

## **Position Paper**

**The Need for a Modern and Robust  
Legal and Regulatory Corporate  
Environment in Palestine for the  
Development of an Emerging and  
Innovative ICT Sector**

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## **I. Introduction**

The information and communication technology (ICT) sector is a fast-emerging industry in Palestine that demonstrates strategic potential and economic promise. The population demography, with a relatively high percentage of IT literate in comparison to the region, the relatively young population, especially with significant percentage of university educated young men and women, the proximity of Israel's advanced IT capabilities, as well as the great potential in highly qualified Diaspora Palestinians who are eager to contribute to their communities and transfer knowledge are all examples of characteristics that give the Palestinian ICT sector competitive edge over other its peers in other countries. Furthermore, restrictions on movement of Palestinians inside Palestine, as well as to and from Palestine, have turned ICT-based services into prerequisites for survival for Palestinian businesses and institutions.

The emergence of the Palestinian Authority (PA) in 1994 witnessed a boost in ICT businesses in the West Bank and Gaza Strip (WBG). Most of the businesses were in the form of Palestinian companies, incorporated as either ordinary or shareholding companies. With the growing activity of the ICT sector in Palestine, along with the emergence of new sub-industries in the sector, the prevailing legal and regulatory frameworks that govern the establishment, operations and all other aspects related to companies in Palestine were put on stake. Legislators, lawyers, business men and women, along with other ICT sector stakeholders differed on the extent to which the prevailing companies laws—namely the Jordanian-enacted Companies Law of 1964 (prevailing in the West Bank) and the British Mandate-enacted Companies Laws of 1929 and 1930 (prevailing in the Gaza Strip) provided the “right” grounds for the development of the Palestinian ICT sector. Dozens of donor-funded projects and interventions—all aimed at stimulating economic growth and private enterprise in Palestine, helped fueling this controversy.

This position paper argues that the prevailing legislative and regulatory framework governing corporate matters in Palestine hinders the development of an emerging and innovative Palestinian ICT sector. In order for such robust sector to grow and contribute more to the Palestinian economy, there is a critical need to improve the current legal and regulatory corporate framework, and gear it towards addressing the needs of the sector.

## **II. The Prevailing Legislative and Regulatory Framework is Inconsistent**

Different legal frameworks govern the incorporation and operations of companies in the WBG. While the Jordanian-enacted Companies Law no. (12) of 1964 govern all aspects related to companies and corporate matters in the West Bank, the British Mandate-enacted Companies Laws no. (22) of

1929 and no. (103) of 1930 govern Gazan companies. The difference in legal frameworks between the West Bank and Gaza reflects discrepancies in the policies and strategies governing Palestinian companies, including ICT companies, in each of the two distinct areas, and make it difficult to adopt a national strategy to that end. Moreover, the absence of a unified legal framework often results in inconsistent procedures among different company registration offices, as well as the absence of a national databank that covers all relevant companies' data nationwide. Efforts have been underway to draft and pass a new uniform companies law, as part of the macro efforts to harmonize the legal and regulatory frameworks between the West Bank and Gaza. These efforts, however, have been stalled due to the current political and security conditions in Palestine, which resulted in, among other things, the stalemate in the work of the Palestine Legislative Council (PLC).

Inconsistency in the legislative framework governing companies also extends to the legal instruments, i.e. legislations, regulating different aspects of the sector. In some cases, different laws prevailing in Palestine contain conflicting provisions, or inconsistent policies. The Companies Law applicable in the West Bank, for example, imposes certain restrictions on foreigners intending to invest in Palestinian companies. The Investment Promotion Law of 1998, to the contrary, was enacted to encourage foreign investors to invest and do business in Palestine. Inconsistency among different laws limit the extent to which the policies behind such laws could be implemented, causes confusion among investors, and often deter new investors, including ICT investors, to pour new resources into such uncertain and ambiguous environments.

Absent a unified and consistent legal framework governing companies between the West Bank and Gaza, as well as among different laws and regulations, the emergence and development of ICT companies in Palestine will remain to be limited.

### **III. The Prevailing Companies Laws are Outdated**

As noted above, companies in Palestine are governed either by the Companies Law of 1964 (in West Bank) or the Laws of 1929 and 1930 (in the Gaza Strip). Since Israel occupied the WBG in 1967, Israel's military rule stopped short from introducing any substantial amendments to those laws that would reflect the development in the economic activity in the WBG and the emergence of modern industries and sectors. The legal and regulatory vacuum often hindered the development of the Palestinian ICT sector, as highly sophisticated and technical matters were left ungoverned, thus introducing additional uncertainties and ambiguities before incoming investors in the field.

Additionally, and given the unique dynamic nature of the ICT sector, the emergence of the ICT sector has resulted in the introduction of new concepts, types of companies and legal structures. Examples include Angel, Seed and Venture Capital investments and concepts, as well as modern concepts and clauses such as liquidation preference, preferred stocks equity positions, price protection provisions, investor voting rights, protective provisions (for protecting minority shareholders), redemption clauses, right of first refusal, co-sales, and vesting of founder's shares. Companies' laws currently prevailing in Palestine did not cater to these new types of legal structures and instruments; many investors preferred to seek other jurisdictions where these concepts and structures were embodied in the legal framework of the country.

Given the dramatic shift that the ICT sector has witnessed in the last few decades, it is essential that new laws are introduced to address the new concepts and provide solutions for the issues and problems arising of the ICT sector. While the currently prevailing laws may have had been suitable and appropriate at the time of their enactment, they are currently outdated, and fail to address the needs and demands of the 21<sup>st</sup> Century ICT revolution era.

#### **IV. The Existing Laws Do Not Encourage Enterprise and Investment in ICT or Other Sectors**

The prevailing companies' laws in the WBG do not cater to introduce a culture of risk-taking, developing entrepreneurs, commercialization of innovation and research, or protection of intellectual property rights. Furthermore, they fail to provide sufficient regulation for telecommunication infrastructure, or liberation thereof, and also stop short of introducing venture capital or equity financing tools. For a modern and dynamic sector such as the ICT, absence of such concepts severely hinders the development of a free market-based industry.

As noted above, the prevailing Companies Law also imposes restrictions on the ability of foreigners to invest in Palestinian companies, and the percentages of shares they can possess therein. Such restriction severely harms the Palestinian ICT sector, as many Palestinian expatriates who do not hold the "right" Palestinian I.D. documents are subjected to such restrictions. The exclusion of Palestinian expatriates and non-Palestinians from investing in the Palestinian ICT sector (in accordance with the Companies Law) is resulting in the loss of huge resources that could have been tapped to stimulate economic growth and private enterprise in the ICT sector. On the other hand, the exclusion of Palestinian ICT investors from the incentives provided by the Investment Promotion Law, in accordance thereof, is persuading highly qualified Palestinian professionals in the field to leave and seek investments for better returns in other countries and tax-havens.

**V. Current Implementing Bodies, both in the Executive (Ministries) and in the Judiciary (Courts) Often Lack The Necessary Knowledge and Training in ICT**

The duties of the Companies Registrar in the West Bank are assumed by the Companies Comptroller, while in Gaza by the Office of the Companies Registrar. Offices of the Companies Comptroller (or Companies Registrar, as applicable) throughout Palestine handle all matters related to all companies, irrespective of the industry or nature of the companies. For example, the same ministry employee handles all matters related to companies working in ICT, motor vehicles, preschool education, food and beverages, or entertainment industries. Accordingly, ministry personnel handling ICT companies' matters usually lack the necessary ICT background or training that would allow them to address the complex needs of this sector. In order for the PA to support the ICT sector, it is crucial that specialized departments inside the ministry's branches are established to respond to the needs of the ICT companies. Personnel should be trained to handle complex matters related to ICT companies.

Similarly, courts resolving disputes arising between ICT companies and other parties, or among ICT companies themselves, are often unfamiliar with the technical and complex matters involved in this sector. As in the ministry personnel case above, the same judge looking into land disputes, car insurance claims, sexual harassment offenses or landlord-tenant cases, is responsible for resolving ICT disputes that are brought before the court. Specialized courts need to be established to look into ICT-related cases. Sufficient training should be granted to judges looking into such cases and court personnel handling them.

**VI. Lack of Adherence to and Respect for Rule of Law Discourages Investors in the ICT Sector**

Political and security instability in the WBG during the last few years has yielded a culture of lack of adherence to or respect for the principles and practices of rule of law. The implementation of laws is often left optional for the desires of ordinary citizens and businesses, with a weak executive power that lacks the necessary mechanisms to enforce the law and impose penalties on violators. Likewise, enforcement of court decisions is often left to the discrepancy of judgment creditors, security circumstances prevailing at the time of delivering it, or jurisdictional restrictions and rules tabled by the Oslo Accords between the Government of Israel and the PLO.

Such unstable and chaotic environment is deterring investors in all sectors, not the least of which in the ICT sector, to invest in Palestine. When they make their investment decisions, investors look for an environment where there is a transparent and predictable legal system, an independent and effective

judiciary that renders judgments that are easily enforceable, as well as a climate of law and order. Absent these features, it would be too risky for local and foreign investors to pour their resources in any sector in Palestine.

## **VII. Recommendations and Way Forward**

In order for the Palestinian ICT sector to excel and contribute more to the economic growth of Palestine, it is essential that the existing legal and regulatory framework for companies is reshuffled, for the existing one is hindering the development of an emerging and innovative ICT sector. A new uniform draft companies laws is currently being discussed. This is a unique opportunity for the Palestinian ICT sector to identify and voice its concerns, in order to make sure that the draft law, once passed, will sufficiently address the complex needs and issues of the Palestinian ICT sector. Below are few issues that are believed to need considerable attention from ICT lobbyists and advocates to that end. While the recommendations below in no way represent an exhaustive list of issues to be considered, they aim to identify courses of action that are believed to be needed in order to address the problems and deficiencies indicated above. Unless the context implies otherwise, reference to the PA below shall mean the three branches of the government; the executive, the legislative and the judiciary.

### **A. The New Companies Law Should Harmonize Rules, Provisions and Corporate Cultures between the West Bank and Gaza, and Should Ensure Consistency Among the Different Relevant Laws**

In order to achieve this goal, the PA must:

- Expedite efforts to enact a new companies' law which harmonizes rules, regulations and policies between the West Bank and Gaza
- Ensure that the new law will result in the synchronization of records between the West Bank and Gaza, as well as harmony in registration and other company-related services' applications and procedures between the two distinct areas
- Remove any reference in the new draft to provisions that conflict with laws en force in Palestine, including the Investment Promotion Law, and remove restrictions on investment of Palestinian expatriates (who may not hold Palestinian IDs) and non-Palestinians

### **B. The New Companies Law Should Aim to Address and Provide Solutions for Modern Companies and Legal Structures in the ICT Sector**

To that end, the PA shall:

- Introduce legal and regulatory framework for business start ups and Angel, Seed, and Venture Capital investments in the new draft companies law
- Introduce modern concepts and clauses in the new draft, such as liquidation preference, preferred stocks equity positions, price protection provisions, investor voting rights, protective provisions (for protecting minority shareholders), redemption clauses, right of first refusal, co-sales, and vesting of founder's shares
- Tailor the new draft law in a way that makes its provisions and scope flexible enough to absorb and provide solutions for new forms of companies and ICT legal structures
- Enact new laws and/or regulations that lay the ground for a modern regulatory environment that governs the highly technical and sophisticated ICT industry

C. The PA Should Create an Enabling Environment that Promotes Enterprise and Investment in the ICT Sector

To that end, the PA must:

- Introduce legal, regulatory and policy incentives for new businesses in the ICT sector
- Introduce bankruptcy laws that facilitate entrepreneurial activities and promote social tolerance towards a risk-taking culture
- Introduce new regulations and policies towards facilitating and expediting procedures for registration and all other applications related to ICT companies
- Ensure sufficient coordination among the different relevant PA bodies in relation to all applications by companies, especially ICT companies, to ensure a speedy, informed and sound decision-making process
- Establish and promote channels of communication and coordination between the PA, represented by the different relevant PA instrumentalities, and the ICT sector, to ensure that the latter's problems and concerns are addressed in a timely fashion
- Introduce e-government, and facilitate public access to relevant unclassified data
- Provide incentives for local persons and businesses to invest in the ICT sector, as well as to foreign persons and businesses
- Introduce a new set of intellectual property laws that provide sufficient protection in the fields of trademarks, copyright and patents
- Introduce new laws that would promote fair competition, inhibit monopoly, and fight fraudulent acts

D. The PA Should Seek to Establish Specialized Departments within the Ministry of National Economy to Handle ICT Matters, as well as Specialized Courts for Resolving ICT-Related Disputes

To that end, the PA Should:

- Establish specialized departments that are capable of handling technical and complex ICT-companies applications
- Train ministry personnel to handle ICT businesses applications and respond to their needs
- Establish specialized courts for resolving ICT-related matter, especially in population centers where ICT businesses mushroom
- Provide training for judges and court personnel in these kinds of cases
- Provide training for lawyers on these kinds of cases
- Introduce alternative mechanisms for resolving ICT-related disputes, such as mediation and arbitration

E. The PA Should Undertake Its Responsibilities to Maintain Law and Order, Ensure Transparency and Predictability in Its Legal Instruments, and Support Independent and Effective Judiciary

To that end, the PA shall:

- Introduce robust mechanisms to ensure that the new (to-be-enacted) Companies Law, as well as the other prevailing laws, will indeed be implemented
- Introduce and enforce penalties against law violators
- Inculcate a culture of respect for rule of law
- Ensure that court decisions are promptly enforced
- Maintain transparency throughout the processes for enacting, amending and annulling laws and regulations
- Promote the independence of the judiciary, and provide the justice system with the necessary resources to ensure impartial, expeditious and fair resolution of conflicts.