since its programme started in 1987.

Legal, regulatory and corporate governance frameworks

System of government

Tunisia is a republic with a strong presidential system dominated by a single political party. Tunisia remains an autocratic regime. The key government organs include:

- **The President.** The president is elected for a five-year term. He appoints a prime minister and cabinet, who play a strong role in the execution of policy.
- **Regional Governors and Local Administrators.** Regional governors and local administrators are appointed by the central government.
- **The Chamber of Deputies.** The Chamber of Deputies has 182 seats, 20 per cent of which are reserved for the opposition parties. The Chamber debates national policy but never originates legislation. The Chamber virtually always passes bills presented by the executive with only one minor change.
- **The Judiciary.** The judiciary is nominally independent but responds to executive direction, especially in political cases.

In general, there is a lack of public political discourse in Tunisia, and there is a general lack of transparency maintained by the government.

There are a number of legal opposition parties all with their own newspapers. However, journalists are generally not critical of the government since the Tunisian government imposes significant restrictions on freedom of speech and human rights. Tunisian Internet access is invariably censored.

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007

In 2007, the Economist Intelligence Unit's Index of Democracy ranked Tunisia as an authoritarian regime and 135th in the world in terms of democracy (out of 167 countries).[1]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for Tunisia in 2008. The overall scores are average, and Tunisia is 80th in the world ranking (out of 178 countries).

Table 1. Enforcement of contracts

	Tunisia	*MENA Region minimum*	*Global minimum*
Procedures to enforce a contract	39	35 (Israel)	20 (Ireland)
Time to enforce a contract (days)	565	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to enforce a contract (% of claim)	21.8	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked Tunisia in terms of legal rights of borrowers and creditors. The overall scores are average – Tunisia is 97th in the world ranking (out of 178 countries).

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in Tunisia:[2]

- Detention of political prisoners.
- Violation of fair trial provisions.
- Lack of independence of judges and lawyers.
- Restraints on media freedom of expression.
- Restraints on freedom of association.

[1] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

[2] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

Company and capital market legislation

The main laws focusing upon companies and the capital markets are:

- **Law No. 94-117 (1994)** The Financial Market Reorganization Law.
- **Law No. 99-92 (1999)** The Enhancement of the Financial Market Law.
- **Law No. 2005-96 (2005)** The Law relating to Security Reinforcement in Financial Relations.
- **The Investment Code Law No. 93-120 (1993).**

CIPE (Center for Private Enterprise) is currently exploring initiatives involving developing the company and capital market legislation and improving corporate governance practices in the country.

Types of companies

Joint-stock companies

- Joint-stock companies must have a minimum of seven shareholders.
- The minimum nominal value per share in a joint-stock company is 5 Tunisian Dinars (TD).
- The board of directors of a joint-stock company is comprised of between 3 and 12 directors.
- The directors appoint the chairman and general manager of the company.
- Foreigners can hold a maximum of 49 per cent of the share capital unless special permission is obtained from the Higher Investment Board.
- Transfers of shares representing more than 10 per cent of the voting rights require approval.

Limited liability companies

- Limited liability companies must have a minimum of two shareholders.
- The shareholders appoint a manager who has significant power within the company.

ITC (international trade companies)

An ITC is a non-resident company in which the share capital is held by Tunisian or non-Tunisian residents where at least 66 per cent of the share capital is paid through convertible foreign currency. An ITC may engage wholly in export, and 80 per cent of its turnover must originate from exporting.

Business-related bodies

The IACE (Institute Arab des Chefs d'Entreprise)

The Institute is a think tank created in 1984 with about 500 members. It is part of the Arab Forum of Young Entrepreneurs. The IACE brings together academics, researchers and private sector representatives to address private sector development issues. The Institute has worked with the World Bank, the European Union, CIPE and the US State Department through the MEPI (Middle East Partnership Initiative) programme on corporate governance. In partnership with the World Bank, IACE runs the Observatoire de l'Entreprise, a business barometer survey applied every three months which measures the investment climate. For more information visit: www.iace.org.tn.

The TACC (Tunisia–American Chamber of Commerce)

The TACC's objectives are to promote Tunisia in the United States as an investment and tourism destination; provide support and assistance to US companies interested in doing business in Tunisia; lobby on behalf of US companies operating in Tunisia; provide support and assistance to Tunisian companies interested in the US market and consolidate regional economic development and support the US North Africa Economic Partnership. The TACC has been working to advance corporate governance reform. For more information visit: www.tacc.org.tn.

The Tunisian Association of Accountants and Auditors

The Tunisian Association of Accountants and Auditors has also been working to advance corporate governance reform.

The Tunisian Stock Market

Tunisia has 45 companies in its stock market, representing only 9 per cent of GDP. Further, 90 per cent of Tunisian companies are family-owned businesses.

The government has formulated Tunisia's Company Law passed in 2005. This law will require greater transparency and accountability from Tunisian companies.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading academic research in this field by Claessens *et al* (2002)[1], Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] did not cover this region.

The World Bank Equity Markets Report identifies that Tunisia has 46 listed companies, the market capitalization to GDP ratio is 10 per cent and that the market capitalization concentration in the top 10 listed companies is 63 per cent.[4] Consequently there is not a strong equity culture.

Bank finance and retained earnings are the main source of funds for Tunisian companies. Companies enjoy relatively easy access to capital from banks and frequently lending covenants are weak.

The IACE Survey (2004)

The IACE conducted a survey in 2004 of their 500 members to gauge managers' views on business ethics and corporate governance.

- Corporate governance was regarded as bad for business as it was perceived to decrease competitiveness.
- Embezzlement of company funds and bribery was a major issue. Many companies were believed to be operating in a less than honest way.
- The private sector has become accustomed to hiding profit and trading activities from the government.
- The black market was perceived to be pervasive in Tunisia and managers felt that its presence strongly impacts their business ethics and behaviour.

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[5]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;

---

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112

[2] Barca, F. and Becht, M. (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

[3] La Porta, R, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

[4] World Bank Financial Indicators, *Equity Markets Report* [Accessed February 2008] Available at www.financial indicators.org

[5] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[1]

In general, disclosure and transparency is relatively low in the MENA region.

World Bank Doing Business Survey (2008)[2]

The World Bank Doing Business Survey 2008 identified that the strength of investor protection was very low in Tunisia scoring 3.3 on a scale of 1–10 (Table 2).

Table 2. Strength of investor protection

	Tunisia	*MENA Region maximum*	*Global maximum*
Strength of investor protection (0–10)	3.3	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

Tunisia is classified as 147th out of 178 countries in the world in terms of protecting investor rights.

Stakeholder relations and corporate responsibility

Few Tunisian companies have investor relations departments and few boards have developed any processes for managing their stakeholder relationships. The Board's principal focus seems to be focused upon satisfying the needs of the block shareholders. There is little use of triple bottom line reporting methods (ie financial, social and environmental performance).

Eighteen organizations have joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

[2] *Doing Business, 2008* World Bank

with 10 principles in the areas of human rights, labour, the environment and anti-corruption). These include:

- Ateliers Mecaniques du Sahel;
- Banque Internationale Arabe de Tunisie;
- CIPI;
- Compagnie Tunisienne pour l'assurance du commerce exterieure – Cotunace;
- Conecta Tunisie;
- Ennadhafa Judy;
- GIAS;
- Jal Group Tunisia;
- Leonie Tunisie;
- Poulina;
- Prokim Industrie;
- Sartex;
- Sicovet;
- Societe Chimique Alkimia;
- Societe de Carrosserie de Constructions Metalliques;
- Marhaba Hotels;
- STT Maklada;
- Yadis Hotels SA.

However, no organization has yet become an organizational stakeholder with the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

Little is known about board practices in Tunisia. It is hoped that research into corporate governance will take place in this country in the near future. There are no director or board development programmes in Tunisia.

---

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Hawkamah/IFC Corporate Governance Survey (2008)[1]

The survey identified that Tunisia scored a rating of 38 per cent for good board of director practices compared to a MENA average score of 47 per cent.

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Tunisia is ranked in their 2008 publication as 88th out of 178 countries in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licenses and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 3 illustrates the comparative ease of starting a business in Tunisia. The number of procedures involved is double the number required in Israel and five times that required in Australia, Canada and New Zealand.

Table 3. Number of procedures for starting a business

	Tunisia	*MENA Region minimum*	*Global best minimum*
Number of procedures	10	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 4 illustrates the comparative ease of starting a business in Tunisia. The time involved is relatively low. The cost involved is relatively high in terms of per capita income.

[1] *Corporate Governance MENA Survey – Banks and Listed Companies* Hawkamah / IFC (2008)

Table 4. Starting a business

	Tunisia	*MENA Region minimum*	*Global best minimum*
Time (days)	11	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	8.3	1.6 (Kuwait)	0 (Denmark)
Minimum capital (% of income per capita)	25.3	0 (Israel, Saudi Arabia)	0 (Australia, Canada, Ireland, Mauritius, New Zealand, Thailand, the United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Tunisia is ranked 68th out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
    - restrictions on weekend and night work;
    - requirements relating to working time and the workweek;
    - mandated days of annual leave with pay.

  The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation.

The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 5 illustrates the comparative level of labour regulations in Tunisia. The rigidity of employment index, the non-wage labour costs and the firing cost are relatively high.

Table 5. Labour regulations

	Tunisia	*MENA Region minimum*	*Global minimum*
Rigidity of employment index (0–100)	49	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-wage labour costs (% of salary)	21.8	5.7 (Israel)	0 (Bangladesh, Botswana, Ethiopia and Maldives)
Firing cost (weeks of salary)	17.3	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

Tunisia is ranked 113th out of 178 countries in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the

Table 6. Credit information

	Tunisia	*MENA Region maximum*	*Global maximum*
Public registry coverage (borrowers / % adults)	13.7	22.2 (Iran)	67.1 (Portugal)
Private bureau coverage (% of adults)	0.0	91.6 (Israel)	100 (Argentina, Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit information index (1–6)	4	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 6).

Tunisia is ranked 97th out of 178 countries in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Tunisia has one of the highest number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Tunisia has one of the highest time to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Tunisia has one of the highest total tax rates in the MENA region.

Table 7. Paying taxes

	Tunisia	*MENA Region minimum*	*Global minimum*
Payments (number per year)	46	13 (Iraq)	2 (Sweden, Maldives)
Time to pay taxes (hours per year)	268	12 (UAE)	12 (UAE, Maldives)
Total tax rate (% of profit)	61.0	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Tunisia is ranked 148th out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Tunisia's import and export documentation is below average for the MENA region. The country's time to import and export is also below average. Its costs to import and export are average in the region (Table 8).

Table 8. Importing and exporting

	Tunisia	*MENA Region best practice*	*Global best practice*
Documents to import	7	4 (Israel)	3 (Denmark, Sweden)
Documents to export	5	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada, Estonia, Panama and Micronesia)
Time to import (days)	22	12 (Israel)	3 (Singapore)
Time to export (days)	17	12 (Israel)	5 (Denmark, Estonia and Singapore)
Cost to import (US $ per container)	810	462 (UAE)	367 (Singapore)
Cost to export (US $ per container)	540	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

Tunisia is ranked 28th out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Tunisia is the fastest country in the region.
- **The cost** to go through the process. The cost of the insolvency process in Tunisia is below average in the MENA region.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. The Tunisian rate is the best in the region.

The statistics for Tunisia are listed in Tables 9 and 10.

Table 9. Closing a business – time and cost

	Tunisia	*MENA Region minimum*	*Global minimum*
Time to go through insolvency (years)	1.3	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of insolvency (% of estate)	7.0	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 10. Closing a business – recovery rate

	Tunisia	*MENA Region maximum*	*Global maximum*
Recovery rate (cents per US $)	51.5	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

Tunisia is ranked 30th out of 178 countries in the world in terms of ease of closing a business.

Summary

Tunisia has a labour force of 3.5 million. It is the ninth largest country in the MENA region. The GDP per capita in Tunisia is the ninth highest in the MENA region. The economy is growing at 5.2 per cent. The major industries in Tunisia are agriculture, mining (particularly phosphate and iron ore), tourism, textiles, footwear, food and beverages.

Governmental control of economic affairs, whilst still heavy, has gradually lessened over the past decade with increasing privatization and a simplification of the tax structure. Company law and corporate governance are relatively undeveloped compared to international best practices. If the private sector is to expand, corporate and capital market legislation will be required in the near future.

Tunisia is ranked by the World Bank in 2008 as 88th out of 178 countries in the world in terms of ease of doing business.

2.17

United Arab Emirates (UAE)

Location

The UAE (United Arab Emirates) is a federation of seven states situated in the southeast of the Arabian Peninsula on the Persian Gulf, bordering Oman and Saudi Arabia. The seven states, termed emirates, are:

- Abu Dhabi;
- Ajman;
- Dubai;
- Al Fujairah;
- Ras Al Khaimah;
- Sharjah; and
- Umm Al Quwain.

Population

The population of the UAE is 4.4 million with a labour force of 3 million.[1] It is the 13th largest country in the MENA region and has one of the most diverse populations (15 per cent of the population are Emirati, 23 per cent are other Arabs and Iranians and 50 per cent are South Asians). An estimated 85 per cent of the population are comprised of non-citizens.[2]

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007

The living standards and economic opportunities in the UAE are amongst the highest in the Middle East and South Asia. This makes the nation an attractive destination for South Asians.

The UAE population has more than twice the number of males than females. This national gender imbalance is the highest in the world. About 96 per cent of the population are Muslims. Languages spoken include Arabic (official), English, Persian, Hindi and Urdu.[1] The adult literacy rate is 77.9 per cent.[2]

Economy

The UAE has a highly industrialized economy that makes the country one of the most developed in the region. The GDP (gross domestic product) per capita is the highest in the MENA region at US $49,700, and the UAE has one of the fastest growing economies at 8.9 per cent.[3]

Petroleum and natural gas exports play an important role in the economy, especially in Abu Dhabi. However, the UAE is becoming less dependent on natural resources as a source of revenue. A massive construction boom, an expanding manufacturing base and a thriving tourism and services sector are helping the UAE diversify its economy.

It is currently estimated that there is US $350 billion worth of active construction projects in the UAE. Major building projects include:

- The Burj Dubai which, when completed in 2009, will become the world's tallest building at nearly 1 kilometre high.
- Dubai World Central International Airport which, when completed, will be the most expensive airport ever built.
- The Palm Islands, the largest artificial islands in the world.
- The Dubai Mall which, when completed, will become the world's largest shopping mall.
- The World, an artificial archipelago of over 250 islands, 6 kilometres long and 9 kilometres wide.
- The Dubai Waterfront, one of the largest man-made developments in the world.

Legal, regulatory and corporate governance frameworks

System of government

The UAE is a federation with specified powers delegated to the federal government and other powers reserved to member emirates. The Presidency

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007

of the UAE is open to election by the Supreme Council. The UAE does not allow political parties. The key government organs include:

- **A Supreme Council.** This council consists of the rulers of the seven emirates who elect the council of ministers.
- **The Council of Ministers.** This council proposes all major legislation for the UAE.
- **The Federal National Council.** This council has 40 members drawn from all the emirates. It reviews all proposed laws made by the council of ministers.
- **The Federal Supreme Court.** The UAE has an independent judiciary. All emirates except Dubai and Ras Al Khaimah have joined the federal system. All emirates apply both secular and Islamic law within their civil, criminal and high courts.

In 2007, the Economist Intelligence Unit's Index of Demography ranked the UAE as an authoritarian regime and 150th out of 167 countries in the world.

Legal rights

Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for the UAE in 2008. The overall score is extremely low and is 144th in the world ranking. The rights have remained unchanged over the last three years.

Table 1. Enforcement of contracts

	UAE	*MENA Region minimum*	*Global minimum*
Procedures to enforce a contract	50	35 (Israel)	20 (Ireland)
Time to enforce a contract (days)	607	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to enforce a contract (% of claim)	26.2	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked the UAE in terms of legal rights of borrowers and creditors. The overall scores are average – the UAE is 115th out of 178 countries in the world ranking.

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of United Nations documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in the UAE:

- The UAE has no elected bodies.
- The rights of migrant workers are not protected.
- People trafficking for sexual exploitation is growing.

There is no provision for the right of workers to organize and to carry out collective bargaining.

Company and capital market legislation

UAE Commercial Companies Law, No. 8 (1984)

This law provides the foundation for all company practices in the UAE. Key articles of the legislation include:

- **Election of directors.** The boards of directors are elected by secret ballot at ordinary general assembly (Article 96).
- **Term limits of directors.** A director's term of office shall not exceed three years although a director can be elected for more than one term (Article 95).
- **Limits on directorships.** No director shall be a director on more than five joint-stock companies having their head offices within the UAE (Article 98). A chairman or vice chairman cannot hold these positions in more than two companies having their head offices within the UAE (Article 98). A managing director cannot hold this position in more than one company having their head office within the UAE (Article 98).
- **Structure and size of board.** Boards cannot have less than 3 or more than 12 directors (Article 95). All boards must select a chairman and vice chairman (Article 99).
- **Membership nationality.** The chairman must be a UAE national (Article 99). The majority of directors in a UAE company must be UAE nationals (Article 100).
- **Conflict of interest.** A director who maintains an interest in a deal conflicting with the company's interests must notify the board of these conflicting interests and shall have no voting rights in the deal (Article 109).

Federal Law, No. 4 (2000) on Emirates Securities and Commodities Authority and Market

This law established the Emirates SCA (Securities and Commodities Authority) and defined its objects, powers and authorities and the structure of its board of directors. The law also defines the administration system of the Securities and Commodities Market particularly the regulation of licensed broker activities.

Corporate governance codes

The Abu Dhabi Securities Market (ADSM) Corporate Governance Code (2006)

In 2006, the ADSM (Abu Dhabi Securities Market) produced a corporate governance code for listed companies and associated rules for progressive introduction that increased disclosures and improved shareholder rights. The adoption of the code by companies listed on the ADSM is voluntary. The code recommended that:

- the boards of directors shall meet at least six times per year (Article 2);
- the boards of directors shall develop an annual programme of matters to be considered each year (Article 3);
- in addition to the audit committee, the board of directors shall consider the establishment of three other permanent committees: the Remuneration, the Nomination and the Risk Management committees (Article 14).

The code also contains appendices that include details of:

- information for the board;
- qualities, duties, obligations and procedures of the board;
- items to be covered in the corporate governance section of the company's annual report – mandatory disclosure;
- additional best practice disclosures to be made in the corporate governance section of the company's annual report;
- tasks and responsibilities of the audit committee;
- modification of articles of association.

The code has recently been withdrawn following the introduction of national corporate governance regulations.

The SCA (Emirates Securities and Commodities Authority) Corporate Governance Code (2007)

The SCA has recently issued a corporate governance code to be applied to all joint-stock companies established in the UAE. The code is based upon common international norms and practices, particularly the OECD's Principles of Corporate Governance. The final draft of the code was approved by the SCA Board in March 2007 after a public consultation. SCA have set a three-year grace period for all the listed companies to comply with the code which will become obligatory by May 2010. The main articles of the code are:

- **Article 3. Board of Directors**
  - The composition of the board of directors shall be determined by the articles of association.
  - At least one-third of directors shall be independent.
  - The majority of directors shall be non-executive.
  - The chairman and the managing director may not be held by the same person.
  - The meetings of board of directors shall be held at least once every two months.
  - Notice of and the agenda for the board of directors meeting shall be distributed at least one week before the meeting.
  - A board of directors meeting shall be valid only in the presence of the majority of directors.
  - The board of directors may make a maximum of four decisions outside of board meetings based on written resolutions by circulation if there is unanimity amongst directors.
  - If a major shareholder or director has any conflict of interest with any significant matter to be considered by the board of directors, the decision will be made in the presence of all directors and in the absence of the interested director's vote.
- **Article 4. Chairman of the Board of Directors**
  - The tasks and responsibilities of the chairman are listed.
- **Article 5. Board of Directors**
  - Newly appointed directors shall be inducted.
  - Directors have a right to request an independent opinion at the company's expense.
  - The director's duty of care is defined.
  - Tasks of the non-executive director are listed.
  - Rules relating to directors dealing in company shares are listed.
- **Article 6. Board of Directors Committees**
  - There shall be two permanent committees: the audit and the remuneration committee.
  - Each committee shall have no less than three non-executive directors and at least two should be independent.
  - The chairman of the board shall not be a member of these committees.
- **Article 7. Remuneration of Directors**
  - The articles of association shall describe the system to determine the board of directors' remuneration.
  - If the remuneration is a percentage of the company's profit it may not exceed 10 per cent of the net profit after deduction of expenses, depreciation and reserves and after distribution of dividends to shareholders of not less than 5 per cent of the company's capital. This is also a company law provision.
- **Article 8. Internal Control**
  - An internal control system shall be established to evaluate the means

and procedures for risk management and the implementation of the corporate governance code.

- **Article 9. Audit Committee**
  - There shall be an audit committee composed of not less than three non-executive directors. The majority of the committee members shall be independent.
  - At least one of the members shall be a financial and accounting expert.
  - The committee shall meet at least every three months.
  - The tasks and duties of the committee are listed.
- **Article 10. The External Auditor**
  - The board shall nominate an external auditor and the appointment and remuneration of the external auditor shall be decided by shareholders at the general assembly.
- **Article 11. Management Authorization**
  - The board may delegate some of its authority to management.
- **Article 12. Shareholder Rights**
  - Shareholder rights are listed.
- **Article 13. Professional Conduct Rules**
  - Professional conduct rules and other internal policies and procedures should be adopted by the company.
- **Article 14. Governance Report**
  - An annual report of corporate governance practices signed by the chairman should be submitted to the SCA each year.
- **Article 15. Penalties**
  - The penalties for violation of the code are mentioned but are not specified.
- **Article 16. Implementation**
  - All listed companies must comply with the code by May 2010. Details of the code can be found at www.sca.ae.

Business-related bodies

The ADSM (Abu Dhabi Securities Market)

The ADSM was established in 2000. The board of directors is comprised of seven members nominated by Amiri Decree. The ADSM has the authority to establish centres and branches outside the Emirate of Abu Dhabi, and to date it has done so in Al Fujairah, Ras Al Khaimah and Sharjah. For more information visit: www.adsm.ae.

Borse Dubai

Borse Dubai is the holding company for the DFM (Dubai Financial Market) and NASDAQ DIFX (NASDAQ Dubai International Financial Exchange). It was created in August 2007 to consolidate Dubai's two stock exchanges. For more information visit: www.borsedubai.com.

DFM (Dubai Financial Market)

The DFM was established in 2000 and operates as a secondary market for the trading of securities issued by public companies and bonds issued by the government and public institutions in the country. For more information visit: www.dfm.ae.

NASDAQ DIFX (NASDAQ Dubai International Foreign Exchange)

NASDAQ and Borse Dubai (DIFX's parent company) agreed in September 2007 to take over Nordic and Baltic share markets owner and technology company OMX AB in a US $4.9 billion deal. NASDAQ now has a 33 per cent stake in DIFX and allows Dubai to use its name in the Middle East, North Africa and South Asia.

The DIFX opened in September 2005. The exchange lists shares, bonds, *sukuk* and structured products. The exchange is the largest in the world for *sukuk* by listed value. Issuers are based in countries all over the world including the United Kingdom, Germany, South Africa, Australia, Switzerland, India, Kuwait, Bahrain, Saudi Arabia and the UAE.

In November 2007, DP World, the world's fourth largest marine terminal operator, listed on DIFX in the Middle East's largest IPO (initial public offering) valued at US $4.96 billion. It was the first listing on the DIFX by a UAE company and was the first IPO to list exclusively on the DIFX. The offering was oversubscribed more than 15 times. DP World, wholly owned by Dubai World until the IPO, listed 3.818 billion shares, representing 23 per cent of the company. They were priced at US $1.30 each.

The DIFX has approximately 20 member-brokers, including leading international and regional banks. The exchange focuses upon international and regional firms. New listings are priced independently of the Ministry of Economy and a minimum stake of only 25 per cent has to be listed compared to a 55 per cent minimum stake on the domestic market.

The DIFX is wholly owned by Borse Dubai and is located in the DIFC (Dubai International Finance Centre). The DIFX also runs the DIFX Academy, a regional provider of capital markets training and education services. Its training programmes include: capital markets and treasury products, Islamic finance, banking and finance, risk management and corporate governance. For more information visit: www.difx.ae.

Dubai Financial Services Authority (DFSA)

The DFSA is the integrated regulator of all financial and ancillary services undertaken in or from the DIFC. The authority was created by statute and is entirely independent of the DIFC. Using a risk-based framework, the DFSA oversees the full range of financial and ancillary services in the DIFC including wholesale banking, asset management, reinsurance, Islamic financial business, securities, derivatives and commodities exchange activities undertaken by exchanges including the DIFX, legal services, accounting services, compliance services, market information services, local services offices and management offices.

The authority authorizes, licenses and registers institutions and individuals to operate within the DIFC once they have demonstrated their ability to meet and maintain the standards required of them. The authority has the power to hold to account those who fail to meet the standards. For more information visit: www.dfsa.ae.

DIFC (Dubai International Finance Centre)

Dubai has developed a new financial centre that serves as an investment zone for international banks, financial institutions and foreign companies. The DIFC was established in 2004. It is a financial free zone which has its own legal jurisdiction based upon international best practices. Regulations in the DIFC are largely based on regulations created by the UK's Financial Services Authority. The DIFC has its own court system and UAE civil and commercial laws do not apply in the DIFC.

The benefits of a company joining the DIFC include 100 per cent foreign ownership of companies is allowed, 0 per cent tax rate on income and profits, no restrictions on foreign exchange, and there are no restrictions on the repatriation of capital or profits. For more information visit: www.difc.ae.

Hawkamah, The Institute for Corporate Governance

The Institute was launched in 2006 with the aim of advancing corporate governance practices in the Middle East, North Africa and Central Asia. Hawkamah is a construction that combines three Arabic root words: *'Hukuma'*, meaning 'government', *'Hukm'* – 'judgement' and *'Hikmah'* – 'wisdom'.

To promote the cause of corporate governance, Hawkamah offers a range of services and member benefits, including producing regular reports, providing development and training programmes and organizing and participating in conferences and events, advisory services for corporates, families and regulators. Since its launch Hawkamah has:

- participated in the development of the first code of corporate governance for state-owned enterprises, the first such code of its kind in the Arab world;
- developed and implemented a series of training programmes for directors, asset managers and corporate secretaries;

- partnered with a regional capital market authority and established a model for capital market corporate governance codes;
- developed and implemented the GCC's (Gulf Cooperation Council's) first Corporate Governance survey from an investor's perspective;
- worked with family firms and listed companies to develop a code of corporate governance based on international best practices;
- launched four regional task forces (banks, state-owned enterprises, insurance industry and insolvency).

In February 2008, Mudara, the Institute of Directors, was split from Hawkamah. Hawkamah continues to be an organization for institutional and corporate members. It does have individual members, but the focus is on providing and advising on corporate governance frameworks and corporate governance and providing services and support for entities rather than on setting individual standards and codes of conduct and providing professional education. Mudara provides a membership organization for individual directors and aspiring directors. The remaining individual members of Hawkamah will be those who have no directorship aspirations but are still interested in corporate governance. The focus on individuals has shifted to Mudara from Hawkamah and Mudara has taken over the running of the Development Programmes for directors.

For more information visit: www.hawkamah.org.

The Federation of UAE Chambers of Commerce and Industry

The Federation was formed in 1977. It coordinates activities of the UAE Chambers of Commerce and Industry and publishes research and studies on commerce and industry in the UAE. For more information visit: www.fcciuae.ae.

Mudara

In February 2008, Mudara was established as a separate institute from Hawkamah. The organizations are separate but complementary. Mudara is a membership organization for individual directors and aspiring directors and Hawkamah will continue to be an organization for institutional and corporate members. The development of Mudara has involved taking the capacity building initiatives of Hawkamah at the level of the individual into a separate organization and expanding that activity. The Development Programmes for directors are now run by Mudara.

SCA (Securities and Commodities Authority)

The SCA was founded by the Federal Law No. (4) of 2000. The Authority has the power to issue regulations relating to the supervisory framework of listed joint-stock companies and other companies operating in the securities field within the UAE. For more information visit: www.sca.ae.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading academic research in this field by Claessens *et al* (2002),[1] Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] did not cover this region.

The World Bank Equity Markets Report identifies that that the UAE has 79 listed companies.[4] The top 10 UAE companies make up 64 per cent of the total value of the market.

Bank finance and retained earnings are the main source of funds for UAE companies. Companies enjoy relatively easy access to capital from banks and frequently lending covenants are weak.

The National Investor (TNI) Board Survey (2007)[5]

The survey identified that the top five families represent roughly 17 per cent of total UAE board seats. The following families were identified as having more than 2 per cent of all UAE listed board seats:

- Qassimi – 6.4 per cent;
- Dhahiry – 3.3 per cent;
- Mazrouei – 3.3 per cent;
- Ghurair – 2.3 per cent; and
- Suwaidi – 2.1per cent.

Multiple family members on the board of a same company are not uncommon.

- 0 directors – 49 per cent;
- 2 directors – 36 per cent;
- 3 directors -12 per cent;
- 4 directors – 1 per cent; and
- 5 directors – 2 per cent.

---

1 Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112

2 Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

3 La Porta, Rafael, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

4 World Bank Financial Indicators, *Equity Markets Report* [Accessed February 2008] Available at www.financial indicators.org

5 The National Investor (TNI) *Market Survey* (2007)

However, it appears that family membership is twice as concentrated on the ADSM as it is on the DFM, the top five families of ADSM listed companies own 24 per cent of total board seats against less than 14 per cent for DFM listed companies.

Ruling families are most widely represented on company boards in four out of five emirates outside of Abu Dhabi and Dubai. A total of 9.23 per cent (65 board seats) were identified as being held by the seven ruling families, these being:

- Maktoum – Dubai;
- Mualla – Umm Al Quwain;
- Nahyan – Abu Dhabi;
- Sharqi – Al Fujairah;
- Qassimi – Sharjah; and
- Qassimi – Ras Al Khaimah.

Note: The Qassimis are the same ruling family in both Sharjah and Ras Al Khaimah.

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[1]

Basic shareholder rights should include the right to:

- Secure methods of ownership registration;
- Convey or transfer shares;
- Obtain relevant and material information on the corporation and a timely and regular basis;
- Participate and vote in general shareholder meetings;
- Elect and remove members of the board.

Share in the profits of of the corporation

Shareholder rights in the UAE include:

- shareholders having one share one vote;
- proxies not being allowed for more than 5 per cent of the company's capital;

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

- cumulative voting for director elections not being allowed;
- material changes to the company and its capital structure must be approved by the shareowners.

Institute of International Finance Inc and Hawkamah Survey (2006)[1]

In 2006, the Institute of International Finance Inc and Hawkamah rated minority shareholder protection in the UAE using international benchmarks and the UAE overall score was relatively low at 2.5 (on a scale of 1 being a low rating and 5 being a high rating). The ratings are shown in Table 2.

Table 2. Rating of minority shareholder protection

	Rating (1 = Low; 5 = High)
Voting rights	3.5
Changes to the company and its capital structure	2.0
Shareholder meetings and other rights	2.5
Minority shareholder protection overall	2.5

Source: Institute of International Finance Inc and Hawkamah Survey (2006)

The constitution of companies in the MENA region typically allows the block shareowners to exercise control-enhancing mechanisms to protect their interests. Minority shareholders in the UAE typically do not exercise much control over the board or the management.

World Bank Doing Business Survey (2008)[2]

The World Bank Doing Business Survey 2008 identified that the strength of investor protection was relatively low in the UAE scoring 4.3 on a scale of 1–10 (Table 3).

Table 3. Strength of investor protection

	UAE	*MENA Region maximum*	*Global maximum*
Strength of investor protection (0–10)	4.3	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

1 Institute of International Finance Inc and Hawkamah *MENA Survey* (2006)
2 *Hawkamah CEO Survey* (2008)

Disclosure and transparency

Institute of International Finance Inc and Hawkamah Survey (2006)

The survey rated transparency using international benchmarks and the UAE overall score was relatively low at 2.5 (on a scale of 1 being a low rating and 5 being a high rating).

Stakeholder relations and corporate responsibility

Very few UAE companies have investor relations departments and few boards have developed any processes for managing their stakeholder relationships. The board's principal focus seems to be focused upon satisfying the needs of the block shareholders. There is little use of triple bottom line reporting methods (ie financial, social and environmental performance). Nine organizations have joined the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption):

- Centre for Management Excellence;
- Condor Building Contracting LLC;
- Emirates Environmental Group;
- Energy Management Services;
- Integrated Contract and Supply Solutions;
- Metito (Overseas) Ltd;
- Pacific Control Systems LLC;
- Pryme Partners Limited; and
- Sama Dubai.

And two have become organizational stakeholders for the Global Reporting Initiative – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world – Pacific Control Systems LLC and the Centre for Responsible Business.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Board structure

The UAE Commercial Companies Law, No. 8 (1984) states that boards cannot have less than 3 or more than 12 directors (Article 95).

The National Investor (TNI) Market Survey (2007)[1]

The survey identified the following statistics for UAE board sizes:

- ADSM listed companies had an average board size of 7.9 (minimum board size 3, maximum board size 14).
- DFM listed companies had an average board size of 6.9 (minimum board size 3, maximum board size 11).

The survey revealed some differences in board size dependent upon the location of emirate location. Sharjah had the largest average board size of 9.1 and Ajman had the smallest average board size of 6.0.

Some differences in board size were dependent upon the industrial activity of the company. Telecoms had the largest average board size of 10.8.

Only 21 out of 569 directors (3.7 per cent) surveyed had directorships on the boards of both Abu Dhabi and Dubai listed companies.

The UAE Commercial Companies Law, No. 8 (1984) states that no director shall be a director in more than five joint-stock companies having their head offices within the UAE (Article 98).

The National Investor (TNI) Market Survey (2007)[2]

The survey identified that there was no breach of the UAE law since:

- 83.8 per cent of directors sit on the board of only one company;
- 10.9 per cent of directors sit on the board of two companies;
- 3.5 per cent of directors sit on the board of three companies;
- 1.4 per cent of directors sit on the board of four companies; and
- 0.4 per cent of directors sit on the board of five companies.

Board development

Training and development programmes

Hawkamah run training and development programmes for directors in both Dubai and Abu Dhabi. Their director development programme comprises:

[1] The National Investor (TNI) *Market Survey* (2007)
[2] The National Investor (TNI) *Market Survey* (2007)

- **Part 1 – An Introduction to Board and Corporate Governance** (2 days duration)
  - The Definition and Rationale for Good Corporate Governance.
  - Building an Effective Board.
  - Board Election, Composition and Structure.
  - Executive and Non-Executive Remuneration.
  - The Working Procedures of the Board and Its Committees and the Role of the Corporate Secretary.
  - Conducting a Board Evaluation.
- **Part 2 – Practical Tools for Strategic Guidance and Managerial Oversight** (2 days duration)
  - The Board's Role in Setting Strategy.
  - The Interaction between the Board and the Management.
  - Choosing and Evaluating the CEO.
  - What Every Director Needs to Know about Accounting and Finance.
  - A Guide to Succession Planning.
  - The Board's Changing Role.
- **Part 3 – The Role of the Board in Disclosure and Transparency** (2 days duration).
  - The Board's Role in Information Disclosure and Transparency.
  - Enterprise Risk Management.
  - Establishing Effective Internal Audit and Control Procedures.
  - The Board and Its Audit Committee.
  - How to Interact with the External Auditor.
  - Developing a Model Annual Report.
- **Part 4 – The Role of the Board in Protecting Shareholder Rights** (2 days duration).
  - The Board's Role in Protecting Shareholders' Rights.
  - The Role of the Board in Related Party Transactions.
  - The Role of the Board in Setting the Company's Dividend Policy.
  - The Role of the Board in Preparing for and Conducting the General Meeting of Shareholders.
  - The Role of the Board in Managing Conflict.
  - Corporate Governance Improvement Planning

The programme follows a similar format to the Egyptian Institute of Directors' BDS (Board Development Series) in Cairo.

Board evaluation

Very few companies have introduced board evaluation processes. One of the few organizations to do so has been the DIFX.

Board Evaluation Case Study: DIFX[1]

A performance evaluation of the collective board and its committees was undertaken in January 2007. The evaluation was conducted by an independent consultant and involved the completion of questionnaires followed by one-to-one meetings or telephone interviews with the consultant. The findings of the evaluation identified that the board and its committees were functioning well and conformed to best international corporate governance practices. No changes to either board or committees processes were recommended, however, a number of development areas were highlighted. These areas were reviewed and discussed in detail at board and committee meetings and appropriate action was taken in order to develop and enhance performance and processes.

Ease of doing business

Each year the World Bank rate countries in terms of doing business. The UAE is ranked in their 2008 publication as 68th in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produce data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licences and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 4 illustrates the comparative ease of starting sa business in the UAE. The number of procedures involved is over double the number required in Israel and over five times that required in Australia, Canada and New Zealand.

Table 4. Number of procedures for starting a business

	UAE	*MENA Region minimum*	*Global best minimum*
Number of procedures	11	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 5 illustrates the comparative ease of starting a

[1] DIFX Annual Review 2006

business in the UAE. The time involved is nearly 7 times the duration in Egypt and over 30 times that required in Australia. The cost involved is over 20 times the cost in Kuwait and the required minimum capital is very high at over 300 per cent of per capita income.

Table 5. Starting a business statistics

	UAE	*MENA Region minimum*	*Global best minimum*
Time (days)	62	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	36.9	1.6 (Kuwait)	0 (Denmark)
Minimum capital (% of income per capita)	312.4	0 (Israel, Saudi Arabia)	0 (Australia Canada, Ireland, Mauritius, New Zealand, Thailand, United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

The UAE is ranked 158th in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work,
  - requirements relating to working time and the work week and
  - mandated days of annual leave with pay.

  The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation.

The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 6 illustrates the comparative level of labour regulations in the UAE. The rigidity of employment index and the non-wage labour costs are relatively low. The firing cost, however, is set at a very high level of over 18 months' salary.

Table 6. Labour regulations

	UAE	*MENA Region minimum*	*Global minimum*
Rigidity of employment index (0–100)	20	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-wage labour costs (% of salary)	12.5	5.7 (Israel)	0 (Bangladesh Botswana, Ethiopia and Maldives)
Firing cost (weeks of salary)	83.6	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

The UAE is ranked 65th in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 7).

Table 7. Credit information

	UAE	*MENA Region maximum*	*Global maximum*
Public registry coverage (borrowers / % adults)	1.4	22.2 (Iran)	67.1 (Portugal)
Private bureau coverage (% of adults)	0	91.6 (Israel)	100 (Argentina Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit information index (1-6)	2	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

The UAE is ranked 115th in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments,** the UAE has one of the lowest number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. The UAE has the lowest time to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. The UAE has the lowest total tax rate in the MENA region.

Table 8. Paying taxes

	UAE	*MENA Region minimum*	*Global minimum*
Payments (number per year)	14	13 (Iraq)	2 (Sweden, Maldives)
Time to pay taxes (hours per year)	12	12 (UAE)	12 (UAE, Maldives)
Total tax rate (% of profit)	14.4	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

The UAE was ranked 4th in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. The UAE's import and export documentation is average. The country's time to import and export is below average. Its costs to import and export are the lowest in the region (Table 9).

Table 9. Importing and exporting

	UAE	*MENA Region best practice*	*Global best practice*
Documents to import	8	4 (Israel)	3 (Denmark, Sweden)
Documents to export	9	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada Estonia, Panama and Micronesia)
Time to import (days)	13	12 (Israel)	3 (Singapore)
Time to export (days)	13	12 (Israel)	5 (Denmark Estonia and Singapore)
Cost to import (US $ per container)	462	462 (UAE)	367 (Singapore)
Cost to export (US $ per container)	462	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

The UAE was ranked 24th in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. The UAE is the slowest country in the region.
- **The cost** to go through the process. The cost of the insolvency process in the UAE is the highest in the region.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. The UAE rate is well below average for the region.

The statistics for the UAE are listed in Tables 10 and 11.

Table 10. Closing a business – time and cost

	UAE	*MENA Region minimum*	*Global minimum*
Time to go through insolvency (years)	5.1	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of insolvency (% of estate)	30	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 11. Closing a business – recovery rate

	UAE	*MENA Region maximum*	*Global maximum*
Recovery rate (cents per US $)	10.1	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

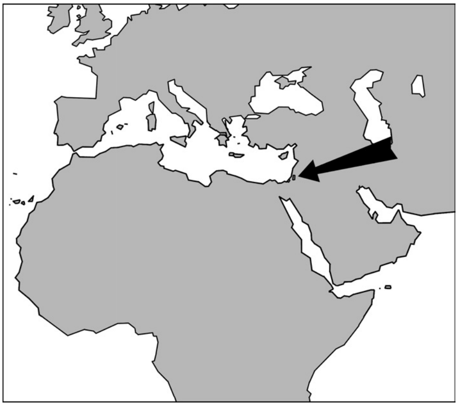
The UAE was ranked 139th in the world in terms of ease of closing a business.

Summary

The UAE has one of the most developed economies in the region. The GDP per capita is the highest in the MENA region at US $49,700 and the economy is expanding fast. The country has a foundation of commercial law and this has been supplemented with recently developed corporate governance codes. Legal rights of shareholders and other stakeholders are relatively undeveloped compared to international best practices. There is a significant move to increase the professionalism of directors with the development of Hawkamah and Mudara. Two-thousand-and-seven saw the first listing on the DIFX of a UAE company and the first IPO to list exclusively on the DIFX (DP World in both cases). The UAE is ranked by the World Bank in 2008 as 68th in the world in terms of ease of doing business.

2.18

West Bank and Gaza



Location and borders

The West Bank

The West Bank is a landlocked territory on the west bank of the Jordan River in the Middle East. Since 1967, most of the West Bank has been under Israeli occupation. The 1993 Oslo Accords divided the West Bank into three areas:

- **Area A.** Area A comprises Palestinian towns and some rural areas away from Israeli population centres in the north (between Jenin, Nablus, Tubas and Tulkarm), the south (around Hebron) and one in the centre south of Salfit.
- **Area B.** Area B contains other populated rural areas, many closer to the centre of the West Bank.
- **Area C.** Area C contains all the Israeli settlements, roads used to access the settlements, buffer zones and almost all of the Jordan Valley and Judean desert.

Areas A, B and C cross the 11 governorates used as administrative divisions by the Palestinian National Authority and named after major cities. The Palestinian Authority has full civil control in Area A; Area B is characterized by joint administration between the Palestinian Authority and Israel; while Area C is under full Israeli control. Israel maintains overall control over Israeli settlements, roads, water, airspace, 'external' security and borders for the entire territory.

While the vast majority of the Palestinian population lives in areas A and B, the vacant land available for construction in dozens of villages and towns across the West Bank is situated on the margins of the communities and defined as Area C.

The West Bank is currently considered under international law to be a territory not part of any state. The Palestinian Authority believes that the West Bank ought to be a part of their sovereign nation, and that the presence of Israeli military control is a violation of their right to Palestinian Authority rule. The United Nations calls the West Bank and Gaza Strip 'Israeli-occupied'. The US State Department also refers to the territories as *occupied*. Many Israelis and their supporters prefer the term 'disputed territories'. Israeli settlements on the West Bank beyond the Green Line border are considered by some legal scholars to be illegal under international law whilst other legal scholars have argued that the settlements are legal under international law.

On 30 December 2007, the Israeli Prime Minister Ehud Olmert issued an order requiring approval by both the Israeli Prime Minister and the Israeli Defence Minister of all settlement activities (including planning) in the West Bank.

The Israeli West Bank barrier is a physical barrier constructed by Israel consisting of a network of fences with vehicle-barrier trenches surrounded by an exclusion area and high concrete walls. It is located mainly within the West Bank, partly along the 1949 Armistice line, or 'Green Line' between the West Bank and Israel. The space between the barrier and the Green Line is a closed military zone known as the Seam Zone, cutting off 8.5 per cent of the West Bank and encompassing many villages and tens of thousands of Palestinians. The barrier is a very controversial project. Supporters claim the barrier is a necessary tool to protect Israeli civilians from Palestinian terrorism, including suicide bombing attacks. Opponents claim the barrier is an illegal attempt to annex Palestinian land under the guise of security and has the intent of pre-empting negotiations. They also argue that it severely restricts Palestinians' ability to travel freely within the West Bank and to access work in Israel, thereby undermining their economy.

Gaza

The Gaza Strip is a coastal strip of land along the Mediterranean Sea, bordering Egypt on the south-west and Israel on the north and east. It is about 41 kilometres (25 miles) long, and between 6 and 12 kilometres (4–7.5

miles) wide. The territory takes its name from Gaza, its main city. It contains about 1.4 million Palestinian residents.

Israel oversees the strip's airspace, territorial water and offshore maritime access and controls the population registry, entry of foreigners, imports and exports and the tax system. The strip itself and its population are nominally governed by the Palestinian National Authority, although following the Battle of Gaza in June 2007, the strip is controlled by Hamas. The Gaza Strip is not recognized internationally as part of any sovereign country.

Population

The population of the West Bank and Gaza is 4.0 million with a labour force of 0.8 million[1]. Much of Gaza's population experiences poverty, unemployment and poor living conditions. Gaza has serious deficiencies in housing, educational facilities, health facilities, infrastructure and an inadequate sewage system, all of which have contributed to serious hygiene and public health problems.

Gaza's population is composed almost entirely of Muslims (99 per cent) and 75 per cent of the population in the West Bank are Muslims. On the West Bank, 83 per cent are Palestinian Arabs whereas in Gaza it rises to 99 per cent.[2] Languages spoken in the West Bank and Gaza include Arabic, English and Hebrew.[3] The adult literacy rate is 92 per cent.[4]

Economy

The West Bank and Gaza is one of the poorest territories in the MENA region. The GDP (Gross Domestic Product) per capita is US $1,500. The economy is growing at 4.9 per cent.[5]

The major industries in the West Bank and Gaza are construction, materials, textiles and metal goods.[6] Many West Bankers and Gazans work in Israeli services and industries when the borders are open. Gaza city contains some small industry, including textiles and food processing. A variety of wares are sold in Gaza's street bazaars, including carpets, pottery, wicker furniture and cotton clothing but commercial development in the city is minimal. Gaza contains a small port that serves a local fishing fleet. Overall economic development has been slow and hampered by frequent political unrest.

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007
[3] *The World Factbook*, CIA, 13 December 2007
[4] *The World Factbook*, CIA, 13 December 2007
[5] *The World Factbook*, CIA, 13 December 2007
[6] *The World Factbook*, CIA, 13 December 2007

Legal, regulatory and corporate governance frameworks

System of government

West Bank and Gaza is a parliamentary democracy. However, since 2007 the Gaza Strip has been controlled by Hamas, whilst Hamas' rival, Fatah, controls the West Bank. There are two Palestinian governments, both considering themselves to be the legitimate Palestinian National Authority government. Neither Hamas nor Fatah recognize the authority of the other government. The political situation is highly turbulent.

In 2007, the Economist Intelligence Unit's Index of Democracy ranked Palestine as a flawed democracy and 79th in the world in terms of democracy (out of 167 countries).[1]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights. In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems.

Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for the West Bank and Gaza in 2008. The overall score is low, and the West Bank and Gaza is 125th in the world ranking.

Table 1. Enforcement of contracts

	West Bank and Gaza	*MENA Region minimum*	*Global minimum*
Procedures to Enforce a Contract	44	35 (Israel)	20 (Ireland)
Time to Enforce a Contract (days)	700	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to Enforce a Contract (% of claim)	21.2	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

[1] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

The World Bank has also ranked the West Bank and Gaza in terms of legal rights of borrowers and creditors. The overall scores are average – the West Bank and Gaza is 68th in the world ranking (out of 178 countries).

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in the West Bank and Gaza:[1]

- Israel's occupation of the Palestinian territories and its violation of the rights of the Palestinian people.
- An increase in the state of lawlessness.
- Rivalry of power between Hamas and Fatah.

The programme concludes that:

> There is no room for any future programs with regard to Human Rights advancements as long as peace efforts are obstructed and the Geneva agreement concerning the protection of civilians under occupation is not enforced.

Company and capital market legislation

The main laws passed by the Palestinian Legislative Council that focus upon companies and the capital markets are:

- **The Securities Law (2004).**
- **The Capital Market Law (2004).**

Business-related bodies

The CPSD (Center for Private Sector Development)

The Center is a subsidiary of the PBA (Palestine Businessmen Association) and was founded in 2001. The CPSD promotes the private sector as the engine for economic growth in Palestine. It assists private sector firms to develop their competitiveness. It also is a "watchdog" on the performance of Palestinian public sector institutions and policies. For further information visit: www.cpsd.ps.

---

[1] The Human Rights Index for the Arab Countries [Accessed 12 February 2008]Available at: www.arabhumanrights.org/en/countries

The Federation of Palestinian Chambers of Commerce, Industry and Agriculture

The Federation was founded in 1989 and represents the West Bank and Gaza Strip's Chambers of Commerce and Industry. The Federation's membership base includes 14 chambers and nearly half the operating businesses in the territories. The Federation's main task involves strengthening and enhancing the capacity of chambers to cope with the requirements of the global business environment. The Federation plays a leading role in this process at both local and national levels. Its vision and strategy are to ensure that the private sector is operating as effectively as possible. The Federation strives to create strong regional and international links to the world's larger, global markets. For further information visit: www.pal-chambers.org.

The PBA (Palestinian Businessmen Association)

The PBA is a Palestinian non-governmental and not-for-profit organization based in Jerusalem with an operational office at Al-Ram. The PBA was established in 1996 as a think tank for the Palestinian business community for Palestinian businessmen and professionals from various sectors of the Palestinian private sector. For further information visit: www.pba.ps.

Palestine Federation of Industry

The Federation represents the industrial sectors of Palestine involving the specialist associations. For further information visit: www.pfi.ps.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading academic research in this field by Claessens *et al* (2002)[1], Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] did not cover this region.

The vast majority of companies in the West Bank and Gaza are privately owned. Bank finance and retained earnings are the main source of funds for West Bank and Gaza companies. Companies enjoy relatively easy access to

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112

[2] Barca, F and Becht, M (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

[3] La Porta, R, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

capital from banks and frequently lending covenants are weak. The West Bank and Gaza is perceived as not having a very strong equity culture.

Shareholder rights and investor protection

World Bank Doing Business Survey (2008)

The World Bank Doing Business Survey 2008 identified that the strength of investor protection was average for the West Bank and Gaza in the MENA region scoring 6.0 on a scale of 1–10 (Table 2).

Table 2. Strength of investor protection

	West Bank and Gaza	*MENA Region maximum*	*Global maximum*
Strength of Investor Protection (0–10)	6.0	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

The West Bank and Gaza is classified as 33rd out of 178 countries in the world in terms of protecting investor rights.

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[1]

In general, disclosure and transparency is relatively low in the MENA region.

Stakeholder relations and corporate responsibility

No West Bank and Gaza companies are known to have investor relations departments and no boards are known to have developed any processes for managing their stakeholder relationships. There is no known use of triple bottom line reporting methods (ie reporting financial, social and environmental performance). No West Bank and Gaza companies have joined either the UN Global Compact (a framework for businesses that are committed to

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 22 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption) or the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[1]

Little is known about board practices in the West Bank and Gaza. It is hoped that research into corporate governance will take place in this country in the near future.

Ease of doing business

Each year the World Bank rates countries in terms of doing business. The West Bank and Gaza is ranked in their 2008 publication as 117th in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licenses and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 3 illustrates the comparative ease of starting a business in the West Bank and Gaza. The number of procedures involved is over double the number required in Israel and six times that required in Australia, Canada and New Zealand.

---

[1] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 24 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Table 3. Number of procedures for starting a business

	West Bank and Gaza	*MENA Region minimum*	*Global best minimum*
Number of Procedures	12	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 4 illustrates the comparative ease of starting a business in the West Bank and Gaza. The time involved is over 10 times the duration in Egypt and over 45 times that required in Australia. The cost involved is over 150 times the cost in Kuwait and the required minimum capital is high at 9 per cent of per capita income.

Table 4. Starting a business

	West Bank and Gaza	*MENA Region minimum*	*Global best minimum*
Time (days)	92	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	280.4	1.6 (Kuwait)	0 (Denmark)
Minimum Capital (% of income per capita)	9.3	0 (Israel, Saudi Arabia)	0 (Australia, Canada, Ireland, Mauritius, New Zealand, Thailand, the United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

The West Bank and Gaza is ranked 166th out of 178 countries in the world in terms of ease of starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work;
  - requirements relating to working time and the workweek;
  - mandated days of annual leave with pay.

The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).

- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation. The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 5 illustrates the comparative level of labour regulations in the West Bank and Gaza. The rigidity of employment index is average. The firing cost, however, is set at a very high level of over 18 months' salary.

Table 5. Labour regulations

	West Bank and Gaza	*MENA Region minimum*	*Global minimum*
Rigidity of Employment Index (0–100)	31	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Firing Cost (weeks of salary)	91	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

The West Bank and Gaza is ranked 103rd out of 178 counties in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.

- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 6).

Table 6. Credit information

	West Bank and Gaza	*MENA Region maximum*	*Global maximum*
Public Registry Coverage (borrowers / % adults)	1.8	22.2 (Iran)	67.1 (Portugal)
Private Bureau Coverage (% of adults)	0.0	91.6 (Israel)	100 (Argentina, Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit Information Index (1–6)	3	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

The West Bank and Gaza is ranked 68th out of 178 countries in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** The West Bank and Gaza has an average number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. The West Bank and Gaza has one of the highest time to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. The total tax rate for the West Bank and Gaza is average for the MENA region.

Table 7. Paying taxes

	West Bank and Gaza	*MENA Region minimum*	*Global minimum*
Payments (number per year)	27	13 (Iraq)	2 (Sweden, Maldives)
Time to pay taxes (hours per year)	154	12 (UAE)	12 (UAE, Maldives)
Total tax rate (% of profit)	17.1	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

The West Bank and Gaza is ranked 22nd in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. The West Bank and Gaza's import and export documentation is relatively low. The country's time to import is very high and time to export is high. Its costs to import and export are relatively high (Table 8).

Table 8. Importing and exporting

	West Bank and Gaza	*MENA Region best practice*	*Global best practice*
Documents to Import	6	4 (Israel)	3 (Denmark, Sweden)
Documents to export	6	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada, Estonia, Panama and Micronesia)
Time to Import (days)	40	12 (Israel)	3 (Singapore)
Time to Export (days)	25	12 (Israel)	5 (Denmark, Estonia and Singapore)
Cost to Import (US $ per container)	995	462 (UAE)	367 (Singapore)
Cost to Export (US $ per container)	830	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

The West Bank and Gaza is ranked 77th out of 178 countries in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. However, in 2007 the World Bank was unable to identify any formal insolvency practices in the West Bank and Gaza.

Summary

The West Bank and Gaza is one of the most troubled economies in the world. It is also one of the poorest countries in the MENA region (only Yemen is poorer). Most businesses are small and family owned. Company law and corporate governance are relatively undeveloped compared to international best practices. The West Bank and Gaza is ranked by the World Bank in 2008 as 117th out of 178 countries in the world in terms of ease of doing business.

2.19

The Republic of Yemen

Location

The Republic of Yemen is located on the Arabian Peninsula. It is bordered by Saudi Arabia to the north, the Red Sea to the west, the Arabian Sea and Gulf of Aden to the south and Oman to the east. Yemen's territory includes over 200 islands.

Population

The population of Yemen is 22 million with a labour force of 6 million. It is the seventh largest country by population in the MENA region. Yemenis mainly live in small villages and towns scattered throughout the highlands and coastal regions.

Yemenis are mainly of Arab origin and are divided into two principal Islamic religious groups: Sunni and Shia.[1] Arabic is the official language, although English is increasingly understood in the cities.[2]

Yemen has one of the world's highest birth rates; the average Yemeni woman bears seven children. This is approximately three times as high as some of the other Arab Gulf states. The adult literacy rate is 50 per cent.[3]

[1] *The World Factbook*, CIA, 13 December 2007

Economy

The GDP (gross domestic product) per capita in Yemen is US $1,000 and is the poorest in the MENA region. The economy is growing at 2.6 per cent.[1] The major industries in Yemen are oil and agriculture.[2]

The country is trying to diversify its earnings because its oil resources are declining. In 2006, Yemen began an economic reform programme designed to bolster non-oil sectors of the economy and foreign investment. As a result of the programme, international donors have begun to pledge billions of dollars investing in a variety of development projects.

Legal, regulatory and corporate governance frameworks

The system of government

Yemen is a Republic. The key government organs are:

- **The President.** The president is an elected head of state. The president's term of office is seven years.
- **House of Representatives.** There are 301 members elected to the House of Representatives. The term of elected office is six years.
- **The Shura Council.** There are 111 members of the Shura Council. The term of elected office is six years.
- **The Prime Minister.** The prime minister is the head of government.
- **The Judiciary.** The judiciary is independent. The legal system includes separate commercial courts and a supreme court. Since the country is an Islamic state, no law may contradict the Quran. Many judges are religious scholars as well as legal authorities.

In Yemen, suffrage is universal over 18 years of age. In 2007, the Economist Intelligence Unit's Index of Democracy ranked Yemen as an authoritarian regime and 137th in the world in terms of democracy (out of 167 countries).[6]

Legal rights

Legal rights are an essential ingredient of a democratic, market-based economy with effective governance. However, many MENA countries have not developed sufficient laws or regulations in areas such as property rights.

---

[1] *The World Factbook*, CIA, 13 December 2007
[2] *The World Factbook*, CIA, 13 December 2007

In addition, many MENA countries have not established simple and straightforward procedures to specify clearly how these rights can be enforced. This leads to administrative inefficiency, high costs and entrepreneurs operating outside of the formal and legal systems. Each year the World Bank rates legal rights enforcement in all countries around the world. Table 1 provides the international comparative data for Yemen in 2008. The overall score is better than average by MENA standards (particularly the time to enforce a contract) and is 41st in the world ranking.

Table 1. Enforcement of contracts

	Yemen	*MENA Region minimum*	*Global minimum*
Procedures to enforce a contract	37	35 (Israel)	20 (Ireland)
Time to enforce a contract (days)	520	520 (Yemen, Iraq and Iran)	120 (Singapore)
Cost to enforce a contract (% of claim)	16.5	13.3 (Kuwait and Oman)	0.1 (Bhutan)

Source: Doing Business, 2008 World Bank

The World Bank has also ranked Yemen in terms of legal rights of borrowers and creditors. The overall scores are well below average – Yemen is 158th in the world ranking (out of 178 countries).

The human rights situation of Yemen has been subject to much criticism in the past, but in recent years there has been some significant improvement with the government signing several international human rights treaties and recently has appointed a woman as Minister of State of Human Rights. However, many human rights problems persist.

The UNDP-POGAR (United Nations Development Programme on Governance in the Arab Region) provides a repository for the entire set of UN documents pertaining to human rights and the responses, including reservations, by the Arab member states to the committees that monitor the core international human rights treaties. It has noted the following human rights difficulties and impediments in Yemen:[1]

- Armed conflict in the Sa'da region.
- Discrimination of women. Many Yemeni girls are deprived of education.
- There is widespread corruption.

Company and capital market legislation

The main laws in Yemen that focus upon companies and the capital markets are:

- **Commercial Register Law No. 33 (1992) amended by Law No. 31 (1997);**

[1] *The World Factbook*, CIA, 13 December 2007

- **Law No. 22 (1997) pertaining to Commercial Companies;**
- **Presidential Decree of Law No. 31 (1992) pertaining to Chartered Accountants.**

CIPE (Center for International Private Enterprise) is currently exploring initiatives involving developing the company and capital market legislation and improving corporate governance practices in the country.

Business-related bodies

Central Bank of Yemen

The Central Bank of Yemen was established in 1971. The Central Bank of Yemen is an independent body created by law to carry out all the functions of a normal central bank with the paramount objective of conducting monetary policy to keep inflation under control, stabilize the exchange rate of the national currency and promote investment and economic growth. The management of the bank is entrusted to a board of directors with the Governor as chairman. The headquarters of the Central Bank of Yemen is in San'a. However, the bank has a branch in each of the 20 governorates of the country. For more information view: www.centralbank.gov.ye.

YPC (Yemen Polling Center)

The YPC is a research organization dedicated to building a free, open and democratic society in Yemen. It has recently conducted a poll into obstacles to doing business. For more information view: www.yemenpolling.org.

Shareholders and stakeholders

Corporate ownership and control

One of the weaknesses in corporate governance research globally is that there are few statistics on corporate ownership. The leading academic research in this field by Claessens *et al* (2002)[1], Barca and Becht (2001)[2] and La Porta *et al* (1999)[3] did not cover this region.

The vast majority of companies in Yemen are privately owned. Bank finance and retained earnings are the main source of funds for Yemen

[1] *The World Factbook*, CIA, 13 December 2007

[2] Economist Intelligence Unit's Index of Democracy (2007) Available at: www.economist.com/media/pdf/democracy_index_2007_v3.pdf

[3] The Human Rights Index for the Arab Countries [Accessed 12 February 2008] Available at: www.arabhumanrights.org/en/countries

companies. Companies enjoy relatively easy access to capital from banks and frequently lending covenants are weak. Yemen is perceived as not having a very strong equity culture.

Shareholder rights and investor protection

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should protect and facilitate the exercise of shareholder rights.[1]

Basic shareholder rights should include the right to:

- secure methods of ownership registration;
- convey or transfer shares;
- obtain relevant and material information on the corporation on a timely and regular basis;
- participate and vote in general shareholder meetings;
- elect and remove members of the board;
- share in the profits of the corporation.

The constitution of companies in the MENA region typically allows the block shareowners to exercise control enhancing mechanisms to protect their interests. Minority shareholders in Yemen typically do not exercise much control over the board or the management.

World Bank Doing Business Survey (2008)[2]

The World Bank Doing Business Survey 2008 identified that the strength of investor protection was relatively low in Yemen scoring 4.0 on a scale of 1–10 (Table 2).

Table 2. Strength of investor protection

	Yemen	*MENA Region maximum*	*Global maximum*
Strength of investor protection (0–10)	4.0	8.3 (Israel)	9.7 (New Zealand)

Source: Doing Business, 2008 World Bank

Yemen is classified as 122nd out of 178 countries in the world in terms of protecting investor rights.

[1] Claessens, S, Djankov, S and Lang, H (2002) The separation of ownership and control in East Asian corporations, *Journal of Financial Economics*, Volume 58 No. 1, pp 81–112
[2] Barca, F. and Becht, M. (eds) (2001) *The Control of Corporate Europe*, Oxford University Press, Oxford

Disclosure and transparency

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation including the financial situation, performance, ownership and governance of the company.[1]

In general, disclosure and transparency is relatively low in the MENA region. Corporate disclosure is not well developed in Yemen.

Stakeholder relations and corporate responsibility

No Yemen companies are known to have investor relations departments and no boards are known to have developed any processes for managing their stakeholder relationships. The board's principal focus seems to be focused upon satisfying the needs of the block shareholders. There is little use of triple bottom line reporting methods (ie financial, social and environmental performance). No Yemeni companies have joined either the UN Global Compact (a framework for businesses that are committed to aligning their operations and strategies with 10 principles in the areas of human rights, labour, the environment and anti-corruption) or the GRI (Global Reporting Initiative) – an initiative that facilitates transparency and accountability by organizations of all sizes and sectors across the world.

Board structure and development

The OECD Principles of Corporate Governance state that:

> The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.[2]

Little is known about board practices in Yemen. It is hoped that research into corporate governance will take place in this country in the near future. There are no director or board development programmes in Yemen.

---

[1] La Porta, R, Lopez de Silanes, F and Schleifer, A (1999) Corporate ownership around the world, *Journal of Finance*, Volume 54 No. 2, pp 471–517

[2] OECD (2004) *Principles of Corporate Governance*, OECD, Paris, p 18 Available at: http://www.oecd.org/dataoecd/32/18/31557724.pdf

Ease of doing business

Each year the World Bank rates countries in terms of doing business. Yemen is ranked in their 2008 publication as 113th out of 178 countries in the world. This ranking is made up of many different submetrics as discussed in the below sections.

Starting a business

The first hurdle that a businessperson may face when starting a business involves completing the procedures required to incorporate and register a new company. The World Bank annually produces data on what legal processes a standard small- to medium-sized company needs to complete to start operations. These include obtaining all of the necessary permits and licences and completing all required inscriptions, verifications and notifications with authorities to enable the company to formally operate. Table 3 illustrates the comparative ease of starting a business in Yemen. The number of procedures involved is over double the number required in Israel and over five times that required in Australia, Canada and New Zealand.

Table 3. Number of procedures for starting a business

	Yemen	*MENA Region minimum*	*Global best minimum*
Number of procedures	12	5 (Israel)	2 (Australia, Canada and New Zealand)

Source: Doing Business, 2008 World Bank

The World Bank also annually calculates the time and cost required for a company to complete an incorporation procedure and the minimum capital that must be paid in. Table 4 illustrates the comparative ease of starting a business in Yemen. The time involved is 7 times the duration in Egypt and over 30 times that required in Australia. The cost involved is over 100 times the cost in Kuwait and the required minimum capital is one of the highest in the world based upon per capita income.

Table 4. Starting a business statistics

	Yemen	*MENA Region minimum*	*Global best minimum*
Time (days)	63	9 (Egypt)	2 (Australia)
Cost (% of income per capita)	178.8	1.6 (Kuwait)	0 (Denmark)
Minimum capital (% of income per capita)	2,003.2	0 (Israel, Saudi Arabia)	0 (Australia, Canada, Ireland, Mauritius, New Zealand, Thailand, the United Kingdom and the United States)

Source: Doing Business, 2008 World Bank

Yemen is ranked by the World Bank as 170th out of 178 countries in the world for ease in starting a business.

Employing workers

The World Bank annually produces data that identifies:

- **Rigidity of employment.** The rigidity of employment index is the average of three subindices: difficulty of hiring, rigidity of hours and difficulty of firing. The difficulty of hiring index measures the flexibility of contracts and the ratio of the minimum wage to the value added per worker. The rigidity of hours index covers:
  - restrictions on weekend and night work;
  - requirements relating to working time and the workweek;
  - mandated days of annual leave with pay.

  The difficulty of firing index covers workers' legal protections against dismissal, including the grounds permitted for dismissal and procedures for dismissal (individual and collective).
- **Non-wage labour cost.** The non-wage labour cost covers all social security payments and payroll taxes associated with hiring an employee, expressed as a percentage of the worker's salary.
- **Firing cost.** The firing cost indicator measures the cost of advance notice requirements, severance payments and penalties due when terminating a redundant worker, expressed in weeks of salary.

Each index takes values between 0 and 100, with higher values indicating more rigid regulation.

The World Bank has identified that countries with a high level of employment regulation generally have high tenures and wages with many undesirable side effects. These include less job creation, smaller company size, less investment in research and development and longer spells of unemployment and thus the obsolescence of skills. All of these factors may reduce productivity growth.

Table 5 illustrates the comparative level of labour regulations in Yemen. The rigidity of employment index and the non-wage labour costs are

Table 5. Labour regulations

	Yemen	*MENA Region minimum*	*Global minimum*
Rigidity of employment index (0–100)	33	13 (Saudi Arabia, Kuwait)	0 (Hong Kong, China, Singapore and the United States)
Non-wage labour costs (% of salary)	9.0	5.7 (Israel)	0 (Bangladesh, Botswana, Ethiopia and Maldives)
Firing cost (weeks of salary)	17.3	0 (Iraq)	0 (Denmark)

Source: Doing Business, 2008 World Bank

relatively high. The firing cost is also set at a high level of over four months' salary.

Yemen is ranked 63rd out of 178 countries in the world in terms of ease of employing workers.

Getting credit

Companies consistently rate access to credit as among the greatest barriers to their operation and growth. The World Bank annually calculates three indicators to measure the sharing of credit information:

- **Public registry coverage**, which shows the number of individuals and companies covered by a public credit registry as a percentage of the adult population.
- **Private bureau coverage**, which shows the number of individuals and companies covered by a private credit bureau as a percentage of the adult population.
- **Depth of credit information index**, which shows the extent to which the rules of a credit information system facilitate lending based on the scope of information distributed, the ease of access to information and the quality of information.

In general, the MENA countries have very low credit information sharing practices compared with global best practice (Table 6).

Table 6. Credit information

	Yemen	*MENA Region maximum*	*Global maximum*
Public registry coverage (borrowers / % adults)	0.1	22.2 (Iran)	67.1 (Portugal)
Private bureau coverage (% of adults)	0.0	91.6 (Israel)	100 (Argentina, Australia, Canada, Iceland, Ireland, New Zealand, Nicaragua, Norway, Sweden and the United States)
Credit information index (1–6)	0	6 (Saudi Arabia)	6 (Argentina, Bulgaria)

Source: Doing Business, 2008 World Bank

Yemen is ranked 158th out of 178 countries in the world in terms of ease of getting credit.

Paying taxes

The World Bank annually records the effective tax that a company must pay and the administrative costs of doing so. Three indicators are used:

- **Number of tax payments.** Yemen has one of the lowest number of payments required in the MENA region.
- **Time,** which measures the hours per year necessary to prepare, file and pay the corporate income tax, value added or sales tax and labour taxes. Yemen has the lowest time to pay taxes in the MENA region.
- **Total tax rate,** which measures the amount of taxes payable by the company. This amount, expressed as a percentage of commercial profit, is the sum of all the different taxes payable after accounting for various deductions and exemptions. Yemen has a relatively high total tax rate in the MENA region (Table 7).

Table 7. Paying taxes

	Yemen	*MENA Region minimum*	*Global minimum*
Payments (number per year)	32	13 (Iraq)	2 (Sweden, Maldives)
Time to pay taxes (hours per year)	248	12 (UAE)	12 (UAE, Maldives)
Total tax rate (% of profit)	41.4	14.4 (UAE)	8.4 (Vanuatu)

Source: Doing Business, 2008 World Bank

Yemen was ranked 84th out of 178 countries in the world in terms of ease of paying taxes.

Trading across borders

The World Bank annually compiles procedural requirements for trading a standard shipment of goods by ocean transport. Their results show that countries that have efficient customs, good transport networks and fewer document requirements are more competitive globally. Yemen's import and export documentation is average. The country's times to import and export are high. Its costs to import and export are some of the highest in the region (Table 8).

Table 8. Importing and exporting

	Yemen	*MENA Region best practice*	*Global best practice*
Documents to import	9	4 (Israel)	3 (Denmark, Sweden)
Documents to export	6	5 (Israel, Lebanon, Saudi Arabia, Tunisia)	3 (Canada, Estonia, Panama and Micronesia)
Time to import (days)	31	12 (Israel)	3 (Singapore)
Time to export (days)	33	12 (Israel)	5 (Denmark, Estonia and Singapore)
Cost to import (US $ per container)	1,475	462 (UAE)	367 (Singapore)
Cost to export (US $ per container)	1,129	462 (UAE)	390 (China)

Source: Doing Business, 2008 World Bank

Yemen is ranked 128th in the world in terms of ease of trading across borders.

Closing a business

The World Bank annually measures the efficiency of procedures and administration of the bankruptcy process. Three measures are constructed:

- **The time** to go through the insolvency process. Yemen is the slowest country in the region.
- **The cost** to go through the process. The cost of the insolvency process in Yemen is average for the region.
- **The recovery rate** – how much of the insolvency estate is recovered by stakeholders, taking into account the time, cost, depreciation of assets and the outcome of the insolvency proceeding. The Yemen rate is average for the region.

The statistics for Yemen are listed in Tables 9 and 10.

Table 9. Closing a business – time and cost

	Yemen	*MENA Region minimum*	*Global minimum*
Time to go through insolvency (years)	3	1.3 (Tunisia)	1.4 (Ireland, Cape Verde)
Cost of insolvency (% of estate)	8	1.0 (Kuwait)	1.0 (Kuwait, Colombia)

Source: Doing Business, 2008 World Bank

Table 10. Closing a business – recovery rate

	Yemen	*MENA Region maximum*	*Global maximum*
Recovery rate (cents per US $)	28.6	51.5 (Tunisia)	92.6 (Japan)

Source: Doing Business, 2008 World Bank

Yemen was ranked 83rd out of 178 countries in the world in terms of ease of closing a business.

Summary

Yemen is the poorest country in the MENA region. The country has little commercial law and there is no corporate governance code. Corporate governance is relatively undeveloped compared to international best practices. If the private sector is to expand in Yemen corporate and capital market legislation will be required in the near future. Yemen is ranked by the World Bank in 2008 as 113th out of 178 countries in the world in terms of ease of doing business.

Appendix

Appendix 1: The Dubai Declaration on Corporate Governance (2006)

Towards sound and efficient financial markets and banking systems

Corporate governance in the Middle East and North Africa (MENA)

Participants in the conference agree on the following:

- Building on recent efforts, MENA countries need to continue improving the legal and regulatory framework underpinning corporate governance.
- Parallel to strengthening these frameworks, the capacity of supervisors and regulators should also be addressed. Moving towards full independence from the government was stressed as an important prerequisite for success, together with a clear definition of their mandate. To empower these bodies to successfully carry out their functions, governments need to allocate adequate human and financial resources. Sustained political commitment at the highest levels is needed for enforcement to be successful and in order to instil public confidence in reforms.
- Self-regulatory measures and corporate governance codes should be developed as a complementary mechanism for improving enforcement in the region. To fulfil their function, codes need to be translated into practice and reach the boardroom. The codes developed on the basis of a structured process for drafting, where regulators, market representatives, companies, shareholders, business associations and the media are represented, would ensure support of all stakeholders in the implementation thereof. Shari'a compliant codes should be developed for Islamic banks and financial institutions especially as these institutions are growing in importance in the region. The Global Corporate Governance Forum Toolkit on Codes should serve as a useful guidance for MENA countries.
- Shareholders and other stakeholders, including creditors, need to have rights and the remedies in order to ensure that they are treated in a fair

and equitable manner. The role of a well-functioning court system and capacity building for judges cannot be overemphasized. In this respect effort needs to be made to ensure the competency, specialization and integrity of the judiciary. Mechanisms for alternative dispute resolution, including mediation, should be put in place to help solve corporate governance disputes in a more cost- and time-effective manner.

- MENA boards of directors, in all circumstance, in listed, non-listed, state-owned companies and banks alike, should act in the interest of the company and all of its shareholders, including the minority shareholders. To empower boards to exercise their strategic and monitoring functions, relying on a sufficient number of independent directors (independent from managers, major shareholders, political and other influence) and on the establishment of specialized committees is necessary. Board evaluation and training should play a critical role in improving boards in the region.
- Corporate governance of SOEs (state-owned enterprises) should be addressed as a priority, because of the important role they play for MENA economies. This should be a gradual process. MENA governments should aim at centralizing the ownership function within one state institution, or ensure effective coordination of the institutions in charge. Transparency of SOEs should improve by strengthening internal control mechanisms carrying out independent external audits, based on international standards and producing aggregate performance reports. Legislation should empower SOE boards of directors as the key body for strategic direction of the company independent from government and political interference in the day-to-day business of the company.
- Given the preponderance and economic importance of family-owned, small- and medium-sized enterprises and non-listed companies in MENA, promoting awareness of the benefits of better corporate governance practices and the adoption of best practices by the private sector is an imperative for economic development and modernization. Access to capital is a particular challenge for non-listed companies, as is succession planning. Effective company law frameworks, transparency and disclosure and enforcement are required in order to set the incentives and information systems underpinning sound corporate governance arrangements in non-listed companies.
- MENA banks play a dominant role in corporate finance. A shortcoming in the governance of banks can lower returns to a bank's shareholders and can have systemic consequences. Policy makers and regulators need to ensure that adequate banking laws and regulations are in place, as well as effective supervision of banks. Good corporate governance would also support more effective risk management practices and is a step forward in implementing the Basel 2 Capital Accord. Ownership and financial relationships of banks need to be transparent, while self-dealing and related lending should be subject to banking and corporate governance standards. Bank directors should be competent and should ensure sound

lending and risk management and monitoring practices, conducive to good corporate governance in the corporate sector.

- MENA countries should act to establish effective insolvency systems and provide a framework for value maximization and more efficient allocation of capital to productive uses. In particular, participants stressed the need for modernizing the legal framework, providing a more active role to creditors and setting the terms for rescue and restructuring of distressed debtors. Institutional capacity building with a special focus on the role of the judiciary, the insolvency professionals and the state agencies and monitoring company performance should constitute a priority as well.
- Promoting awareness of the benefits of better corporate governance practices and the adoption of best practices by the private sector is an imperative for economic development and modernization. MENA countries need to make considerable progress in this respect. Public and private sector institutions should design communication campaigns and training programmes for companies, directors, shareholders, journalists and other interested parties underlining the value of good corporate governance. Participants encourage the establishment of Institutes of Directors and Codes of corporate governance that can play an important role in this respect.

Implementation

Participants welcome the proposal of the MENA OECD (Organization for Economic Cooperation and Development) Working Group on Corporate Governance to focus on implementation of concrete measures and action plans for improving corporate governance in the region.

They support the proposed establishment of two task forces, focusing on corporate governance of banks and state-owned enterprises in order to provide regional guidelines based on international best practices, define policy priorities and set the milestones for time-bound action in these areas.

Further work, based on pilot and case studies, will focus on corporate governance of non-listed companies, including family-owned businesses and small and medium-sized enterprises. Succession planning, reporting and decision making systems, as well as improving access to finance through public listing will be among the issues for discussion. Participants agreed to hold a workshop, to decide on how to carry this work forward.

Participants agree that insolvency and creditor rights systems require special attention and welcome the launch of a Module on Insolvency and Corporate Restructuring as a particularly timely initiative. In doing this, they will build partnerships with all interested organizations. The private sector, through the networks of INSOL International (the International Association of Restructuring, Insolvency & Bankruptcy Professionals), will play a key role.

Participants encourage media capacity building, as media can play a critical role in educating the public and keeping the focus on corporate governance reforms. They welcome the contribution of the media to awareness raising on the need and benefit of reform and to achieving a general buy-in and support for better corporate governance.

Participants called for wide dissemination of this Declaration to governments, regulators, private sector bodies and to the general public. At its next annual conference in 2007, Hawkamah, in cooperation with the MENA OECD Working Group on Corporate Governance, will review the progress achieved in implementing the Declaration.

Index