Report on the Legal and Regulatory Framework for Corporate Governance in the Republic of Yemen

Yemeni Businessmen Club
Center for International Private Enterprise

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Supported by the Middle East Partnership Initiative

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1. Introduction

1.1 Background

The Yemeni Businessmen Club (YBC) and the Center for International Private Enterprise (CIPE) are working in partnership to address the growing need to improve the corporate governance environment and practice in Yemen. The objective of the project is to raise awareness about corporate governance and provide the tools and knowledge to improve corporate governance practices in Yemen.

CIPE engaged KPMG Yemen to assist it in preparing a study of the legal and regulatory environment in Yemen as it pertains to corporate governance. This piece of research, along with a survey of corporate governance practices of the Yemen business community conducted by the Yemen Polling Center (YPC), will provide background information for voluntary "Corporate Governance Guidelines for Yemen Private Companies".

The Task Force on Corporate Governance was established in February 2008, which includes 25 members from the public and private sector. The objective of the Task Force is to bring together key stakeholders in government, the business community, academia and media in order raise awareness about the importance of corporate governance, increase technical knowledge and expertise on corporate governance best practices, conduct research and baseline studies, explore policy reform, and develop a manual of guidelines to improve corporate governance application in Yemen.

This initiative comes as part of an ongoing partnership between the Center for International Private Enterprise (CIPE) and the Yemen Businessmen Club (YBC) to advance corporate governance in Yemen. The two-year project is funded by the Middle East Partnership Initiative of the U.S. State Department.

About the Yemen Businessmen Club (YBC)

The Yemeni Businessmen Club was established in 2002 as a not-for-profit, non-governmental organization to bring together young businessmen to advocate for greater economic reform and freedom in Yemen. YBC is consulted by the Yemeni Government regularly regarding private sector issues. Elections for the board of directors at YBC are held every three years and membership currently stands at 104. The YBC sustains itself entirely through membership dues and contributions. Since inception the YBC has concentrated on building its infrastructure and membership base. Since 2007, YBC has taken a prominent role in efforts to raise awareness and promote the application of corporate governance in Yemen.

About the Center for International Private Enterprise

The Center for International Private Enterprise (CIPE) is one of four core institutes of the U.S. National Endowment for Democracy and a non-profit affiliate of the U.S. Chamber of Commerce. CIPE seeks to strengthen civic institutions supporting democracy around the globe by encouraging private enterprise and market-oriented reform.

Corporate governance is one of CIPE's eight key program areas. CIPE seeks to enable improved corporate governance through institutional development to promote transparency, fairness, accountability and responsibility in both the public and private sectors, which are foundational to a diverse, healthy private sector.

Ownership

1.2 Objectives

The objectives of this study are as follows:

- Conduct a comprehensive review of relevant laws and regulations to gauge compatibility with core corporate governance principles;
- Document instances in the laws that either uphold or contradict principles of corporate governance;
- Evaluate the impact of these laws and regulation on general business environment;
- Review judicial framework as it relates to these principles; and
- Make recommendations about what should be changed or added to bring the legal framework into compliance with international best practices of corporate governance, e.g., the OECD Principles of Corporate Governance.

1.3 Scope of Work

This study examined relevant provisions of the current Commercial Companies, Commercial, Banks, and Income Tax Laws, and where relevant, certain related laws and current practices reflecting the actual implementation of these laws, to answer the questions below:

1.3.1 Legal and Regulatory Framework

- What are the laws and regulations that pertain to the functioning of companies?
- Are corporate governance principles covered by these laws and regulations – where are the gaps?
- What inconsistencies exist among various laws?
- Outside of legal mandates, what kind of business ethics guidelines exist?
- What is the role of the judicial system in upholding laws and effectiveness of courts?
- How are foreign investors treated by courts and regulators?
- What is the degree of compliance with the taxation system, and what are the principal reasons for tax evasion?
- Is the insolvency system effective?
- What is the nature of insolvency rules, and do they favor debtors or creditors?

1.3.2 Supervisory Authorities

- What institutions monitor company behavior and how effective is the monitoring?
- What is the role of regulators in banking, securities, insurance, and pension funds?
- What is the quality of supervision and coordination among entities with oversight over companies?

- What kind of actions or punishments are taken against companies that violate laws or regulations?
- What are the requirements for company registration?
- What documentation is required by companies (such as by-laws, list of board members, financial information) and do companies actually comply with the requirements?

1.3.3 Legal Requirements for Companies

1.3.3.1 Board of Directors

- What companies are required to have a Board of Directors?
- How is the role of the Board of Directors defined (setting corporate strategy, setting the annual budget, business plans, etc)?
- How does the Board relate to managers and shareholders?

1.3.3.2 Shareholder rights

- Does the law guarantee shareholder rights and protect minority shareholders?
- How is ownership transferred?
- How are dividends determined and distributed?

1.3.3.3 Disclosure and transparency

- What are the requirements for disclosure of financial and non-financial information?
- To whom are disclosures made and are there mechanisms to enforce the requirements?

1.3.3.4 Accounting and auditing

- What accounting and audit standards are required and how do they compare with international standards? Are internal and external audits required?
- Is action taken against companies that disclose inaccurate accounting information?

2. Executive Summary

2.1 Legal and Regulatory Framework

Yemen has a small economy, dominated by informal businesses and sole proprietorships. Governance considerations in such an environment mainly apply to the small number of very large entities, principally joint stock companies, public sector companies, and very few large foreign branches.

Yemen's laws are a patchwork of relatively simple laws with few contradictions, but many exceptions created by one law overriding another over time. Laws emphasize formal compliance more than practical control. Laws of importance to this study include the Companies Law, Commercial Law, Income Tax Law, and various sector specific laws, notably the Banks Law.

Yemen's laws, although less than comprehensive, are not the weak link in Yemen's regulatory framework. No culture of compliance exists in relation to secular laws. Widespread non-compliance, combined with weaknesses in the court system, and limited enforcement authority on the part of regulators all mean that even strong laws cannot be effective.

Yemen's bankruptcy law is effective, and favors creditors to such an extent that bankruptcy is avoided at all costs, since it typically means the end of the bankrupt entity.

2.2 Supervisory Authorities

Similar to its laws, Yemen has a patchwork of regulatory bodies overseeing business. The most prevalent of these is the Ministry of Industry and Trade (MIT) which has oversight over most forms of private sector business entity. However, its role is mostly formal, with limited monitoring powers and very little enforcement powers.

Revenue collection authority is logically centered in the Ministry of Finance, which has broader powers of collection and enforcement with clear authority, but limited resources in an environment where voluntary compliance rates are low. Tax reforms in Yemen aim at simplifying and lowering the cost of compliance to encourage it voluntarily.

The Central Bank of Yemen has primary regulatory authority over banks, in addition to its various other roles in government and public finance. It is the single most effective independent regulatory body in Yemen, with fairly strong regulatory and monitoring powers. The Bank's main weakness is similar to other institutions in that it lacks strong tools for enforcing regulations and forcing violators into line.

The oil sector is regulated by the Ministry of Oil and Minerals. This Ministry's primary concern is promoting production and resulting revenues, rather than broader public interest matters.

Supervisory requirements for companies outside of the banking sector are very limited with little corporate governance impact.

2.3 Legal Requirements for Companies

Board of Directors are required only for joint stock companies. Boards represent shareholders directly and are effectively able to control management, limited only by their competence. Board compensation must be defined by the shareholders within legal limits, and disclosed to the shareholders each year. Directors are the top tier of management; independent Directors do not exist.

Majority shareholders' rights are guaranteed by law. Minority shareholders have limited rights beyond their voice and vote in the General Assembly, access to information, and their share in any dividends and right to sell their shares.
Specific requirements for disclosure and transparency are practically non-existent outside the banking sector. Yemen lacks not only accounting and auditing standards, but even standard setting bodies with authority to establish rules of any kind. Only the banking sector in terms of Central Bank regulations has an established accounting standard framework, and some requirement for auditor competence.

Only Directors and management of joint stock companies are subject to limited formal related-party restrictions and disclosures. Controlling shareholders can effectively override these restrictions. Banks are subject to an adequate system of related-party restrictions and disclosure requirements, but enforcement is weak.

2.4 Conclusions

Yemen's corporate governance system is limited to guaranteeing the rights of major shareholders, with no real consideration of the broader concept of stakeholders. Major gaps include:

- Clear rules and enforcement powers for relevant regulators;
- A unified, comprehensive regulatory framework for business;
- Minority shareholder rights; and
- Accounting and auditing standards.

3. Legal and Regulatory Framework

3.1 Background and Local Business Environment

Corporate governance is the system by which businesses are directed and controlled. Corporate governance defines how business owners ultimately control the relationship primarily between themselves and management, but also with other stakeholders, which might include employees, Government and regulatory bodies, customers, suppliers, and the general public. The emphasis of corporate governance is on responsibility and accountability of owners and management to other parties that may be affected by the consequences of their actions.

Consequently, although corporate governance principles may be applied to almost any type of organization, their emphasis is on larger, public interest entities. These typically include all publicly traded companies, but also entities with a large impact on external stakeholders such as banks and other financial institutions, public utilities, communications and media enterprises, regardless of their ownership. Very large private entities with broad influence and larger public sector entities should also be subject to corporate governance considerations.

Yemen has a relatively small economy, roughly comparable in overall size to the city of Charlotte, North Carolina, but much less diversified. Economic activity, management, investors, and infrastructure all tend to be simple and unsophisticated. Concepts such as governance, stakeholders, and transparency are not even part of public discourse. Yemen has no financial markets, a very limited financial services sector, and overall economic activity is dominated by a handful of sectors, with oil, agriculture, trading, government, and transportation together comprising more than 75% of the total economy.

Yemen's private business sector is dominated numerically by sole proprietorships, which range from small businesses with no non-family employees, to very large, prominent businesses across all of Yemen's less regulated sectors, particularly trading. Partnerships are also fairly numerous, although they are overwhelmingly medium to smaller trading or service sector entities. Because these are all owner-managed businesses, corporate governance is not generally a consideration. Ownership and management are typically controlled by individual Yemenis or families.

Capital companies represent a relatively small segment of the economy, but a much larger share of medium to large enterprises. These are overwhelmingly limited liability companies (LLCs), most often controlled by a single family, but established either for ease of transferability, or the activity being subject to some regulation that requires it, or to legally insulate a business licensed under the Investment Law or subject to other tax exemptions, from the unrelated taxable activities of the same principals. As the size of these businesses increases, so does the likelihood of non-related or even foreign shareholding. To the extent that LLCs are also typically managed by a controlling shareholder, corporate governance considerations would not apply. However, a very large LLC or one with significant minority shareholding would certainly benefit from good corporate governance.

Joint stock companies (JSCs) are relatively few in number (only a few hundred in all), but represent many of the largest enterprises in Yemen, particularly in the more regulated sectors that require them, or where third party capital may be sought, e.g., insurance companies, banks, large private telecommunications operators, and other large entities with foreign investors and technical input, particularly in manufacturing and real estate. These larger public or public interest enterprises are the primary focus of traditional corporate governance.

Yemen's public and mixed sector, including a small number of state-controlled JSCs and LLCs, controls perhaps one-quarter of Yemen's largest enterprises, a legacy of Yemen's early state-dominated economic development. These include one fourth of Yemen's banks, insurance companies, the main airline, three telecommunications operators, public utilities, a variety of transport and manufacturing entities, and a few heavy industrial companies engaged in activities including cement, and oil production, refining, and distribution. Most of these enterprises were previously State monopolies, although today only the utilities and wireline telecommunications have not been opened up to private competition. However, most of these larger entities meet the definition of public interest entities, and by definition have separate ownership and management that should in principle be subject to corporate governance rules. Governance in Yemen's public sector is usually very poor.

Branches of foreign companies are the smallest segment of the business sector numerically, but include a number of very important entities, including five banks, twelve oil and gas production operators, numerous oil exploration and service entities, and a handful of significant construction sector contractors. These companies are domiciled elsewhere, so their shareholder rights are irrelevant to Yemen. The parent entities are typically subject to much greater regulation in their home markets, and therefore tend to be more aware of their obligations to other stakeholders than strictly local entities. Unfortunately, some multinationals take advantage of Yemen's less regulated environment to ignore stakeholder considerations, so governance quality at foreign branches varies widely.

3.2 Governing Laws

Business in Yemen is controlled by a somewhat uncoordinated patchwork of laws. This lack of a comprehensive framework, combined with chronological precedence and a tendency to have laws about one subject modify laws concerned with another creates confusing exceptions to many rules, and a need to consult indirectly related laws before forming an opinion about legality or rules. Special laws or rules applying to particular sectors of activity also create exceptions both in terms of specific rules, and extending to assignment of regulatory responsibility.

Most relevant laws are individually rather simple and limited in scope. Formal regulations, such as registration and compliance requirements, and fees, are emphasized more than actual controls over corporate conduct. Most laws also have related executive regulations that typically restate provisions of the laws and include additional administrative details.

3.2.1 Principal governing laws

The principal relevant laws regulating business entities in Yemen are as follows:

- Republican Decree of Law no. 22 of 1997 concerning Commercial Companies (the Companies Law) as amended by Republican Decree no. 15 of 1999, Law no. 12 of 2001, Law no. 28 of 2004, and Law no. 37 of 2008 is the primary law governing all forms of private and mixed sector companies across all industries. It is also the primary reference law for corporate governance.
- Branches of foreign companies are subject to Republican Decree of Law no. 23 of 1997 concerning the Organization of Agencies and Branches of Foreign Companies and Establishments (the Branches Law) as amended by Law no. 16 of 1999, permitted for specific activities, which includes only very limited regulatory provisions.
- Sole proprietorships, as well as commercial companies and foreign branches are subject to Republican Decree of Law no. 33 of 1991 concerning the Commercial Register, as amended by Republican Decree Law no. 31 of 1997, Law no. 14 of 1999 and Law no. 10 of 2002, which includes no governance related rules.
- Public sector entities are subject to Republican Decree of Law no. 35 of 1991 concerning Public Corporations, Authorities and Companies, as amended by Republican Decree Law no. 7 of 1997, as well as typically being established by a specific founding law or decree, which serves the same purpose as the articles of association of a commercial company.
- Banks are subject to either Law no. 38 of 1998 concerning Banks or Law no. 21 of 1996 concerning Islamic Banks, which define among other matters governance rules for commercial and Islamic banks respectively. These rules are modified frequently and extensively by Central Bank of Yemen (CBY) circulars issued from time to time, in terms of Law no. 14 of 2000, as amended by Republican Decree no. 21 of 2003 concerning the CBY. All banks are also subject to various other laws, including anti-money laundering, electronic transactions, and deposit insurance. These laws include some other matters related to external stakeholder rights.
- Insurance companies are subject to Republican Decree of Law no. 37 of 1992 concerning Supervision and Control of Insurance Companies and Brokers (the Insurance Law) as amended by Law no. 9 of 1997.
- Law no. 22 of 2002 concerning Investment governs all projects and companies licensed via the General Investment Authority, and effectively modifies the applicability of other relevant laws with respect to those entities.
- Oil exploration and production activities in Yemen are all governed by Production Sharing Agreements (PSAs) which are ratified by and have the full force of law. Mineral exploration and production is also subject to its own legal regime.
- All commercial activities in Yemen are subject to Law no. 31 of 1991 concerning Income Tax, as amended by Law no. 13 of 1996 and Law no. 12 of 1999.
- Relationships between various commercial entities and certain third party stakeholders are governed by certain provisions of Republican Decree of Law no. 32 of 1991 concerning the Commercial Law, as amended by Law no. 6 of 1998, Law no. 22 of 2004 and Law no. 1 of 2008. Other third party matters are governed by certain provisions of Law no. 14 of 2002 concerning the Civil Law. The relevant provisions of these laws govern matters such as contractual relations between parties and bankruptcy.

3.2.2 Inconsistencies in laws

Actual inconsistencies or contradictions in laws are rare in Yemen because of a general reliance on chronological precedence. Most laws include a blanket statement cancelling all provisions of earlier laws that conflict with it. This provides legal clarity, so long as the latest amendment is known.

Where ambiguities exist, they are usually due to poor use of language. Very occasionally, an amendment is made to one provision, without modifying other related provisions. However, once laws have been implemented and a base of practical interpretation established, there is little doubt unless a court challenge is made.

Exceptions due to sector related laws are a larger problem, for example some provisions of the Companies Law are overridden by provisions of the Banks, Insurance, and Investment Laws, and each of these establishes separate regulatory jurisdiction for the companies subject to those laws. Many of Yemen's tax laws are effectively modified by the Investment Law, and laws governing oil and mineral activities.

We are not aware of any current inconsistencies or contradictions in laws related to corporate governance, except for those created by Law no. 1 of 2008 amending the Commercial Law to permit non-Yemenis to engage in trading activity without a Yemeni partner, and the related Cabinet Decree that ordered modification of relevant existing laws to eliminate all limitations on foreign ownership of Yemeni companies.

Previously, Article 28 of the Commercial Law required 51% Yemeni ownership of all trading activities, while the Companies Law continues to require that a majority of directors of a joint stock company be Yemeni, unless an exception is specifically authorized by a Cabinet Decree, and the Executive Regulations to the Companies Law further require that a 51% majority of capital of Yemeni companies be held by Yemenis. The Insurance Law exceptionally specifies a minimum 75% Yemeni ownership for Yemeni insurance companies.

At the same time, the Investment Law permits unrestricted foreign ownership of activities licensed under that law, which do not include trading, banking, insurance, oil and minerals. The Branches Law permits licensing a (by definition 100%) foreign branch to engage in specific activities, including banking, oil and minerals, manufacturing, and a wide variety of contracting and services.

In line with the intent of the Cabinet Decree, the CBY recently permitted a foreign bank to acquire a controlling stake in a Yemeni bank JSC. We therefore consider it likely that any serious investor would now be approved to either establish or acquire control of a Yemeni company even outside the scope of the Investment Law, although this continues to contradict current law.

3.2.3 Extra-legal business ethics guidance

Yemeni business is not subject to any codified ethical guidance. Some foreign entities and perhaps a handful of local ones have private codes of conduct, but there is no agreed-upon ethical framework. This, combined with a relative lack of regulation of any kind creates a strongly "buyer beware" oriented business environment.

A high priority for any investor is the identification of reputable, honest business partners. These do exist, but this is generally driven by the personal character of owners or management rather than by any written code.

3.3 Regulatory System

3.3.1 Compliance and enforcement of laws

Arguably the greatest weakness of Yemen's legal system has nothing to do with laws themselves, but with low rates of compliance and weak enforcement.

Yemen's culture is dominated by tribal and Islamic influences. Although the tribal "code" of honor is unwritten, its rules are well understood and very widely adhered to. Certain elements of written Islamic law (shari'a) are also widely known and honored.

In contrast, the State and its secular laws are relatively recent innovations that are not widely understood or respected, unless enforced forcefully and consistently. Civil and criminal laws that do not overlap with tribal or Islamic law are considered unimportant and may be ignored if there are no practical consequences. In practice, this means that the prominent and powerful may be free to ignore some laws, and ordinary people will comply only if a representative of the State is watching them. This is readily illustrated by almost complete ignorance of and total non-compliance with traffic laws, except in locations where traffic police are present.

For purely civil or administrative matters such as Companies law, penalties normally consist solely of fines, in amounts that may be immaterial to any successful businessman. This may make compliance practically unnecessary. The primary effective means of enforcement of such administrative matters in Yemen has proven to be requiring documentary proof of compliance with one regulation as a condition of renewal of another document such as a license that the holder may require in order to obtain future business. Although this does ensure formal compliance, many administrative processes are subject to a high degree of corruption, such that it is often as cheap or cheaper to make an unofficial payment to obtain the required document, than to actually comply with the law.

3.3.2 Court system

Yemen's court system is widely regarded as inefficient, subjective in its judgments, and highly prone to extra-judicial influences. Procedures are very bureaucratic, with an emphasis on formal requirements more than the substance of justice. Judges are educated almost solely in Islamic jurisprudence, and therefore may be ignorant of how to rule in matters related to purely secular civil law. Extra-judicial influences may include corruption, but who the parties are will usually far outweigh the relevant facts of the case.

Commercial disputes may sometimes be resolved through commercial courts. Official arbitration via the Yemen Center for Arbitration and Conciliation, or unofficial arbitration by selecting a committee of judges, businessmen, political figures or Government officials to resolve disputes are also possibilities that may produce more rational outcomes. Any of these approaches are likely to be practical for businesses that have strong, well-connected Yemeni partners. Official arbitration is the best option for a foreign party or a Yemeni of no particular influence.

As with the laws themselves, enforcement of commercial court or arbitral judgments, particularly those involving seizure or claims against assets legally owned by others may be difficult or impossible, or may depend upon the enforcement means available unofficially to the parties themselves. An influential local party (e.g., a locally controlled bank) often can obtain enforcement. However, police and other security forces are unlikely to act against anyone well-connected where only property is at stake. Hypothecation and other commercial claims against property are not as well respected as beneficial ownership rights.

On the other hand, rights of ownership are genuinely respected by both law and practice. What is owned outright is unlikely to be seized by others, whether Governmental entities or third parties. A majority shareholding in a company confers strong rights inside Yemen over immovable property. Also, rights over financial assets held by licensed financial institutions will also generally be handled according to law.

Moveable fixed asset rights can be somewhat weaker. No one is likely to seize them, but a foreign owner's ability to move them or take them outside the country might be restricted in case of a commercial or tax dispute.

In general, foreign businesses should not rely on resorting to any legal system to guarantee their relations with Yemeni business partners, suppliers or customers. A foreign entity cannot generally prevail against any local party, unless unofficial influences are involved. Local businesses' ability to take advantage of the court system will tend to depend on the strength of connections and relative power of the two parties to a dispute, more than the actual merits of the case.

As a practical matter, resort to foreign law or jurisdictions provides no practical value when one or both of the parties is based solely in Yemen, because Yemen is not a signatory to any international conventions for enforcement of judgments. If a party has no foreign assets or interests that may be affected by a judgment in the foreign jurisdiction, the judgment will have no meaning.

Foreign or local businesses may more dependably rely upon commercial rather than legal vehicles to guarantee their rights, such as commercial banking instruments. Sales transactions to Yemen can better be done on a letter of credit basis. Other commercial transactions may be subject to bank or other commercial guarantees. Insurance policies also function as in other countries. And ownership rights in Yemen are respected.

Other commercial means of enforcing rights include the ability to withhold technical support, captive supplies, or captive sales channels required by the other party.

Credit risks related to local customers may be managed in Yemen by means such as selling on a cash or letter of credit basis, use of deposits or guarantees, and very strict credit limits.

Similarly, a minority interest in a project or business may protect its rights by retaining control of management under contract, or control of critical supplies, or of sales channels and relations to customers. The ability to withhold required inputs, or to move product and withhold collections related to sales may typically provide the leverage required to maintain good relations in case of dispute between partners.

The overall commercial risks related to doing business in Yemen are not unreasonably high, but the means of managing those risks should rely more on commercial mechanisms than on resort to courts of law.

3.3.3 Regulatory bodies

Regulatory agencies in Yemen in general have issues similar to the court system in terms of efficiency, competency, and integrity. However, they do tend to be somewhat more even handed in their treatment of Yemenis as compared to foreigners, in part due to official pressure to treat investors appropriately. Agencies that deal frequently with foreigners are more likely to be even handed than those that do not.

Influential or well-financed parties are effectively favored over smaller players in terms of service. Fees or other payments demanded are often at a level that is low enough to be irrelevant to a large investor, but may be an entry barrier to a small local businessman. To the extent that influence or corruption are factors, these will tend to apply equally to all parties.

We do not know of a case where a substantial foreign investor has been deprived of his rights extra-judicially or in violation of local law. There was one highly publicized dispute recently between a foreign company and the Government at the end of a long-term contract, which was subject to international arbitration in Paris. Although the ruling was nominally in favor of the investor, because Yemeni legal procedures were honored fully, the investor was awarded nothing beyond his legal costs.

3.3.4 Compliance with taxation

Poor compliance with tax laws is a major problem for Yemen's Government. 75% or more of Government revenues comes from oil earnings, and the Government wants badly to increase non-oil revenues to reduce its exposure to reductions in oil revenue.

Yemen has had the most compliance success with taxes collected at source. Yemen's economy is dominated by import trade (virtually everything except a portion of food and energy is imported), and Customs points of entry are de-facto the most important point of revenue collection. In addition to collecting Customs duties, General Sales Tax (GST) and income tax in advance are collected at the Customs' points of entry as a condition of clearing goods into the country. This captive compliance yields over half of Yemen's total non-oil revenue.

As noted above, most of Yemen's businesses are small sole proprietorships. Certain important sectors, notably agriculture, fisheries, and oil and gas are exempt from profit tax (corporate income tax) by law. In addition to the above sectors, all entities below YR 50 million in annual sales (approximately US$ 250,000) are also exempt from registration for GST purposes.

Smaller taxable entities typically either do not have, or claim to not have formal books of account. In terms of Article 70 of the Income Tax Law, this permits the Tax Authority to collect income tax on a lump-sum assessment basis. This may be based on gross turnover when known, but in many cases it is simply by estimation, meaning agreed between the taxpayer and the tax reviewer. These small businesses will typically pay Zakat on a lump-sum basis as well, if at all. Aggregate Zakat revenues equal only around 5% of income tax revenues. Such entities will not typically comply with salary tax, social security, or Vocational Training Fund (VTF), and are small enough employers that they do not merit greater attention from the relevant authorities.

Generally, a larger business must comply formally with applicable taxes, meaning declarations must be filed and something paid in order to obtain clearances and renew the entity's tax card, which is required for official tenders, and may be required by private sector clients as well.

However, except for a handful of very large entities or public JSCs that are subject to publication of audited financial statements, the effective profit tax rate is likely to be far below the statutory rate, either because of underreporting of income, or overstatement of expenses, many of which may be due to related party transactions. Entities such as banks, insurance, and large telecommunications companies are the only ones unlikely to be able to avoid payment of a fair share of profit tax.

Large telecommunications and medium to large manufacturing entities are likely to pay GST on a more or less statutory basis because they have good control over their sales revenues. However, virtually all of Yemen's trading sector has refused to comply with GST pending the outcome of two court challenges to the law, which have proceeded very slowly. Medium to small service sector entities may avoid or evade GST in a variety of ways, from barter transactions to offshore payment, to simply failing to register and file declarations.

Medium to large employers have more difficulty avoiding attention from authorities in relation to salary tax or social security, but under declaration of salaries is commonly used to reduce the burden of these taxes. VTF is commonly avoided by simply not filing.

Even Customs collections are subject to some under-declaration of quantities or values, although procedural reforms have made this less of a factor at the largest points of entry, resulting in steady gains in revenue even as nominal tax rates have declined.

Foreign entities, because of their relative size, lack of connections, and public profile are more likely to receive attention from various revenue authorities in case of non-compliance. Even so, many foreign entities try to evade compliance, rationalizing that they can "get away with it" in Yemen. As practical matter, tax evasion is cheaper in the very short term, but becomes increasingly expensive over the longer term.

The most common approach to evasion is for a short to medium term contractor not to register in Yemen at all, and hope to avoid notice. Non-resident contractors have historically been subject to withholding tax, but since the compliance and payment obligations lie with their Yemeni clients, the rate of compliance has been very low. If authorities identify a substantial unregistered contractor doing business in Yemen, they will typically assess applicable taxes, and if the contractor does not comply, may block the departure of personnel or removal of temporarily imported equipment to force compliance.

Resident foreign entities may neglect compliance and use illegal payments to avoid official attention, but as noted above, this becomes very expensive over the long term, and compliance ultimately becomes difficult to avoid because the pressure on authorities to collect more revenue continues to increase. Even withholding taxes tend to be assessed against resident foreign entities.

3.4 Bankruptcy Law

One third of the Commercial Law is devoted to bankruptcy and insolvency rules. Bankruptcy is effective in Yemen, and generally favors debtors over creditors, although it may be catastrophic to both if the party facing bankruptcy might be able to pay its debts if allowed to continue to operate.

Bankruptcy in Yemen is typically initiated by the court as a consequence of a creditor debt collection suit or foreclosure proceeding, or as a result of a liquidation procedure where claims of creditors clearly exceed available assets. Bankruptcy is relatively rare in Yemen, since it is usually a better deal for the largest creditors to allow the entity to continue operating in the hope it will be able to settle its debts.

Bankruptcy normally results in either total liquidation of the bankrupt entity, or seizure of all major assets in settlement of debts. Bankruptcy as a means of protection from creditors in order to continue operating and reorganize is not really provided for in the law, thus bankruptcy is never initiated by management. Management would be considered responsible for the bankruptcy, and therefore could not continue in their posts. The receiver responsible for managing through the bankruptcy will be appointed by the court with input from major creditors, and possibly the shareholders.

A bankruptcy process might last anywhere from a few weeks to a couple of years, depending upon the complexity of the situation and the variety of creditors.

During the bankruptcy process, any interest on debts ceases to accumulate. Also, since Yemeni courts will rarely award interest because of Islamic prohibitions, previously accumulated interest may be written off, unless assets can be seized and sold to compensate.

Typically, secured creditors have first claim on the assets hypothecated as security. Suppliers of goods then have a claim on non-hypothecated goods, e.g., inventory sold by them but not yet paid for by the bankrupt purchaser. Assets not belonging to either of the above two categories, i.e., owned outright with no specific liens, will be sold as part of a liquidation to settle debts.

Claims of the Government are limited to the last two years' unpaid taxes, and are included with other unsecured creditors, typically ahead of suppliers, but behind major lenders.

The priority of claims on available cash is typically immediate obligations to employees first, debts to secured lenders where either the security may not be seized or does not satisfy the full amount of principal, unsecured loans from financial institutions, other third party unsecured loans, taxes and dues to government authorities, various suppliers unable to seize assets such as inventory, or whose full debt is not satisfied, miscellaneous creditors, related party creditors, and shareholders last. However, these priorities (other than employees) are not clearly fixed in the law, and as with other court proceedings, the prominent and powerful are likely to be favored over others, e.g., calling their debts and obtaining partial settlement before the bankruptcy judgment is announced.

For banks, Article 61 of the Banks Law specifies a different priority with the Central Bank first, followed by depositors, then taxes, then one month's salary for employees, and other liabilities last.

4. Supervisory Authorities

4.1 Principal Regulatory Authorities

As business is regulated by a patchwork of laws, a variety of regulatory authorities share responsibility for entities according to the laws that govern them. The major regulatory bodies related to corporate governance are as follows:

- All forms of private business entity are regulated to some extent by various departments of the Ministry of Industry and Trade (MIT), which licenses and regulates all forms of company, as well as foreign branches, and commercial registration.
- In contrast, public sector entities tend to be controlled solely by the Ministry that "owns" them, with no real independent supervision except for the entities which are established by an independent founding law. A few larger revenue generating commercial type of entities may also be supervised by the Ministry of Finance. All public sector entities are also subject to periodic audit by the Central Organization for Control and Audit, the governmental internal audit agency.
- Banks are overseen by MIT with respect to matters of Companies Law, but by the CBY with respect to most other matters.
- Insurance companies are regulated principally by the Insurance Department within MIT.
- Projects licensed under the Investment Law are regulated by the General Investment Authority (GIA). However, a company licensed at MIT is regulated by the usual department of MIT, and a company licensed at the GIA will be regulated by the branch of the MIT companies department at the GIA offices.
- Oil and mineral exploration and production entities are regulated primarily by the relevant departments of the Ministry of Oil and Minerals.
- Revenue collection matters are regulated primarily by the Tax Authority within the Ministry of Finance. The Directorate for Taxes on Major Taxpayers oversees income tax and GST on larger and foreign entities, with local branch offices overseeing other businesses. Customs is also within the Ministry of Finance. Zakat is managed by its own authority, as is VTF within the Ministry of Labor, and Social Security in the Ministry of Social Insurance.

4.2 Regulator Roles and Power

The most important limitation on regulators in Yemen generally is a lack of statutory enforcement powers. Many types of violations may be subject only to fines of nominal importance to large entities, or denial of license renewals or other paper documents that may not necessarily impair operations.

In addition, entities large or important enough to be considered public interest entities are usually controlled by very influential persons that regulators may be afraid to embarrass.

When a problem becomes substantial enough and public, then regulators may be pressed into appropriate action by political authorities, but these actions may not strictly be supported by written regulations. This can lead to protracted legal challenges, or legitimate concern on the part of investors as to whether they could be at risk of punitive action for reasons not strictly related to compliance.

4.2.1 Banks

Banks are by far the most heavily regulated entities in Yemen, and the CBY is almost the only governmental entity that resembles a typical independent regulatory agency in its oversight powers. The CBY also doubles as a central bank and treasury, issuing and managing currency and reserves, and acting as a banker to the government.

As a regulator in practice, the CBY has broad power to issue regulations governing the banks, monitor their compliance, but comparatively weak enforcement authority. The CBY Law actually limits the CBY's regulatory authority, but in practice the CBY sets a wide variety of rules by issuing circulars which are binding on all banks, including the following matters:

- Minimum capital and capital adequacy requirements;
- Required reserves in both local and foreign currency to be held at the CBY in relation to deposits accepted from the public;
- Establishing minimum and/or maximum rates of interest payable on deposits or permitted on loans;
- Establishing limits on various categories of bank assets, including asset concentration restrictions within limits defined by statute, related party restrictions, and limits on certain categories of investments or loans, usually expressed in relation to regulatory capital;
- Defining rules for making statutory provisions for past due and non-performing loans; and
- Defining financial reporting and auditing standards applicable to banks.

The CBY also subjects all banks to regular inspections at a variety of levels, preparing detailed audit reports, and recommending or demanding (in case of regulatory violations) corrective actions. Although the professionalism of bank examiners varies, particularly when it comes to more sophisticated aspects of banking such as risk management, the CBY has invested substantially in training, and their reports do provide useful information about the quality of bank management, at least from an administrative, fiduciary and regulatory perspective.

However, as noted above, the CBY's statutory punitive powers are very limited. A number of local banks routinely are found to be in violation of various rules, e.g., having less than the required minimum capital, lending to a single group of entities in excess of the statutory asset concentration limit, or violating rules concerning related party transactions. These violations can be determined by simply reading the banks' published audited financial statements. Yet the same violation may occur year after year.

In the case of Yemen's only recent bank failure, bank examiners reported problems at the bank almost from inception. However, it seems that the CBY did not believe it had the authority to intervene in the way that was required. It was not until the bank had already effectively collapsed that the CBY was permitted to take over the failed bank. This was already too late for depositors who lost most of the value of their deposits. This failure was one of the drivers for Yemen's establishment of its new deposit insurance system.

The only legal grounds for forced receivership in the Banks Law are if the bank is being liquidated, or "if its repeated failure to comply…threatens the interests of depositors." Article 43 of the Law does provide for seizure in cases of non-compliance, inadequate capital, or unsound or illegal conduct, but as noted above, no bank has ever been seized for these reasons.

4.2.2 Other financial institutions

Insurance companies are regulated by the Insurance Department within MIT. The Insurance Law specifies a minimum level of capital, 10% of which must be deposited with MIT. Otherwise, regulatory requirements on insurance companies are minimal, as is regulatory oversight. Most of Yemen's insurance companies are very small, with underwriting risks heavily (around 90%) reinsured abroad, and little investment income.

Insurance companies deal almost exclusively in commercial property and casualty insurance. Yemen has a small life insurance sector, and insurance companies do not act as depository institutions or investment companies. Therefore the public interest in their stability is much more limited, i.e., only important in a major catastrophe, or limited to the value of the current year's premiums paid,

Money changers and money transfer agents comprise the rest of the financial sector. Yemen has no private pension funds, no leasing companies or other non-bank financial services firms, no organized stock or bond markets, no public investment companies or brokerages, and with the exception of a single class of common shares for every joint stock company, and a handful of corporate bonds, no marketable securities.

4.2.3 Oil and minerals sector

Oil and mineral operators are regulated by the Ministry of Oil and Minerals (MOM). The private sector consists overwhelmingly of branches of foreign companies, where governance considerations do not apply. MOM's primary role is to represent the government's interests, primarily revenue, but secondarily employment and other matters, in this sector. MOM both oversees the sector and facilitates its work, in order to ensure a stable flow of revenue into government coffers.

4.2.4 Other companies

MIT oversees companies and has licensing, monitoring and very limited enforcement powers, all established by law. It has practically very limited rulemaking authority, and mainly exists to implement and monitor the application of the Companies Law and related laws.

The applicable laws define very limited governance rules, e.g., shareholder rights, requirements for directors, annual meetings, recordkeeping, reporting, and audit.

As noted above, most of MIT's powers relate to formal matters, e.g., whether audited financial statements are submitted, not the content or quality of the statements. Consequently, MIT can do nothing about problems that do not constitute formal violations of law. Even for formal violations, penalties are generally limited to fines. MIT can refuse to renew licenses or register share transfers, which in certain cases may be used to prod action on compliance issues.

4.3 Documentary Requirements

4.3.1 Company licensing

Partnerships require only a Company Memorandum, including the identity of partners, name, location, type, term and objective of the company, the capital and shares of each partner, identity of managing partners, and any other agreed upon terms.

LLCs require Articles of Association and an Incorporation Contract, which must include legally prescribed content similar to a partnership, but also defining matters such as the powers of the General Assembly and managers, also in accordance with the Companies Law. The latest amendment to the Companies Law abolished any minimum capital requirement.

Both partnerships and LLCs may have a minimum of only two partners (LLCs may have a maximum of 30), and must pay up capital in full before licensing. LLCs are licensed by Decree of the Minister of Industry and Trade.

JSCs require a more complicated Articles of Association, including a Board of Directors separate from day to day management, have a required minimum capital of YR 15 million and a minimum of five shareholders, with no upper limit on either, but only 20% of required capital need be paid up upon incorporation. Public companies have a higher minimum capital (currently YR 50 million), prospectus publication requirements, with a bank acting as a subscription and sale agent. Upon close of public subscription, or licensing of a closed JSC, there must be a founding general assembly to approve the company's Articles, report on the incorporation, elect directors, and appoint auditors. This Assembly is followed by the Minister (or Prime Minister for a public company) issuing the licensing decree.

Foreign branches must submit only documentation describing the parent company, proof of authorization to form a branch and appointing a manager, and proof of a "capital" deposit of US$ 30,000 at a Yemeni bank.

All documentation required shall be certified by the Chamber of Commerce and the Yemeni Embassy of the original country and translated into Arabic language.

4.3.2 Company reporting

All companies must have founding documents as described above.

Partnerships are supposed to have formal books of account. Any change in the Company Memorandum, ownership or management must be submitted to MIT for recording and legalization. However, unless they have "commercial accounting books" and declare tax on the basis of accounting profit, there is no audit requirement.

LLCs and JSCs are supposed to have an MIT official attend all General Assembly meetings to legalize the proceedings, and submit copies of the approved minutes to MIT. Therefore, any change in Articles, capital, directors, or for LLCs, shareholdings is registered with MIT, and does not take legal effect until this has been done. The limitation of legalization of these matters is the principal reason that companies feel compelled to comply with the law ultimately, if not always on a timely basis.

JSCs are further required to file an annual return with MIT including identities of and regulations related to Directors, and securities (shares and bonds) holdings of Directors, the General Manager, the auditors, and their immediate family members.

All capital companies (LLCs and JSCs) and foreign branches are required to prepare annual financial statements audited by a locally licensed chartered accountant, both for statutory purposes and in support of their tax declarations. Compliance with this requirement varies as much as compliance with the tax laws. Larger, more visible entities are more likely to be compliant than smaller ones.

5. Legal Requirements for Companies

5.1 Boards of Directors

Only JSCs are required to have a Board of Directors, with three to eleven members. All Board members must be shareholders holding at least 2% of the shares of the JSC, i.e., independent directors are not permitted. This minimum shareholding is deposited as a guarantee of the director's responsibility. Directors are elected by the General Assembly.

LLCs may have from one to seven managers. When multiple managers are appointed, they may function similarly to a Board, but there is no requirement, nor is it even contemplated that there will be some body in between the day to day operational managers and the partners.

The Board has all powers necessary to manage the company, other than those reserved for the General Assembly by law or by the Articles. Unless specifically permitted in the Articles, the Board may not mortgage or sell Company assets, take out term loans in excess of three years, or release debtors from their liability.

The Board should establish internal rules and regulations to organize its own work, and define the authority and duties of employees within limits defined by law and the Articles of Association. The Board may expressly delegate its authority in relation to specific tasks or matters to one or more Directors, and may establish committees to oversee specific areas of management.

Compensation of Board members, including the Chairman, is limited to that provided for in the Articles of Association, and Directors are expressly prohibited from obtaining any other compensation from the Company in relation to additional work performed. By law, Directors may be compensated by a percentage of distributable net profits of up to 10% in aggregate, by a fee per meeting, or a fixed monthly stipend. Directors are in practice usually compensated, with the specific amount defined each year in the Annual General Assembly, based on the Board's own recommendation, which should be within the limits defined by law and in the Articles of Association.

All amounts of any kind received by the Directors from a JSC, including their compensation, the compensation of retired Directors, and end-of-service benefits, must by law be disclosed in the Board's annual report to the shareholders, to be delivered to shareholders at least fifteen days before the annual General Assembly meeting. Directors' compensation must also be disclosed in the financial statements of banks in Yemen, and financial statements prepared in accordance with International Financial Reporting Standards. Other than for banks, there is no applicable local standard.

The Board's relationship with managers is a matter of the style or business culture imposed by the dominant shareholders. In companies with professional management, or where a director or trusted relative of the shareholders is in charge, the Board may be less active. If the level of trust in management is lower, the Board may be more controlling. How active the Board is also varies according to directors' levels of competence. Most directors in Yemen do not necessarily have professional management backgrounds or a good understanding of what their role should be.

The Chairman or Deputy Chairman of the Board is expressly permitted to serve as General Manager, although other members of the Board may not. Employees other than the General

Manager may also serve on the Board. Any employee of a JSC may be invited to attend Board meetings on a non-voting basis, and it is quite common for members of senior management to attend Board meetings to provide information and answer questions of the Directors.

In the same way that independent Directors do not generally exist, there is no fixed division between the Board and executive management, unless a division is specifically defined in the Articles of Association, by shareholders agreement or resolution, or by the Board itself. By law, the Chairman is responsible for "day-to-day management" of a JSC, including signatory authority, representing the company, hiring, firing and supervision of employees. The powers of the General Manager of a JSC are not defined in the law. Managers of entities not having a Board, e.g., LLCs and foreign branches, are specifically defined by law.

The relationship between directors and shareholders is more clear cut. Major shareholders or their direct delegates normally serve as directors, and answer directly to the shareholders that appoint them. Yemeni Boards are by definition responsive to the principle shareholders they represent.

5.2 Shareholder Rights

5.2.1 Major shareholders

Rights of major shareholders are effectively guaranteed by Yemeni Law, as follows. The Companies' Law permits only a single class of shares, and no restrictions on voting, participation in the General Assembly in person or by proxy, or dividend rights of paid up shares is permitted at all. All shares are legally equal, and control of a simple majority of shares ensures the ability to pass any ordinary resolution in an ordinary General Assembly.

Control of a three-quarters majority confers an unassailable power to call and pass resolutions in an Extraordinary General Assembly, including increasing or decreasing the capital or amending the Articles.
Voting rules effectively mean that any major shareholder can obtain one or more seats on the Board, thereby having a direct voice in day-to-day management.

5.2.2 Minority shareholders

Minority shareholders have very limited rights, particularly in a situation where a single block of related shareholders control an absolute majority of capital. If there is no dominant block, shareholders with seats on the Board will tend to run things, and those without Board representation will effectively have more limited rights.

A group of shareholders controlling more than 25% of capital can request calling an Extraordinary General Assembly, and block resolutions to change the Articles or capital, but relatively little else. A group controlling 10% of the capital may demand calling a General Assembly meeting, request a motion to dismiss Directors, or demand a secret ballot in the General Assembly, but little else. A group holding 5% may request inclusion of items on the agenda of the General Assembly. A shareholder must hold a minimum of 2% to serve as a member of the Board (4% to serve as Chairman). These minimum shareholdings must be deposited in a bank as security and may not be disposed of while the shareholder remains on the Board.

The principal absolute legal rights of small shareholders include:

- To receive a share of dividends, or a share of residual assets in case of liquidation;
- To dispose of, pledge or hypothecate the shares at will, and priority to subscribe to any new issue of shares;
- To attend, speak up, and vote in General Assembly meetings, including asking and receiving answers to questions from the Board of Directors or auditors, debating and expressing opinions, having his or her statements recorded in the minutes of the General Assembly, and representing other shareholders by proxy;
- To receive all required documents, e.g., the Board report and financial statements, fifteen days before the General Assembly, and to appoint another shareholder to represent him or her by proxy;
- To examine the books and records of the JSC at its head office; and
- To request and obtain access for a statutory fee to all public record official filings related to the JSC at the Ministry of Industry and Trade, which include company formation and license related documentation, Board and General Assembly minutes, Board reports and internal regulations, annual audited financial statements, and filings disclosing the holdings of securities (shares and bonds) in the company by the Board, management, auditors, and their immediate family members.

There are no special regulations concerning disclosure of control arrangements and structures, beyond that would normally be disclosed in the financial statements and Board reports. However, control provisions contrary to the Articles of Association or Companies Law are expressly prohibited, including any provisions that would restrict or modify the rights of shareholders detailed above.

Ownership of most Yemeni companies, even JSCs, are dominated by one or two prominent business families. Genuinely widely held companies do not exist. However, many public or closed JSCs have a number of smaller shareholders who act as passive investors. When a company is dominated by a single family holding 51% or more, even a 20% dissident shareholder may have no real influence, other than making noise and recording their opinions at Board and General Assembly meetings.

5.2.3 Transfers of shares

Once the first year's audited financial statements have been published, shares of a JSC may be freely transferred. Bearer shares do not even require recording of the transfer. If shares are registered, the transfer need only be recorded in the company's share register.

In a closed joint stock company, the Articles and shareholders' agreement may place restrictions on the sale of shares to third parties, providing a first right of refusal to the other existing shareholders. LLCs are always subject to such a restriction by law. However, if a third party offer is not matched by an existing shareholder, the shareholder is always free to sell his share.

5.2.4 Dividends

Dividends are payable as long as the company has retained profits, after setting aside the statutory reserve, any optional reserves specified by the Articles, based on a resolution of the General

Assembly. In practice, many companies distribute all distributable profits, although well managed capital intensive businesses may retain all or part of earnings to fund growth.

Dividends are distributed strictly in proportion to shareholdings.

5.2.5 General Assembly meetings

Every JSC is required by law to have at least one ordinary General Assembly (OGA) annually, held during the first four months of the year. An additional OGA may be held whenever called by the Board of Directors at their discretion, when requested by the auditors, or by shareholders holding 10% of the shares. When the Board fails to act on a legitimate auditor or shareholder request for an OGA, the Ministry of Industry and Trade (MIT) may call the meeting. The auditors also have a legal right to call an OGA whenever required by law.

OGA invitations must be published in an official daily newspaper, and should be sent by registered mail to all shareholders, including the agenda and all required attachments such as Board reports and financial statements, at least 15 days before the date of the meeting. MIT must also be invited to attend at least 10 days in advance of the meeting.

The minimum quorum for an OGA is half of total shares represented, although a higher minimum may be specified in the Articles of Association. If no quorum is achieved at an OGA, a second meeting will be called within 30 days, where 25% of shares will constitute a quorum. If a third meeting must be called, the third meeting will be valid unless no shareholders attend.

In addition to shareholders, a valid quorum of the Board is required to attend, as are the auditors. The Ministry also has a right be have its representative present to record the proceedings and authenticate the minutes. If an insufficient number of Board members attend an OGA, members absent without an acceptable excuse may be considered to have resigned.

All OGA resolutions must be approved by an absolute majority of shares represented in the meeting. The Chairman, his deputy, or someone designated by the Board shall chair the meeting. A shareholder chosen by the OGA may preside when a matter concerning the Chairman is under discussion. A secretary will be appointed by the OGA to record the proceedings.

An extraordinary General Assembly (EGA) may be called by the Board when required, or upon request by shareholders representing at least 25% of shares. The Ministry may call the EGA when the Board fails to act.

The quorum for an EGA must be at least two-thirds of total shares; one-third when the meeting must be called a second time solely because of failure to achieve a quorum. EGA resolutions must be approved by two-thirds of shares represented at the meeting, or by three-quarters to increase or decrease the capital, extend the term, or approve a liquidation or merger.

In other respects, an EGA is identical to an OGA.

5.3 Disclosure and Transparency

This is a major weakness of existing Yemeni laws, particularly in relation to the government's stated intent to establish financial markets. Existing laws specify very few requirements.

5.3.1 Financial statements

Article 149 of the Companies Law requires a "balance sheet, profit and loss account, a report on the Company's operations during the financial year, its financial position, and the method proposed for the distribution of the net profits." A JSC must also publish its financial statements, auditors' report, and a "comprehensive summary" of the Board's annual report in an official daily newspaper.

The Income Tax Law and related regulations (Article 13) require "profits or losses, audited by a chartered accountant … accompanied by copies of the final accounts, balance sheet, the depreciation statement prepared by the taxpayer, and a statement of the accounting principles upon which all the figures shown in the declaration are based." Minister of Finance Resolution no. 255 of 1999, Article 4, adds a requirement for "explanatory notes".

The Accountants Law, Article 49, requires audited financial statements to make reference to "accepted accounting principles", but does not define these.

Required non-financial disclosures are essentially the documentation requirements described above. Except for the banking sector (see below), very little in the way of specific disclosures is required from any company.

Enforcement of any requirement except the submission of financial statements in some form is a non-issue, since there are no requirements.

5.3.2 Board reports (JSCs only)

In addition to financial statements, the Board must report to the shareholders, before or during the OGA:

- The agenda of the OGA;
- A report on the company's operations during the year (contents not specified);
- Compensation and other amounts received by current or former Board members;
- Related party transactions and contracts as detailed below;
- Details of all amounts spent on publicity or as donations; and
- Complete minutes of the OGA, including any statements requested to be included by specific shareholders, must be provided to any shareholder requesting them.

5.3.3 Related parties (JSCs only)

All JSCs are subject to the following legal restrictions and disclosure requirements with respect to related parties:

- Directors are not entitled to any compensation except as authorized by the Articles of Association and approved by the OGA;

- No contract may be made in which a Director or manager has an interest without the approval of the OGA, unless the award was a result of winning a public tender;
- Directors may not vote in Board meetings or the General Assembly on any matters in which they have an interest, financial or otherwise;
- Directors and managers are prohibited from participation in any business or activity that competes with the company;
- Directors are prohibited from obtaining loans or guarantees from the company, except in the case of a bank, which may only grant credit on the same arms-length basis that it is granted to third party customers;
- Directors and managers must report the share- and bond-holdings of themselves and their immediate family members, and any changes in these holdings, to the Board at the earliest Board meeting following their appointment or the change in holdings;
- The Chairman must report any business or contracts in which a Director has an interest to the OGA, accompanied by a report from the auditors (this report may be included in the financial statements); and
- As noted above, the Board must report to shareholders in advance of the OGA all amounts received by Directors from the company, in cash or in-kind, including a description of their nature, and all business and contracts in which any member of the Board has an interest.

The law does not make any specific provision for disclosure of transactions related to shareholders, subsidiaries, or affiliate entities under common control, when these do not relate to a Board member in some way.

In addition to the above rules, banks are subject to additional Central Bank rules:

- Facilities granted to related parties must be granted on substantially the same terms as those granted to similar third party customers;
- Total credit facilities granted to any employee may not exceed one year's gross compensation;
- Total credit facilities granted to any non-employee Board member may not exceed 0.5% (one-half percent) of the bank's total capital plus reserves;
- Total credit facilities granted to any shareholder owning 5% or more of the capital is limited to 15% of the bank's total capital plus reserves;
- Total facilities granted to all related parties in aggregate must not exceed the bank's total capital plus reserves;
- Related party loans may not be written off without a court decree of bankruptcy, unanimous approval of the General Assembly, Central Bank approval, and the write-off will not be tax deductible as a loss;
- For Islamic banks, unsecured facilities may not be granted to shareholders; and
- In terms of Central Bank rules for financial reporting, banks are effectively subject to International

Financial Reporting Standards (IFRS) disclosure requirements with respect to all related parties, including affiliates. These requirements include disclosing the categories of related parties, the nature and volume of transactions, and an indication as to whether terms were arms length or more favorable.

As with other regulatory matters in Yemen, enforcement can be an issue. Some local banks have been known to regularly violate the restriction on aggregate facilities to related parties.

5.4 Accounting and Auditing

Yemen does not have any organized accounting or auditing standard setting bodies, any proper local professional examination, or any defined framework for accounting or auditing standards. External audits are required for LLCs, JSCs and branches, as noted above, but without any standards this requirement is somewhat meaningless. Internal audit in the comprehensive sense is not required at all by statute or regulation.

The one notable exception is the banks. The CBY many years ago established, with the assistance of consultants, a comprehensive reporting framework originally based upon International Accounting Standards. The current framework has departed somewhat from certain elements of International Financial Reporting Standards (IFRS), as the IFRS disclosure requirements related particularly to financial instruments and risks have gotten more complex, and as changes in the CBY framework have continued to lag behind the rapid recent changes in IFRS. However, a meaningful reporting framework does exist for banks in Yemen. Islamic banks are subject to similar rules, which consider the prevailing international standards applicable to Islamic banking.

For auditing, given the lack of any local standard setting body or system of monitoring and professional discipline, the CBY has established a very short list of auditors approved to audit banks. Every firm on the approved list is affiliated at some level with an international accounting firm, since it is believed that this affiliation guarantees some level of oversight by the "parent" firm or association, that both the CBY and the Yemeni Chartered Accountants Association lack the capability or authority to provide.

The CBY would report and might possibly fine a bank guilty of reporting violations.

Outside of the banking sector, there are a few specific disclosure items legally applicable to specialized entities such as oil operators or insurance companies, but no comprehensive reporting framework or system of standards exists beyond the very vague requirements of the Companies and Income Tax Laws mentioned above. The Yemeni Chartered Accountants Association along with COCA have conducted several meetings and conferences and have both promised to issue Yemeni Accounting and Auditing standards but so far that has not happened.

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