Business for the Rule of Law

CONSULTATION WORKSHOP REPORT

LOCATION:
United Arab Emirates, Dubai

DATE:
15 March 2015

HOST/FACILITATOR:
Baker & McKenzie
Part I: Executive Summary

1. UN Global Compact and Business for the Rule of Law Overview
   - The participants were keen to fully understand the true meaning of the rule of law and how to apply the concept to their businesses. Additionally, they wished to gain different perspectives from the private and public sectors and understand how global issues will impact laws in the UAE.

2. Business Support for the Rule of Law in Practice [Explained]
   - Although most participants understood what the rule of law meant in practice, it was more difficult for a few, as they initially instinctively focused on philanthropy. However, they grasped the concept once the business examples were given.

3. Business Case for Supporting the Rule of Law
   - Most participants felt that it was understood that companies needed to respect and comply with the rule of law in the UAE. Most participants felt that stakeholders in the UAE generally sought to comply with the rule of law.
   - It was noted that it was more difficult to persuade people to actively support the rule of law as most people equate this with philanthropy or charity, and cited the costs of such actions as something which is difficult to justify to shareholders of companies in the UAE.
   - Several participants commented that support for the rule of law is something that companies may choose to do during prosperous times as part of a broader charity / CSR initiative and that such expenditure will often be the first to be cut in tougher financial times.
   - This led the group to conclude that businesses would need something sustainable in order for the rule of law to become a cultural norm and to be upheld through all economic cycles, and that it was therefore imperative for any B4ROL initiative to be aligned to the organisation’s business and objectives.

4. Business Actions and Business Examples in Support of the Rule of Law
   - Participants were particularly engaged in this discussion and some very lively discussions broke out, both within the smaller discussion groups, and with the group as a whole.
• The proposed business actions were seen as relevant and useful to the Framework, and all agreed that it was a lot easier for businesses to respect and observe the rule of law, but a lot more challenging to proactively support the concept, for the reasons described above.

• Key themes discussed included the need: a) for governments and businesses to engage with each other and share the burden of implementing the rule of law; b) to raise awareness of the rights of all stakeholders in the UAE; c) to ensure training a wide spectrum of people; and d) for transparency, consistency, certainty and accountability.

• 5. Call to Action (to Business and by Business) to Support the Rule of Law
  • Collaboration between the government and the private sector is seen to be key to promoting the rule of law in the UAE.
  • The government should promote and support transparency, education / training, whistle-blower schemes, and adopt international standards.
  • Businesses can focus on sustainable activities aligned with their business objectives, and provide training in their work place, academia and in the society generally.

• 6. Mobilizing Business to Support the Rule of Law
  • The main obstacles from supporting the rule of law are seen to be lack of access to the legal system, undue influence/lobbying, and the lack of transparency.
  • The line between business and government is less defined in the UAE. This can make the partnership between business and government easier to establish, although doesn’t necessarily allow businesses the freedom to pursue their support for all aspects of the rule of law.

• 7. Any other comments or questions (including “quotable quotes” that may be included in the Framework)
  • Overall, participants felt it was a very useful exercise and were keen to understand the various UAE initiatives currently going on and see how good practice can be applied to their own business.
  • Participants were keen to continue the discussion and discussion was had regarding a follow up meeting or similar event.
Part II: Workshop Report

1. UN Global Compact and Business for the Rule of Law Overview

- Participants were asked to provide key words they associated with the concept of the rule of law. Responses included: Consistent standards, transparency in the legal system, no-one above the law, level playing field within the judicial system, consistently applied standards, enforcement of decisions, certainty, judicial independence, judicial integrity, judicial accountability, access to the law, predictability of laws.

- Participants were keen to gain fresh insight on global issues and impacts, and understand different perspectives from the private and public sectors, and different industries. They wanted to understand what and how the rule of law would impact the laws in the UAE, and to identify methods to better interface with the government in order to apply the rule of law in the conduct of their business.

- They also wanted to further understand the criteria to focus on in order to apply the rule of law appropriately.

2. Business Support for the Rule of Law in Practice [Explained]

- Most participants felt that it was understood that companies needed to respect and comply with the rule of law in the UAE. Most participants felt that stakeholders in the UAE generally sought to comply with the rule of law.

- It was noted that it was more difficult to persuade people to actively support the rule of law as most people equate this with philanthropy or charity, and cited the costs of such actions as something which is difficult to justify to shareholders of companies in the UAE.

- Several participants commented that support for the rule of law is something that companies may choose to do during prosperous times as part of a broader charity / CSR initiative and that such expenditure will often be the first to be cut in tougher financial times.

- This led the group to conclude that businesses would need something sustainable in order for the rule of law to become a cultural norm and to be upheld through all economic cycles, and that it was therefore imperative for any B4ROL initiative to be aligned to the organisation’s business and objectives.
3. Business Case for Supporting the Rule of Law

a. What does the rule of law mean in this country?
   - All agreed that it was important to ensure that a company was complying with/respecting the rule of law, but it could be hard to convince shareholders that it is more than just philanthropy and that it is good for the business.
   - Businesses need something sustainable that thus has a chance to become the cultural norm.
   - In addition, it was imperative that any B4ROL initiative is aligned to the business and its objectives.

b. How does business benefit when there is a strong rule of law? Alternatively, what challenges exist for business when the rule of law is weak?
   - All agreed that businesses are more effective in jurisdictions where there is a strong rule of law. It is very difficult to operate on a level playing field if you are struggling against corruption, lack of transparency and corporate governance and uncertainty.
   - Businesses can vote with their feet if the rule of law makes it too difficult for them to operate fairly or successfully in a particular jurisdiction - they can choose to invest elsewhere.

4. Business Action and Business Examples in Support of the Rule of Law

The four break-out groups discussed the issues below, looking at one business action (2-5) - Business Actions 1 and 6 were debated as a group:
   a. Explore the meaning of the business action and how it relates to business.
   b. Explore how the business action can be implemented by business by sharing an actual or hypothetical example.
   c. Are these the correct business actions to include in the Framework?
   d. Are there business actions that are missing from the Framework that should be included?

- **Business actions 1 and 2 - Respect and support accountability**
  - Education and training are key - the government should take responsibility to educate their citizens about the rule of law from an early age (e.g. university or high school). Businesses could use channels such as employee handbooks to educate their staff on the rule of law and use internal policies to ensure it is applied, e.g. requiring purchasing managers comply with anti-corruption obligations and observe and comply with the terms of legally binding contracts the business has with third parties.
The government should establish whistle-blower schemes that could reduce the risk of unlawful activities. It was noted, however, that some private companies may be too closely linked to governments, which can make this challenging.

The group felt that it was key for the government to engage and consult members of the public about this issue - government engagement on new laws (possibly sector focused) reduces the shock effect to business. Businesses in turn should provide comments on consultations and help identity issues that should be addressed. The UAE has significantly improved in this respect with new legislation being subject to extended periods of consultation with a wide range of stakeholders - e.g. the new Federal Commercial Companies Law (which was generally available in draft for several years prior to enactment) and the rules of the Abu Dhabi Global Market (which are available online for consultative feedback).

Again, education/raising awareness/training is key - governments and businesses should ensure visibility of legal rights (e.g. good translating of legislation from English to Arabic and vice versa), ensure the training of judges and advocates, and provide training and education through and university school curriculums. Greater transparency as to when legislation becomes effective would also be helpful.

Businesses could certainly play a role in promoting rule of law e.g. employers educating employees on their rights, businesses running workshops jointly with government entities, particularly in certain industries.

It is important to foster a culture of observance and support for the rule of law within an organization in order for it to be sustainable in the long term.

**Business action 3 - Support and encourage equal enforcement of the law**

Participants felt very strongly that there is a need for fundamental respect for commercial contracts and honouring of contractual agreements. Many participants felt that parties in the region are too ready to ignore the terms of contracts they have signed up to - often knowing that counterparties will do nothing due to the difficulty, cost and time required to enforce your rights under a contract in the UAE.

Several participants cited gaps in UAE legislation which would be addressed to help the business environment, including a new secure transactions law (covering liens, pledges, etc) and insolvency laws in the UAE (although both of these are expected to be issued soon).

It would be key to ensure that the laws are consistent throughout all the UAE states - with other Emirates developing their own systems of law, there is the possibility of conflict of laws and lack of uniformity. The UAE also has many free zones which make the legal landscape even more complex.
Participants thought it would be helpful to raise awareness among the UAE business community that businesses are not only subject to local laws, but can also be subject to international laws (e.g. the UK Bribery Act, FCPA, sanctions legislation, etc.).

Good translations are essential for all stakeholders to support and uphold the rule of law (from Arabic to English and DIFC laws from English to Arabic), as this leads to consistency in communication and application of the rule of law, and access and understanding by all. It was suggested that the private sector could fund a project on the proper translation of UAE laws - there are many translations available but they are often only 90% accurate.

All participants agreed that sustainability was key. For support to continue in the long term it must become integral to a business, e.g. large multinational companies who are strict about the suppliers they use.

One particular challenge for the UAE is the lack of taxation (there is no corporate or personal taxation, save for certain specific industries), as in other jurisdictions businesses can be incentivised to change their operations or culture through tax breaks.

At the end of the day, businesses can vote with their feet, e.g. by choosing one country over another if they are unhappy with the way the rule of law is (not) applied.

- **Business action 4 - Support access to justice initiatives**
  - Supporting the rule of law is more onerous than just respecting it, and any initiative needs to be core to the business’ objectives and activities, and sustainability must be ingrained in the business. An employee handbook, training of staff, CSR projects, code of conducts, etc, could all help but it needs to have top down management support to foster the right culture throughout the organisation.
  - Political issues are a challenge - e.g. minimum wages and workers rights are politically sensitive in the UAE.
  - Educating the public on their rights is important, e.g. Abu Dhabi Judicial Department’s online portal making law accessible and raising awareness (could be taken to another level by incorporating information from the private sector). Good translations of the law will aid understanding and awareness of rights and access to justice.
  - Participants felt that the UAE courts were advanced but that UAE laws may not be, particularly when you consider the various federal, Emirate level and free zone laws and the significant possibility of conflict between them.

- **Business action 5 - Respect applicable contract and property rights**
Participants felt it was important to have a well-drafted contract in compliance with the law of the elected jurisdiction which is respected by the contractual counterparties.

The group came up with practical examples as to how this respect can be enforced in practice - e.g. implementation of policies for employees and for contractors within the supply chain of the business; the importance of communicating the terms of contract to staff and having an individual in the company who can address follow up questions on the terms of the contract with anyone who is required to discharge the company's obligations under the contract; businesses should accommodate and encourage a forum for open discussion.

Participants sympathised with the difficulty faced by organisations that are not financially strong in adhering to these requirements as they face the inherent restriction of lack of income to invest in expensive legal counsel. It was suggested that law firms consider offering such services via pro bono work to smaller companies.

Participants underlined the importance of having legal counsel both at the start and throughout the term of the business in order to ensure laws/policies are updated and necessary amendments incorporated and the company notified (also important to work closely with legal counsel in order to implement these actions).

It was also essential to respect the outcome of any dispute, as well as the dispute procedure itself.

- **Business action 6 - Advocate business respect and support in business relationships**
  - The whole group discussed this and suggested that training others further down the supply chain could be an effective way to advocate business respect for the rule of law.
  - In addition, both government and business can attach conditions to aid/financing or investment in order to secure the application of the rule of law with those they do business with.

5. **Call to Action (to Business and by Business) to Support the Rule of Law**

a. **What are some concrete steps business can take to respect and support the rule of law?**
  - There was a general preference to focus on initiatives linked to the objectives of the company and not much wider due to sustainability reasons and the potential challenge of encouraging shareholders to invest and support initiatives so distant to
their own business. The group stressed that one needed to consider how/whether companies could justify participating in initiatives that are not necessarily in line with the main objectives of the business itself (i.e. for purely philanthropic purposes).

- Business can support the education of university students on the rule of law.
- Businesses can focus on corporate governance and anti-corruption - businesses can fight back against corruption.
- Businesses can provide diversity / positive work culture / sensitivity training to their employees.

b. What actions can other actors, including Government, academia and civil society take to improve legal institutions, access to justice, equality before the law, capacity building and other such action?

- All agreed that collaboration between the government and the private sector is key.
- The government can promote, support and enforce transparency (e.g. with procurement, disclosure of all transactions and conflict of interest, voluntary disclosure of financial information/accounts, etc.) and can also provide whistle-blower protection in the fight against corruption.
- Academia, government and business can educate all university students (not just law students).
- Everyone can aim to adopt international standards.

6. Mobilizing Business to Support the Rule of Law

a. What obstacles, if any, does your organization experience that prevents it from supporting the rule of law in this country or in any other country it has an interest in, such as investments, operations, business relationships?

- The participants expressed that the main obstacles from supporting the rule of law are lack of access to justice due to unfairness; undue influence/lobbying, and the lack of transparency (e.g. in procurements).

b. How can the UN Global Compact, and other actors, support business to take action in support of the rule of law (e.g. information sharing via webinars on specific rule of law topics, in-person events, leveraging online resources, strategic partnerships)?

- This was not discussed at great length, although participants were interested in learning more about the local UNGC network and the support the UNGC could provide.
on the ground. The focus of the discussion was more about what governments, academia and businesses could do to take action, as expressed above.

7. **Additional Comments, Suggestions or Questions**

[Workshop Report End]