MENA-OECD
INVESTMENT
PROGRAMME

WORKING GROUP 5

IMPROVING CORPORATE GOVERNANCE

IN THE MIDDLE EAST AND NORTH AFRICA

Insolvency

Module

(draft for discussion purposes)

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OECD and the Middle East and North Africa (MENA)

The OECD, comprised of 30 member countries sharing a commitment to democratic government and the market economy, is dedicated to supporting economic development throughout the world, and has active relationships with some 70 other countries, NGOs and the private sector.

While its work spans a wide range of public policy concerns in Member countries, the OECD is particularly well known for its economic analysis and policy advice to non-Members. In 2004, the OECD established its MENA Investment Programme at the request of countries from the region in order to provide advice on implementing investment policy reform as driving force for economic growth and employment throughout the region. Successful implementation of the Programme is expected to make a substantive contribution to creating better conditions for economic growth and investment, helping create jobs, encouraging private initiative, promoting efficient, transparent and accountable public sectors and fostering regional co-operation. The Programme operates under a rotating chairmanship by a MENA and an OECD country. In 2006, the Programme's chairmanship was passed to the Arab Republic of Egypt and the United Kingdom.

A Steering Group composed of high level delegates from MENA and OECD countries, international organisations and the private sector, guides and monitors the Investment Programme. The Programme also relies on five Working Groups focusing on: *(i)* Transparent and open investment policies; *(ii)* Encouraging Investment Promotion Agencies and business associations to act as driving forces for economic reform; *(iii)* Providing a tax framework for investment and assessing incentives; *(iv)* Promoting policies for financial sector and enterprise development in support of economic/investment diversification; *(v)* Improving corporate governance.

As a part of the broader MENA-OECD Investment Programme, the Working Group aims to support the overall reform process by creating a regional network for policy dialogue on corporate governance, as well as to enhance capacity for policy reform and institution building. It is uniquely placed to do so, as it brings together a network of senior policy makers, regulators, market participants and representatives of academia from the region and OECD countries. Bahrain, Egypt, Jordan, Lebanon, Morocco, the Palestinian Authority, Saudi Arabia and the United Arab Emirates participate in the activities of the Working Group.

The Working Group builds on the initiative, which the Global Corporate Governance Forum launched in the region in 2003. Consistent with its usual policy for avoiding duplication, the OECD MENA Working Group works closely also with longstanding partners from the World Bank, the International Finance Corporation and the Centre for International Private Enterprise. The OECD ensures local ownership and relevance of its activities by closely co-operating with home-grown regional and country specific initiatives and institutions, such as the Regional Corporate Governance Institute – Hawkamah, the Egypt Institute of Directors, the Union of Arab Banks, National Country Teams, established within the OECD MENA Investment Programme, and others.

INSOLVENCY MODULE FOR THE MENA

Rationale

Corporate governance and insolvency are closely linked. As acknowledged by the OECD *Principles of Corporate Governance,* the corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

Companies with a good corporate governance record reduce the risks of lenders and are often able to borrow more and on more favourable terms than their competitors with a poor governance record. Moreover, corporate governance in insolvent enterprises poses specific challenges. Legal frameworks often impose on directors of insolvent enterprises to act in the interests of creditors, and provide the latter with specific role in the governance of distressed debtors.

Importantly, effective insolvency systems, based on developed legal frameworks, relying on a sound judicial system and on the availability of lawyers and accountants experienced in insolvency proceedings, play a critical role for orderly exit of insolvent corporations and for the efficient reallocation of resources.

In MENA jurisdictions, where banks are the dominant source of corporate finance, access to capital in the region will depend on the legal rights of banks as creditors, on their enforceability and on the level of development of the laws, judiciary and insolvency profession.

Meeting on Developing Sound Insolvency and Creditor Right Systems in the MENA

In order to take stock of the existing MENA frameworks and practices, raise awareness on existing international guidance on insolvency and establish a network of regional insolvency experts, the OECD will organise a meeting on Developing Sound Insolvency and Creditor Right Systems in the MENA. In doing this, the OECD will explore avenues for co-operation with its international and regional partners. The input of the private sector will be sought in co-operation with INSOL International, the international organization of insolvency professionals.

The meeting will bring together representatives of MENA Ministries of Justice, Ministries of Finance, Central Banks, representatives of the judiciary, the financial sector and insolvency professionals, experts from OECD countries as well as from international and regional organisations. The participants will attempt to identify priorities for insolvency reforms in the MENA and options for regional co-operation and dialogue on the topic.

Proposed Issues for Discussion

It is proposed that the meeting focuses on the following themes:

Theme I: Building Sound Insolvency and Creditor Rights’ Systems: the International Perspective

Theme II: The Legal and Institutional Framework

Theme III: Case Studies from MENA and non-MENA countries

Concluding session

The presentations within the first theme will "set the stage" for the discussion by providing an insight on international guidance and country approaches to building sound insolvency and creditor rights systems. Participants will also draw some conclusions as to why it is important for the MENA countries to focus on improving their insolvency frameworks and practices.

The discussions will then go on to examine national legal and institutional frameworks for insolvency. The presentations will enable a discussion on the following issues: formal and informal proceedings; the characteristics of debtor-creditor relationships; efficiency of insolvency mechanisms and procedures; and problems and areas in need of reform.

A variety of case studies from both OECD and MENA economies will be presented to illustrate the strengths and weaknesses of existing insolvency frameworks. The cases may discuss and illustrate a variety of issues, including the techniques for “repackaging” and dealing with bulk sales of insolvent assets, the role of courts in declaring insolvency, debtor management, the treatment and priority of claims, asset valuation and cross-border issues arising in insolvency.

In the last session, the participants will draw certain conclusions and explore the possibilities for future work and dialogue in the area of insolvency in order to promote the emergence of effective insolvency systems in the region.

Timing of the meeting and output

It is proposed to hold the meeting in **May 2007.**

The issues discussed at the meeting, could be summarised in a **Policy Brief,** drawing on the country presentations and general discussions. It will include references to international guidance, and approaches applied in non-MENA countries, which could be useful in designing proposals for reforms in the region. The Brief will also attempt to propose some recommendations and policy options for consideration by MENA policy makers. A draft version of the Brief will be circulated to participants for their feedback, which will be reflected in its final version.