

**Analyzing the Applicable Company Law in the West Bank of
Palestine in Light of the SOCIAL MARKET ECONOMY Principles**

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1. Introduction.

Both the legal and economic systems in Palestine are considered to be unique due to the exceptional circumstances which Palestine has experienced throughout history, alongside the different authorities which have been in control of it.

The applicable company law in the West Bank of Palestine which this paper will analyze is also a part of this unique system. Therefore, in order to understand the mentioned law and analyze it in light of the SME, the paper will firstly talk about (1.1. Palestinian legal system: a historic overview of company law). Secondly, this paper will be (1.2 defining the social market economy (SME)). Lastly, this paper will examine the (2. social market economy's criteria in connection with the applicable company law in the West Bank of Palestine).

1.1. The Palestinian Legal System: A Historic Overview of Company Law.

By 1517, the Ottomans conquered the historic land of Palestine and ruled it for almost five centuries. The Ottoman Empire's rule ended by 1918, when the British Empire extended its mandate to historic Palestine. Following the end of the British Mandate in 1948, the State of Israel was declared on the historic land of Palestine. The 1948 Arab-Israeli war then resulted in the systemic division of historic Palestine; the West Bank was placed under Jordanian control (Transjordan at the time) and the Gaza Strip was placed under Egyptian administration. However, the Arab rule over the Palestinian territories ended following the 1967 war, which resulted in the Israeli occupation of all the Palestinian territories.

In an attempt to settle the complicated situation, the Oslo I Accord was signed in 1993 between the Israeli government and the Palestinian Liberation Organization. The Oslo Accord led to the establishment of a Palestinian interim self-government, the Palestinian National Authority (PNA), with jurisdiction over Gaza and Jericho. The signing of the Oslo II Accord in 1995 extended the PNA's jurisdiction to almost 40% of the West Bank.

The territory of historic Palestine was subject to different legal and economic systems during the aforementioned periods. In regards to company law, various versions of this law were imposed during each period. During the Ottoman rule, external pressure led to the adoption of French commercial laws in the Ottoman Commercial Code, which regulated, *inter alia*, companies at that time. When the British Empire extended its mandate to Palestine, the Ottoman Commercial Code was replaced by the Palestine Companies Ordinance No.18 of 1929. During the Jordanian rule of the West Bank, the Jordanian Companies Law No.12 of 1964 was enacted, which was automatically enforceable in the West Bank². As Egypt administered Gaza Strip but did not annex it,

¹Companies Law No.12 of 1964 as amended by Decree Law No. (6) of 2008.

²In 1950, the Jordanian Parliament adopted a resolution which made the West Bank and East Jerusalem part of Jordan. As a result, all Jordanian laws were applicable in the West Bank and East Jerusalem.

only little Egyptian civil legislation was effective in Gaza Strip. As a result, many of the British Mandate commercial ordinances remain intact. As for the Israeli military occupation period, nothing was changed regarding the applicable company laws³. Although the PNA enacted many laws to regulate various sectors in the Palestinian territories, many laws which were in force prior to the establishment of the PNA are still effective today, such as the Companies Law No. 12 of 1946.

However, the PNA was and still is not completely free in the formation and enforcement of laws in certain areas. The Paris Protocol, which regulates the economic relationship between the PNA and Israel, restricts the PNA's ability in regulating the Palestinian economy⁴.

A country's company laws play an important role in shaping its economic system. Accordingly, this paper will primarily analyze the applicable company law in the West Bank in order to ascertain its applicability with the social market economy.

1.2. Defining the Social Market Economy.

As the paper's main object is to analyze the Companies Law No. 12 of 1946 and its amendments (hereinafter: "Companies Law of 1964") in light of the social market economy principles, it is essential to define this type of economy.

To begin with, the two main economic systems in modern societies are: (1) Capitalism⁵ - which is primarily based on the philosophy of market freedom - and (2) Socialism⁶. According to some scholars, only those two economic systems

³Legal Information Bank Unit of IoL at Birzeit University, *The Legal System and the Legislative Process in Palestine* (Birzeit University: Institute of Law at Birzeit University, 2008) 2-9.

⁴ The Paris Protocol ties the Palestinian economy to the Israeli one in a single customs union, which deprives the PNA the ability of controlling the rate of VAT and customs duties (important components of fiscal policy) for most goods and services. The protocol also retained the duty of collecting customs and added value taxes on the Palestinian imports in the hands of Israel. Moreover, the issue of a national currency is conditional on Israel's approval, which means denying the Palestinian Monetary Authority the use of most of the monetary policy tools which are necessary to guide the economy; see Nasser Abdel Kareem, *The Economic and Financial Situation in Palestine: An Evaluation of Policies and Performance* (unpublished paper, 2018), 2.

⁵Capitalism is a political and social system which its main features are:

- Individualism: individuals can own economic resources.
- Competition: political system emphasizes competition for resources as a means of increasing capital

⁶ Socialism is a political and social system which its main features are:

- Ownership of means of production: the state plans and produces goods, and either owns or redistributes resources among its citizens.
- Wealth distribution: the emphasis is on distributing wealth so that individual needs are met with collective capital.

To read more please refer to Andrew Walter, *Capitalism vs. Socialism Overview* (New York: Salem Press Encyclopedia, 2013) <<http://eds.a.ebscohost.com/eds/detail/detail?vid=1&sid=235d3c98-688d-4376-8ee9-d786ec28101c%40sessionmgr4007&bdata=JnNpdGU9ZWRzLWxpdmU%3d#AN=89158071&db=ers>>, Last access date 27/8/2018.

exist⁷. Others however, argue that the social market economy (hereinafter: “SME”) represents a third category of economic systems.⁸

According to Von Wogau, a combination between market freedom and socialism creates a whole new system (i.e the SME)⁹. In other words, “more socialism with more freedom”¹⁰ leads to the SME. In this sense, if one combines “the principle of market freedom with the principle of social balance” competition could be redefined as an instrument to achieve social goals¹¹.

Many scholars have attempted to provide a clear definition of the SME and to clarify its criteria. Although their definitions vary from one to another, all of them clearly agree that the SME system is not a transition from one form of economy to another¹². Furthermore, most of them agreed that the SME’s policy is based on market freedom, but at the same time, it includes elements of social balance¹³.

Building on the above-mentioned elements, several of the social market economy’s criteria could be inferred, such as, open markets; avoiding monopoly; stability of monetary policy¹⁴; protection of private property; freedom of contract, and responsibility of property and for decisions. Thus, in order to ensure competition and market freedom, all of these elements are crucial. Moreover, to achieve social balance, it is necessary to have social solidarity and a stable economic policy that leads to the establishment of people’s confidence in the existing economic system.¹⁵

1.3. Paper Scope.

This paper will analyze and examine the SME’s criteria in connection with the Companies Law of 1964. For this purpose, this paper will primarily focus on the Companies Law of 1964 as amended by the Decree Law No. (6) of 2008. Other legislation will also be analyzed in connection with company law when it is essential.

2. The Social Market Economy’s Criteria in Connection with the Applicable Company Law in the West Bank of Palestine.

⁷Misyef Jameel, MAS, “Social Market Economy”, Interview by Nisreen Dar Omar, MAS, August 31, 2018.

⁸Richard Stock, *European Network for Education and Training* (EU: European Network for Education and Training EUNET, 2011), 2.

⁹Karl Von Wogau, *Social market economy: In the EU, Social Market Economy History, Principles and Implementation – From A to Z*, Ed. Rolf H. Hasse, Hermann Schneider & Klaus Weigelt (Germany: Konrad-Adenauer-Stiftung, 2005), 398 – 401.

¹⁰Friedrun Quaas, *Genealogie der sozialenmarktwirtschaft Social Market Economy History, Principles and Implementation – From A to Z*, Ed. Rolf H. Hasse, Hermann Schneider & Klaus Weigelt (Germany: Konrad-Adenauer-Stiftung, 2005), 52 – 53.

¹¹Ibid.

¹²Mohamed Maan Diop, *Views and Trends on the Implementation of the Concept of the Social Market Economy*, Journal of Research and Scientific Studies (Syria: Tishreen University, 2008), 177.

¹³John D.Khalas, *The German Social Market Economy – (Style) A Model of the European Union* (Germany: Chemnitzm Technical University, 2006), 1212.

¹⁴Karl Von Wogau, *supra* n.9, 424.

¹⁵Mutasem Ismael, *The Social Aspect of the Market Economy in the Syrian Arab Republic* (Syria: Tishreen University Journal for Research and Scientific Studies (Economic and Legal Sciences Series), 2011) 134-135.

Companies play an important role in countries' economic systems, as the former provides the latter with economic services that affect the economic movement in general¹⁶.

This section will be divided into two parts; the first will discuss companies in the social market economy and their regulations. The second part will discuss the applicable company law in the West Bank in light of the SME principles.

2.1. Companies in the Social Market Economy.

A state that wishes to adopt a SME system must implement a certain set of market mechanisms and instruments. Accordingly, this means that the state must intervene and guide the market towards the desired social goals. This could be achieved through, *inter alia*, an efficient institutional, legislative and regulatory structure, and an effective economic and financial capacity to achieve a productive and balanced economy¹⁷.

One of the mechanisms that the state must use is "market institutions". Under this mechanism, the state must regulate the market and define the roles of market actors. Indeed, this mechanism is a necessary precondition for the function of a free market. As for social markets, it is argued that this mechanism is a priority for its function¹⁸.

Regulating the market mechanism and its institutions requires legislative tools, which means that a set of related laws must be imposed by the state, such as, commercial laws, company laws and competition laws¹⁹. Once these laws are implemented, the SME will stand in reliance on the market mechanism. Furthermore, this is the most efficient way to meet the demand from consumers for goods and services. On the one hand, the market mechanism will bring companies to increase productivity, expand, innovate and create jobs²⁰.

On the other hand, companies will have to think in political and social terms;^{21,22} meaning, companies must operate in a socially responsible manner since they are members of the society they are working in. Hence, they have social duties toward other members of their society.

In fact, the SME requires a considered assumption of responsibility starting from the level of personal attitude. This assumption applies to companies and to the activities of individuals in their capacity as managers, employees and consumers. Furthermore, the assumption of responsibility also applies to the functionality of social structures

¹⁶ Elyas Nassif, *General Provisions of Companies*, (without publisher, 1994), 5.

¹⁷ Nabeel Marzouq, *The Role of Market Mechanisms and State Intervention in the Social Market Economy* (Syria: Syrian Economic Sciences Association, 2005) 8.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ Speech by Commissioner Monti, *at the Conference of the European Parliament and the European Commission*. (Reform of European Competition law: 2000), 2.

²¹ Evangelical Church of Westphalia, *Re-modelling the Social Market Economy from An Ethical Standpoint* (Germany: Evangelical Church of Westphalia, 2007), 32.

²² Talal Abu Ghazaleh, *Values in Economic and Social Systems*, Freedom and Order for more Justice (Germany: Konrad Adenauer Stiftung, 2008), 26-27.

facilitating performance, competition and economic success²³. In this context, looking at companies as an important actor in the SME from a German perspective will be helpful.

According to Germans, the best companies are not always those which generate the highest profit, or more precisely, those with the highest return on capital invested. For this purpose, Germans use social achievements as a core element in a company's evaluation. Indeed, a company's success should not be viewed from a shareholder's perspective only²⁴.

Moreover, monopoly, environmental damage, employee exploitation, gender questions, tax evasion, etc. are sometimes argued to be the result of a free market economy, which lacks moral values and primarily operates to maximize profits²⁵. However, from a SME perspective, the "economic man" has been replaced by a "social man". As such, the function of a business is not limited to a market partner that offers the best product or service. Indeed, a business also functions as a social partner that cares and serves society in a broader sense²⁶.

To conclude, the German Politician Ludwig Erhard argued that it is "not the free market economy of the laissez-faire plundering of a bygone era ... but the socially responsible market economy that once again brings the individual to the fore, that places a high value on the person and that provides a fair return for work carried out, this is the modern version of the market economy ...". Thus, it could be argued that the main idea behind the social market economy is to protect the freedom of the economy and functioning competition, and at the same to foster prosperity and social security in a country²⁷.

2.2. The Applicable Company Law in the West Bank of Palestine and the SME.

Following the above discussion, this section will analyze the Companies Law of 1964 as amended by the Decree Law No. (6) of 2008 in light of the four main SME principles discussed in section 1.2, as these principles could be connected to companies' legislation.

Accordingly, this section will deal with the following principles:

- Freedom of contract.

²³Ibid, 23.

²⁴Ibid, 27.

²⁵ Ibid

²⁶Ibid

²⁷ Federal Ministry for Economic Affairs and Energy, "70 Years of Social Market Economy", August 16, 2018 <<https://www.deutschland.de/en/topic/business/social-market-economy-in-germany-growth-and-prosperity>>, last access date 29/11/2018.

- Principle of responsibility.
- Social solidarity.
- A stable economic policy that leads to the establishment of people's confidence in the existing economic system.

2.2. A. Freedom of Contract.

One may ask why this principle is classed as a SME principle since it is a liberal principle. However, it must be borne in mind that the SME appeared as a result of a need to search for a solution beyond capitalism and socialism (i.e a third way). Furthermore, it was contemplated by the SME's architects that this third way could give back the chance of rebuilding Germany's economy as a social economy with a moral dimension. However, this does not mean that the SME does not contain features from the two well know economic systems.

As mentioned above, the roots of this core principle go back to liberalism where governments should build a legal system that represents liberalism as a natural and an essential organization for life; it follows that this system should guarantee freedom of contract and protect it as a right by law²⁸.

In an economic system that considers private property as one of its core components, freedom of contract is essential for competition. Freedom of contract could be defined as the ability of market participants to conclude contracts free of any external restrictions. Moreover, freedom of contract is a crucial element in a competitive order because individual economic decisions have to be contractually secured in a decentralized manner²⁹.

However, freedom of contract is not free from limitations; contracts must not undermine or eliminate the order of competition, or offend public decency. Otherwise, violating contracts may be rendered void and unenforceable³⁰.

For Companies, this principle guarantees the mutual protection of all and increases competition, since this kind of freedom motivates them to make more achievements^{31 32}.

As for the Palestinian context, there is no applicable competition law which could be the reference in terms of regulating the freedom of contract. However, this does not mean that there is no other law which regulates this principle.

²⁸ Thomas Gutmann, *Some Preliminary Remarks On A Liberal Theory Of Contract* (Germany: University of Münster, 2013), 39.

²⁹ Konrad-Adenauer-Stiftung, *Freedom and Order for more Justice*, (Germany: Konrad-Adenauer-Stiftung, 2008), 19

³⁰ Ibid.

³¹ John.D.Khalas. *supran*.13.

³² In this context - "Freedom of Contract principle" and its connection to companies and SME- It is useful here to have a look at the Syrian experience of adopting the SME, where a decision that confirms the importance of company's financial and administrative independency, has been issued in the Country Conference in 2000, which means adopting and implementing the principle of freedom of contract; see Decision No. 82 of 2000, Al Baath Newspaper: No.12790, published on 24/8/2005.

Upon examining the Companies Law of 1964 in order to see if features of the principle of “freedom of contract” for companies could be found, the following texts are of relevance:

Establishing a Company. To begin with, establishing a company is a contract between the company’s founders themselves. Many articles emphasize this point in the Companies Law of 1964 such as Article 9³³, which states that the company *is a contract between two people or more*. Furthermore, Article 40³⁴ states that *to register a company you need to have an "establishment contract"*.

The Companies Law of 1964 allows people to establish a company by agreeing on a memorandum of association and bylaws which are contracts between the company’s founders themselves, and between the founders and the employees. Accordingly, the Companies Law of 1964 itself puts no restrictions on establishing a company, in a sense that new companies can enter the market to import and export goods. Furthermore, there are no restrictions on the amount of companies that can enter this market.

Practicing the Company Business. It is a legally established principle that the business activities of companies are governed by the contracts they are party to. The Companies Law of 1964 regulates companies’ relations with others in terms of responsibilities of the assignor that deals with others on behalf of the company (Articles 17-19), based on Article 104 of the MECELLE³⁵ (the applicable Civil Law in Palestine) which gives the company the right to make a contract as long as the subject is legal.

The PNA’s role in regards to contracts is primarily reduced to supervision; it does not interfere in contracts that company is a party to³⁶.

However, the PNA still has an intervention role, which could be exercised through imposing registration requirements on certain contracts such as franchise agreements³⁷.

All in all, the Companies Law of 1964 entitles firms to be self-interested economic actors and to maximize their profits. Companies, by law, can freely produce and compete in the market. However, such freedom is limited to the extent that it does not infringe upon another economic actor’s freedom.

The problem regarding the concept of freedom of contract is not with domestic legislation which regulates companies. It is rather the Oslo Accords and Paris Protocol which do not allow market participants to conclude contracts freely by imposing external restrictions on them.

³³Article 9 of the Companies Law of 1964.

³⁴Article 40 of the Companies Law of 1964.

³⁵MECELLE of 1876, Aref Ramadan collection: 0. 9/9/9988. 1.

³⁶Salam Abu Samra, Companies Department at the Palestinian Ministry of National Economy, “Social Market Economy”, Interview by Nisreen Dar Omar, MOE, October 25, 2018.

³⁷Law No. (2) for the year 2000 concerning the organization of the business of commercial agents, Palestinian Waqae newspaper: 32. 29/2/2000. 92.

Below are some examples³⁸:

- Palestinians cannot import or export from countries in which Israel does not have any political or commercial relations with.
- Palestinians cannot import many equipment for the service sector (eg electricity and telecommunications) without obtaining prior approval from Israel. In practical terms, Israeli authorities prevent Palestinian private sector enterprises from importing, installing or transferring equipment for the production of electricity and the telecommunications network without their consent.
- All crossings, borders, foreign investment, and commercial and individual movement to and from Palestine are fully controlled by Israel (except in Gaza Strip after 2007 through tunnels).
- Palestinian foreign trade is fully subject to Israeli standards and specifications. Investors, importers and exporters alike cannot trade in any goods that do not meet Israeli specifications.
- The expansion of the production base is limited to Areas A and B in the West Bank. Investors and the private sector are prohibited from extending their productive and commercial activities to Area C, the latter being 62% of the West Bank.
- The estimation of the needs of the Palestinian market and the quantities of imports of goods must be agreed between the two sides in accordance with Israeli standards and in light of the information and available details on consumption, production, investment, foreign trade, population growth and the rise in the rate of GDP and national income.

To conclude, the most prominent feature is the narrow margin of economic policy available to the PNA under the provisions of the Paris Protocol. Furthermore, these agreements established structural distortions in the Palestinian economy which began to accumulate with the Israeli occupation of the West Bank and Gaza Strip in 1967³⁹.

2.2. B. The Principle of Responsibility.

Responsibility in the SME is a social value which is essential for a healthy community. According to Ludwig Erhard, who is one of the founding fathers of the SME, “the inherent meaning of social market economy is to combine the principle of

³⁸Khader Qrrish, *The Palestinian Economy is a Victim of the Paris Economic Agreement*, (Palestine: General Union of Palestinian Economists, 2017)
<<http://www.gupe.plo.ps/article/25/%D8%A7%D9%84%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF-%D8%A7%D9%84%D9%81%D9%84%D8%B3%D8%B7%D9%8A%D9%86%D9%8A-%D8%A7%D9%84%D9%85%D8%AC%D9%86%D9%8A-%D8%B9%D9%84%D9%8A%D9%87-%D8%A8%D8%A7%D8%AA%D9%81%D8%A7%D9%82%D9%8A%D8%A9-%D8%A8%D8%A7%D8%B1%D9%8A%D8%B3-%D8%A7%D9%84%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF%D9%8A%D8%A9>>, last access date 25/10/2018.

³⁹Abdel Kareem, Nasser, *supra* n.4, 5.

freedom on the market with the principle of social balance and the individual's ethic responsibility for the common good"⁴⁰.

In an open society, freedom and responsibility are two inseparable terms. Without responsibility, freedom will degenerate to a state of non-commitment and undermine its own fundamentals. Obviously, Erhard gave a reason for his support of the SME, which has not lost its validity today⁴¹.

Responsibility means that each individual is responsible for his/her own actions and may be called to account for them. Furthermore, only those who are able to care for themselves will also be able to care for others⁴².

Social responsibility is an important topic in this context, which this paper will examine under the principle of solidarity, after discussing companies' regulated responsibility in the Companies Law of 1964.

Two layers of Responsibility should be analyzed in this context in order to understand what a company's responsibilities are and what they should be.

First, it must be emphasized that all individuals in society deserve solidarity and support from the government of their state. As such, governments must be active in regulating the economy so that it benefits society, as opposed to society benefiting the economy (i.e the elite).

Keynes supported governmental intervention in the economy as he did not believe in a pure laissez-faire approach. Indeed, Keynes believed that governments should intervene, although he also had some concerns regarding governmental intervention beyond necessary⁴³.

A government's role in the SME is extremely important to achieve social goals. However, this role should not contradict with the basic principles of personal responsibility and competition as it would destroy the very basis which creates "prosperity for all"⁴⁴.

Moreover, a company's ability to own means of production, possess private property and maximize its profits (self-interest) is underpinned by self-responsibility. As such, companies are obliged to achieve social goals without active governmental intervention. Furthermore, companies are responsible for means of production and their decisions.⁴⁵

By examining the Companies Law of 1964 and its amendments, in order to check if there are features of the principle of companies' responsibility, it could be observed

⁴⁰Konrad-Adenauer-Stiftung, supra n.29, 14-17 .

⁴¹Ibid

⁴²Ibid

⁴³Nicholas Wapshott, *Keynes Hayek: The Clash That Defined Modern Economics*; 1st Edition (New York: W.W. Norton & Company, Ltd) 1-206.

⁴⁴ The Social Market Economy in a Globalised World, Congress Document adopted by the EPP Statutory Congress Bonn, 9-10 December 2009.

⁴⁵Ibid.

that in principle, a company has its own personality pursuant to Article 5⁴⁶ of the Companies Law of 1964. Meaning, a company is responsible for all of its actions. However, the Companies Law of 1964 creates different categories of liability for companies as listed below.

- Limited liability company: shareholders are liable only to the limit of their shares in the company. The Companies Law of 1946 regulates this type of company in its articles, such as Article 39/2⁴⁷ which states that limited shareholding companies are divided into two types:
 1. Public Limited Shareholding Company: the Company is free of title and its capital consists of negotiable shares which are offered for public subscription. The liability of shareholders is limited to the amount of their investment in the company.
 2. Private Shareholding Company: a company whose capital is divided into shares that are not offered for public subscription. The liability of the shareholders is limited by the amount of their respective shares.
- Unlimited liability: a company whose partners are not only responsible to the limit of their capital contribution to the company. The Companies Law of 1964 regulated this type of company in its articles, such as Article 9⁴⁸, which defines unlimited liability companies as:
 1. General company: a company in which all partners are personally and severally liable for all of the company's debts and its contractual and legal obligations.
 2. General limited company: a company that includes two types of partners. One or more general partners are individually responsible for the company's debts and all its contracts and obligations. The second type of partners consists of one or more limited partners whose liability is limited to their capital investment in the company.

Companies' responsibility toward third parties: companies are always responsible for their acts even if they are not officially registered. According to Article 14⁴⁹ of the Companies Law of 1964, "Failure to comply with the registration and publication procedures shall not preclude the determination of the existence of the company or the emergency change thereof in favor of third parties or the report of the company's invalidity or change in favor of third parties. Moreover, those who do not register their company cannot benefit from their failure to comply with the registration and publication process, and each partner in this kind of company is jointly liable with his/her partner towards third parties.

⁴⁶ Article 5 of the Companies Law of 1946

⁴⁷ Article 39 of the Companies Law of 1946

⁴⁸ Article 9 of the Companies Law of 1946

⁴⁹ Article 14 of the Companies Law of 1946

Morally and ethically, those who are able to care for themselves cannot withdraw from their social responsibility toward members of society such as children, the diseased, the old who have to be cared for, and important institutions like the family that have to be given support⁵⁰. This leads to the next principle.

2.2. C. Social Solidarity.

According to the rules of social market economy, economic activity has to be value-driven. On the one hand, economic players always have to be viewed as a part of society and the individual takes responsibility for himself and the community. On the other hand, the community has to take responsibility for the individual should s/he be in need. In this contrasting context, the SME seeks a balance between freedom, responsibility, individual gain and public welfare⁵¹.

In other words, the SME's system's core idea, or main goal, is to create a balance between market principles and social responsibility principles, in order to create an integrated political, economic and social program. Furthermore, as confidence in the traditional liberalism system, which is based on supply and demand factors in the management of a market economy has diminished, the need for additional mechanisms to ensure social protection has emerged⁵².

Again, the SME is a political economic combination that goes beyond the market mechanism of liberal thought to a socially moral concept in social development theories⁵³.

Solidarity is based on human communion, which is the ethical precondition required for the pursuit of common welfare. Putting a common interest before one's personal interest is motivated by the knowledge that common challenges can only be mastered through common effort. A society which has integrated the principle of solidarity into its ethics system can give its members social peace and consequently enjoy stability and long-term success. The principle of solidarity is not a one-way street, it relies on a system of mutuality in which people contribute as much as they can⁵⁴.

Moreover, some scholars argue that a commitment of the world's economies to the principles of the SME prevents economic crises in the first place. Indeed, proponents of the SME argue that the free market is an irresponsible tool for development and its moral values are blind. By contrast, the SME depends on the state to maintain order and give people the framework that develops their capabilities and economic

⁵⁰Konrad-Adenauer-Stiftung, supra n.29, 15.

⁵¹ibid

⁵² Gerhard Kleinhenz, *Organizing Labor Market, Social Market Economy History, Principles and Implementation – From A to Z*, Ed. Rolf H. Hasse, Hermann Schneider & Klaus Weigelt (Germany: Konrad-Adenauer-Stiftung, 2005), 297 – 300.

⁵³Yahya Almotawakil, *Meeting the Calls For Change and Achieving Human Dignity: Symposium on the economic file at the table of national dialogue* (Yemen: Sana'a University),15 .

⁵⁴Konrad-Adenauer-Stiftung, Supra n.29, 16.

opportunities. As such, the SME makes it possible to overcome underdevelopment, economic instability, and social injustice⁵⁵.

In practice, the experiences of many Asian countries such as South Korea and Malaysia (which have some parallels with the social market economy in Germany) have demonstrated remarkable progress in the adoption of a free market economy. Such progress, however, has been linked to the state's active role in infrastructure development, education development, social security and social solidarity for the poor and the unemployed.⁵⁶

By examining the Companies Law of 1964 and its amendments in order to check if there are features of the principle of “social solidarity”, it can be concluded that there is no existence for articles which mention social responsibility shares that companies should pay in order to contribute in building the company and achieving the social goals which the SME aims to achieve.

As for social solidarity governance⁵⁷, the Palestinian private sector is unique in more than one important aspect; it is mostly dominated by small and medium family enterprises, with poor performance and governance. Moreover, corporate social responsibility is not obligatory in the current code of governance. However, there are suggestions to enact a legislation which obliges companies that operate in Palestine to make a disclosure of social and environmental responsibilities at least once a year (in the annual report).

2.2.D. A Stable Economic Policy that Leads to the Establishment of People's Confidence in the Existing Economic System.

Another basis for building a country besides the rule of law is the regularity and steadiness of economic policy. Competition in itself is a highly dynamic process forever modifying the relevant risks, key figures, and conditions of action for any economic agent. In order not to further aggravate this complexity and insecurity by economic interventions, it is necessary for the state to maintain a constant and consistent economic policy. Developing countries are particularly susceptible to arbitrary political initiatives or interventions in the economic life which may introduce

⁵⁵Ibid

⁵⁶Yahia Al-Motawakil, *Philosophy and Methodology of the Social Market Economy*, (Yemen: Economic observatory for studies and consultancy, 2012) < <http://www.eosc-yemen.org/%D8%A7%D9%84%D8%A7%D8%AE%D8%A8%D8%A7%D8%B1-%D9%88%D8%A7%D9%84%D9%85%D9%82%D8%A7%D9%84%D8%A7%D8%AA/%D8%A7%D9%84%D9%85%D9%82%D8%A7%D9%84%D8%A7%D8%AA/117-%D9%81%D9%84%D8%B3%D9%81%D8%A9-%D9%88%D9%85%D9%86%D9%87%D8%AC-%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF-%D8%A7%D9%84%D8%B3%D9%88%D9%82-%D8%A7%D9%84%D8%A7%D8%AC%D8%AA%D9%85%D8%A7%D8%B9%D9%8A>, last access date 29/8/2018.

⁵⁷Palestinian Institute of Governance. *Governance in Palestine*. (Palestine: Palestinian Governance Institute, 2013), 17.

a factor of uncertainty in the decisions of entrepreneurs and consumers alike who may then abandon investments or long-term projects⁵⁸.

Stability is fundamental in any economic system regardless of the economic model that a state adopts. In the absence of stability, citizens will have no trust in their governments, which affects the government's ability in taking long-term decisions and could inevitably lead to a crisis. As such, it could be argued that the "social market economy is a model that achieves stability at times of crises"⁵⁹.

In practical experience, the SME brought about the German economic miracle with a stable democracy, social peace and stability – making the country one of the most powerful economies in Europe within few years⁶⁰.

When discussing stability, one is referring to⁶¹:

- Financial stability: which requires balancing between expenditure and revenue. The Palestinian legislator tried to achieve this goal by enacting Law no. (7) for the year 1998 regarding organizing the general budget and financial affairs⁶².

However, financial instability in Palestine does not stem from the text of the legislation. Indeed, this issue stems from the occupation and has caused many problems in the PNA's budget, which, as a result, made the PNA dependent on foreign financial assistance. Furthermore, other problems appear in this context such as⁶³, the predominance of current expenditure on the composition of public expenditure, the control of the salary and wage bill on the current government expenditure structure, adoption of the financing of public expenditure on international aid in varying proportions, indirect taxes fall outside national control, and the deficiency in the Palestinian tax system which increases the gap between the rich and the poor, and does not achieve equitable distribution of the tax burden.

- Foreign trade: the required equation in this regard to achieve stability is balancing between exports and imports in order to reach exchange rate stability⁶⁴.

⁶⁰Konrad-Adenauer-Stiftung, Freedom Supra n,19.

⁵⁹Marcus Marktanner, *Social Market Economy – Third Way or Compassionate Capitalism?*, Legal Encounters, the Institute of Law (IoL), in cooperation with the Faculty of Law and Public Administration, at Birzeit University. <http://lawcenter.birzeit.edu/lawcenter/en/2012-10-31-07-50-52/399-Social%20Market%20Economy%20E2%80%93%20Third%20Way%20or%20Compassionate%20Capitalism>, last access date 28/8/2018.

⁶⁰LITO MONICO, *Introduction to Social Market Economy: Laissez faire and socialism, the antecedents*, (Philippines: The Manila Times, 2016) [HTTPS://WWW.MANILATIMES.NET/INTRODUCTION-SOCIAL-MARKET-ECONOMY-LAISSEZ-FAIRE-SOCIALISM-ANTECEDENTS-2/294480/](https://www.manilatimes.net/introduction-social-market-economy-laissez-faire-socialism-antecedents-2/294480/), last access date 24/8/2018.

⁶¹ Ismael, Mutasem, Supra n15, 134-135.

⁶²Law no. (7) for the year 1998 regarding organizing the general budget and financial affairs, Palestinian Waqae newspaper: 25. 24/9/1998. 5.

⁶³Abdel Kareem, Nasser, Supra n, 13-16.

⁶⁴Ismael, Mutase, supra n.63

In practice, the Paris Protocol is the governing agreement in this matter, which is based on Oslo Accords, which gives control over the borders to Israel. Hence, there is a permanent deficit in the balance of payments and transactions, in addition to the large imbalance in the trade balance in favor of imports in the narrow base of exports and the limited diversity and quantity compared to imports⁶⁵.

- Full Employment: which means the most efficient use of economic resources so that the unemployment rate does not exceed 4%.

Both of the Amended Palestinian Basic Law of 2003⁶⁶ and the Palestinian Labor Law⁶⁷ cover employment;

Article 25 of the Basic Law states that "Every citizen shall have the right to work". Article 4 of the Labor Law also states that "Work is a right for each citizen who is capable thereof. The National Authority shall provide it on the basis of equal opportunities and without any kind of discrimination whatsoever".

Moreover, Article 9 of the Labor Law states that "The Ministry shall develop regular quantitative and qualitative statistics related to unemployment and employment", and the objective is to work on reducing the unemployment rate as much as possible. However, there is a serious problem in this regard since the unemployment rate between Palestinian young people is 23%⁶⁸.

Thus, in order to answer the question of whether the Companies Law of 1964 empowers workers to the extent that they can form unions and management representatives, the fourth Section of the Labor Law regulates workers' unions and representatives and gives them the right to have an independent union.

Furthermore, in light of the difficult economic conditions and the high rate of unemployment in unprecedented levels, many initiatives have emerged to alleviate the suffering of Palestinian families, many of whom live below the poverty line, by helping the unemployed find employment opportunities to meet basic needs and requirements for living. However, these initiatives cannot be seen as part of an approved policy⁶⁹.

⁶⁵Abdul Moati Zurab, *The Future of the Palestinian National Authority, Ministry of National Economy*, (Palestine: Public Administration for Policy - Analysis and Statistics, Department of Statistics, 2005), 6.

⁶⁶Amended Basic Law of 2003, Palestinian Waqae newspaper: No. 0, 19/3/2003.

⁶⁷ Labor Law No. 7 of 2000, Palestinian Waqae newspaper: No. 39, 25/11/2011. 7.

⁶⁸Maan Newspaper, *The Majority: Domestic economic policies cause the economy to decline* (Palestine: Maan Newspaper, 2017) <https://www.maannews.net/Content.aspx?id=912771>, last access date 25/8/2018.

⁶⁹Abdel Kareem, *Supra* n, 20.

3. Conclusion.

By Examining the above-mentioned criteria in connection with the Companies Law of 1964 and other laws, it can be argued that some features of the SME are present in the Palestinian system, although the Basic Law adopts the free market economy system.

As discussed earlier in the paper, freedom of contract is adopted in the Palestinian legal system. However, the Paris Protocol practically limits companies' ability of conducting contracts such as importing and exporting contracts.

Moreover, regarding the principles of responsibility and social solidarity, it is obvious that the Palestinian legal system only imposed taxes on the working companies in the West Bank, and did not mention social responsibility in any of its laws, which leaves companies the choice in this regard.

As for the principle of "a stable economic policy that leads to the establishment of people's confidence in the existing economic system", it could generally be considered as a governmental goal. In practice, for a country like Palestine which is still under occupation, it is problematic.

However, these factors are not sufficient for one to argue that the Companies Law of 1964 adopts the SME model.

Finally, it is important to realize that main issue in the Palestinian economic system stems from the texts and application of the Paris Protocol and the political and security references in the Oslo Accords.

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