

Introduction

The Middle East is situated in a strategic global position featuring many dynamic trade and investment opportunities. The region is primarily known as one of the world's largest oil and natural gas reserves, yet governments are attempting to reduce their economic dependency on oil revenues by instituting policies intended to attract foreign investment.¹ As countries in the region attempt to transform their oil-based economies into information and service-based economies, they must reach out to world partners to encourage investment.² Essentially, the conglomeration of factors such as a regional surge of economic diversification, privatization of traditionally state-owned business, population growth, regional integration efforts, and reconstruction efforts in Iraq are major sources of potential economic opportunity in the Middle East.

Middle-Eastern leaders recognize that they must diversify their economies away from a nearly complete dependence on oil and state-sponsored subsidies. As a result, recent legislation in many Middle Eastern countries aims to privatize traditionally state-owned businesses and attract foreign direct investments.³ The World Bank estimates the need for nearly \$3.1 billion a year in private investments to realize privatization efforts and infrastructure projects in the Middle East.⁴

Another factor that gives rise to a demand for foreign investments has been the steady population growth in the region. Thirty-five percent of the population is below the age of fifteen, and the creation of jobs in the private sector has consistently expanded the labor force.⁵ The marriage of Arab youth and Western pop culture through the media, including the Internet, also continues to fuel an increased demand for American products in the region.

Presently, the Gulf Cooperation Council (GCC) serves as a model for the later developing economies in the region due to the consolidation of trade liberalization reforms implemented to attract and sustain foreign

1. See, e.g., *Iran's President Khatami Submits His Last Budget Bill to Majlis*, BBC MONITORING INT'L REP., Jan. 10, 2005 (quoting Pres. Khatami as saying, "Economic transformation and national development . . . requires knowledge and experience, as well as suitable infrastructure and strategies. By relying only on oil revenues and spending them on our daily needs . . . [w]e will not be able to generate economic dynamism").

2. See *id.*

3. See *Interview: George Abed*, MIDDLE EAST ECON. DIG., Sept. 19, 2003, at 12 (discussing privatization in Saudi Arabia); Ugo Fasano & Zubair Iqbal, *GCC Countries Face Fundamental Choices as they Head for Monetary Union*, 39 IMF FIN. & DEV. Q. (Dec. 2002), available at <http://www.imf.org/external/pubs/ft/fandd/2002/12/fasano.htm> (discussing privatization in the GCC).

4. Emad Tinawi, *Middle Eastern Law*, 31 INT'L LAW. 541, 541-44 (1997) (discussing recent legal and political developments that in turn will shape the economic outlook for countries in the Middle East).

5. The World Bank Group, *2004 World Development Indicators* 256 (2004), available at <http://www.worldbank.org/data/wdi2004/tables/table5-1.pdf>; see also *id.* at 40, available at <http://www.worldbank.org/data/wdi2004/tables/table2-1.pdf> (the average annual population growth rate for the Middle East and North Africa between 1980 and 2002 was estimated at 2.6%, following closely Sub-Saharan Africa, which exhibited the highest growth rate in the world at 2.7%).

European civil law models.³⁸ The Shari'a is a body of commandments, religious and legal, given by God through the prophet Muhammad and documented in the Quran and the "Sunna" or traditions of the Prophet.³⁹ Directly translated, the "Shari'a" means "the right path" or guide for Muslims who wish to live their lives consistent with Islamic principles.⁴⁰

The Quran has also served as a source of principles of justice and was used as a mediation tool by the prophet Muhammad to induce legal settlement amongst Muslims.⁴¹ Yet there are limitations to the application of the Quran to modern day disputes because the laws directly derived from the Quran addressed a limited realm of issues regarding family law (marriage, divorce, and succession), criminal law (adultery, slander, and intoxication), evidence, (the acceptance of witnesses) and certain commercial matters.⁴²

The Sunna, which is the second source of Islamic law, stems from the traditions and precedents set by the behavior of the prophet Muhammad and his family.⁴³ Essential to the formation of Islamic law are the stories regarding matters in which the Prophet was asked to arbitrate disputes and decide questions of law.⁴⁴ Following the Prophet's death the Sunna were collected by various schools of Islamic law. Consequently, the schools that emerged throughout the Middle East compiled a wide array of legal scholarship with variations in the form and accuracy of the collected Hadiths.⁴⁵ Today, there are cultural variations in the legal foundations and role that Islamic laws play within Middle Eastern countries.

Later, the development of Islamic law into the nineteenth century did not reflect a desire to reform the foundation of the law, derived earlier from the Quran and Sunna, to match the times, but to supplement it by way of administrative regulations and amendments. Through Islamic principles of consensus-building and analogy, Islamic jurists fit these regulations within the infrastructure of the Shari'a.⁴⁶ As a result, there are a variety of subtle differences in the interpretations and regulations that supplement Islamic laws across the Middle East, largely due to the breadth of Muslim schools and jurists that sprung from the region following the prophet Muhammad's passing.⁴⁷ For Muslims the fundamental laws are in the

38. *Id.*

39. *Id.* at xvi.

40. *Id.* at xvi-xvii.

41. *Id.*

42. *Id.* at xxii. Commercial matters discussed in the Quran are limited to issues regarding forms of contracts and the prohibition of usury or unearned profit in the form of interest on money or insurance contracts. See, e.g., Quran II:275 ("Those who eat Ribā (usury) will not stand (on the Day of Resurrection) except like the standing of a person beaten by Shaitān (Satan) leading him to insanity."); II:282 ("When you contract a debt for a fixed period, write it down"), available at <http://www.ummah.org.uk/what-is-islam/quran/noble/subject1.htm> (last visited Feb. 27, 2005).

43. *Id.* at xvii.

44. *Id.*

45. *Id.* at xvii.

46. *Id.* at xvi.

47. *Id.* at xvii.

cles of incorporation, and only one shareholder is necessary to start an FZE.²³¹ To form an FZE a company or individual must submit a completed application and questionnaire to Free Zone officials.²³² Free Trade Zones are attractive to foreign investors because they permit 100% foreign ownership of companies. The Jebel Ali Free Zone Authority also permits foreign companies to establish branches without sponsorship by a local agent.²³³ The other advantages of the Free Trade Zone include a corporate tax exemption for fifteen years (renewable for an additional fifteen years), the 100% repatriation of capital and profits, a personal income tax exemption, and nominal customs duties.²³⁴

In addition to the Jebel Ali Free Zone, the Dubai International Airport, Sharjah, and Saadiyat free trade zones in Abu Dhabi all offer distinctive investment opportunities. The simplicity in establishing and operating a business in the free zones has attracted over 100 major U.S. companies to the region.²³⁵ The Dubai International Airport is popular as an offshore banking and manufacturing center.²³⁶ The fourteen square mile free trade zone on Saadiyat Island offers a tax-free offshore financial center, a freight airport, a seaport, the opportunity for 100% foreign ownership, and 100% repatriation of profits.²³⁷ In addition, the establishment of a stock exchange (supplemented by commodities, futures, and options exchanges) in Saadiyat is expected to turn the free zone into a regional financial and commodities hub.²³⁸

There are few federal import restrictions in the United Arab Emirates, and basic foodstuffs and building materials are exempt from all duties.²³⁹ Import permits are not required on any items except arms, ammunition, and sporting rifles.²⁴⁰ In addition, export licenses are not required, documents may be invoiced in any currency, and there are no exchange controls in the Emirates.²⁴¹ Also, a foreign company that wants to export its goods to the United Arab Emirates may supply its goods directly to importers and traders if the trade volume is low.²⁴² However, a company has to appoint a

231. *Id.* at 20.

232. *Id.*

233. FEILER, *supra* note 76, at 433-34.

234. See DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY, *supra* note 217, at United Arab Emirates Free Trade Zones.

235. *Id.* Such companies include Singer Sewing Machines, Mobil, Union Carbide, Arco, Black & Decker, M&M Mars Confectionary, Polaroid, and 3M, all of which operate in the Jebel Ali zone. U.S. companies operating in the Dubai International Airport free zone include Boeing, Dell Computer Corp., DHL, Digital Equipment Corp., IBM Corp., Samsonite, and UPS. *Id.*

236. *Id.*

237. *Id.*

238. *Id.*

239. DOING BUSINESS IN THE UNITED ARAB EMIRATES, *supra* note 221, at 46. The government levies duties of 50% on alcohol and tobacco products. *Id.*

240. WALTER H. DIAMOND & DOROTHY B. DIAMOND, FOREIGN TAX & TRADE BRIEFS, PART 5: MIDDLE EAST §1 UNITED ARAB EMIRATES TAX INFORMATION (2003) [hereinafter DIAMOND & DIAMOND, UAE TAX INFORMATION].

241. *Id.*

242. DOING BUSINESS IN THE UNITED ARAB EMIRATES, *supra* note 221, at 49.

local commercial agent to act on its behalf if it wants to establish a permanent exchange.²⁴³ While the tax laws technically apply to all corporations operating in the Emirates, only oil-producing companies are practically affected.²⁴⁴ The government does not tax companies operating in the United Arab Emirates, except for oil and gas companies, and foreign banks.²⁴⁵ The government also does not tax capital gains, dividends, sales, or the passage of estates.²⁴⁶

The UAE currency is fixed against the dollar, and the government does not impose any restrictions on the repatriation of capital and earnings.²⁴⁷ In 1991, the UAE government approved an internal memorandum that allowed offshore banks to operate as tax-free financial shelters without any currency restrictions.²⁴⁸ The primary objective behind the law is to provide sufficient financing for multinationals that have established manufacturing facilities in the United Arab Emirates. Today, there are no limitations as to the number of banks that can be admitted.

There is no central or federal development plan in the United Arab Emirates. Each Emirate has its own economic objectives and is responsible for its own industrial development policy. Companies operating in the Free Trade Zones with Free Zone licenses are not subject to UAE federal regulations.²⁴⁹ Federal regulations concerning the operation of foreign and local businesses are set out in the Federal Commercial Companies Law. Local Emiri laws contained in the UAE Commercial Transactions Codes supplement this body of Federal law.²⁵⁰

6. *Oman*

Oman is a traditionally liberal Middle Eastern nation and has been open to introducing reforms and encouraging foreign investment for years. Currently, the government of Oman is privatizing its utilities and developing a body of commercial law to facilitate greater foreign investment.²⁵¹ Oman joined the WTO in November 2000 and has since continued to liber-

243. *Id.*

244. DIAMOND & DIAMOND, UAE TAX INFORMATION, *supra* note 240.

245. DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY, *supra* note 217, at United Arab Emirates Tax Exemptions & Reductions. Foreign banks operating in Abu Dhabi pay an income tax of 20% of the year's profits. *Id.*

246. DIAMOND & DIAMOND, UAE TAX INFORMATION, *supra* note 240. The exception being that Dubai imposes 10% municipal taxes on the rental value of a company manager's office premises and 5% on the rental value of the manager's personal residence. DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY, *supra* note 217, at United Arab Emirates Tax Exemptions & Reductions.

247. DOING BUSINESS IN THE UNITED ARAB EMIRATES, *supra* note 221, at 37.

248. DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY, *supra* note 217, at Banking and Foreign Exchange.

249. DOING BUSINESS IN THE UNITED ARAB EMIRATES, *supra* note 221, at 35.

250. See generally DIAMOND & DIAMOND, UAE POLITICAL AND ECONOMIC STABILITY, *supra* note 217, at United Arab Emirates Tax Exemptions & Reductions (discussing the different tax laws operating in the United Arab Emirates).

251. CIA World Factbook—Oman, available at <http://www.cia.gov/cia/publications/factbook/print/mu.html> (last updated Feb. 10, 2005).

alize and diversify its markets.²⁵² The country has passed several measures to support its burgeoning hotel and tourism industry, liberalize the economy, and encourage privatization in hopes that foreign investors will enter the economy and create jobs for a growing Omani population.²⁵³

The Foreign Capital Investment Law of 1994 governs foreign investment in Oman. This law provides that before any foreign national or entity invests in Omani companies, the person or entity must first obtain the Omani Ministry of Commerce and Industry's approval.²⁵⁴ One of the most recent changes in the Omani foreign investment laws is with regard to permitted foreign ownership. Currently the government permits foreigners to own up to 70% of companies in most sectors, provided that the capital invested is at least \$390,000.²⁵⁵ The new law even permits 100% foreign ownership if the capital invested is at least \$1.3 million and the project contributes to the development of the national economy.²⁵⁶ In 1993, the Omani Ministry of Commerce issued new foreign investment regulations that permitted foreigners to invest up to 65% equity investment.²⁵⁷ Foreigners are only allowed to invest at such levels in certain industries, including agriculture, construction contracting, mixed commercial services, tourism, and trade.²⁵⁸ However, commercial agency activities are still limited to 49% foreign equity. Also, the foreign investors must have at least ten years of experience in the relevant activity.²⁵⁹

Tax exemptions are granted for five years (and may be extended for an additional five years) and are available for entities engaged in designated industries.²⁶⁰ Companies that operate in these select industries may also receive customs duty exemptions on imported equipment, spare parts, and raw materials.²⁶¹ Oman does not tax an individual's personal income, dividends, interest, estate, or gifts.²⁶² To qualify for the five-year tax exemp-

252. *Id.*

253. Ros Weaver, *Cash: Property: Oman Opens Its Doors—and Shores—to Outside Investors: The Sultanate is Pinning Its Hopes on a Housing and Tourism Boom*, THE OBSERVER, Oct. 12, 2003.

254. The Omani Centre for Investment Promotion and Export Development, *Foreign Investment Law*, available at <http://www/ociped.com/investments/law.asp?ulink=1>.

255. *Id.*

256. *Id.* Whether a project contributes to the development of the national economy is based on the recommendation of the Foreign Capital Investment Committee and on whether the project is deemed to contribute to the economic development of Oman. See WALTER H. DIAMOND & DOROTHY B. DIAMOND, FOREIGN TAX & TRADE BRIEFS, PART 5: MIDDLE EAST, OMAN TAX INFORMATION § 1 (2003) [hereinafter DIAMOND & DIAMOND, OMAN TAX INFORMATION], at Oman Tax Exemptions and Reductions.

257. DIAMOND & DIAMOND, OMAN TAX INFORMATION, *supra* note 256, at Oman Banking and Foreign Exchange.

258. *Id.*

259. *Id.* However, foreigners from the Gulf Cooperation Council countries only need five years of experience. *Id.*

260. The Omani Centre for Investment Promotion and Export Development, *supra* note 254. Tax exemptions are available for companies engaged in "manufacturing, mining, agriculture, fishing, fish processing, animal breeding, tourism, export of manufactured and reprocessed products, higher education, and public utilities." *Id.*

261. *Id.*

262. DIAMOND & DIAMOND, OMAN TAX INFORMATION, *supra* note 256.

tion, a company must invest capital equivalent to \$263,000, and be involved in developmental projects in the respective sector.²⁶³ Consulting firms working under a government contract and professional individuals are also exempt from local income tax.²⁶⁴

Import permits or licenses are not necessary in Oman.²⁶⁵ However, certain products may only be imported by exclusive licensed agents.²⁶⁶ These products include arms and ammunition.²⁶⁷ Importers are no longer required to maintain a local distributor or agent.²⁶⁸ Under the recent Sultanate decree, the government permits the licensed importation and distribution of goods without requiring an agent or a commission.²⁶⁹

Other advantages to investing in Oman include a wide range of local and foreign banking, generally low customs duties of 2%, the free repatriation of capital and earnings, and a positive commercial relationship with the United States.²⁷⁰ The nation cemented its friendly relationship with the United States in 1976 when it signed the Overseas Private Investment Corporation of the United States, which guaranteed insurance protection against expropriation or nationalization, war, or revolution.²⁷¹

The government established the Oman Development Bank to support the requirements of private ventures in the mining and oil industries.²⁷² The Bank is jointly owned by the Government, Omani nationals, and foreign firms, and conducts studies and provides financial advice to potential investors.²⁷³ The Bank also provides loans to commercial ventures in agriculture, fisheries, petroleum, and minerals.²⁷⁴ The government has allocated \$345 million for interest-free loans to new manufacturing and mining companies.²⁷⁵

263. DIAMOND & DIAMOND, OMAN TAX INFORMATION, *supra* note 256, at Oman Investment and Capital Incentives. This five-year tax holiday applies to foreign companies with 35% or more equity ownership and to all Omani-owned companies registered under the Foreign Investment Law. Income from banking, professional activities, and government contracts are not subject to the minimum 35% Omani participation requirement. DIAMOND & DIAMOND, OMAN TAX INFORMATION, *supra* note 256, at Oman Investment and Capital Incentives.

264. *Id.*

265. DIAMOND & DIAMOND, OMAN TAX INFORMATION, *supra* note 256, at Oman Trade Information § 2.

266. *Id.*

267. *Id.* Items such as certain dangerous drugs, fireworks, and “immoral” literature are prohibited from importation to Oman. *Id.*

268. DIAMOND & DIAMOND, OMAN TAX INFORMATION, *supra* note 256, at Oman Tax Exemptions and Reductions.

269. *Id.*

270. *Id.*

271. *Id.*

272. *Id.* at Oman Banking and Foreign Exchange.

273. *Id.*

274. *Id.*

275. *Id.* at Oman Investment and Capital Incentives. In the Maritime Law of April 1975, the Omani Sultanate “approved the use of the Omani registry for foreign-owned and local ships without the imposition of taxes on income from international shipping.” *Id.*

Since the oil sector accounts for more than 75% of Oman's GNP, the government has attempted to diversify its oil-based economy and develop other industries.²⁷⁶ Since the early 1990s the government has also begun to collect a percentage of oil revenues in a State General Reserve Fund. Furthermore, the government intends to develop its natural gas industry, and has begun planning a \$9 billion natural gas pipeline installation.²⁷⁷ The development of other natural resources such as copper have been made possible through a Saudi Arabian loan of \$200 million to assist in the development of eleven million tons of copper reserves in northeastern Oman.²⁷⁸ The government has also attempted to capitalize on its great fishing potential in the Arabian Sea.²⁷⁹

Despite the recent developments in industry and commerce, Oman continues to rely on imports for nearly all essential products in its economy. As a result, even as the government continues to diversify and modernize its economy, it is also developing greater ties with the European Union and the United States and seeks membership in the World Trade Organization. Although Oman is a relatively small country, it will continue to be significant to the future of the Middle East due to its strategic location within the shipping lanes in the Strait of Hormuz, through which one-third of western oil supplies pass.

B. Beyond the Gulf Cooperative Council: A Look at Jordan, Egypt, and Libya

1. Jordan

Following Iraq, the country that has perhaps had to bear most the burden of conflicts in the region has been Jordan. After the first Gulf war and the subsequent U.N. sanctions imposed on Iraq, the Jordanian economy suffered.²⁸⁰ Having never recovered from this economic downturn, the recent invasion of Iraq has continued to take a heavy toll on Jordan's economy and natural resources.

Today, despite the volatile state of its neighboring trade partners and regional conflict in the West Bank and Gaza, Jordan has struggled to press forward with reforms that include macroeconomic stabilization, trade liberalization, and privatization.²⁸¹ Economic reforms are also intended to

276. See *id.* at Oman Political and Economic Stability.

277. *Id.*

278. *Id.*

279. *Id.* The Arabian Sea contains ample stocks of fish, and the government has already granted some permits to foreign companies to deep-sea fish. *Id.*

280. See WALTER H. DIAMOND & DOROTHY B. DIAMOND, 2 TAX HAVENS OF THE WORLD, JORDAN POLITICAL AND ECONOMIC STABILITY (2004) [hereinafter DIAMOND & DIAMOND, JORDAN POLITICAL AND ECONOMIC STABILITY]. Following the U.N. sanctions on Iraq in August of 1990, \$1 billion worth of imported goods intended for Iraq were stranded in Jordan's warehouses. Jordan also struggled to support the influx of Iraqi refugees. Jordan has estimated that losses from its former trading partner have surpassed \$3 billion since 1990. *Id.*

281. THE WORLD BANK GROUP, COUNTRY BRIEF: JORDAN (Sept. 2004), available at <http://web/worldbank.org>.

address the youthful nature of Jordan's population. Jordan has five million young people, seventy percent of whom are under thirty years old.²⁸² To promote the integration of the young population into the economy, the Jordanian government has invested in areas of human capital development such as education, literacy, and health.²⁸³ Due to a current unemployment rate of 15%, and a labor force that is growing at 4% each year, job creation is crucial for both living standards and social stability.²⁸⁴ Consequently, the country has initiated extensive reforms to foster greater educational opportunities, to facilitate the growth of the private sector, and to attract foreign investment.²⁸⁵

Since King Abdullah's reign began, Jordan has pushed for accession to the WTO and for the establishment of free trade agreements with the United States and Europe²⁸⁶ while taking grave steps to encourage foreign investment and trade. Since the late 1990s, the nation has revived several privatization programs that have spurred foreign investment in the Jordanian telecommunications and transportation industry, and in industrial and power projects.²⁸⁷

The U.S.-Jordan Free Trade Agreement was a key step toward trade integration with the United States. It included a gradual phasing out of import duties over a ten-year period ending in January 2010, and the gradual establishment of an overall free trade area.²⁸⁸ Today, the government has eliminated 83% of all tariffs in all major product categories. Observers expect that figure to reach 95% of all tariffs by January 2005.²⁸⁹ Additionally, the Jordanian government has entered into a Free Trade Agreement with the EU, which will be created by 2014.²⁹⁰

Since the commencement of Jordan's privatization programs, private companies have acquired major stakes in the Jordan Telecommunications Company, and the Arab Potash Company.²⁹¹ Further, the government is currently seeking a foreign partner to buy up to a 49% stake of its operating division in Royal Jordanian Airlines.²⁹²

For the most part, the government has reformed Jordan's investment laws to encourage liberalized trade and investment by treating foreign and

282. *Id.*

283. The Hashemite Kingdom of Jordan, *Human Resources* (2004), available at <http://www.kinghussein.gov.jo/resources.html>.

284. THE WORLD BANK GROUP, *supra* note 281.

285. *Id.*

286. See Jordan Free Trade Agreement Act, Pub. L. No. 107-143, 115 Stat. 243, 19 U.S.C. 2112 (2001). The Jordan Free Trade Agreement provides for preferential tariff treatment, the elimination of duties, the protection of intellectual property rights, and the promotion of transparency in international trade agreements. *Id.*

287. United States Trade Information Center, *Investment Climate: Jordan*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf> [hereinafter *Investment Climate: Jordan*].

288. United States Trade Information Center, *Economic Trends and Outlook: Jordan*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf> [hereinafter *Economic Trends and Outlook: Jordan*].

289. *Id.*

290. *Id.*

291. See *id.*

292. *Id.*

local investors equally.²⁹³ For instance, Jordan is one of the only Middle Eastern countries to permit foreigners to own 100% of all public shareholding companies, closely held corporations, and partnerships that operate in the fields of manufacturing, tourism, and nontrade services.²⁹⁴

Furthermore, foreigners can exploit investment incentives such as tax and customs duties exemptions in the country's three development areas.²⁹⁵ The three zones offer exemptions that vary according to the area's level of development.²⁹⁶ Zone C encompasses all agricultural, maritime transport, and railway investments.²⁹⁷ Zone A is a conglomeration of hotel, tourism, leisure, recreational facilities, and convention centers.²⁹⁸ Particular trade advantages include ten-year exemptions from income and social services taxes for projects approved by the Investment Promotion Committee.²⁹⁹ Such advantages include a 100% tax exemption for the first five years of investment and business engaged in industrial areas of Zone A, and a 40% exemption for the next two years.³⁰⁰ Zone B projects are 100% tax-exempt for eight years and Zone C provides for 100% tax exemption for twelve years.³⁰¹

In addition to offering tax incentives in the designated zones, the government has designated a large portion of the port of Aqaba as a free trade zone.³⁰² Merchandise imported into Jordan can be stored in the free trade zone for delivery to any neighboring markets.³⁰³ To engage in free trade zone activities, the companies must be new to Jordan, adopt modern technology, use local raw materials, and improve labor skills.³⁰⁴ Aqaba offers the benefits associated with all regional modern seaports, without the congestion typically associated with neighboring ports. Furthermore, Jordan's modern highway system encourages the importation of goods destined for Saudi Arabia, the Gulf States, and Syria.³⁰⁵ Currently, the port of Aqaba is also expected to continue developing as a tourist destination with several

293. *Investment Climate: Jordan*, *supra* note 287. However, Regulation No. 54 of 2000 lists several exceptions to this general rule. Foreign investors may not own a majority stake in projects in construction and contracting, wholesale and retail trade, transport, wastewater treatment, food services, travel agent services, and import-export services. *Id.* Yet under the terms of the Jordan-U.S. Free Trade Agreement, foreign investors are limited to 60% ownership in publishing, aircraft maintenance, and repair services. *Id.*

294. DIAMOND & DIAMOND, JORDAN POLITICAL AND ECONOMIC STABILITY, *supra* note 280, at Jordan Investment and Capital Incentives.

295. *Id.*

296. *Id.*

297. United States Trade Information Center, *Performance Requirements/Incentives: Jordan*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf/f41c595bf093a662852566f2004cfcf6/83ca390b3e7f7fb785256f150064cb3e!OpenDocument>.

298. *Id.*

299. *Id.*

300. DIAMOND & DIAMOND, JORDAN POLITICAL AND ECONOMIC STABILITY, *supra* note 280, at Jordan Investment and Capital Incentives.

301. *Id.*

302. *Id.* at Jordan Free Trade Zone.

303. *Id.*

304. *Id.*

305. *Id.*

new resorts and hotels.³⁰⁶ While regional instability has caused a downturn in tourism in the past, tourism has recently rebounded, and western tourist travel has increased by 60% in the first quarter of 2004.³⁰⁷

The Jordanian Commercial and Civil Codes govern commercial transactions in Jordan.³⁰⁸ The Jordanian Constitution stipulates that the judiciary is independent of other branches of government, and that commercial transactions are resolved in secular courts.³⁰⁹ Under the Investment Promotion Law of 1995, foreign investors may choose alternative dispute resolution methods or an internationally recognized settlement of disputes.³¹⁰ In addition to abiding by WTO dispute settlement mechanisms, Jordan is a member of the International Center for the Settlement of Investment Disputes and the New York Convention of 1958, which recognizes and enforces foreign arbitral awards.³¹¹ The government offers loans at low interest rates and provides free guidance to foreign companies interested in investing in Jordan.³¹² King Abdullah has also asserted that he needs to reduce the “red tape” associated with his nation’s government agencies to attract more foreign investment.³¹³ Consequently, since assuming leadership, he has promoted national administrative reform, government transparency and accountability, and the advancement of civil liberties.³¹⁴

Today, with the assistance of new trading partners and King Abdullah’s leadership, Jordan continues to steadily press forward economic reforms. Since Jordan has had to bear much of the impact of regional instability in the region, the United States and other European nations have pledged economic and military aid.³¹⁵ In addition, the United States has relieved Jordan of over \$420 million of the Kingdom’s debt.³¹⁶ Despite the regional unrest due to the ongoing violence and instability in Iraq, the U.S. Trade Information Center reports that Jordan’s resilient economy grew at a decent rate of 3.2% in 2003.³¹⁷

2. Egypt

The U.S. Trade Information Center estimates that the Iraq war cost the

306. See *Economic Trends and Outlook: Jordan*, *supra* note 288.

307. *Id.*

308. See *Jordan*, *Countrywatch.com*, available at http://aol.countrywatch.com/aol_print.asp?vCOUNTRY=87&SECTION=COVER&TOPIC=INFIC&TYPE=TEXT.

309. *Id.*

310. United States Trade Information Center, *Dispute Settlement: Jordan*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf/f41c595bf093a662852566f2004cfcf6/3a9fc7251e50c6a585256f15005a8032!OpenDocument>.

311. *Id.*

312. DIAMOND & DIAMOND, *JORDAN POLITICAL AND ECONOMIC STABILITY*, *supra* note 280, at Jordan Investment and Capital Incentives.

313. *Id.* at Jordan Political and Economic Stability.

314. *Id.*

315. *Id.*

316. *Id.*

317. *Economic Trends and Outlook: Jordan*, *supra* note 288.

Egyptian economy nearly \$1 billion.³¹⁸ Economic performance over the past three years reflects difficulties following September 11th and the Iraqi conflict. Today, the IMF reports that Egypt has begun to recover from an economic downturn caused by both these events and several regional conflicts.³¹⁹

IMF directors have recommended that the government reduce unemployment by undertaking structural reforms aimed at expanding the growth of the private sector.³²⁰ With unemployment estimated at nearly 10%, job creation remains a top priority.³²¹ In order to achieve and sustain economic growth that will facilitate job creation, the government has made efforts to promote domestic investment and increase efficiency and integration into the global trading system.

In June 2001, Egypt signed a Partnership Agreement with the EU, which entered into force on January 1, 2004.³²² The agreement will grant Egyptian exporters increased access to the European market, and will gradually phase out tariffs and other barriers to European exports.³²³ The agreement also includes nearly 615 million Euros in project assistance grants and 1.1 billion Euros in loans designed to help modernize Egyptian industries.³²⁴ The EU remains Egypt's largest trading partner, typically accounting for nearly 35-40% of imports and exports.³²⁵ It is estimated that once the Partnership Agreement with the EU is implemented, there will be a significantly larger volume of trade between Egypt and the EU.³²⁶

The United States is Egypt's largest single-nation trading partner; it accounts for nearly 20% of imports and 11% of exports.³²⁷ The U.S. Department of Commerce estimated that at the end of 2001, total U.S. direct investment in Egypt was \$3.068 billion.³²⁸ Since 1992, the United States and Egypt have acted according to a Bilateral Investment Treaty that provides for nondiscriminatory treatment for investors from both nations.³²⁹ The treaty includes provisions for international legal standards on expropriation and compensation, and accepted procedures for the settlement of investment disputes such as international arbitration.³³⁰ In 1999, Egypt and the United States signed a Trade and Investment Frame-

318. *Stat-USA Egypt Country Commercial Guide FY 2004: Economic Trends and Outlook*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf> [hereinafter *Stat-USA*].

319. *Egypt: 2004 Article IV Consultation Staff Report*, International Monetary Fund Country Report No. 04/69, available at <http://www.imf.org/external/np/sec/pn/2004/pn0469.htm>.

320. *Id.*

321. *Id.*

322. See Protocol to the Euro-Mediterranean Agreement Between the European Communities and their Member States and the Arab Republic of Egypt, OJ 2005 L31/31.

323. *Stat-USA*, *supra* note 318.

324. *Id.*

325. *Id.*

326. *Id.*

327. *Id.*

328. *Id.* at Egypt Investment Climate.

329. *Id.*

330. *Id.*

work Agreement intended to increase American investment in Egypt's markets.³³¹

Tourism is Egypt's largest foreign exchange earner, yet it is an industry that is most susceptible to instability resulting from regional conflicts such as unrest in Israel and the Palestinian territories and the Iraqi conflict. A 2001 report by the Egyptian Center for Economic Studies suggested that tourism accounted for nearly 11% of Egypt's GDP. Tourism revenues dropped 22% in March 2003 at the start of the Iraq War.³³² Fortunately, the industry rebounded in April and May of last year, and if the region stabilizes politically, the government estimates that tourist arrivals could increase to 9.5 million per year by 2005.³³³

Like several nations in the region, the Egyptian government hopes to continue its economic reforms without diverting resources to resolve regional political instability. The Parliament approved key legislation in 2003, including the Telecom Regulatory Authority Law in February and a Unified Banking Law in May.³³⁴ Egypt's Telecom Law expands the power of the National Telecom Regulatory Authority to issue licenses and permits, and includes provisions to protect users' rights.³³⁵ The law complies with Egypt's obligation as a member of the WTO to end Telecom Egypt's monopoly of fixed-line services.³³⁶

Unlike the tourism industry, the energy sector, surprisingly unaffected by the regional instability, has exhibited positive growth over the past few years. Gas production and reserves have increased approximately 75% during the past five years.³³⁷ Gas reserves have nearly tripled over the past decade, and Egypt has sought to conserve the gas surplus by converting 81% of its thermal power plants to gas.³³⁸ Since new natural gas discoveries are outpacing domestic demand, the government is seeking to develop its export capacity for gas.³³⁹ Oil discovery has also produced lucrative results for investors. In May 2003, BP announced it had discovered a huge oil reserve in the Gulf of Suez that contained an estimated reserve of 80 million barrels and an expected average flow rate of 40,000-50,000 barrels per day.³⁴⁰

To facilitate foreign investment and to alleviate domestic business disputes, Egypt has promoted alternative methods of dispute resolution and arbitration. The nation acceded to the International Convention for the Settlement of Investment Disputes³⁴¹ (ICSID) in 1971, and is a member of

331. *Id.* at Egypt Economic Trends and Outlook.

332. *Id.* This is in comparison to the figures for tourism revenue in March 2002. *Id.*

333. *Id.*

334. *Id.*

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

340. *Id.*

341. Convention on the Settlement of Investment Disputes between States and Nationals of Other States, Oct. 14, 1966.

the International Center for the Settlement of Investment Disputes,³⁴² which provides a framework for the arbitration of investment disputes between the host government and the foreign investor.³⁴³ The government also enacted Law 8 of 1997, which recognizes the right of investors to settle disputes within the framework of bilateral agreements, the ICSID, or through international commercial arbitration.³⁴⁴

3. Libya

The United States imposed sanctions on Libya in 1986 and, until recent months, has barred trade and travel to Libya by U.S. citizens. The policy behind the Iran and Libya Sanctions Act of 1996 (ILSA) with respect to Libya was to seek full compliance by Libya with its obligations under U.N. Resolutions 731,³⁴⁵ 748,³⁴⁶ and 883,³⁴⁷ which include ending all support for alleged acts of international terrorism and alleged efforts to develop or acquire weapons of mass destruction.³⁴⁸

Since those resolutions, international efforts evolved into attempts to reopen diplomatic ties with Tripoli. Libya has accepted "civil responsibility" for the actions of Libyan officials in the 1988 Pan Am Flight bombing over Lockerbie, Scotland, pledged to cooperate with the United Nations regarding the investigation of the bombing, renounced terrorism, and signed the Comprehensive Nuclear Test Ban Treaty in January of 2004.³⁴⁹ The United States responded to Libya's diplomatic efforts by sending the first U.S. Congressional delegation to Libya since 1969 and announcing that it would place a diplomat in Libya for the first time since closing the U.S. embassy in 1980.³⁵⁰

On September 20, 2004 President Bush issued an Executive Order that terminated sanctions against the government of Libya.³⁵¹ The President also revoked Executive Order 12,538 of November 15, 1985, which prohibited the importation into the United States of petroleum products refined

342. See INT'L CENTER FOR SETTLEMENT OF INVESTMENT DISPUTES, ICSID CONVENTION, REGULATIONS AND RULES (2003).

343. See *Stat—USA*, *supra* note 318, at Egypt Investment Climate.

344. *Id.*

345. S.C. Res. 731, U.N. SCOR, 47th Sess., 3033d mtg., U.N. Doc. S/RES/731 (1992).

346. S.C. Res. 748, U.N. SCOR, 47th Sess., 3063d mtg., U.N. Doc. S/RES/748 (1992).

347. S.C. Res. 883, U.N. SCOR, 48th Sess., 3312th mtg., U.N. Doc. S/RES/883 (1993).

348. Iran and Libya Sanctions Act of 1996, Pub. L. No. 104-172, 110 Stat. 1541, 104 H.R. 3107 (1996), at § 3(b) "Declaration of Policy" (codified at 50 U.S.C. § 1701).

349. See generally Lisa Anderson, *Pan Am 103 Families Fear That Accepting Cash Absolves Gadhafi*, THE CHICAGO TRIBUNE, Feb. 24, 2004, at Zone C, p. 1 (providing a timeline of U.S.-Libyan diplomatic relations).

350. See Colum Lynch, *Powell Holds Talks with Libya's Foreign Minister*, WASH. POST., Sept. 24, 2004, at A17 (describing improving diplomatic exchanges between the United States and Libya).

351. Exec. Order No. 13,357, 69 Fed. Reg. 56, 665 (Sept. 20, 2004) (titled "Termination of Emergency Declared in Executive Order 12,543 with Respect to the Policies and Actions of the Government of Libya and Revocation of Related Executive Orders"), available at <http://www.whitehouse.gov/news/releases/2004/09/20040920-5.htm>.

in Libya.³⁵² In addition, the Order removed all blocks on property and interests in property that had been blocked under the Libya Sanctions Regulations.³⁵³ Yet Libya still remains on the American list of states that allegedly sponsor terrorism, which bars the reinstatement of full diplomatic relations.³⁵⁴ Consequently, the export of military and security related materials to Libya will continue to be restricted.³⁵⁵ Nevertheless, the Libyan economy will gain tremendously from the removal of economic restrictions on aviation, the reinstatement of direct flights from the United States, and increased U.S. investment.³⁵⁶

C. An Examination of Limited, Yet Lucrative Opportunities in a Sanctioned and Steadily Growing Iranian Economy

The Iran and Libya Sanctions Act of 1996 (ILSA) was intended in pertinent part:

[t]o impose sanctions on persons making certain investments directly and significantly contributing to the enhancement of the ability of Iran or Libya to develop its petroleum resources, and on persons exporting certain items that enhance Libya's weapons or aviation capabilities or enhance Libya's ability to develop its petroleum resources, and for other purposes.³⁵⁷

In addition to the unilateral sanctions imposed by the United States on Libya and Iran through the ILSA, the Act also calls for multilateral and "Enhanced Sanction[s]"³⁵⁸ on U.S. allies that trade with Iran and nationals of foreign countries who invest \$40 million or more in Iran's petroleum sector within any twelve month period.³⁵⁹ The Act was basically designed to deter U.S. nationals, allies, and foreign companies from doing business with and investing in Libya and Iran.³⁶⁰ While President Bush's Executive Order terminated sanctions against Libya,³⁶¹ the sanctions remain with respect to trade with Iran.

1. *Iran*

The ILSA is intended to deny Iran the ability to explore, extract, refine, or transport its oil resources.³⁶² These sanctions developed after political and diplomatic tensions that escalated between Iran and the United States following the Islamic Revolution of 1979.

352. *See id.*

353. Libya Sanctions Regulations, 31 C.F.R. § 550 (2004).

354. Steven R. Weisman, *U.S. Lifts Trade Embargo on Libya in Return for Promise on Arms*, N.Y. TIMES, Sept. 21, 2004, at A7 (discussing the implications of President Bush's Executive Order revoking economic sanctions on Libya and the limitations on trade relations with the Arab nation based on alleged state-sponsorship of terrorism).

355. *See id.*

356. *See id.*

357. Iran and Libya Sanctions Act of 1996.

358. *Id.* § 4(d).

359. *Id.* § 5(a).

360. *See id.*

361. Exec. Order No. 13,357, 69 Fed. Reg. 56.

362. Iran and Libya Sanctions Act of 1996 §3(a).

In 1979, a revolution overthrew the Pahlavi monarchy and established an Islamic Republic under the political control of Islamic clerics. Following the Islamic Revolution, the Iranian government isolated itself economically and politically. A largely state-run economy and subsidized oil industry resulted in high levels of inflation, unemployment (currently at nearly 16%), and the rise of internal political factions. Following the Revolution, the new government nationalized banks and industries such as the petroleum, transportation, utilities, and mining sectors.³⁶³ Currently, Iran's economy is a mixture of state-owned enterprises, village agriculture, and smaller private service ventures.³⁶⁴

Over the past five years there have been efforts by reformists in the government to privatize and liberalize the ailing economy. Reformist President Mohammad Khatami has followed the market reform plans and indicated that he will continue to diversify the oil-based economy.³⁶⁵ The United States welcomed such reforms, and the Clinton Administration responded in March 2000 by loosening import restrictions.³⁶⁶ Former Secretary of State Madeline Albright announced that the United States would relax sanctions to permit Americans to import Iranian carpets and foods.³⁶⁷

In addition, the U.S. Treasury Department, pursuant to President Clinton's loosening of U.S. import restrictions, has authorized commercial sales of food, medicine, and medical equipment to Iran.³⁶⁸ Under this export policy, the Office of Foreign Assets Control (OFAC) issues licenses on a case-by-case basis. The government permits such sales to approved buyers, such as private individuals, nongovernmental entities, and government procurement bodies identified by OFAC. Additionally, the government will permit licensed Americans to broker and sell bulk agricultural commodities.³⁶⁹ The regulations limit payment to advanced cash, sales on open accounts, or financing by third country banks.³⁷⁰

Nevertheless, this policy amendment did little to loosen the restric-

363. See U.S. Dep't of State, Bureau of Near Eastern Affairs, *Iran Profile August 2004*, at <http://www.state.gov/r/pa/ei/bgn/5314.htm>.

364. *Id.*

365. *Id.*

366. See Madeleine K. Albright, *Remarks Before the American-Iranian Council* (Mar. 17, 2000) (noting that "President Clinton eased restrictions on the export of food, medicine, and medical equipment to sanctioned countries including Iran"), at 367, at <http://secretary.state.gov/www/statements/2000/000317.html>.

367. See *id.*

368. United States Trade Information Center, *Sanctions Lifted on Food, Medicine and Medical Equipment to Iran*, available at <http://web.ita.doc.gov/ticwebsite/meweb.nsf/> (declaring that pursuant to President Clinton's statement on April 28, 1999, the U.S. Treasury Department announced it would authorize the sale of food, medicine, and medical equipment to Iran, Libya, and Sudan under existing unilateral sanctions regimes).

369. See *id.*

370. See *id.*

tions on exports from the United States.³⁷¹ While the American government continues to restrict exports to Iran, it has not fully enforced the ILSA and has occasionally granted a “waiver” of the ILSA when dealing with its allies.³⁷² Pressure from U.S. allies in the European Union and Asia in the WTO has resulted in the limited application of the extraterritorial sanctions outlined in the ILSA.³⁷³

Iran currently engages in the large-scale privatization of its telecommunications and banking sectors, and is preparing for the gradual introduction of these private entities onto the Tehran Stock Exchange (TSE).³⁷⁴ The IMF contends that such measures have successfully boosted Iran’s economy as the nation’s levels of foreign investment and economic reforms have grown at the highest rate in the Middle East and North Africa over the past few years.³⁷⁵ Much of the growth is attributed to the establishment of the Oil Stabilization Fund in 2001, the diversification and growth of non-oil industries, the reformation of the state subsidy system, and the privatization of the banking and insurance industry.³⁷⁶ While banks were removed from the stock exchange listings following the Islamic Revolution, the Tehran Stock Exchange council passed a 2002 law permitting the admission of the banks.³⁷⁷ According to Iranian financial experts, the main purpose behind the privatization of the banks is to improve transparency in the financial sector and to increase competition.³⁷⁸

Despite ongoing U.S. sanctions, Iran is currently headed toward an era of economic liberalization and diversification necessary to open its markets to foreign business and sustain the needs of its growing population.³⁷⁹

371. See generally Iranian Transactions Regulations, 65 Fed. Reg. 25, 642 (May 3, 2000) (codified at 31 C.F.R. § 560) (providing the statutory means for export restrictions to Iran).

372. See Madeleine K. Albright, *Statement on ILSA: Decision in the South Pars Case*, available at <http://www.ghayan.com/ilsw051898.htm>. An ILSA waiver was granted on May 18, 1998 by the former Secretary of State Madeleine K. Albright regarding the development of the South Pars Gas Field in Iran by Total (France), Gazprom (Russia), and Petronas (Malaysia). *Id.*

373. See generally Wynn H. Segall, *Running on Empty: U.S. Economic Sanctions and Export Controls in 1997*, 32 INT’L L. 271 (1998) (asserting that the U.S. executive branch has hesitated to promulgate any extraterritorial tactics like those embodied in the Helms-Burton and ILSA sanctions of 1996 against Cuba, Iran, and Libya due to their problematic enforcement). Currently there is an ongoing debate in Congress regarding sanctions and export controls, and a conflict has arisen between U.S. business interests abroad, U.S. national security interests, and international law. Consequently, U.S. strategic initiatives to isolate rogue nations, such as Iraq and Iran, have lost ground since the sanctions were enacted. See *id.*

374. See generally Stephen Timewell, *A New Economic Era for Iran*, THE BANKER, Dec. 1, 2004 (providing a positive assessment of privatization prospects).

375. See *Minister Says Much Efforts Needed To Raise Iran’s Economic Growth Rate*, BBC WORLDWIDE MONITORING: THE MIDDLE EAST, Aug. 23, 2003.

376. See *IMF Commends Iran’s Good Intentions*, THE MIDDLE EAST ECONOMIC DIGEST, Oct. 5, 2001.

377. Stephen Timewell and Mohsen Asgari, *Iran Pushes for Privatization*, THE BANKER, Dec. 1, 2003, at 95.

378. *Id.* at 96.

379. See generally *Fewer Means Better*, ECONOMIST, Aug. 5-11, 1995, at 41 (discussing Iran’s population growth).

Currently Iran is prepared to sign an agreement with the GCC to establish a free trade zone in the region. The Saudi Arabian minister of commerce and industry supports Iran's plans to set up a free trade zone between Iran and its Arab neighbors, and encouraged Iran to exploit trade opportunities within the GCC.³⁸⁰

In 1995, the "Law for Attraction and Protection of Foreign Investment" was the first specific foreign investment law enacted by Iran's legislature since the Islamic Revolution. This law aimed to encourage additional foreign investment.³⁸¹ Additionally, in 1993 the Iranian Parliament enacted a law that exempts foreign investors in certain regions from paying taxes for a period of fifteen years.³⁸² This law guarantees the rights of foreign investors.³⁸³ Furthermore, according to this law, the government will not apply customs duties and commercial benefit taxes to any goods imported into the country.³⁸⁴

The Iranian economy experienced limited growth from the reforms spelled out in the initial five-year economic plan, and has since engaged in fundamental economic reforms. The recent Socio-Economic and Cultural Development Plan of 2000-2004 includes measures to privatize government-controlled industries and to introduce private entities onto the TSE.³⁸⁵ These dramatic measures were introduced to cure an ailing economy of a nation that ironically has one of the world's largest oil and natural gas reserves and some of the most strategic ports and waterways, but is lagging in the global marketplace.

Chapter Three of the Third Socio-Economic and Cultural Development Plan of 2000-2004 includes reforms primarily aimed at privatization and the transfer of control of state-owned enterprises.³⁸⁶ This chapter calls for the transfer of the shares and stocks of the designated state-owned enterprises "whose continued operation in the public sector seems to be unnecessary."³⁸⁷ The scope of the enterprises due to be privatized appear to be limited to those sectors that do not jeopardize the national security or create a monopoly, and the privatization of which promotes public management.³⁸⁸ Chapter Ten of the Third Socio-Economic and Cultural Development Plan of 2000-2004 addresses the crucial reforms necessary to reorganize the financial markets.³⁸⁹ Under this plan, the Iranian central

380. *Iran, Saudi Arabia Discuss Trade at Joint Economic Commission Meeting*, BBC MONITORING MIDDLE EAST, Mar. 14, 2004.

381. *Status of Foreign Investments in Iran*, at <http://iranlaw.online.fr/laws2.html#f%20investments>.

382. *Free Trade Zones, Message from the Iranian Secretariat of the High Council of Free Trade-Industrial Zones*, full text available at <http://www.salamiran.org/Economy/FreeZones/FTZ.html>.

383. *Id.*

384. *Id.*

385. *Iran's Third Socio-Economic and Cultural Development Plan of 2000-2004*, full text available at http://www.salamiran.org/Economy/third_plan.html.

386. *See id.* at ch. 3.

387. *Id.* at ch. 3, art. 9.

388. *Id.* at ch. 3, art. 10 §§ (a), (b), (c), (d), (e), (f).

389. *Id.* at ch. 10.

bank is authorized to issue bonds to creditors to enhance their ability to compete in the international banking sectors.³⁹⁰ The law also creates a computerized network for the capital market set up by the Stock Exchange that will foresee electronic transactions and provide national and international information.³⁹¹

More liberal trade laws not confined by the limitations of the Constitution are offered in the three Free Trade-Industrial Zones established by Parliament under the Free Zones Act of 1993.³⁹² These zones are managed according to their own laws and operate outside the domain of Iranian customs authorities. The Kish Island, Qeshm Island, and Port of Chabahar Free Trade Zones provide incentives to investors such as a fifteen-year tax holiday, exemption from customs duties, 100% foreign investment and repatriation of capital and profit, offshore banking, and no entry visa requirement for foreigners.³⁹³

Recent IMF reports suggest that Iran's economy has grown significantly over the last four years due to key structural reforms implemented since the beginning of the Third Five-Year Development Plan (2000-2004).³⁹⁴ The IMF credits greater confidence in the economy and a rise in private sector activity as the primary reasons for Iran's economic growth.³⁹⁵ During the first four years of the Third Five-Year Development Plan, real GDP grew by an average of 5.6%, external debt was reduced to extremely low levels, and the unemployment rate declined.³⁹⁶ The IMF supported the country's goal of developing the private sector and international trade. The IMF also respected the government's simultaneous efforts to lobby for the key reforms featured in the Fourth Five-Year Development Plan.³⁹⁷

III. The Future of U.S. Business in a Promising Region and a Global Economy

A. Expanding Business Interests Through Mutual Understanding and Credibility

As Middle Eastern nations implement economic and legal reforms aimed at liberalizing their trade policies and attracting foreign investors, the region as a whole benefits from the fruits of the global economy in the form of social and political stability. Consequently, major Middle Eastern trading partners such as the EU and the United States continue to take advantage of these expanding economic opportunities and create long-term stakes in the region. Yet transitioning to a global marketplace should be

390. *See id.* at ch. 10, art. 92.

391. *Id.* at ch. 10, art. 94.

392. *See Free Trade Zones, supra* note 382.

393. *Id.*

394. *IMF Concludes 2004 Article IV Consultation with the Islamic Republic of Iran*, International Monetary Fund Country Report No. 04/109, available at <http://www.imf.org/external/np/sec/pn/2004/pn04109.htm>.

395. *See id.*

396. *Id.*

397. *Id.*

second nature for nations with deep roots in a history of trade since the threads of the silk trail connected continents and people over centuries ago. Such history has thus laid the foundation for the current growth and economic revival in the region. For the most part, the nations of the Middle East have addressed new legal issues regarding trade and commerce much like the “ulama” pragmatically and through general consensus, addressed rising issues outside the confines of the Shari’a hundreds of years ago. Today, this sense of cultural pragmatism and flexibility has fundamentally assisted these nations in adjusting to political instability, reforming their economies, and seriously competing in the global marketplace.

In 1997, an International Monetary Fund Official stated:

Remarkable changes are taking place in economic attitudes and policies in many Middle Eastern . . . countries. These changes reflect a switch to a strategy that, instead of trying to protect economies from the rest of the world, seeks to take advantage of opportunities offered by participating in the global economy.³⁹⁸

Many in the region and abroad predicted grim economic consequences on the Middle Eastern economies following the U.S. invasion of Iraq. The nations of that region responded cautiously to the Iraqi conflict³⁹⁹ in order to prevent economic instability. Yet, many of the largest exporters in the region saw their incomes increase by nearly 30%.⁴⁰⁰ This includes Saudi Arabia, whose government achieved a surplus of \$12 billion and a balanced budget.⁴⁰¹ The All-Arab Index, which tracks the share prices of 79 stocks in 12 Arab countries, grew 50% in 2003.⁴⁰² The IMF also predicted that economic growth in the region following the war would be around 5% for most Middle Eastern countries.⁴⁰³

Since the Iraqi invasion, the United States has sought to actively increase trade and investment in Middle Eastern nations in order to ease the strains of political instability in the region. By creating Trade and Investment Framework Agreements (TIFAs), Bilateral Investment Treaties (BITs), and Free Trade Agreements, the United States has sought to

398. Stanley Fischer, *Economic Reform and Growth: Progress and Challenges in Middle East Countries*, 20 MIDDLE EAST EXEC. REP. 4, 9 (1997).

399. George Abed et al., *International Monetary Fund Press Briefing on the Economic Outlook in the Middle East and North Africa*, Sept. 18, 2003 (noting that these measures included tightening of fiscal accounts, adding to reserves, and undertaking economic reforms to ease dependence on energy sector). Transcript available at <http://www.imf.org/external/np/tr/2003/tr030918a.html>.

400. See *Improving?*, *ECONOMIST*, Jan. 3, 2004, at 32 (discussing the pre-war apprehension in Middle Eastern nations regarding the possible negative economic consequences of the Iraqi invasion and revealing the actual positive post-war economic gains achieved in neighboring countries).

401. *Id.*

402. *Id.* Reports indicate that following the end of the Iraqi invasion, Kuwaiti shares doubled in value, Saudi Arabia’s increased by 74%, and the Cairo exchange gained 60%. *Id.*

403. Abed et al., *supra* note 399. The Middle Eastern region in this report is said to include Pakistan, Afghanistan, Iran, and all twenty-one Arab countries including the Palestinian territories. *Id.*

enhance its economic stake in the Middle East in order to improve long-term diplomatic relations and stability in the region.⁴⁰⁴ Since launching the Middle East Free Trade Initiative, the Bush administration has signed Trade and Investment Framework agreements with Saudi Arabia,⁴⁰⁵ Egypt,⁴⁰⁶ Kuwait,⁴⁰⁷ Bahrain,⁴⁰⁸ the United Arab Emirates,⁴⁰⁹ Qatar,⁴¹⁰ and Oman.⁴¹¹ Trade and Investment Framework Agreements are intended to protect investors and intellectual property, and promote commercial transparency and efficiency.⁴¹² The United States also views TIFAs as a way to promote investor confidence in the signatory's markets and expand American exports to that market.

Currently the United States' only free trade agreements in the Middle East are with Israel and Jordan, although it has begun free trade negotiations with Bahrain and Morocco.⁴¹³ The recent U.S.-Bahrain FTA Congressional Caucus, which should be complete by the end of 2004, is aimed at expanding export opportunities for American farmers, workers, and businesses.⁴¹⁴ Since the beginning of trade agreements with the United States, Bahrain has joined the WTO Information Technology Agreement, committing to zero tariffs in computer and telecommunications. It has also taken steps to implement the World Intellectual Property Organization Internet treaties, liberalized its telecommunications market, and passed legislation promoting transparency in its commercial and legal systems.

404. United States Trade Representative, *Middle East Free Trade Initiative*, available at <http://www.ustr.gov/new/fta/Morocco/2004-03-02-middleeast-factsheet.pdf> [hereinafter *Middle East Free Trade Initiative*]. The Middle East Free Trade Initiative outlines the Bush Administration's regional plan for economic growth and trade relations in the Middle East. Measures taken by the Administration to achieve this agenda include establishing Bilateral Investment Treaties and Free Trade agreements with nine Middle Eastern nations, and supporting Saudi Arabia, Lebanon, and Yemen in their attempts to achieve WTO accession.

405. *Id.*

406. *Id.*

407. Press Release, United States Trade Representative, United States and Kuwait Sign Trade and Investment Framework Agreement (Feb. 6, 2004), available at <http://www.ustr.gov/releases/2004/02/04-06.pdf>.

408. Press Release, United States Trade Representative, Zoellick Joins Launching of U.S.-Bahrain FTA Congressional Caucus (Mar. 3, 2004), available at <http://www.ustr.gov/releases/2004/03/04-16.pdf> [hereinafter Press Release, Bahrain FTA Caucus].

409. Press Release, United States Trade Representative, United States and United Arab Emirates Sign Trade and Investment Framework Agreement (Mar. 15, 2004), available at <http://www.ustr.gov/releases/2004/03/04-18.pdf>.

410. Press Release, United States Trade Representative, United States and Qatar Sign Trade and Investment Framework Agreement (Mar. 19, 2004), available at <http://www.ustr.gov/releases/2004/03/04-23.pdf>.

411. Press Release, United States Trade Representative, United States and Oman Sign Trade and Investment Framework Agreement (July 7, 2004), available at http://www.ustr.gov/Document_Library/Press_Release/2004.

412. See *Middle East Free Trade Initiative*, *supra* note 404.

413. *Id.*

414. Press Release, Bahrain FTA Caucus, *supra* note 408. The U.S. Trade Representative reports that American goods exported to Bahrain in 2003 totaled \$509 million. American agricultural commodities such as U.S. meats, fruits, vegetables, cereals, and dairy products would also benefit from the Agreement. *Id.*

Additionally, the United States has worked to expedite accession to the WTO with nations such as Saudi Arabia and Lebanon. The Bush Administration hopes that such initiatives will eventually lead to the establishment of a Middle East Free Trade Area by 2013.⁴¹⁵ The United States is attempting to create this Free Trade Zone by actively supporting WTO membership for countries like Saudi Arabia and Lebanon, and helping current Middle Eastern WTO members implement trade agreements.⁴¹⁶

Experts agree that increased trade and investment in the Middle East will facilitate growth, job creation, and a dynamic economy that no longer depends on oil. To realize these goals, Middle Eastern nations are reaching out to the world community and brokering ties by way of trade and investment integration. Such ties have recently gained momentum in the form of Free Trade initiatives and agreements with the EU and United States, and will inevitably foster greater diplomacy and mutual understanding, thus creating diverse international stakes in a region that will over time be a stabilizing force in a landscape often vulnerable to the international appeal of its gas and oil industries. However, liberal trade and investment agreements must be accompanied by a thorough and mutual understanding of the rich history, culture, and diverse economies that compose the Middle East.

The ABCGC works with the United States Chamber of Commerce and American businesses to assist and support the expansion of trade between American and Middle-Eastern businesses.⁴¹⁷ The ABCGC was established in 1989, and has since assumed the role of promoting American business in the Gulf Region.⁴¹⁸ The ABCGC is an affiliate of the United States Chamber of Commerce and composed of nine American Chambers of Commerce operating in the Gulf region. The ABCGC represents more than 750 U.S. companies conducting business in the Gulf. This voluntary organization has sought to improve American economic relations with the GCC countries by encouraging trade, investment, cross-cultural exchange, and mutual understanding.⁴¹⁹

Recognizing the dynamic trade opportunities available in the Middle East is a major step towards improving business relations with those nations. Growing competition from Europe and Asia requires American businesses to understand the cultural and legal background in the Middle East. Further, fostering trade and investment in the region is fundamental to restoring stability in the Middle East and ultimately bolstering the American economy.

415. *Id.*

416. Remarks by U.S. Trade Representative, Robert B. Zoellick, Global Trade and the Middle East: Reawakening a Vibrant Past, The World Economic Forum, Dead Sea, Jordan, (June 23, 2003), available at <http://www.ustr.gov/new/index2003.shtml>.

417. American Business Council of the Gulf Countries, *Promoting America's Business Interests in the GCC*, available at <http://www.abcg.org/about.html>.

418. *Id.*

419. *Id.*