
# Arab Business Legislative Frameworks

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Economic and Social Commission for Western Asia

# ARAB BUSINESS LEGISLATIVE FRAMEWORKS

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# PREFACE
# BUSINESS LEGISLATIVE CLIMATE IN THE ARAB REGION


Five years ago, ESCWA conducted a study titled "Competition and Regulation in the Arab Region" that provided an overview of the legislative structures related to competition in the Arab region. The study concluded with a range of urgent recommendations related to the structure and relevance of competition laws and policies in Arab countries. It also called for more public awareness-raising measures on the importance of competition laws, more robust enforcement processes, and the need to leverage initiatives of international partners to further improve and refine the systems presently in place.

Since 2015, there has been only modest progress in implementing these recommendations. Nevertheless, the growing interest in legal and institutional reforms, business facilitation and better governance in the Arab region has led governments, donors and development agencies to increasingly focus their attention on improving the regulatory framework for doing business and ensuring a fair balance between the rights and obligations of various social players. Legal reform, however, is not merely about the production of legislation, but also ensuring that such legislation is well understood, applied and integrated into the overall legal framework, and snuggles neatly with the specific contexts of each Arab State.

The Arab region faces serious lack in the ability of various stakeholders to access laws pertaining to competition, anti-corruption, foreign direct investment (FDI) and consumer protection. Small firms, activists, political reformists, researchers and others face obstacles to adequately access the most up-to-date legislation related to public policy. The lack of a unified consolidated and accessible repository of legislation in the Arab region has negative knock-on effects on transparency, accountability and the rule of law.

The growing interest in legal and institutional reform, business facilitation, and better governance in the Arab region has led governments, donors and development agencies to increasingly focus their attention on improving the regulatory framework for doing business and strengthening the rule of law. The deep interest in legal reform, however, has not provided ample platforms to better inform citizens and the private sector of the body of laws that govern business legislation. Consequently, providing a consolidated repository of legislation in the Arab region is crucial to inform and motivate both citizens and the private sector to engage with the legislative reform process.

Moreover, the Arab region lacks unified regulatory and legislative standards that could help consolidate reform agendas. The lack of such standards poses various barriers to regional trade, investments and the movement of goods and people, and weakens overarching developmental agendas. The lack of synchronization on a regional level also increases legal fragmentation that weakens institutional learning. Common and integrated regulatory standards could encourage convergences, complementarity of legislation and institutional knowledge sharing. Presently, with the very low integration in the region, Arab States have little incentive to collectively upgrade or update their legislation to reflect best international standards. At the same time, researchers and journalists face tremendous difficulties in accessing regional comparative data to understand regional historical and contemporary patterns in regulatory reform.

Regulatory reform and refining legal enforcement capacity are understood to be at the core of efficient markets and effective governments. They are necessary for successful national development planning towards establishing healthy competition, innovation and sustainable growth that benefits all people. The Organisation for Economic Co-operation and Development (OECD) notes that "regulatory reform reduces barriers to competition and market openness, and fosters market dynamics while ensuring essential social and environmental welfare. Incorporating practices for consultation, transparency and access to law, regulatory reform also contributes to reduced corruption."[1]

Consequently, and noting the challenges of implementing the 2030 Agenda and achieving the Sustainable Development Goals (SDGs) in the region, acting on addressing this need is necessary. Regulatory reforms in the business legislative framework in the Arab region are needed to achieve progress toward a sustainable economic growth (SDG 8) and sustainable industrialization, in addition to a better fostering of innovation (SDG 9). Reforms within the four key areas of the report are essential to reduce inequality in the societies of the Arab region (SDG 10) and to re-establish more effective, accountable and inclusive institutions (SGD 16).

**The lack of synchronization on a regional level also increases legal fragmentation that weakens institutional learning.**

This report sets out to provide a basic assessment of the current business legislative climate in the region by examining the current state of legislation related to four key areas of business regulatory frameworks: Competition; Anti-Corruption; Foreign Direct Investment (FDI); and Consumer Protection. Additionally, the report intends to provide a basic gap analysis assessment of the legislative, regulatory, institutional and enforcement mechanisms practice, thereby identifying any revealing gaps and providing recommended actions that can address them.

The main findings of the report can be summarized by the fact that there is little coordination or standardization of legislative business frameworks at the regional level. Business legislation across the 22 Arab States lacks standard definitions and modes of operation, hindering inter-Arab trade and investments across the region. This is perhaps to be expected, given the Arab region's enormous geographical area and disparate strategic interests. However, subregions within the broader Arab region display a greater degree of legislative coordination and standardization, which facilitates trade between countries with common borders and interests. Future attempts to standardize legal frameworks in the interest of promoting trade and competition should build on these existing subregional similarities, instead of attempting to impose frameworks at the larger regional level.

[1] OECD, Regulatory Reform: Efficient Markets, Effective Government. Available at http://www.oecd.org/gov/regulatory-policy/42203181.pdf.

**Even when a country's business legislation framework appears to match international standards, poor implementation means that the law can remain ineffective.**

Positive legal developments in recent decades can often be traced back to external pressure for change in business legislation. The majority of the laws included in this study were passed between 2000 and the present day. Many of the laws passed in this period regulated competition and FDI, which enabled growing trade between Arab countries and new trading partners, such as the European Union. This development demonstrates the power of external market pressures on Arab countries' business legislation. Domestic events have also precipitated a legislative change in the region; for example, anti-corruption and consumer protection legislation saw a boom in the years following the Arab Spring in 2011.

Streamlined legislation strengthens the implementation of the law. Countries that streamline all legislation relating to a certain issue into a single law are generally more successful in its implementation. The United Arab Emirates and Kuwait are good examples of how legal centralization and streamlining impact enforcement positively. For example, the United Arab Emirates has a complete set of legislation dealing with competition, named "Federal Law No. 4 of

2012". Centralization and streamlining also promote transparency by allowing citizens to find all relevant laws in one place. Conversely, countries with relatively complex and sprawling legal systems suffer from poor enforcement and sluggish bureaucracy, as witnessed historically and currently in Egypt.

Consumer protection is the weakest area of business legislation within the region. On average, countries scored the lowest in consumer protection compared to any other business legislation theme. This is partly because consumer protection is an emerging field, receiving renewed focus after the Arab Spring, in which consumer protection and price controls became more imperative for the public. While many Arab States have some form of consumer protection legislation, institutions designated to implement the law frequently lack clarity on enforcement mechanisms and the ability to follow up effectively.

Shortcomings in implementation and enforcement often undermine commendable legislation. Even when a country's business legislation framework appears to match international standards, poor implementation means that the law can remain ineffective. This is often due to a lack of human and financial resources, poor training and awareness of staff on follow-up procedures, lack of political will and ability, in addition to other barriers that inhibit the ability to comprehensively enforce legislation. In many cases, regulatory bodies are not genuinely independent of the government, allowing for conflicts of interests. Sometimes, these regulatory authorities and councils are tied directly to, or are under the auspices of, the ministries of trade or commerce and have limited abilities to fully exert their powers. Regulatory institutions are given absolute autonomy only in rare cases – as is the case of Tunisia's handling of legislation related to FDI.

Exemptions often provide loopholes in the legislation that are exploited by those in positions of financial or political power. Most tax exemptions benefit public utilities, state-owned businesses, or sensitive sectors like the military/security sector, creating conflicts of interest with businesses close to the government. Experts in Iraq noted that exemptions within anti-corruption legislation exempted government entities from the law, undermining the strength of the legislation.

# ACKNOWLEDGEMENTS

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ESCWA is grateful for all the public representatives from the 22 Arab countries for their time and active engagement in providing input and verifying the findings and the legislative mapping.

A regional workshop, organized by ESCWA, provided a reflective environment to enhance and develop the methodology and findings of the study. The final study also benefitted from several rounds of review and feedback from internal peer reviewers. The study and its findings comprise an important component and base for regulatory and institutional reforms at the national and regional levels in the Arab region.

The report covered the 22 Arab countries: Algeria, Bahrain, Comoros, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Mauritania, Oman, State of Palestine, Qatar, Saudi Arabia, Somalia, Sudan, Syrian Arab Republic, Tunisia, United Arab Emirates and Yemen.

Note: The findings of this report are based on ESCWA's evaluation of legislations available in the 22 Arab countries up until June 2020. In the future, ESCWA will update the framework, indicators, and results of this study on a regular basis.

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# ACRONYMS

| | |
|---|---|
| **ESCWA** | United Nations Economic and Social Commission for Western Asia |
| **FDI** | foreign direct investment |
| **GCC** | Gulf Cooperation Council |
| **KDIPA** | Kuwait Direct Investment Promotion Authority |
| **LDCs** | Least Developed Countries |
| **OECD** | Organisation for Economic Co-operation and Development |
| **UNCTAD** | United Nations Conference on Trade and Development |
| **UNDP** | United Nations Development Programme |

# SUBREGIONS

**GCC** includes Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates.

**Maghreb** includes Algeria, Libya, Morocco and Tunisia.

**Mashreq** includes Egypt, Iraq, Jordan, Lebanon, the State of Palestine and the Syrian Arab Republic.

**LDCs** includes the Comoros, Djibouti, Mauritania, Somalia, the Sudan and Yemen.

# ARAB BUSINESS LEGISLATIVE FRAMEWORKS
# KEY MESSAGES

## KEY FINDINGS

- There is **little coordination** or **standardization** of **legislative business frameworks** at the regional level.
- **Consumer protection** is the **weakest** area of business legislation within the region.
- Countries which streamline all legislation relating to a certain issue into one law are generally more successful in its implementation.
- Institutions designed to oversee **competition, FDI, anti-corruption, and consumer protection** are rarely autonomous.
- Business legislation framework appears to **match international standards** in some countries; however, **poor implementation** means that the **law can remain ineffective.**

## COMPETITION

- On paper, most Arab countries possess some form of **competition legislation, and enforcement** across all appears to be **strong**, but **widespread exemptions** in key sectors **undermine the law**.
- Many institutions lack the autonomy and enforcement powers needed to implement their respective country's competition law.

## ANTI-CORRUPTION

- Most Arab countries have reached a **very strong state** in **outlining enforcement mechanisms** recommended by international guidelines but still have **several gaps** in **enacting sufficient enforcement** in their anti-corruption legislation.
- In December 2010, almost **all Arab States signed** the Arab **Anti-Corruption Convention**, but only **12 States ratified** the convention, making it largely **ineffectual**.

## FOREIGN DIRECT INVESTMENT

- The **Mashreq** subregion has the most **"Developed"** overall **FDI legislative frameworks** in the Arab region.
- Arab countries **struggle** to include **clear and coherent definitions** within their FDI laws.

## CONSUMER PROTECTION

- Consumer protection is a **relatively new legislative field** in the Arab world where countries have **passed** or **amended** their consumer protection laws only in the **past 15 years**.
- The concept of **sustainable consumption** is **almost absent** within the Arab consumer protection legislation (**SDG12**).


## SUMMARY AND RECOMMENDATIONS

- The region is in **great need of refroms** to address and **improve** the overall business legislative framework. Exemptions and the **lack of effective enforcement** hinders the achievement of the desired and expected results.
- Countries should **enhance public awareness** of their legislation, as well as **citizens' legal rights and duties**.

# I. ARAB BUSINESS LEGISLATIVE FRAMEWORK CONDITIONS AND PROSPECTS

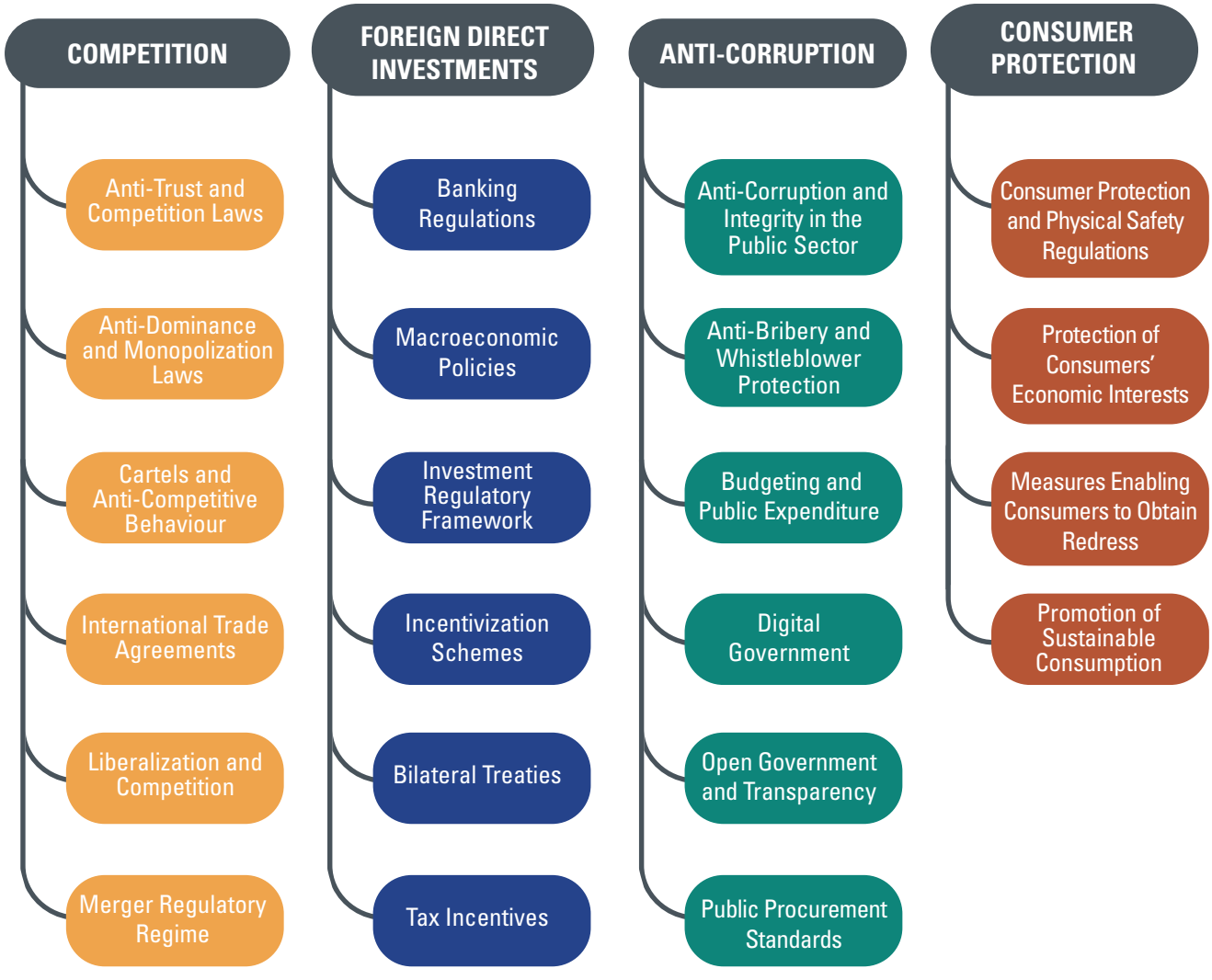
This study on Arab Business Legislative Frameworks seeks to conduct a preliminary holistic mapping of the legislative climate in the 22 Arab countries across four themes: Competition; Foreign Direct Investment (FDI); Anti-corruption; and Consumer Protection.

- Provide a basic assessment of the current business regulatory climate in the region, looking at the legislations related to competition, FDI, anti-corruption and consumer protection;

In addition to assessing legislative climate using common standards garnered from international best practices, this study seeks to provide a repository of existing legislation in the Arab region. Accordingly, this study has the following objectives:

- Provide a gap analysis assessment of the current legislative, regulatory, institutional and enforcement mechanisms and recommend actions that can tackle and/or alleviate the gaps.

**FIGURE 1**
ESCWA EVALUATION MATRIX - MAIN HEADINGS



Based on the guidelines developed by the Organisation for Economic Co-operation and Development (OECD) and the United Nations (appendix A), ESCWA constructed the evaluation matrix that formed the Gap Analysis Questionnaire (appendix A) and surveyed Arab countries in 2020 to compute two sets of indicators, each of which reflects a different way of the aggregated data.

In the first set of indicators (figure 1), the data collected from the questionnaire originate separately from four main indicators: Competition; Foreign Direct Investment; Anti-corruption; and Consumer Protection. These "main headings" were derived from indicators highlighted in Appendix A and tend to be the general essential components with each respective field under study.

**TABLE 1**
ESCWA EVALUATION MATRIX - SUBCATEGORIES

| SUBCATEGORIES | DESCRIPTION |
|---|---|
| Laws/Decrees | Existence of particular types of national legislations and/or regulations, royal decrees, federal laws, etc. as recommended by various indicators and international guidelines. |
| Definitions | Types of legal definitions within the legislation that are clear and concise on the subject, and match the requirements of definitions suggested in the UNCTAD model law. |
| Institutions | Bodies and/or authorities that are highlighted within the legislation, including their responsibilities, jurisdiction, independence and powers, as recommended by the international guidelines. |
| International Agreements | Regional and/or international conventions, commitments, treaties or trade agreements that are noted to be enforced or complemented by national legislation. |
| Enforcement Mechanisms | Modes of enforcement, whether positive or negative, such as incentives, subsidies, fines, prison sentences or complaint mechanisms outlined by legislation, and match the recommendations and guidelines of internationally recognized agreements. |
| Exemptions | If certain sectors or components within a sector are exempted from the legislation and their implementation and/or exemptions appear within the legislation. |
| Accessibility and/or Transparency | Noting how the legislation is itself accessible, and what modes of transparency and accessibility mechanisms are in place regarding the respective field. |

To further narrow the broad scope, the main headings are examined using a framework composed of seven subcategories (see table 1) that form the second set of indicators. The subcategories were applied to every main heading without exception, creating continuity across all main headings. These seven subcategories not only helped in narrowing the focus for the research, but also provided a skeleton structure in the construction of the evaluation matrix that formed the Gap Analysis Questionnaire.

The Arab Business Legislative Framework Report is based on an assessment system of the current business regulatory climate in the region. The assessment system integrated a selection of best practices into tool design in order to ensure that the outputs are informative and objective, take into account context-specific issues, and can be easily utilized by stakeholders. The collated information from relevant ministries, international development agencies and academic institutions for each topic and each individual country is filtered and correlated through in-depth key informant interviews (KIIs) with officials, administrators and relevant stakeholders in each country.

The questionnaire was derived from the indicators highlighted in appendix A. They were crafted to inquire whether there was such legislation, and if the legislation had particular articles, provided definitions and indicated the institutions, enforcement mechanisms and other essential

regulatory infrastructures, as well as exemptions, international agreement responsibilities and modes for accountability and redress, and if the legislation and its enforcement infrastructures were accessible. A total of 156 questions were formulated to guide the assessment and analysis of the legislation: 55 questions were written out for Competition; 30 for FDI; 37 for Anti-Corruption; and 34 questions for Consumer Protection. Each category also had its respective main headings covering the basic components of each of the themes and structured by the subcategories for continuity.

The scoring was based on the assumption that the international indicators and model law templates are considered "Very Strong". Answers with a "Yes" were treated as a score of one, while "No" received a score of zero. In some cases, a positive response scored zero – for example, the existence of capital controls of certain types of exemptions equalled a score of zero. A descriptive score was used since the report aims to provide countries with a description of their legislative frameworks to compare with "Very Strong" international standards, and not to compare with each other. The detailed scores of each country can be found in appendix C (Country Profiles).

As noted in table 2, the higher the score, the closer a respective country's legislative framework is to what international guidelines advise.

**TABLE 2**
SCORING CONTINUUM

| SCORE | CAPACITY/ PERFORMANCE LEVEL | EXPLANATION |
|---|---|---|
| 0 | No Score | The "No Score" classification appears in case there is no law. This means that the legislative framework does not exist.<br>In the case of having this "No Score" on subcategories, for example, "Laws/Decrees", this means that the country has not adopted or does not have the law.<br>The "No Score" classification will be shown as blank. |
| 0 to 0.99 | Very Weak | The "Very Weak" classification is for the lowest scores within the scoring continuum (below 1). This score is for legislative frameworks that are super weak and very close to non-existing, or where there are no defined laws in the specified category. It mainly indicates that the legislation with this score barely exists and is far from very strong international standards.<br>Having this score on the "Exemptions" subcategory, for example, indicates that the country has many exemptions from the law, and it does not match international standards. |
| 1 to 1.99 | Weak | The legislative framework is weak and very far from very strong international standards. However, the "Weak" classification is the second-lowest score (between 1 and 1.99). It mainly indicates that the categories and subcategories with this score are not effective or exist, but below the basic level. |
| 2 to 2.99 | Basic | The legislative framework in a country with this score is considered to be basic or sub-par compared to general international standards. The legislation categories and sub-categories with this score have the minimum structure or performance in comparison to very strong standards. For example, a country's "Basic" score on enforcement indicates that the country's law enforcement is at a minimum. |




| | | |
|---|---|---|
| 3 to 3.99 | Moderate | The legislative framework is at a developing stage in comparison to very strong international standards. The "Moderate" score indicates that the categories or subcategories condition is in the middle between "Basic" and "Developed". |
| 4 to 4.99 | Developed | The "Developed" classification indicates that much of the legislative frameworks are in a developed stage, near the strong and very strong standards recommended by international measurements. |
| 5 to 5.99 | Strong | Legislative frameworks that score "Strong" are the closest to very strong standards recommended by international guidelines and indicators. It indicates that the status of a main category or subcategory is strong. |
| 6 to 7 | Very Strong | The "Very Strong" score specifies that the legislative frameworks match or are close to international guidelines and indicators. If a country has the "Very Strong" status on the main category, for example, "Merger Regulatory Regime", this indicates that the merger regulatory regime is identical to the international indicators and model law templates. |

# II. KEY FINDINGS

## A. Overview

Overall, countries of the Gulf Cooperation Council (GCC) scored the highest in terms of legislative development, while the Maghreb and the Least Developed Countries (LDCs) lag significantly behind. Business legislation is by far the most developed in the GCC countries across the board. However, some subregions surpass the GCC in specific areas. For example, the Mashreq benefits from a well-developed FDI and consumer protection regulations, pushing it ahead of the GCC in these themes. Meanwhile, both the Maghreb and the LDCs lag behind, especially on legislative frameworks related to consumer protection.

Positive legal developments in recent decades can often be traced back to external pressure for change in business legislation. The majority of the laws included in this study were passed between 2000 and the present day. Many of the laws passed in this period regulated competition and FDI, which enabled growing trade among Arab countries and new trading partners, including the European Union. This development demonstrates the power of external market pressures on Arab countries' business legislation. Domestic events have also precipitated a legislative change in the region. For example, anti-corruption legislation saw a boom in the years following the Arab Spring in 2011. Out of 140 anti-corruption laws passed in the Arab region since 1937, an impressive 55 were

> **"Countries that streamline all their legislations relating to a certain issue into one law are generally more successful in implementing that law.**

approved since 2011. The legislative trend reflects protesters' demands to reduce corruption during and in the years following the Arab Spring. Laws passed relating to consumer protection – another demand of protesters – increased as well in this period, but to a lesser extent.

There is little coordination or standardization of legislative business frameworks at the regional level. Business legislations across the 22 Arab States lack standard definitions and modes of operation, which hinders trade across the region. This is perhaps to be expected, given the Arab region's enormous geographical area and disparate strategic interests. However, subregions within the broader Arab region display a degree of legislative coordination and standardization, which facilitates trade between countries with common borders and interests. This often manifests itself in uneven development patterns. For example, the GCC countries benefit from more developed competition and anti-corruption legislation than the Mashreq countries. However, the Mashreq is a regional leader in terms of its legislative frameworks for FDI.

Consumer protection is the weakest area of business legislation within the region. On average, countries scored the lowest in consumer protection compared to any other business legislation theme. This is partly because consumer protection is an emerging field, receiving renewed focus after the 2011 Arab Spring, in which consumer protection and price controls became more imperative for the public. While many Arab States have some form of consumer protection legislation, institutions designated to implement the law frequently lack enforcement mechanisms and the ability to follow up effectively. Consumer protection legislation in Libya and Morocco, for example, lack any enforcement mechanisms in terms of physical safety, while the Sudan lacks any specialized complaint procedure set for regulators in terms of measures to enable consumers to obtain redress.

Streamlined legislation strengthens the implementation of the law. Countries that streamline all their legislations relating to a certain issue into one law are generally more successful in implementing that law. The United Arab Emirates and Kuwait are good examples of how legal centralization and streamlining positively impact enforcement. For example, the United Arab Emirates has comprehensive legislation named "Federal Law No. 4 of 2012" that deals with competition. This promotes transparency by allowing citizens to find all relevant laws in one place. Conversely, countries with relatively complex and sprawling legal systems, such as Egypt, suffer from poor enforcement and sluggish bureaucracy. In these countries, issues may overlap different laws, making the legislation less cohesive and more prone to various interpretations. Meanwhile, countries with no formal law for any specific issue tend to suffer from extremely poor governance and awareness in that area. For example, Lebanon,the state of Palestine and Somalia lack formal competition laws altogether.

Institutions designed to oversee competition, FDI, anti-corruption and consumer protection laws are rarely autonomous. Institutions authorized to oversee, assess and implement the legislation are often embedded within the ministries. This undermines their ability to take independent decisions when implementing or enforcing the law. In some cases, these investment authorities and councils are tied directly to, or are under the auspices of, the ministries of trade and/or commerce and have limited ability to fully exert their powers. Regulatory institutions are given absolute autonomy only in rare cases – as is the case of Tunisia's handling of legislation related to FDI.

Poor autonomy and feeble regulatory powers of institutions fit into a broader picture of poor enforcement of existing laws. Most experts referred to ongoing tensions between the legislation and its implementation. They frequently stressed the importance of defining and outlining enforcement mechanisms in a very clear and coherent manner.

Moreover, enforcement mechanisms must be granted major empowerment and autonomy in order to fulfil their jobs. Political will is often the biggest obstacle, whether in the establishment of key laws as seen in the cases of Lebanon's andthe state of Palestine's competition laws, or in the implementation of laws and their mechanisms, as highlighted in Kuwait, Iraq and the Syrian Arab Republic. Of course, implementation, in particular cases, has its limits – especially given the extraordinary circumstances facing countries like Iraq, Libya, the state of Palestine, the Syrian Arab Republic and Yemen, all of which are experiencing varying degrees of societal challenges arising from conflict or occupation. These "force majeure" factors must be considered when evaluating a State's ability to enforce existing laws.

Shortcomings in implementation and enforcement often undermine commendable legislation. Even when a country's business legislation framework appears to match international standards, poor implementation means that the law can remain ineffective. This is often due to a lack of human and financial resources, poor training and awareness of staff on follow-up procedures, lack of political will, and other barriers that inhibit the ability to comprehensively enforce legislation. In many cases, regulatory bodies are not genuinely independent of the government, allowing for conflicts of interests. Lebanon is a good example of this, as the country has approved many anti-corruption laws but has not established a competent institution or enforcement infrastructure to enforce these laws on the ground. As for countries like the Syrian Arab Republic and Iraq, consumer protection experts spoke highly of the legislation, but quickly noted the weakness in enforcement mechanisms, lack of knowledge by officials and the consistent lack of follow-up procedures.

Exemptions often provide loopholes in the legislation that are exploited by those in positions of financial or political power. Most tax exemptions benefit public utilities, State-owned businesses or sensitive sectors like the military/security, creating conflicts of interest with businesses in the private sector. For example, Key Informants in Iraq pointed to exemptions within anti-corruption legislation that excused government entities from the law, thereby undermining the essential strength of legislation.

## B. Competition

The analysis of competition legislation examined the existence of various components as recommended by international best practice. As seen in figure 2, key components of competition legislation include laws and articles related to antitrust and competition laws, anti-dominance and monopolization laws, cartels and anti-competitive agreements, competition enforcement practices, international trade agreements, liberalization and competition intervention in regulated sectors.

Most Arab countries possess some form of competition legislation. Laws regulating competition tend to tackle key components of competition, such as antitrust, anti-dominance, monopolization, cartels and anti-competitive agreements. However, there are noticeable subregional differences, as shown in figure 2. The Maghreb and GCC States scored the highest overall in the competition sector, with a few countries achieving a strong status across the board in many of the categories related to competition. Mauritania achieved the highest rank regionally, bringing up the LDCs' subregional average. These subregions are followed by the Maghreb, which fell in the "Moderate" range. Morocco leads its sub-region with a score placing it in the "Strong" status. The Mashreq scored significantly lower than any other sub-region, placing it in the "Basic" category for competition. Within the Mashreq, Iraq scored highest. However, Lebanon's and the State of Palestine's complete or near lack of competition legislation dragged the Mashreq's overall score down to "Basic".

The Mashreq and LDCs continue to lag behind the GCC and Maghreb in key regulatory components. Both LDCs and Mashreq subregions struggle to clearly define and outlaw anti-dominance, monopolization, cartels, and other forms of anti-competitive behaviours in their


legislative frameworks. The Mashreq States, however, exhibit alarmingly weak legislative scores, even in comparison with the LDCs in key components, such as antitrust and competition laws, anti-dominance and monopolization, international trade agreements, and liberalization. Specifically, the LDCs are able to score better in terms of liberalization due to their willingness to allow for significant competition intervention in most sectors and honouring commitments arising from international trade agreements.

GCC States have concise and streamlined competition laws, similar to the Maghreb subregion in key components of the competition. Gulf countries' competition laws mirror international standards, scoring "Developed" overall in terms of definitions, institutions and enforcement mechanisms. Bahrain, Kuwait and Qatar lead the GCC thanks to their clear legislative definitions of competition, anti-competitive agreements, and dominance, in addition to their abilities to enforce the law. However, GCC countries perform relatively poorly in terms of liberalization and competition intervention in regulated sectors, scoring "Basic" in that category. This is due to the reluctance of the Gulf States to liberalize their regulated sectors, most notably the oil and gas sector, which is monopolized by State companies. In order to preserve State hegemony over these key sectors, the GCC laws and decrees only partially address antitrust, monopolization and anti-competitive agreements. For example, Kuwaiti law does not provide a clear definition of the term cartel. Instead, Law No.10 of 2007 outlines examples of anti-competitive behaviour without explicitly using the term cartel.

Most Arab countries lack autonomous institutions to enforce competition. Most of the competition institutions continue to be dominated by government ministries, and lack sufficient financial and administrative independence. For example, in Bahrain, the Ministry of Industry, Commerce and Tourism is authorized to enforce and oversee competition legislation. Similarly, in Jordan, a competition directorate in the Ministry of Industry and Commerce oversees implementation and enforcement. Article 22 of the Competition Law in the Comoros establishes a commission on competition, which is under the tutelage of the Ministry of Commerce. The president of this commission is nominated by the Minister of Commerce. Such practices continue to pose obstacles to consistent and coherent competition reform. Figure 2 shows that competition enforcement practices are more focused and streamlined in the GCC and Maghreb legislation, in comparison to other subregions.

Anti-dominance, monopolization, antitrust and competition laws are the weakest in the Mashreq subregion. The Mashreq struggles to outline anti-competitive practices concretely. For example, Jordan's Competition Law does not explicitly outlaw monopolies, but it does outlaw what it calls "monopolistic practices". At the same time, Article 5 of that law includes cartels as part of an example of anti-competitive practices, but lacks clarity on what constitutes a cartel. By virtue of not having competition legislation, both the State of Palestine and Lebanon have no form of legislative control on what constitutes anti-competitive practices and institutions. Yemen, on the other hand, is a rare example wherein the legislation clearly defines and explicitly outlaws monopolies.

**FIGURE 2**
KEY COMPONENTS OF COMPETITION LEGISLATION, SUBREGIONAL OVERVIEW

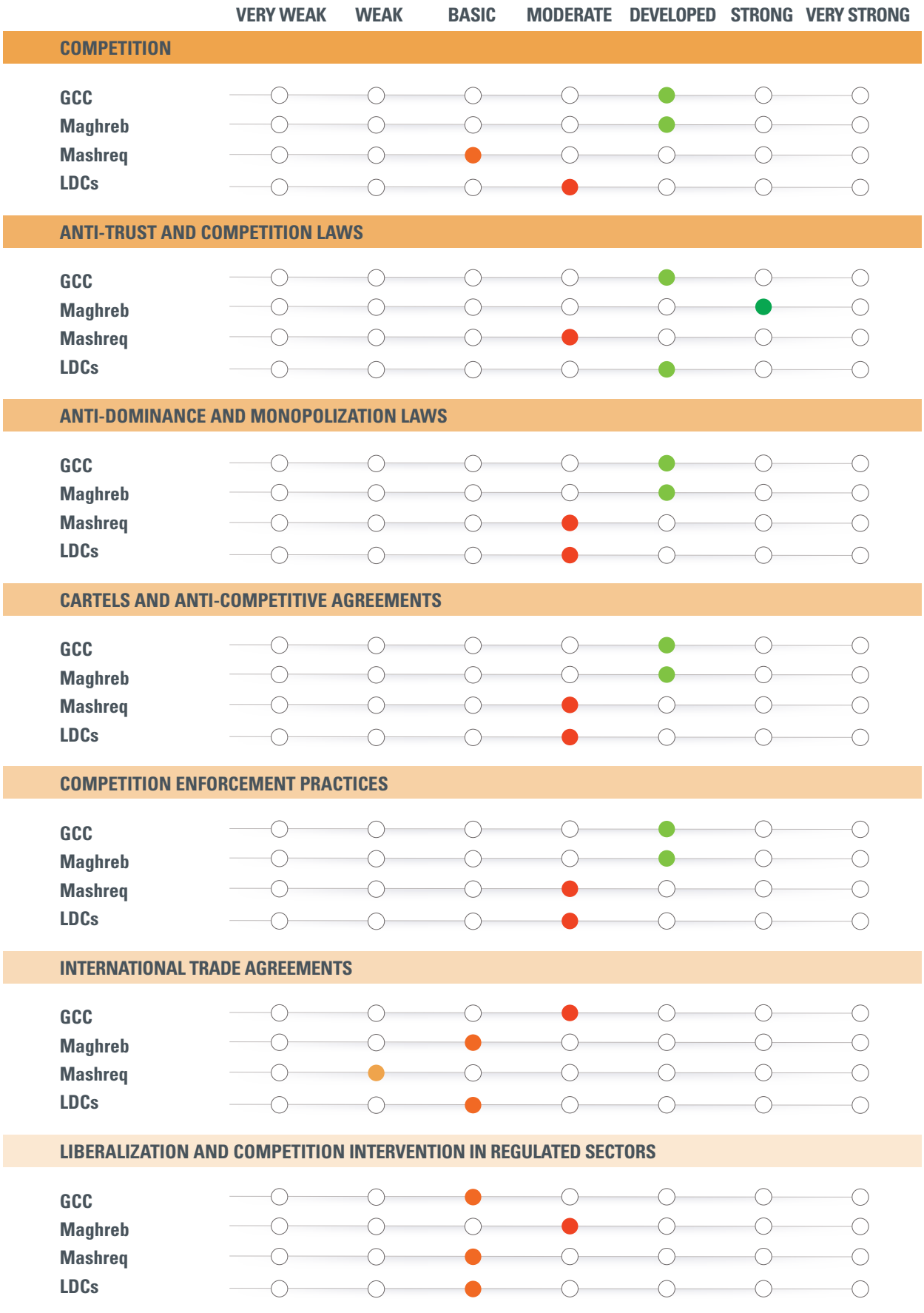
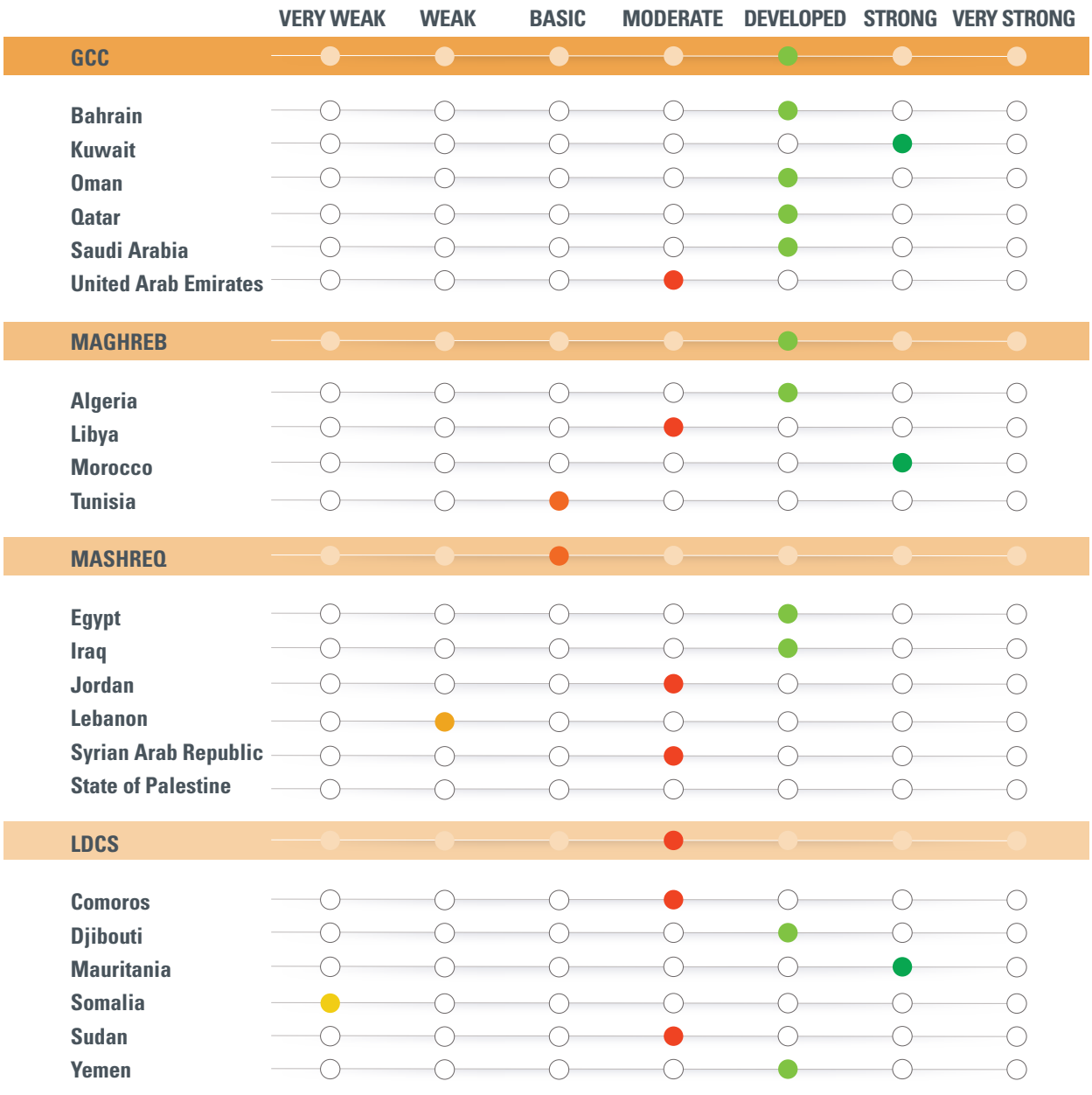


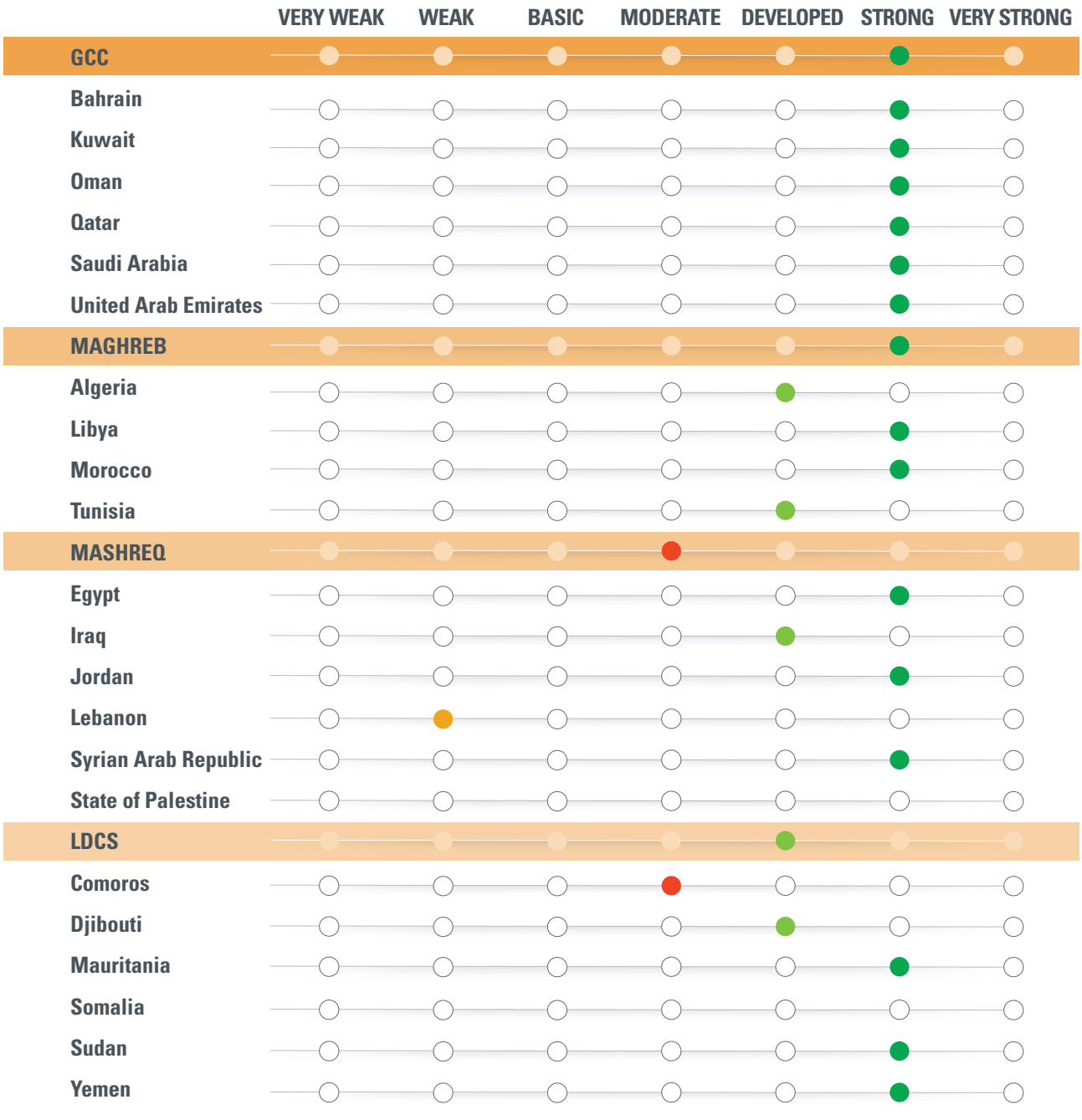
**FIGURE 3**
OVERVIEW OF COMPETITION LEGISLATIVE FRAMEWORK, BY COUNTRY




Competition laws are often non-organic, developed due to external pressures such as trade deals with influential countries. These laws are a relatively new development regionally, with most competition laws and decrees passed in the past two decades. In the previous century, Arab countries typically had commercial or penal codes that governed aspects of competition, but did not have any formal competition laws. One of the earliest competition laws examined in this report was Tunisia's Law No. 64 of 1991, which was amended most recently in 2015. Starting from 2000, countries across the region began to adopt legislations that specifically dealt with competition. In the first decade of the twenty-first century, Egypt, Iraq, Kuwait, Qatar, Saudi Arabia, the Syrian Arab Republic and the Sudan all passed legislations with the word competition in their titles. This increased focus on competition reflects Arab countries' increasing trade connections with European countries and a growing affiliation with the World Trade Organization. In this way, competition laws are largely non-organic – that is, imposed from the outside and tend to awkwardly clash with the norms and systems already in place. The scoring results for the subcategory assessing the existence and usage of laws/decrees related to competition are summarized in figure 4.

The score looked at the presence of particular types of laws, codes, and/or regulations, royal decrees, federal laws, and other pieces of legislation as recommended by various indicators and international guidelines to support and promote positive forms of competition.

**FIGURE 4**
EXISTENCE OF COMPETITION LAW/DECREES

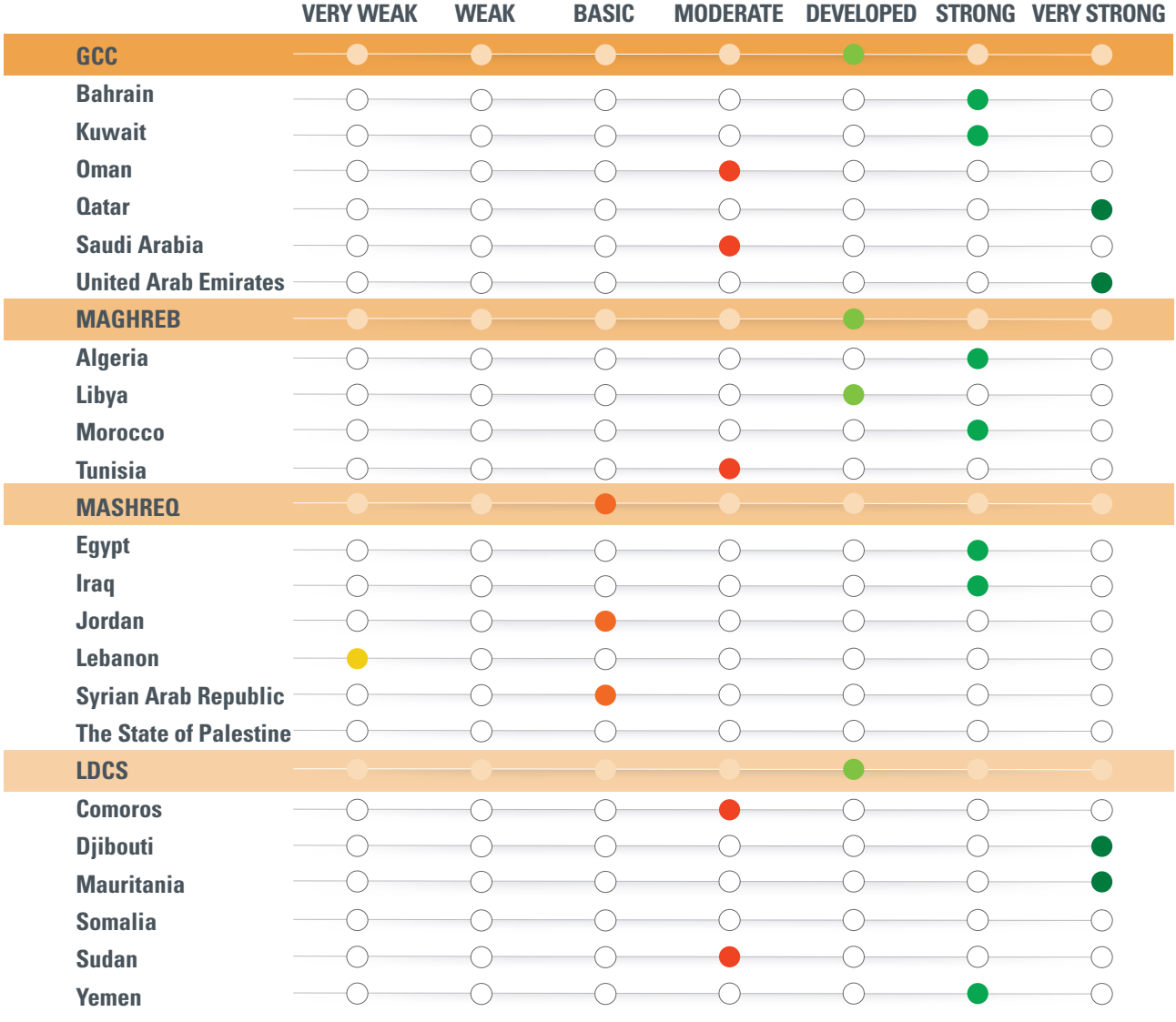



Of countries included in this report, only Lebanon,the State of Palestine and Somalia have no formal competition law. Lebanon entirely lacks competition legislation, falling in the "Weak" class in competition laws and decrees. By extension, there are neither clear definitions of anti-competitive behaviour nor coherent methods of tackling such monopolistic behaviour. Vague generalities concerning competition can be found in Lebanon's archaic Commercial Code from 1942 and its Penal Code from 1943. In addition, Decree 78 from 1983 – which aims to regulate the purchase and trading of goods and products – contains brief references to monopolies and anti-competitive behaviour. However, definitions are inconsistent and lack details. This tapestry of different laws and lack of streamlining complicates enforcement, and implementation

is virtually non-existent.The State of Palestine, on the other hand, has been in the process of drafting a competition law since 2003. Due to various political factors, however, the Palestinian Legislative Council has still not approved the law. Internal rifts within Palestinian political bodies and pressure from the Israeli occupation have left Palestine grappling with the organization and governance of competition. Geographical fragmentation within the Palestinian territories would make it difficult to enforce competition laws because there is no single market, nor a unifying legal system. This leads to considerable variations in prices between regions and within cities themselves.

Other Mashreq countries have poor legislative definitions of competition. Lebanon's and Palestine's lack of formal competition laws are not the only reason that the Mashreq lags behind the rest of the region in terms of the practice. Competition legislation in Jordan lacks clarity on key concepts relating to competition. Also, the Syrian Arab Republic does not have a legal definition of competition or cartels. By comparison, Egypt and Iraq stand out in the Mashreq as regional leaders since their respective laws clearly define most of the components required for competition legislation. Both countries have achieved a "Strong" status – close to "Very Strong" – in the "Legal Definitions" category. Figure 5 shows countries' scores for definitions within competition legislation. For clarity, it must be stressed that the ranking of definitions was based on the types of legal definitions within existing legislation, where countries with a "Very Strong" ranking have competition legislations that are clear and concise, and match the requirements and recommendations related to the structure and scope of definitions as noted in the UNCTAD model law template.

**FIGURE 5**
EXISTENCE AND CLARITY OF DEFINITIONS IN COMPETITION LEGISLATION



Countries hoping to govern competition must have autonomous institutions to enforce the competition law. The OECD emphasizes the importance of "effective, accountable, and inclusive institutions in promoting sustainable and equitable development."These institutions should have the legal power and autonomy to dictate competition provisions, mainstream governing policies, adopt budgetary support, make decisions on manpower availability, and ensure overall law effectiveness. Broadly speaking, most Arab countries in this report scored highly for the existence of institutions in their legislation. However, in many countries, these institutions exist only on paper. For example, many institutions lack the autonomy and enforcement powers needed to implement their respective country's competition law. Kuwait and the Syrian Arab Republic, for example, possess competition councils directly embedded in the ministries of economy and commerce, causing conflicts of interest when applying the law. Meanwhile, Morocco and Tunisia have reformed their judicial systems in the past five years, endowing the state with greater autonomy and enforcement powers. At the other extreme, some Arab countries completely lack institutions to govern competition. Lebanon and the State of Palestine, as mentioned above, do not have any such bodies and face competition issues arising from this institutional gap.

**BOX 1**

VERTICAL AND HORIZONTAL ANTI-COMPETITIVE AGREEMENTS

Collusion and agreements between competitors have different forms: vertical and horizontal. These forms of agreements should be well defined within the competition legislations to ensure a better understanding and more effective enforcement by the competition authority. Horizontal agreements are not only hard core cartels, they also include agreements to fix prices or other terms of sale, concerted refusals to purchase or supply, information-sharing agreements, joint marketing, etc. Vertical agreements are between firms of different levels within the production and distribution chain, such as resale price maintenance, exclusive dealing, tying arrangements and full-line forcing.

In Canada, the Competition Act has multiple clear provisions that prohibit several specific forms of vertical anti-competitive agreements, like sections 76 and 77 that deal with resale price maintenance, exclusive dealing, market restrictions and tying. The Canadian Act also contains similar clear prohibitions on horizontal anti-competitive agreements, such as section 45 that forbids agreements among competitors to fix prices, allocate markets or limit output, also, section 90.1, which prohibits other types of horizontal agreements that are likely to substantially lessen or stop competition.

**Source:** UNCTAD - Model Law on Competition (2020).

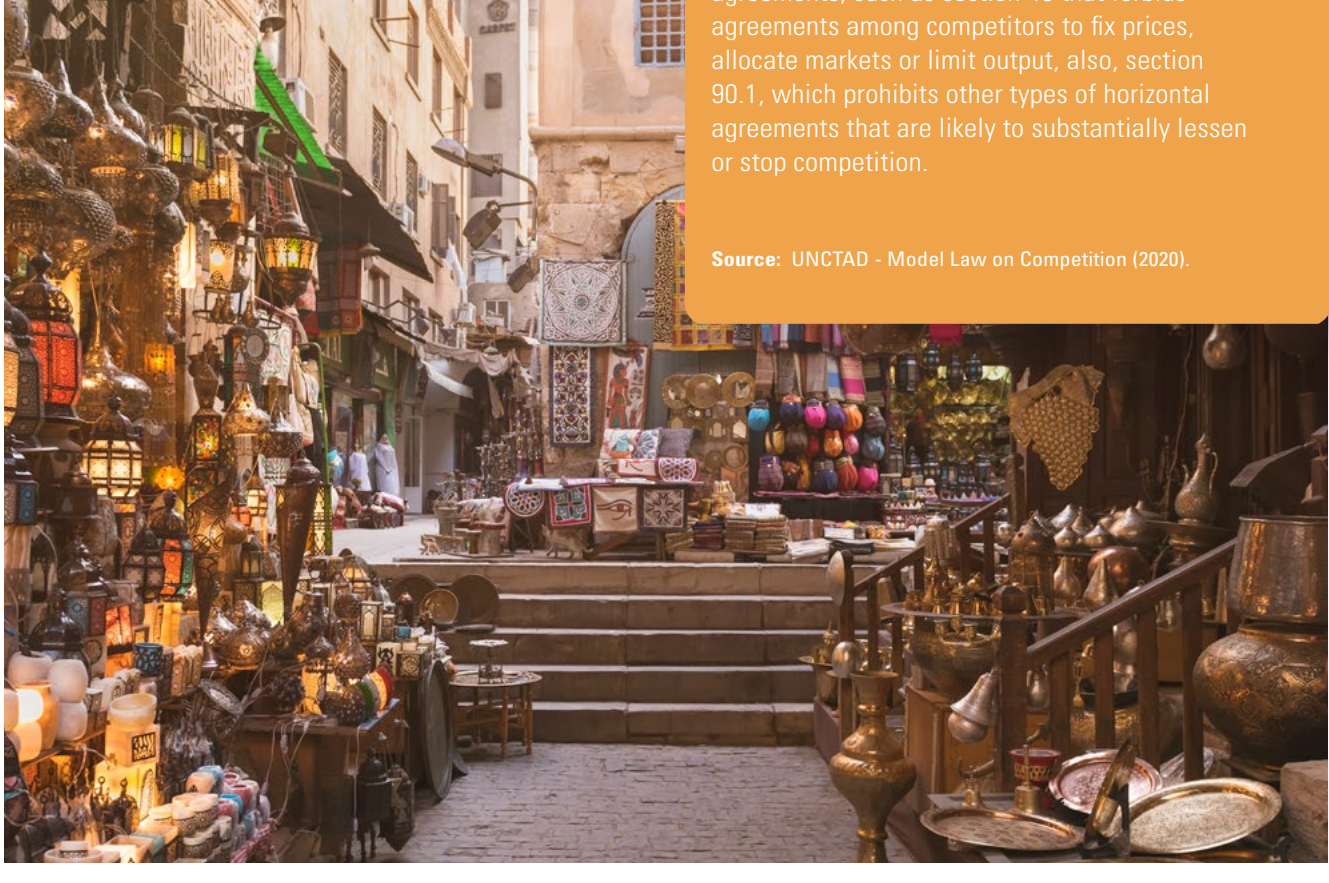
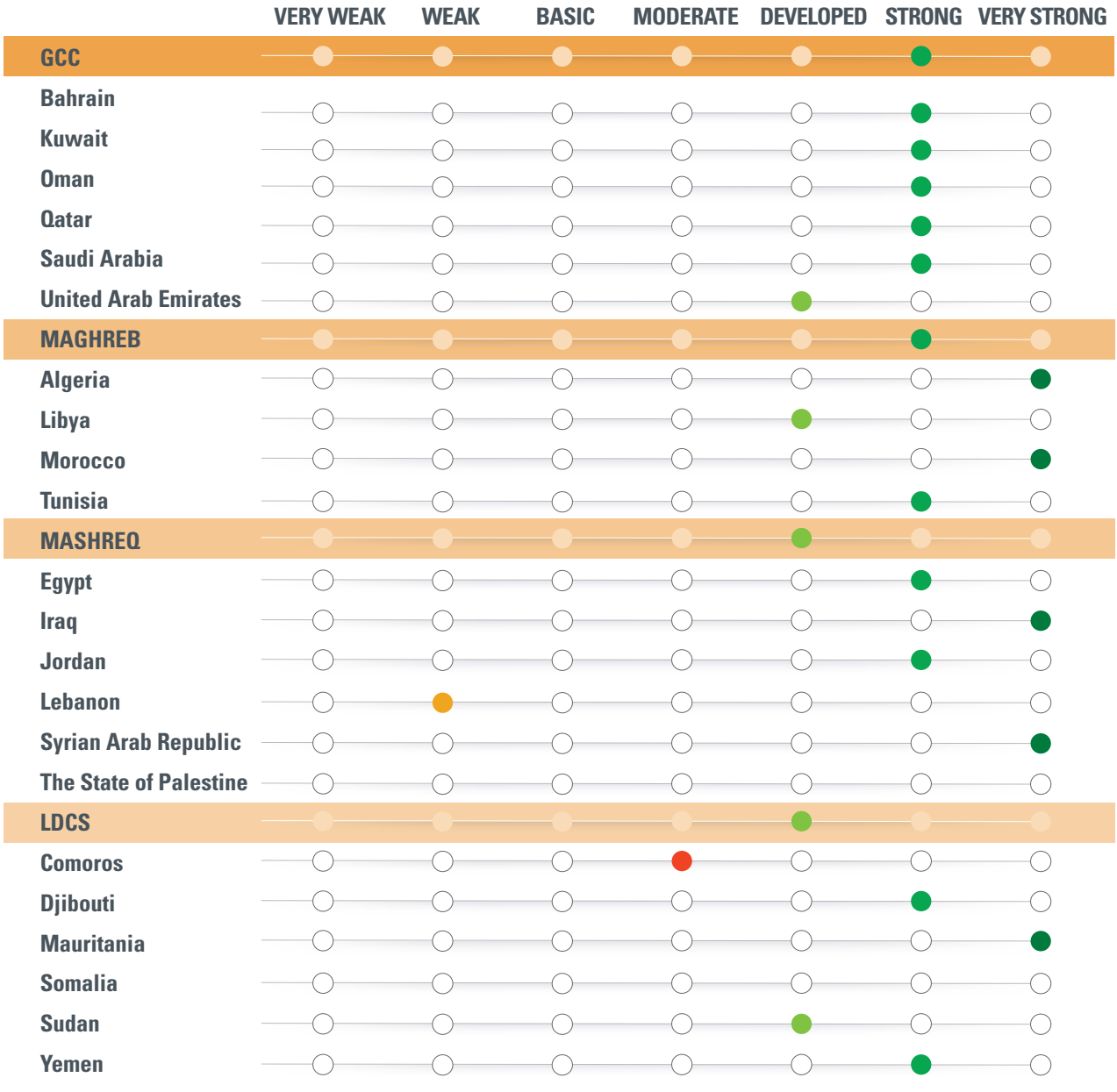


Figure 6 provides a consolidated classification assessing how institutions are noted and defined within legislation and how their roles and responsibilities are clear, as outlined within the legal framework of the respective countries. This includes independence, autonomy, decision-making and investigative powers, as well as other characteristics recommended by various international guidelines.

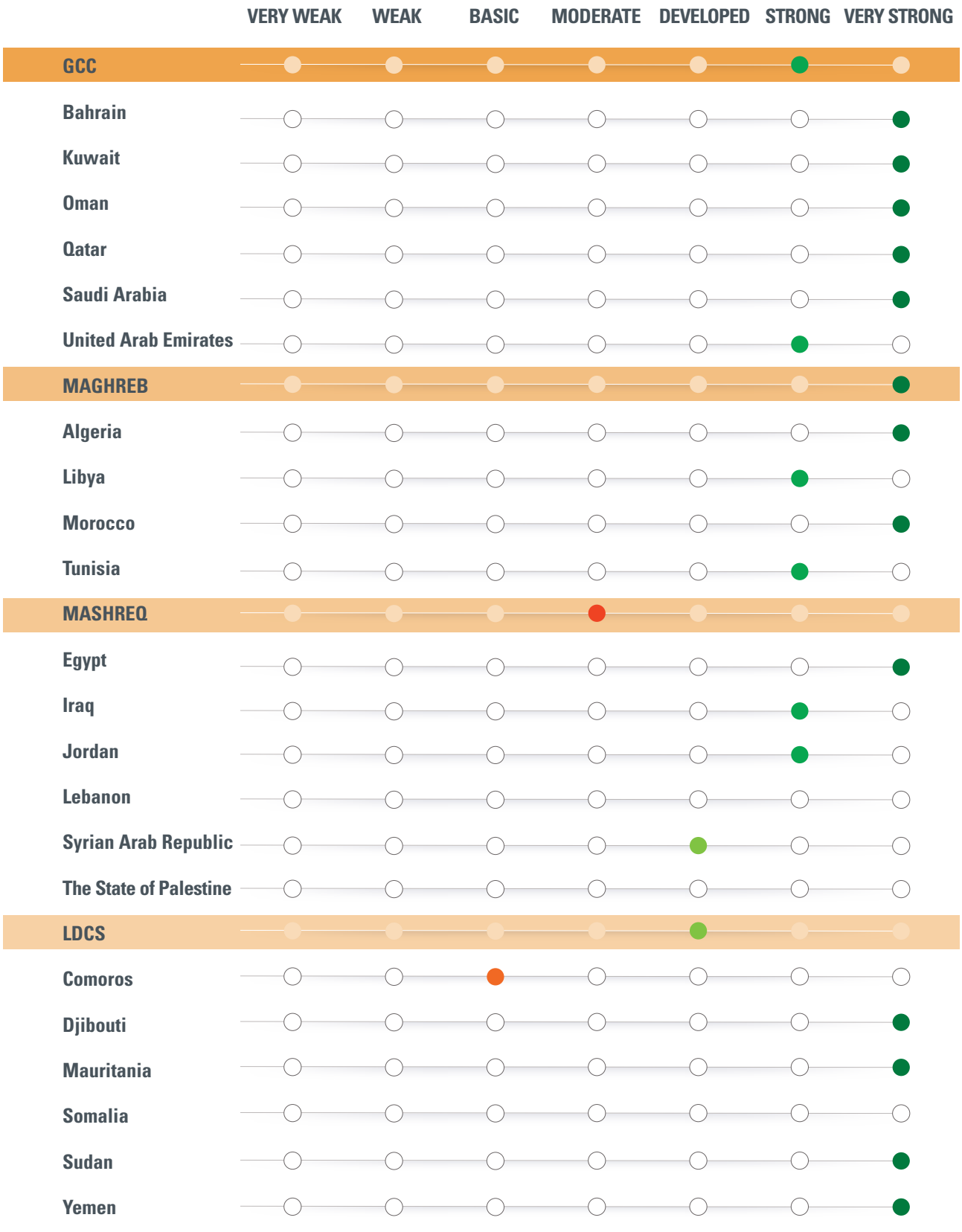
**FIGURE 6**
EXISTENCE AND ROLE OF INSTITUTIONS IN COMPETITION LEGISLATION




Algeria, Mauritania and Morocco score significantly higher than other countries in the Arab region due to their streamlined laws and methods of enforcement. Morocco's competition law – Law No. 104-12 of 2014 – contains rigorous definitions of anti-competitive behaviour in unified competition legislation. A separate law sets out the role and powers of the Competition C-ouncil, an institution responsible for regulating competition and overseeing mergers. In 2018, the Council received expanded powers to carry out investigations and impose sanctions.

Other Maghreb countries received lower overall scores in competition on account of weak legislation relating to anti-dominance and monopolization laws, as well as cartels and anti-competitive agreements. Figure 7 outlines the scores for enforcement mechanisms within the legislation. The ranking sets to evaluate the modes of enforcement such as incentives, subsidies, fines, prison sentences and complaint mechanisms.

**FIGURE 7**
ENFORCEMENT MECHANISMS OUTLINED IN COMPETITION LEGISLATION



On paper, enforcement across all Arab countries appears to be strong, but widespread exemptions in key sectors undermine the law. The GCC, the Maghreb and the LDCs all score "Very Strong" and "Strong" in terms of enforcement, with Mauritania and Morocco achieving international standards. However, these scores do not reflect the many exemptions that often undermine the scope and power of the legislation. Kuwait, for example, exempts government facilities and projects from the competition law, while Oman excludes research and development activities, allowing for the possibility of monopolistic behaviour to flourish in these lucrative sectors. On its part, Saudi Arabia introduced a new law on competition in 2018 that included the concept of "leniency" that allows for more exemptions within the law. Moreover, Saudi law also lacks clear criteria and goals for "leniency" that could benefit individuals or companies that have political or commercial advantages and connections.

**BOX 2**

COMPETITION LAW ENFORCEMENT AGAINST STATE-OWNED ENTERPRISES

The Arab countries are historically characterized by their national economies due to the size of the public sector and State-owned enterprises (SOEs). In some cases, these SOEs form a State monopoly and, in some other cases, they engage in commercial economic activities and compete against private enterprises. Competition laws in most of the Arab countries have many clear and vague exemptions regarding SOEs, which immune them from enforcement practices.

However, many competition authorities around the world have took effective actions to enforce the antitrust law on SOEs. In India, for example, a domestic SOE by the name of Coal India Ltd. was the first SOE to be charged a major fine by the Competition Commission of India in December 2013. Ferrovie dello Stato, an Italian State-owned group, was charged a EUR 300,000 fine by the Italian Competition Authority for abuse of dominance in the national railway infrastructure access market.

**Source:** OECD 2018 – Background paper: Competition Law and State-Owned Enterprises.

## C. Anti-Corruption

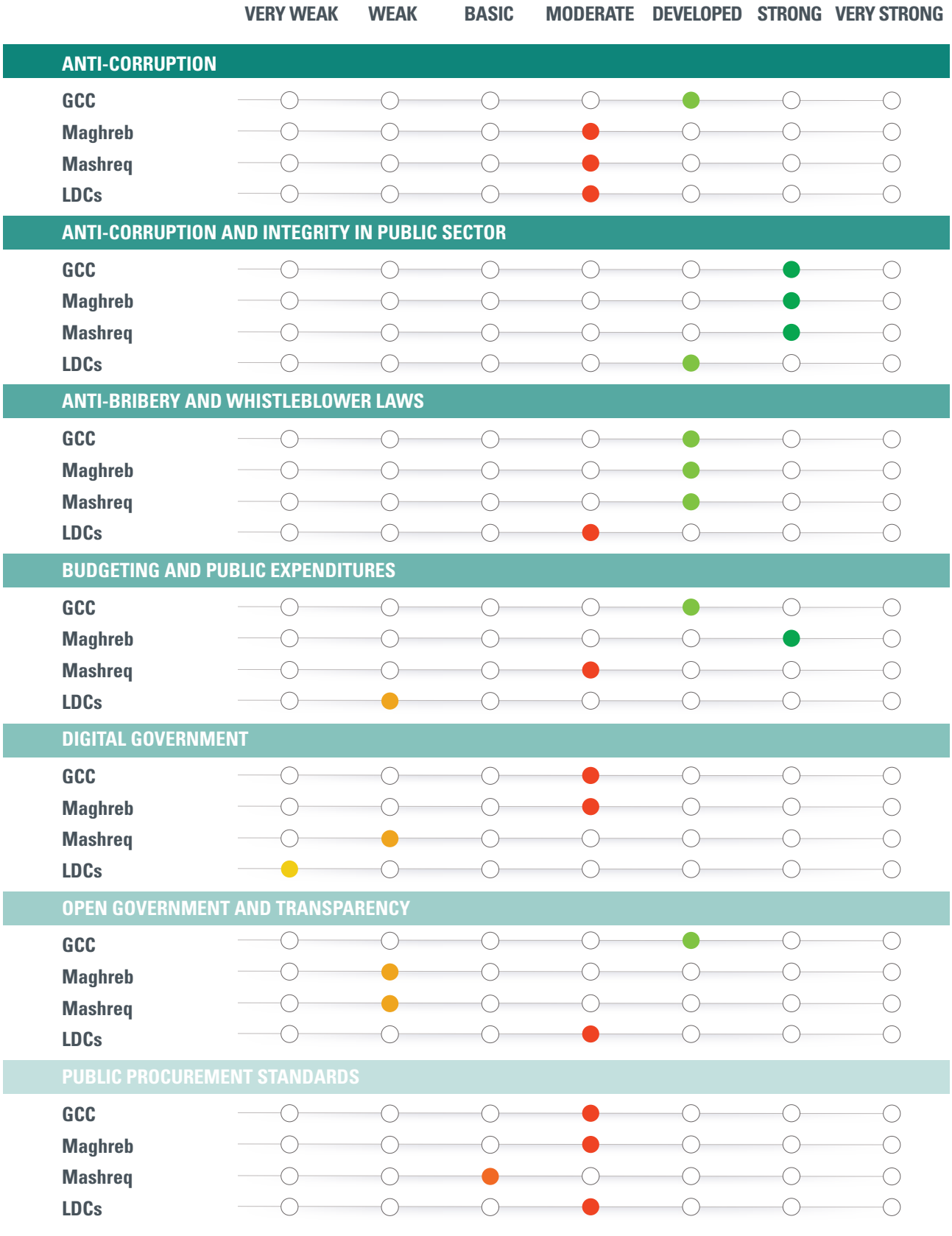
The analysis of anti-corruption legislation examined the existence of various components, as recommended by international best practice. As seen in figure 8, key components of anti-corruption legislation include laws and articles related to anti-corruption and integrity in the public sector, anti-bribery and whistleblower laws, budgeting and public expenditures, digital government, open government and transparency, and public procurement standards.

The results indicate that the Gulf countries possess the most developed anti-corruption legislation in the Arab region. The Gulf countries particularly lead in the budgeting and public expenditures, open government and transparency, and public procurement standards (See figure 8). For example, Kuwait and Qatar have incorporated international agreements and commitments into their national legislative frameworks. In 2007, Qatar incorporated the United Nations Convention against Corruption into its national legislation through Decree No. 71 of 2007. Similarly, Kuwait actively works with UNDP and UNODC on instances of non-transparency, resulting in Kuwait having one of the most transparent systems in relation to public procurement. On its website, Kuwait's Central Agency for Public Tenders displays information about open tenders, giving details on each project and the cost of each tender. Moreover, Arab countries display reluctance to ratify even regional anti-corruption conventions. In December 2010, almost all Arab States signed the Arab Anti-Corruption Convention – an initiative by the League of Arab States – but only 12 countries have ratified the convention, which remains largely ineffectual.

Arab countries on average score higher in "Anti-Corruption and Integrity in the Public Sector". All Arab countries have either "Developed" or "Strong" legislation in that category. Jordan, Kuwait, Morocco and Tunisia match international standards for all the required components in terms of definitions, enforcement mechanisms within the public bureaucracy, and decent institutional processes to counter corruption and ensure integrity within the public sector.

[2] Central Agency for Public Tenders, Kuwait, https://capt.gov.kw/ar/.

**FIGURE 8**
KEY COMPONENTS OF ANTI-CORRUPTION LEGISLATION, SUB-REGIONAL OVERVIEW



> **"The national strategy and the laws encourage and protect whistleblowing. It is often portrayed as a national duty of all citizens in Kuwait to report bribery and corruption."**
>
> ***– Kuwait Anti-Corruption Authority Key Informant***

All Arab countries criminalize bribery in the public sector. However, few actively enforce whistleblower laws that give specific strength to enforcement and implementation. Kuwait, Morocco, Saudi Arabia and Tunisia particularly have strong legislation pertaining to combating bribery and protecting whistleblowers. Uniquely, Kuwait has included laws that encourage and protect whistleblowers in its national strategy. The streamlined and clear nature of anti-corruption legislation helps stakeholders understand and utilize the law. This has fostered an environment in Kuwait that portrays whistleblowing as part of national duty.

In terms of public procurement standards, the GCC countries lead in the Arab region. Qatar, for example, lays out robust definitions of corruption and integrity during public procurement in the following laws: Qatari Penal Code of 2004; Civil Service Law No. 1 of 2001; Public Procurement Law No. 26 of 2005; and Emiri Decree No. 84 of 2007. These laws cover corruption-related definitions and prohibited acts, and clearly define the monitoring bodies responsible for enforcement. Importantly, Qatar's public procurement law includes an administrative review for procurement and stipulates that the State auditor must be involved in the procurement process.

Most of the Arab legislations include articles regarding anti-corruption and integrity in the public sector. However, major exemptions that strongly undermine implementation persist. Exemptions create loopholes in anti-corruption laws that undermine their effectiveness. They also frequently benefit individuals or companies that have political or commercial advantages and connections. Iraq's Public Procurement Standards, for example, contain exemptions for entities

with direct links to the government and senior officials. For decades, senior officials in Yemen benefited from anti-corruption legislation that exempted them from scrutiny. In light of the increased focus on anti-corruption measures since 2011, lawmakers were set to remove this exemption. However, the recent unrest in Yemen has brought this development to a halt.

Jordan, Kuwait, Qatar and Tunisia regulatory and legislative systems tackling anti-corruption are closer to international best practices. Kuwait scores strongly across all categories, including definitions, laws and decrees, institutions and enforcement mechanisms. Tunisia scores highly because it has also passed whistleblower laws that protect reporters of bribery and corruption. Most of Tunisia's anti-corruption laws were passed since 2011, during a push towards greater transparency following the Arab Spring and in reaction to popular demands to reduce corruption. These include the Whistleblower Law of 2017 and the Access to Information Law of 2016. Figure 9 provides the rankings related to the existence of laws and components of legislation for anti-corruption, meaning the existence of types of laws and/or regulations, royal decrees, federal or State laws and other pieces of legislation to support and promote anti-corruption.

Most Arab countries outline some form of standards for assessing and monitoring budgeting and public expenditures. These laws are very important in defining clear procedures for public expenditures and government spending that are outlined by law and could be reviewed, published and assessed by the wider public on a regular basis. However, based on the research results, it is believed that the Comoros, Djibouti, Egypt, Libya, Saudi Arabia and the Sudan lack such legislation. Countries like Iraq and Yemen that do have such legislation continue to face problems in providing this information in an accessible manner to the public.

Open government and transparency legislations are the weakest in the Mashreq and Maghreb subregions. Most Arab countries do not provide a clear definition of transparency (only six countries do) nor do they provide clear enforcement mechanisms related to open government and transparency. Arab countries should work diligently on designing and strengthening legislation that protects privacy and data security.

Definitions of corruption are weakest in the LDCs, followed by the Mashreq and Maghreb subregions. Mauritania's extremely poor definitions of corruption led to a score of zero, dragging the LDCs' overall rank down to "Basic". Mauritania's Law No. 14 of 2016, for example, defines corruption in a few short paragraphs, without providing any details or nuances. While the law references terms such as "illicit enrichment," it does not clearly define them. Libya and Syrian Arab Republic have the lowest rank in the Maghreb and Mashreq subregions respectively. In the case of the Syrian Arab Republic, the law loosely refers to economic crimes but does not define corruption. However, several countries in these regions stood out, achieving "Strong" scores thanks to excellent definitions of corruption and similar practices. Tunisia's Law No. 10 of 2017 on Reporting Corruption and Protection of Whistleblowers, for example, provides clear definitions of corruption, transparency, accountability and integrity. The GCC scored relatively low in definitions of corruption since Gulf countries' legislation notably lacks a clear definition of corruption. Gulf legislation merely outlines acts that fall under "bribery" or "abuse of power/position". This umbrella phrase covers corruption and other forms of abuses of power, leaving many loopholes for individuals to avoid the law.

**BOX 3**

REDUCING CORRUPTION THROUGH ADMINISTRATIVE PROCEDURES REFORMS

The settings within the institutions and organiztions can greatly determine to what level the administrative procedures are subjected to external interference and corruption. Regular review of measures and their modification by law, or even their elimination whenever necessary, also add to reducing corrupted actions within administrations.

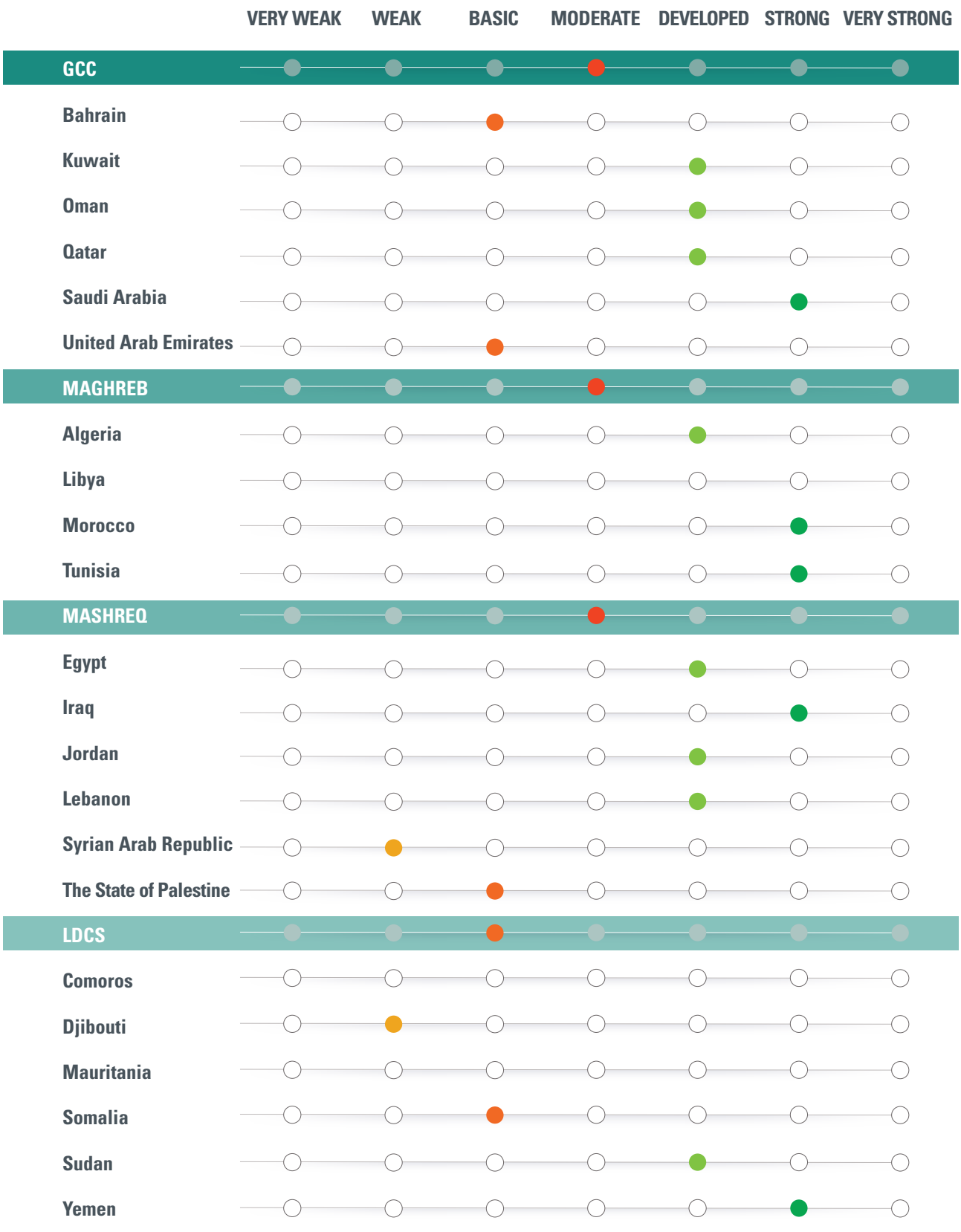
Regular and timely rotation of officials reduces parochialism in thinking and decision-making and therefore helps in reducing corruption. Many Asian countries rotate public officials under certain circumstances or according to a fixed schedule. Bangladesh, China, Hong Kong, India, Indonesia, Kazakhstan, Korea, Nepal, Singapore and Thailand use this method of routinely rotating public officials. The Philippines performs regular rotations on certain officials of the international revenue office and the national police.

Streamlining administrative procedures and reducing discretion in decision-making can also help in fighting corruption. Many countries made efforts to reform administrative procedures in order to stop discretionary powers of public officials. For example, China has streamlined the public licensing system and reduced the amount of public licenses by half. Thailand's Act on Administrative Procedure (2001) defines the rule of administrative procedures to streamline it and promotes effective implementation of the law to prevent corruption in public administration.

**Source:** OECD Anti-Corruption Policies in Asia and the Pacific: Legal and Institutional Reform in 25 Countries.

Figure 9 shows the scoring for definitions as they are included and utilized within anti-corruption legislation.

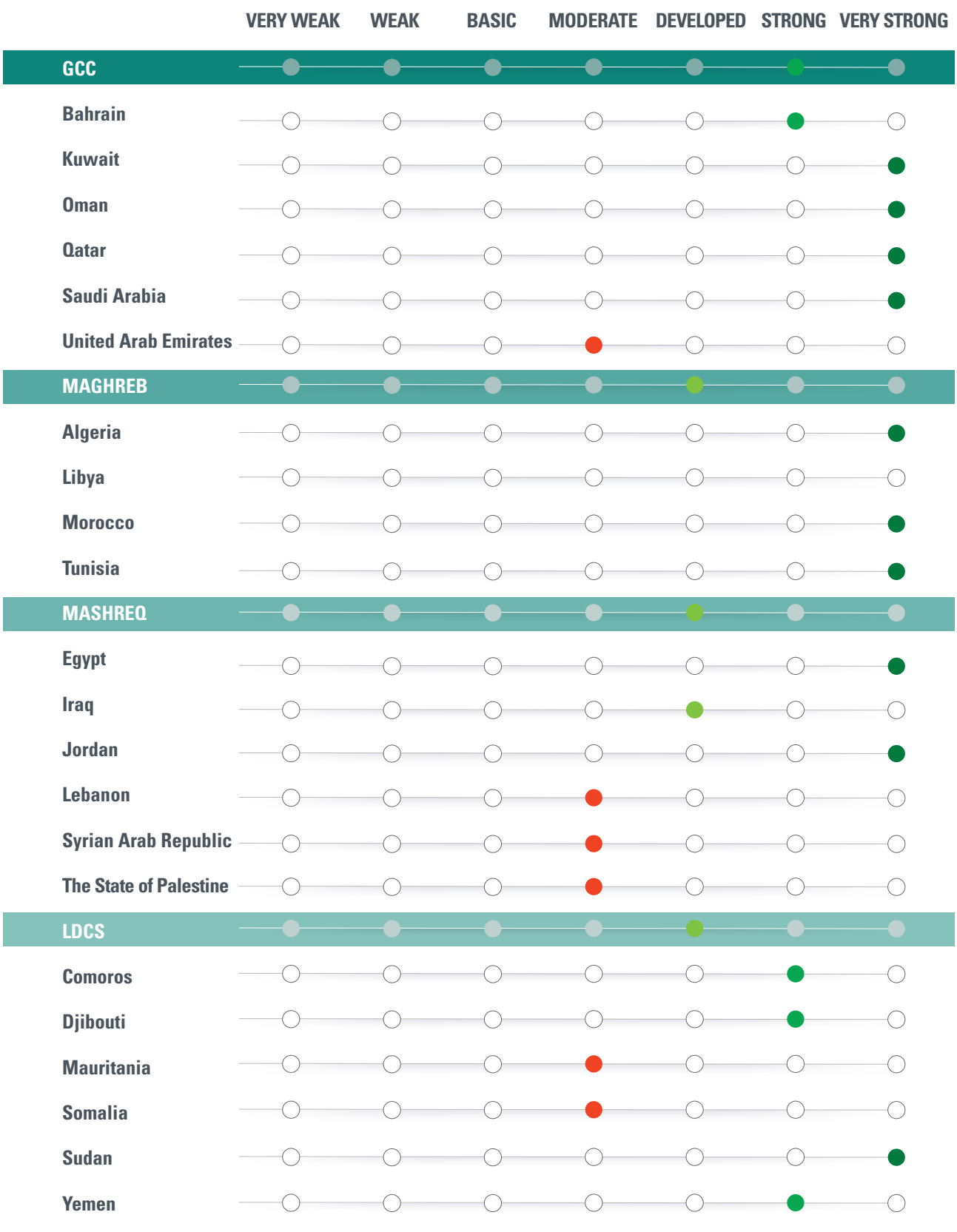
**FIGURE 9**
EXISTENCE AND CLARITY OF DEFINITIONS IN ANTI-CORRUPTION LEGISLATION



Most Arab countries have strong enforcement mechanisms outlined in their anti-corruption legislation. As seen in figure 10, the majority of Arab countries, including Algeria, Bahrain, Egypt, Jordan, Kuwait, Morocco, Oman, Qatar, Saudi Arabia, the Sudan and Tunisia, have reached a very strong state as recommended by international guidelines. On the other hand, Lebanon, Mauritania, the State of Palestine, Somalia, the Syrian Arab Republic and the United Arab Emirates still have several gaps in terms of enacting sufficient enforcement in their anti-corruption legislation.

However, countries that outline law enforcement mechanisms still struggle to appropriately and comprehensively implement these mechanisms. Oman is an example of a country that struggles to implement anti-corruption laws, despite possessing a robust legislation that outlines enforcement mechanisms. Omani law criminalizes abuse of office, passive and active bribery, and embezzlement. Specifically, the Omani Penal Code and the Law for the Protection of Public Funds and Avoidance of Conflicts of Interest (Royal Decree No.112 of 2011) make up the legal framework covering corruption offences committed by government officials, employees of the public sector, or companies in which the government holds at least 40 per cent of shares. The Law is also applicable to private companies involved in corruption cases and connected to government bodies or officials. Omani law also forbids government officials from holding positions outside their government job without prior approval. Despite this law, however, several cabinet members have allegedly had direct or indirect business interests. The impunity of State officials is evidence that enforcement mechanisms outlined in national legislation do not immediately translate into full implementation.

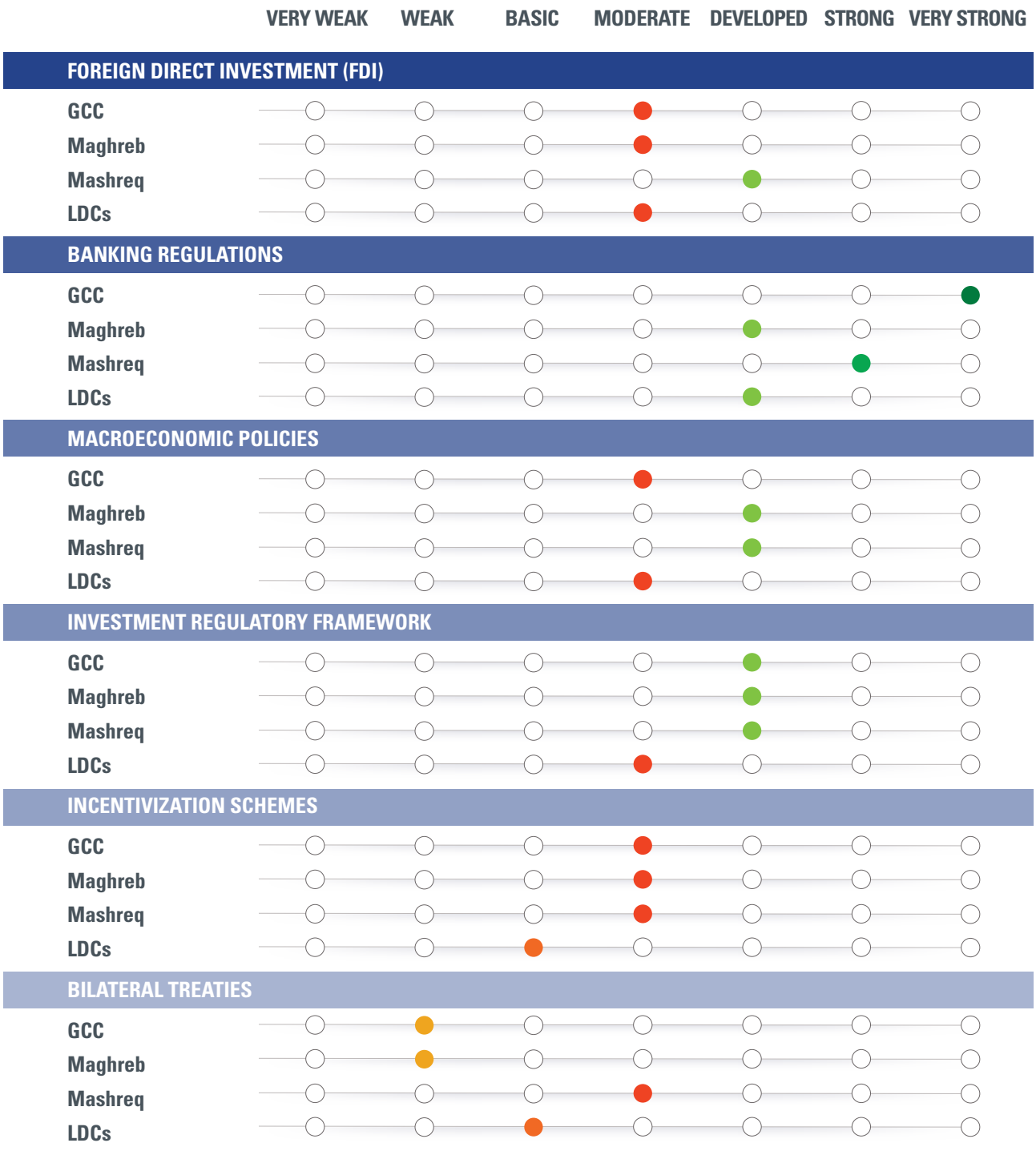
**FIGURE 10**
ENFORCEMENT MECHANISMS OUTLINED IN ANTI-CORRUPTION LEGISLATION



## D. Foreign Direct Investment

The analyses of FDI legislation in the Arab region examined the various components of FDI as recommended by international guidelines. As seen in figure 11, key components of FDI legislation include laws and articles related to banking regulations, macroeconomic policies, investment regulatory framework, incentivization schemes and bilateral treaties.

**FIGURE 11**
KEY COMPONENTS OF FDI LEGISLATION, SUBREGIONAL OVERVIEW



The Mashreq subregion has the most "Developed" overall FDI legislative frameworks in the Arab region. Countries in the Mashreq scored highest for their FDI legislative frameworks, which regulate investments entering the country from abroad. FDI legislative frameworks in the Mashreq sub-region typically contain robust institutions to manage investments entering the country, incorporate international agreements that link with the countries' macroeconomic policies, and boast accessible and transparent legislation for various stakeholders. Jordan and Egypt achieved the highest score in the subregion, followed by Iraq and Lebanon. Jordan, the highest-scoring single country in the region, first passed an investment law in 1995, which it amended in 2000, and recently updated in 2014 in the form of Law No. 30/2014. Jordanian investment law is a comprehensive document that rigorously explores trade incentives and advantages within and outside of free trade zones, outlines the Investment Commission and its responsibilities, and regulates general procedures and provisions that cover the rights of non-Jordanian investors. Meanwhile, the Maghreb sub-region falls into the "Moderate" class, with Algeria being the only country in the region that has "Developed" FDI regulation. Among the LDCs, the lowest-scoring subregion, Djibouti, Somalia and Yemen surpass their peers thanks to newly "Developed" banking regulations, clearer macroeconomic policies, and major commitments to bilateral treaties.

In the GCC region, Kuwait alone consistently rivals the Mashreq countries across all scoring criteria. Kuwait was the only GCC country to score either "Very Strong" or "Developed" in incorporating definitions, international agreements, enforcement mechanisms, and accessibility and transparency of the FDI legislative framework. Kuwait scored highly in these criteria thanks to Law No. 8 of 2001 regulating FDI, which contains robust definitions of the rights of foreign investors. Law No. 116 of 2013 established the Kuwait Direct Investment Promotion Authority (KDIPA), which is currently in the third phase of the national strategy for promoting investment. The KDIPA has 29 ongoing projects, of which 10 are related to FDI. All of Kuwait's FDI processes are open to scrutiny from multiple stakeholders. However, other countries in the GCC region are attempting to develop their own FDI laws, including Oman, Qatar, and the United Arab Emirates, all of which have passed new laws promoting FDI in the past two years, suggesting that other Gulf countries may soon be competing with Kuwait in the subregion. Meanwhile, Bahrain is still working on a unified law that governs FDI.

Banking regulations in the GCC are predominately "Very Strong", with the exception of Qatar and the United Arab Emirates. Banking regulations are essential for attracting foreign investments into a country. In this regard, the GCC countries tend to score very highly, largely matching international standards. Only Qatar and the United Arab Emirates lag behind, but are in line with the rest of the Arab countries. For the Mashreq subregion, Iraq and Jordan are "Very Strong" in terms of their banking regulations. Iraq, for example, benefits from its Banking Law of 2004, a hefty piece of legislation that contains comprehensive articles on components like general provisions, capital requirements, bank management, rules related to conducting banking activities, regulations related to accounts and financial statements, the audit process, provisions on confidentiality, enforcement measures and penalties.

All Arab countries have specific national legislation that regulates the banking sector. At the same time, 11 Arab countries enforce some form of capital controls

on their banks or other restrictions on capital liquidity within their banking sectors. These restrictions on capital movement are enacted to protect against capital flight and stabilize the national banking sector. These restrictions, however, have a negative impact on attracting FDI into the respective countries. In the United Arab Emirates for example, Federal law No. 19 of 2018 on FDI restricts the movement of FDI into the banking sector, as part of its "negative list" of sectors.

All Arab States have macroeconomic policies designed to attract and govern FDI. As such, all these countries have at least an institution or authority that governs FDI in the banking sector. These institutions can take the shape of a central bank, national investment commissions, chambers of commerce or banking associations. All Arab countries, with the exception of the Sudan, also possess national strategies and specific legislations to attract FDI into their respective countries. The Mashreq countries tend to have the strongest macroeconomic policies in all of the Arab region.

The Mashreq region has stronger institutions to manage FDI, followed by the GCC countries and Yemen. Since the late 1990s, countries in the Mashreq have gone to a great length to outline the procedures and institutions on FDI, often in the form of national investment councils and agencies that fall under the larger umbrella of the ministries. Thus, the Mashreq region has had a long history in establishing and engaging with FDI, allowing their institutions more time to develop within the legislative frameworks.

More recently – especially in the past two years – the GCC region has pushed forward its legislative frameworks for FDI. In virtually all FDI laws in the Gulf, there is an explicit emphasis on the need to receive prior approval and licensing through these institutions for any company or business to operate. Yemen also scored highly for its institutions, as outlined to its Law No. 15 of 2010, known as the Investment Law. The Yemeni Investment Law establishes the General Investment Authority and applies the concept of a "one-stop shop" to facilitate and coordinate investment into the country; this is particularly elaborated on in Articles 13 and 14 of the law. The General Investment Authority is also granted "a legal personality, an autonomous financial status, and is accountable to the Prime Minister," as stated by Article 11. Moreover, the Yemeni Investment Law clearly outlines the roles and responsibilities of the General Investment Authority, its structure, and how it operates (covered under Articles 15-25).

Despite their willingness to attract FDI, many Arab countries continue to impose various forms of restrictions and screening requirements on foreign capital and enterprises. Most Arab countries (except five) possess investment regulatory frameworks that include restrictions on foreign equity, prior approval requirements, and foreign enterprise operations. Djibouti, Iraq, Jordan, Morocco, Palestine, Somalia and Tunisia have no market restrictions on FDI's entry into their local economic sectors or markets.

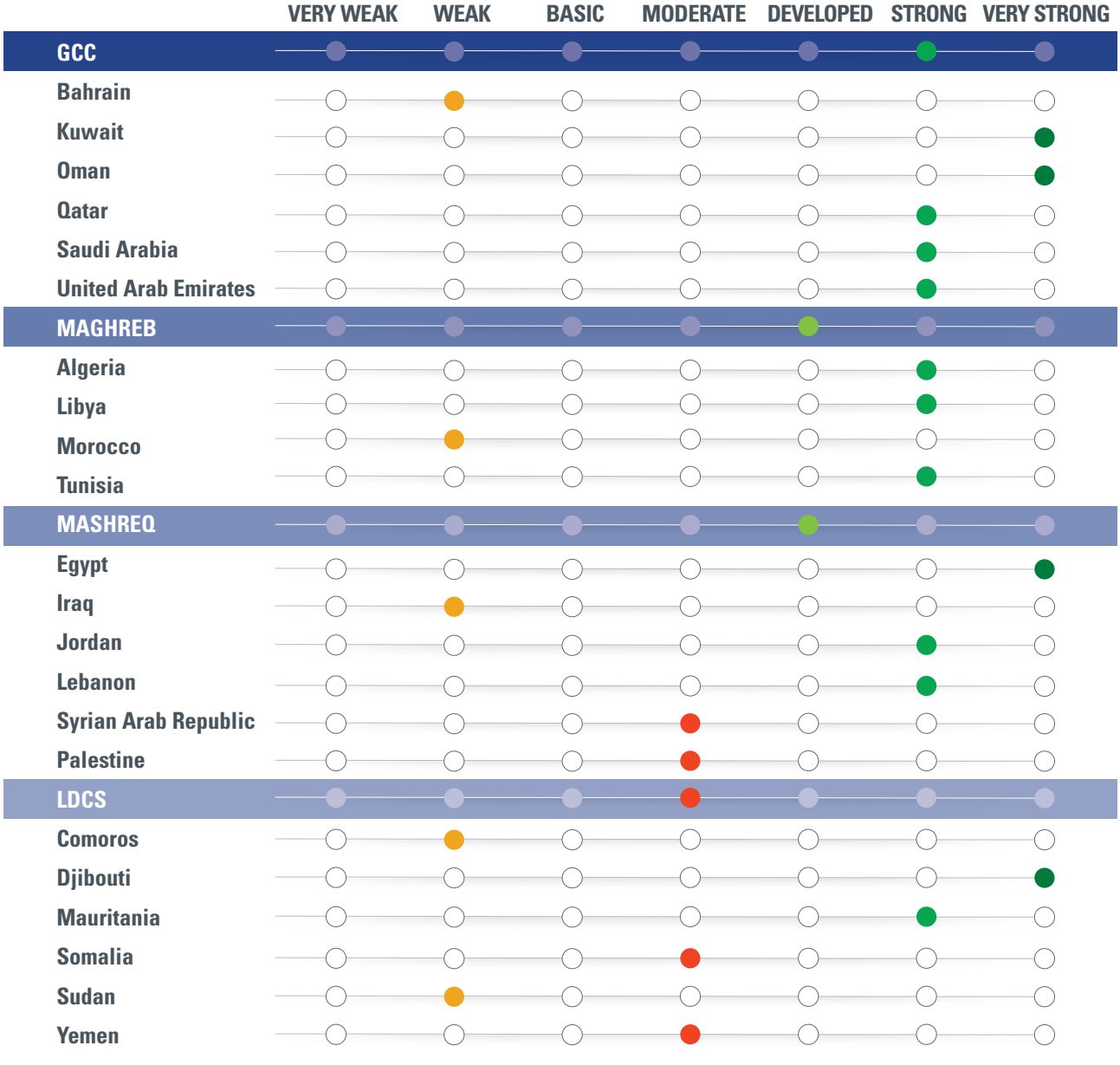
All Arab countries, except for the Sudan, possess some form of FDI incentivization schemes. These schemes are often manifested as tax exemptions or free zones. However, there are no clear time profiles nor a cost-benefit analysis outlined in most Arab countries (except for Morocco), showing the need to reform the FDI incentivization schemes in a way that maximizes the positive results of foreign investments. It is important to note thatthe State of Palestine's incentivization schemes are the closest to matching international standards. The Palestine Investment Promotion Agency (outlined in Law No. 1 of 1998, Article 12) is charged with promoting foreign investment in the State of Palestine. The 1998 investment law, which went through several amendments over the years, also contains considerable incentives for attracting investments. While these incentives exist, the State of Palestine falls behind overall due to the restrictions arising from Israel's occupation, in addition to dual forms of government in Gaza and the West Bank. Meanwhile, Egypt, Jordan, Kuwait and Tunisia are also closer to the international standards thanks to coherent and streamlined systems of incentivization. For example, in Kuwait, a "one-stop shop" exists through a series of decrees from 2014 (Decree No. 34) and 2019 (Decrees No. 393 and 394) that centralize and clearly outline the necessary procedures for FDI.

Arab States across the region struggle to include clear and coherent definitions within their FDI laws. These countries scored lower on average for definitions within their FDI legislative frameworks compared to definitions within the other themes – competition, anti-corruption and consumer protection. In this regard, the GCC and the LDCs sub-regions score "Basic"; the only notable exceptions to this rule are Kuwait and Mauritania. Saudi Arabia lacks clear definitions in both of its laws governing FDI: the 1979 Foreign Investment Law and an update to the law through a royal decree in 2001 (Royal Decree No. M1). In both laws, definitions are rudimentary, lacking elaboration and clarity as recommended by international standards. Figure 12 highlights the scoring on the existence of clear and concise definitions, and how they are used within FDI legislation.

**FIGURE 12**
EXISTENCE AND CLARITY OF DEFINITIONS IN FDI LEGISLATION

Enforcement outlined in FDI legislative frameworks is more robust in the GCC subregion, followed by the Mashreq and Maghreb countries. In particular, Kuwait, Egypt and Oman have comprehensive mechanisms to enforce their legislation compared to other Arab countries. While Iraq does have an enforcement process, it is not outlined in its FDI legislative framework, giving it the lowest overall score in terms of FDI law enforcement. The law is still being reformed, and has gone through amendments in 2009, 2017 and 2018 to mitigate these gaps. For its part, Article 6 of the United Arab Emirates FDI law (Law No. 19 of 2018) specifies the legislative criteria for the FDI committee to consider enforcement. The country's FDI law is unique in containing clear criteria and goals for incentives, procedures, limitations, processes, aims and goals to enforce FDI regulation. Often, tax exemptions are the most common form of incentives used to attract foreign investors into a country. Bahrain's FDI legislation, compared to the rest of the GCC region, contains severe gaps in clarity and coherence in outlining its enforcement mechanisms, garnering it the lowest score for the GCC region. Figure 13 shows the scoring results related to enforcement mechanisms outlined within FDI legislation.

**FIGURE 13**
ENFORCEMENT MECHANISMS OUTLINED IN FDI LEGISLATION



Arab countries have key sectors that are off-limits to foreign investors. The nature of these sectors depends on the country. For example, the GCC countries typically shield the oil and gas sector from foreign investment, while Lebanon ensures that its telecommunications, electricity and security sectors are dominated by the State. Meanwhile, Iraq does not allow foreign investment in transportation and finance, and the Syrian Arab Republic forbids FDI in the security and military sectors. In the United Arab Emirates, Article 19 of Federal Law No. 19 of 2018 concerning FDI notes that the Licensing Authority and the Competent Authority will reject FDI projects in the cases of "threat to national security or peace" or "negative impact on a strategic sector in the State." The law does not provide clear definitions of these terms, providing a fertile ground for manipulation.

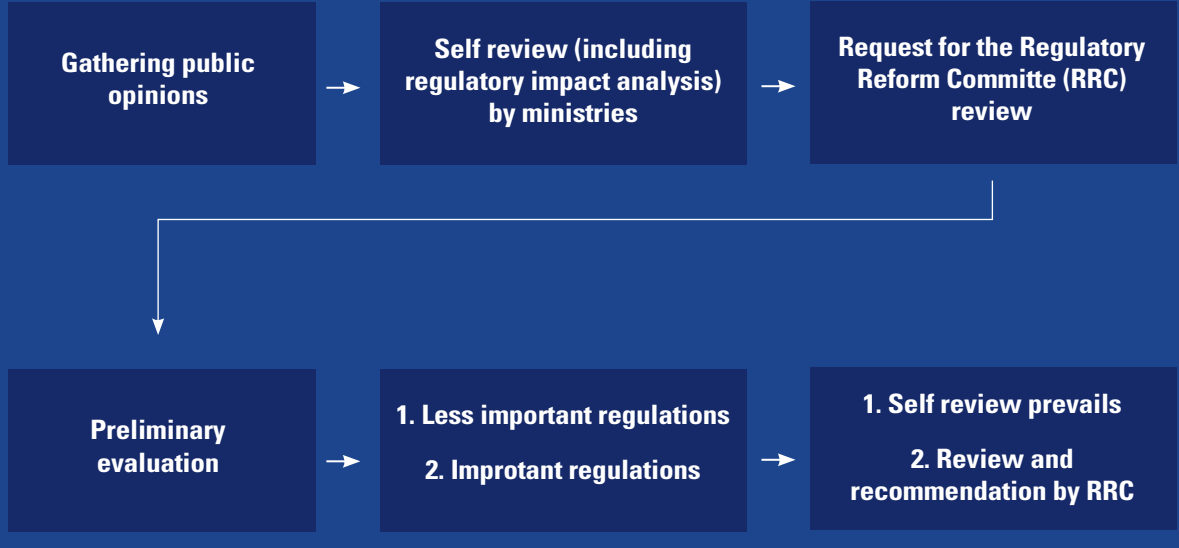
**BOX 4**

THE KOREAN REGULATORY REFORM COMMITTEE

In order to supervise the regulatory reform process, Korea established the Korean Regulatory Reform Committee in 1997. The committee has 22 members, including the Prime Minister (as chairman), six government members, another chairman from the private sector, and 14 civilian committee members. The main responsibility of the committee is to ensure quality control over of the Regulatory Impact Analysis and establish the elementary policy guidelines. The committee monitors ministerial regulatory improvement plans and reviews new and existing regulations, where it reviews around 1,000 regulations per year.

To increase FDI in Korea and to create a more investment-friendly environment, the Foreign Investment Promotion Act, enacted in 1998, eliminated and relaxed foreign investment regulations in 29 Korean industries. With the help of the established regulatory registry system, the Kim Dae-jung administration (1998-2003) succeeded in dropping the number of registry regulations by half.

**The Korean Regulatory Reform Committee Procedure**



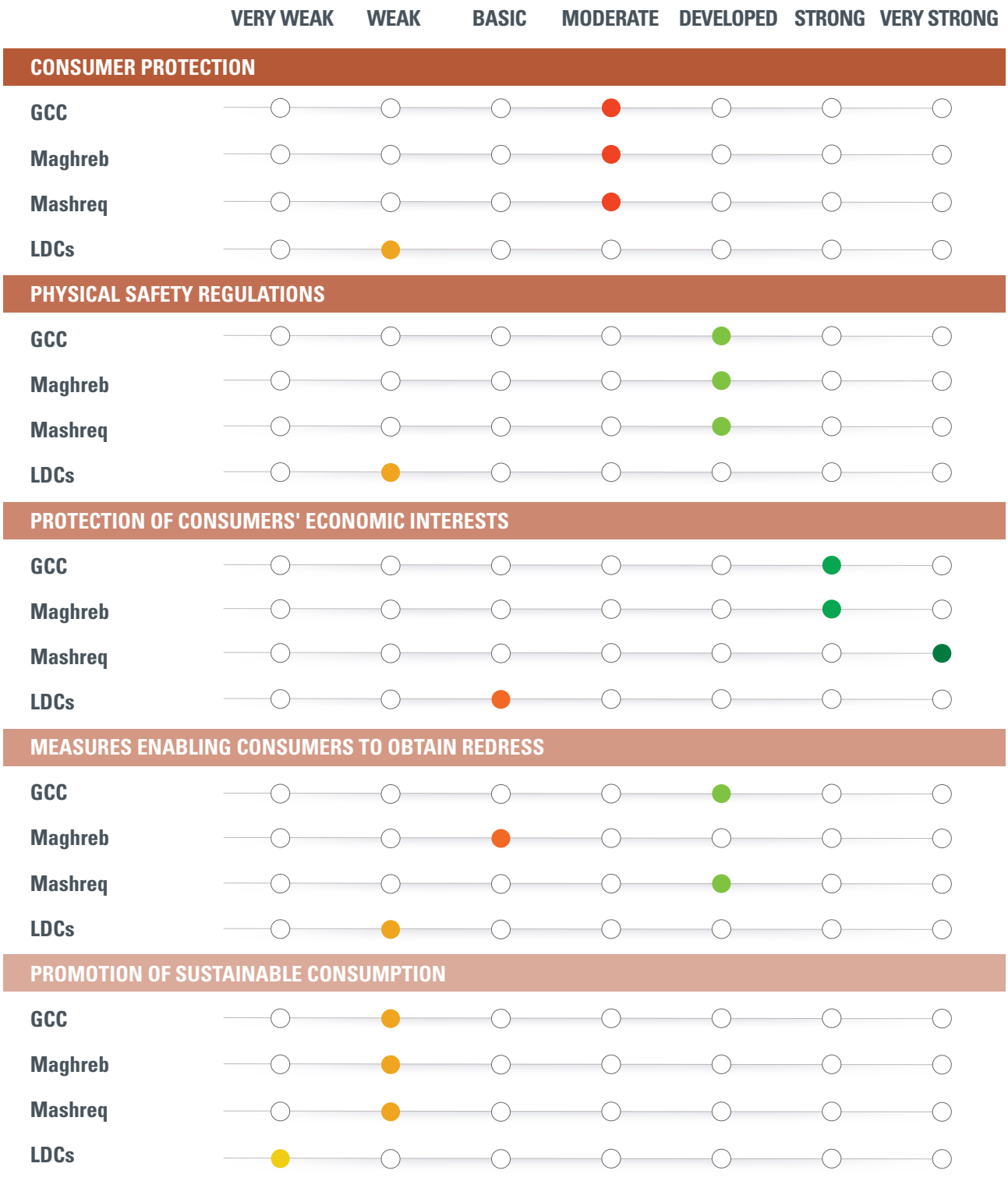

Note: important regulations are those that undermine competition, have $10 million or more negative effect on the economy, or have a negative effect on 1 million people or more.

**Sources**: OECD Reviews of Regulatory Reform Regulatory Policy in Korea Towards Better Regulation. The Korean Regulatory Reform Commite official website.

## E. Consumer Protection

As seen in figure 14, key components of consumer protection include laws and articles related to physical safety regulations, protection of consumers' economic interests, measures enabling consumers to obtain redress, and promotion of sustainable consumption.

**FIGURE 14**
KEY COMPONENTS OF CONSUMER PROTECTION LEGISLATION, SUBREGIONAL OVERVIEW



Overall, consumer protection legislative frameworks in the Arab region were seen to be the least developed in comparison to other themes under study. This indicates a serious need to further develop and understand the field of consumer protection and how it relates to the wide consumer base that forms the Arab world. As indicated in figure 14, the Mashreq, Maghreb, and GCC subregions have a "Moderate" legislative framework for consumer protection, while the LDCs lagged behind, ranking "Weak" overall. Algeria, Jordan, Kuwait, Lebanon and the Syrian Arab Republic are the only countries achieving "Developed" ranks.

Region-wide low scores reflect the fact that consumer protection is a relatively new legislative field in the Arab world. Only in the past 15 years have Arab countries either passed a consumer protection law or updated or amended their existing laws related to consumer protection in order to match international standards. Since consumer protection is a new development in the region, there is more room to develop and strengthen the legislative framework. Similar to the trends seen in competition, Tunisia was the first country to pass a consumer protection law - Law No. 117 of 1992. However, only since 2005 have other countries begun approving consumer protection legislative frameworks, including Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Oman, the State of Palestine, Qatar, the Syrian Arab Republic, the United Arab Emirates and Yemen. Even then, in many of these countries, the law applies only to traditional forms of consumption, while overlooking new forms of consumption such as e-commerce. Only eight countries in the region (Algeria, Egypt, Kuwait, Lebanon, Morocco, Saudi Arabia, Tunisia, and recently the United Arab Emirates) have laws that cover e-commerce, leaving a considerable gap in consumer protection in the remaining countries. Libya currently lacks a consumer protection law but has been waiting to approve a draft law since 2017.

Most Arab countries have physical safety regulations, except for three: Saudi Arabia, Somalia and the Sudan. Physical safety regulations can come in the form of major consumer protection laws. These laws outline the procedures in monitoring, assessing and tackling cases of violations of physical safety. Physical safety regulations also look at the enforcement mechanisms, including institutions authorized to monitor compliance and any exemptions embedded in law. Results indicate that most of the exemptions in physical safety regulations are related to the medical or military sectors.

Most Arab regulations, except those of the Comoros, Iraq, Libya and Somalia, provide clear legal rights and protections of the economic interests of consumers. These interests are generally highlighted under consumer protection laws, which accord consumers certain rights, such as transparency on pricing, complete information regarding ingredients and process of manufacturing and production. The laws are also supposed to protect consumers against price gouging, fraud and manipulation. The Mashreq slightly accords more protections to economic interests than the GCC and Maghreb. The LDCs continue to significantly lag behind the rest of the region.

In most Arab countries, consumers are unable to access regional or international modes of accountability, significantly hindering their ability to obtain redress. Most Arab consumers are limited to only their national processes and procedures. For example, the United Arab Emirates Consumer Protection Federal Law No. 24 of 2006 only allows the consumer or the ministry to initiate litigation on behalf of the consumer. Nevertheless, there are still avenues for unified agreements and regional processes to play a role in consumer protection. For example, the GCC countries are currently discussing a unified agreement to address consumer protection. Other countries already allow consumers to benefit from regional and international modes of accountability. Legislation in Kuwait, Morocco, the State of Palestine and Tunisia all allow room for regional and international processes to give individuals and organizations the opportunity to pursue consumer rights.

***"In Iraq, consumer protection organizations do not have access to regional and/or international bodies to pursue forms of accountability. They aren't allowed to initiate litigation or legally operate with full powers. So we're limited to only national (and/or government) means."***

*- Iraqi Consumer Protection Key Informant*

Moreover, Arab States almost fail entirely to address the concept of sustainable consumption within their consumer protection legislation. Countries across the region scored extremely poor for the promotion of sustainable consumption, on average achieving "Weak" and "Very Weak" levels of development. Only Algeria achieved "Moderate" status. Countries with a "Basic" score in promoting sustainable consumption in their consumer protection legislation are Bahrain, Jordan, Lebanon, Tunisia and Yemen. Jordan is the only country to include the concept of sustainable consumption in its legal frameworks, with its National Strategy and Action Plan for Sustainable Consumption. The plan emphasizes the importance of pursuing sustainable consumption in the future.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# III. SUMMARY AND RECOMMENDATIONS

Several weaknesses could be observed in the four main headings of the study, as many Arab countries are still lagging behind international standards. Even when few countries' legislative frameworks seem to be very strong on paper, exemptions and the lack of effective enforcement mechanisms hinder the achievement of the desired and expected results of any laws. This adds to the many challenges that prevent the region from progressing towards achieving the 2030 Agenda. The region is in great need to address and improve the overall business legislative framework, especially in the four topics of study. The development of a regulatory framework promotes sustainable development in the region and the movement towards the 2030 Agenda.

Regulatory and structural reforms of Arab institutions are highly needed to ensure effective implementation. These reforms can play a key factor in achieving economic growth, fostering innovation, reducing inequalities, and having more effective and inclusive institutions. Therefore, improvements of the laws regarding competition, anti-corruption, FDI and consumer protection, and their implementation, are essential to ensuring progress towards achieving the SDGs, especially goals 8,9,10, and 16.

In light of the presented results, member countries are recommended to consider the following:

- Countries across the region are to focus on improving and strengthening implementation and enforcement mechanisms and infrastructures of their respective legislations. The scope of this report only produced findings based on what is stated in the laws. As repeatedly mentioned, there is a considerable difference between the law and its implementation. Once a law is in place, other processes must take place in order to ensure its enforcement. In order to strengthen the rule of law, countries' requirements must be studied on a case-by-case basis. While some countries may need increased funding, such as many LDCs, others may require training, such as boosting the Syrian Arab Republic's ability to enforce consumer protection laws. In other regions, such as the Gulf, countries may require increased or strengthened modes of accountability. There is also a need for increased and continuous consultations with respective stakeholders and beneficiaries, especially the private sector, the banking sector and other productive sectors, when drafting these laws or amending them, or creating the right mechanisms to ensure their enforcement;
- Subregional standardization between bordering countries is a valuable and feasible way to increase and encourage practical cooperation between Arab countries. This report found that regional standardization in competition, anti-corruption, FDI and consumer protection legislative frameworks does not exist, owing to the geographic scale and disparate strategic interests of the region. However, countries already possess forms of standardization and cooperation and other legislative convergences along with sub-regional levels, especially among countries sharing borders. The Arab States could build on this to create more practical and efficient forms of legal convergence and to promote trade and FDI among themselves. More so, this could also involve localized knowledge-sharing practices that are sensitive and better suited for the particular contexts in the Arab region. (Refer to appendix B and appendix C to review the full regional and national results of the study);

- Countries enhance public awareness of their legislations, as well as citizens' legal rights and duties. Key Informants confirmed that countries with streamlined and accessible legal systems were more successful in promoting public awareness of legal rights among their citizens. Besides tightening sprawling legal systems, such as Egypt's, Arab countries could also increase outreach among citizens to make legal texts more accessible to them. These outreach programmes could be achieved through the relevant ministries or institutions. Most importantly, citizens should be as fully aware as possible of their right to appeal to the relevant regulatory institution, especially in the field of consumer protection, which is a fairly new field in the region. Knowledge of the relevant institution is not enough; outreach programmes should also include information on the appropriate avenues for submitting complaints;

- Routine training of government officials and enforcers on the legislative frameworks is absolutely necessary. One of the continual gaps that are apparent within the regulatory systems arises during the implementation and enforcement phase. While these gaps are related to a lack of public awareness, political will or other factors, an urgent point made by the experts interviewed was the significant lack of awareness of officials and government workers of the relevant laws and procedures. Routine training on an annual basis, that can synthesize and explain the relevant legislative framework in an accessible manner to government staff, could ensure that the implementation of these laws is more coherent, consistent and clear for all stakeholders;

- Increased focus on enforcement of anti-corruption legal frameworks is likely to have a positive knock-on effect on other legislations. Although Arab countries scored relatively high in anti-corruption laws compared to other themes, it is the area which suffers from the weakest enforcement mechanisms. Greater accountability and transparency among the highest forms of government, and a serious effort to enforce anti-corruption laws, would positively impact other areas of the law, such as competition, FDI and consumer protection. As emphasized in the foreword to the United Nations Convention against Corruption, "Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development";

- Encourage countries to continue making their legislative frameworks available and accessible, especially through digital platforms. A difficulty faced by the research team during the compilation of the existent laws through public sources was to locate and access these laws. The quality of archiving varies vastly from one country to another, with only a few countries – notably the GCC – offering a simple and practical way for an individual to access the legislation online in either Arabic or English. In general, the legislation is dispersed along different government and ministerial platforms, presented in a non-user-friendly manner, and often lacked any indication of changes or progressions on the legislation over time. Countries should consider improving how to archive and make their legislation available in the simplest and most practical way for citizens and non-citizens alike.

The growing interest in legal and institutional reforms, business facilitation and better governance in the Arab region has led Governments, donors and development agencies to increasingly focus their attention on improving the regulatory framework for doing business, and ensuring a fair balance between the rights and obligations of various social players. Legal reform, however, is not merely about enacting legislation but also ensuring that such legislation is well understood, applied and integrated into the overall legal framework, and is consistent with the specific context of each Arab country. Various stakeholders in the Arab region do not have adequate access to laws on competition, anti-corruption, foreign direct investment (FDI) and consumer protection. Small firms, activists, political reformists, and researchers face challenges in accessing up-to-date legislation related to public policy. The absence of a unified consolidated and accessible repository of legislation in the region has negative knock-on effects on transparency, accountability, and the rule of law.

In addition to assessing the legislative climate using common standards derived from international best practices, the present study provides a repository of existing legislation in the Arab region. Its offers a basic assessment of the current business regulatory climate in the region, by evaluating legislation related to competition, FDI, anti-corruption and consumer protection. It also provides a gap analysis assessment of the current legislative, regulatory, institutional and enforcement mechanisms and recommends actions that can bridge those gaps. Moreover, the study provides ESCWA member States with a foundation for a flexible assessment model on business legislative frameworks that can be regularly updated, so as to establish more coherent region-wide indicators on business legislation.

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