

INCORPORATION LAW

1- CONSTITUTION OF COMPANIES

Establishing a company constitutes usually the first step in the process of creating an investment project as it the company depends on the results of the foregoing investment namely in terms of its internal administration, due taxes on income, profits distribution etc....

1-1 Types and forms of companies

Companies are categorized according to their object into two segments: civil companies and trade ones.

- **Civil companies** are those with a civil object such as artistic, literature, educational, art or liberal professions companies etc... Civil companies are registered in a special record kept at the first instance civil court where the office of the company is usually located,

- **Trade companies** are those with a commercial object. They are registered and published in the commercial register kept at the first instance court where the head office of the company or the commercial establishment is located.

In order to have the qualification of trader, a physical person exercising a business should execute the formalities relevant to the registration of his establishment in the commercial register. In such event he will remain liable for the debts resulting from his activities. Non Lebanese physical persons wishing to carry on their business in Lebanon should have a work permit duly issued.

1-2 Formalities of registration in the commercial register

The concerned entity shall submit in person or by legal proxy the registration application annexed with all requisite instruments fixed for each type of formalities. He shall receive, after paying all duties and fees, an authenticated counterpart thereof in addition to the registration certificate from the commercial register.

Any amendment or change that may occur on the documents to be registered shall be notified and recorded in the commercial register as well as appositions, restrictions, liens, attachments, proceedings or judgments related to the company or the trader.

Some companies carrying on special activities are required by the law to obtain a prior approval from the public bodies in order to be registered in the commercial register inclusive permits issued by the central bank of Lebanon for companies undertaking banking activities of all type, financial brokerage companies, collective investment funds, fiduciary institutions and exchange institutions. Insurance companies are subject to receive the prior permit of the Ministry of Finance and Trade.

The constitution application shall be signed before the head Clerk of the relevant commercial register, or the notary public in order to authenticate the signature of the concerned entity by either of both. The articles of association of joint stock companies (anonymous) should be registered at the office of the notary public where the head office of the company is located save to register the same in the commercial register within one month of the authentication by the notary public.

A counterpart of the deed of property or lease agreement of the head office stamped by the municipality or a document attesting that the landlord or any of his descendants granted these premises free of charge to the company should be provided. The head clerk of the commercial register in certain cases may request a police record from the concerned entity.

Joint stock companies should in addition to the articles of association provide the minutes of the constitutive meeting featuring the names of the members of the first board and the auditor, as well as the minutes of the board relevant to the election of the Chairman and the GM of the company.

Companies with capitals exceeding one million Lebanese pounds should appoint a legal counselor adherent to the bar association of Beirut or the north as the case may be.

1-3 registration duties

The registration duties comprise the fees of the commercial register, the financial stamp fees, the notary public fees, the bar association fees according to the table below:

Duty	Limited liability company, simplified limited partnership, general partnership	Limited joint stock partnerships, company, Lebanese joint stock company, holding company, offshore company
Financial stamp fees	Lump-sum of 500USD + a relative fee of 0.3% of the capital	Lump-sum of 667USD + a relative fee of 0.3% of the capital
Notary public	0.1% of the capital + lump-sum of 5.56\$ per page + a fixed sum of 60\$	
Bar association	0.1% of the capital + a fixed sum of 67\$ as registration fee of the proxy of the lawyer in the bar	
Magistrate insurance fund	50% of the financial stamp fees	50% of the financial stamp fees
Stamps + commercial register fees	Around 100\$	Around 167\$
Capital deposit certificate issued by the bank	Free of charge for the clients or around 17\$	

The registration fees of a trader and a commercial establishment are similar to the ones related to general partnership except for the fees applied on the capital.

2- CHOICE OF THE TYPE OF THE COMPANY MOST SUITABLE FOR THE NEEDS OF THE INVESTOR

Business or trade companies include fund companies and person ones

2-1 PERSON COMPANIES

Person companies are based on the identity of the person establishing it therefore third parties conduct their business with the company based on the confidence they have in the person.

Shareholders shall be liable for the debts of the company with their own funds in addition to their personal investment in the company.

2-1-1 General partnerships

2-1-1-1 Definition

A general partnership carries on activities related to a special object and is constituted between two persons or more liable with others for the debts of the company and before its debtors.

2-1-1-2 Constitution

The general partnerships are constituted usually of two persons at least, each of them shall be liable jointly and severally with the other shareholders for the debts of the company and before its debtors.

2-1-1-3 Administration

At least one partner or more should be appointed as manager (s) of the company, if not all the partners shall administrate the same. In case the partners convene to appoint a foreigner or one of them or more as manager, this manager or those managers shall conduct the business of the company.

2-1-2 SIMPLIFIED JOINT STOCK COMPANIES

The simplified joint stock company covers two categories of shareholders:

- Delegated shareholders who shall alone administrate the company and are liable personally and jointly to settle the debts of the company.
- Investing shareholders providing the contributions and everyone shall be liable only in prorate of this investment.

2-1-3 JOINT VENTURE COMPANIES

Only the concerned entities confirm the presence of such type of companies and therefore the same cannot be registered due to their confidential character. The rights and obligations of the

shareholders and their participation in the loss and profits shall be defined in the articles of association. Shareholders shall only be liable in prorate of their personal investments.

Despite the confidential aspect of the company the conventions and undertakings relevant to the same shall have a legal force in case of conflicts.

2-2 FUND COMPANIES

Fund companies are characterized with the loss of the personal entity between shareholders, it is based on providing the finance notwithstanding the person of the partner thereupon the latter shall only be liable in prorate of his contribution.

2-2-1 LEBANESE JOINT STOCK COMPANIES

Shareholders in a Lebanese joint stock company should not be less than 3 and its capital should not be shorter than 30 million Lebanese pounds divided into nominal shares or for bearer ones, each of one thousand Lebanese pounds at least. A quarter of the said capital should be deposited upon registration and the remaining part liberated within 6 months. The capital of the Lebanese joint stock company may be provided as in kind or in species contributions. The partners in the Lebanese joint stock companies are called shareholders and they shall be liable legally towards the debts of the company in prorate of their investments. The Lebanese joint stock company may issue transferable bonds into shares and shares. Rehabilitated bankrupted persons for more than 10 years may establish Lebanese joint ventures. Convicted persons in Lebanon or abroad for a period falling short than 10 years are forbidden from establishing such companies.

2-2-1-2 Registration

Lebanese joint stock companies should have a head office in Lebanon. Subscription to its capital may be done between the shareholders or the public further to public calls duly published.

2-2-1-3 Constitution

The constitutive meeting appoints the members of the board and the auditors, should the same are not appointed in the articles of association. The majority of the members of the board should be Lebanese nationals chosen amongst the shareholders beholding at least the minimal number

of security shares defined in the bylaws. These shares same may not be transferred or negotiated or waived during their office in the board.

2-2-1-4 Administration

The board shall be constituted of at least 3 members and 12 utmost and shall be liable of all the activities of the company. The retributions of his members shall be in form of yearly remuneration or and attendance fees and / or a percentage of the net profits.

The board elects amongst his members a Chairman entrusted to execute the decisions of the board in his capacity of GM. The chairman may at his sole responsibility appoint a manager for the company who does not need to be a shareholder. The chairman may not be member in the boards of more than 6 companies located in Lebanon, and in two for chairmen having more than 70 years old. Foreigner chairman should get a work permit.

Tow auditors should be appointed the first by the general meeting and the second by the judge of the commercial register.

The general meeting of shareholders should be held once at least yearly. Each shareholder shall have the right to vote and a number of votes equivalent to his shares in the capital. The ordinary general meeting is held at the closure of the fiscal year in order to deliberate the financial accounts, acquit the members of the board for their administration, distribute dividends and appoint the members of the board and . or the auditors at the expiry of their mandate.

2-2-1-5 Negotiable shares

The shares constituting the capital of the company shall freely circulate between persons and public subscriptions may be made in stock market.

2-2-1-6 Absence of restrictions on activities

Lebanese joint stock companies may perform any type of activities save to be legal ones.

2-2-2 LIMITED PARTNERSHIPS BY SHARES

The limited partnership by shares covers two types of partners the delegated ones who shall have the right alone to administrate its activities and are liable for the debts of the company, and the

investors providing funds, liable in prorate of their contributions. The registration formalities and administration of limited partnerships by shares are the same as anonymous companies except for the above mentioned matters.

2-2-2-2 Administration

This company shall be administrated by the delegated partners only. There is not a fixed number of security shares to be legally held by a partner to manage the company as his liability is personal and several towards thirds and other partners.

2-2-3 HOLDING COMPANIES

2-2-3-1 characteristics

The formalities of registering a holding company are the same of the ones relevant to joint stock companies (anonymous company). The word holding shall be clearly mentioned following the denomination of the company. Subscription to its capital may be done in foreign currencies provided to execute and fill in its accountancy records, accounts and balance in the same.

The object of a holding company shall be restricted to the following:

1. Own shares and participations in Lebanese or foreign anonymous or limited liability companies, established or participate in their establishment.
2. Administrate companies in which it owns shares or participations
3. Give loans to the companies in which it owns shares or participations and guarantee these loans towards third parties. For this purpose, the holding may contract any loans or borrow monies from banks or issue securities pursuant to the provisions of the code of commerce (trade), save that the total value of the issued bonds do not exceed, at any given time, five times the capital of the holding plus the provisions according to the last balance approved. The holding company cannot give loans to companies operating in Lebanon in which it has more than 20% of the capital (this principle does not apply on foreign investments)
4. Own patents, inventions, privileges and trademarks as well as any other registered rights; lease the same to the companies operating in Lebanon and abroad.

5. Own movable and immovable amounts save to use the same for the purpose of its activities and business exclusively in conformity with the code on the acquisition of real estate rights by foreigners in Lebanon.

2-2-3-2 administration

A holding is exempted from the obligation of the presence of Lebanese moral entities and physical persons in its Board. Its non-resident foreigner Chairman does not need a work permit. The Head office of the company shall be located in Lebanon, yet meetings of its Board and General meetings may hold abroad if allowed in the articles of association. Holding companies shall hold their annual ordinary meetings in Lebanon within 5 months from the closure of the fiscal year as stipulated in the articles of association. The ordinary general meeting shall be held twice if imposed in the articles of association, the meeting shall appoint an auditor, resident in Lebanon, for three years. Holdings are exempted from the nomination of an additional auditor at the contrary of anonymous companies.

2-2-3-3 The fiscal system relevant to holding companies

Holdings are exempted from paying the income tax on its revenues and on distributed dividends related to movable capitals.

Nevertheless, Holding companies shall be liable to pay the following taxes:

1. The income tax applied on interests resulting from short term loans (less than three years) granted to companies operating in Lebanon
2. The tax set forth in article 45 of the income tax (10%) applied on the profit resulting from the cession of shares or participations it owns in Lebanese companies since a period of time less than two years.
3. A tax of 5% applied on the amounts collected by the holding from its affiliated companies in Lebanon for administrating the same or rendering any other similar services or else, save that such amounts do not exceed the limits defined in the decree approved by the Minister of Finance.

4. A tax of 10% applied on the amounts collected by the holding from companies or institutions located in Lebanon to which it has leased or rented its patents and intellectual rights. No other tax shall be added to this one.
5. A yearly lump-sum tax of 6% applied on the total value of its capital added to the provisions whenever such amount does not exceed 50 million Lebanese pounds (LP). This tax shall be reduced to 4% for amounts between 50 to 80 million LP, and 2% for the amounts exceeding 80 million LP. Save that the total value of the yearly tax does not exceed 5 million LP. This tax is applied on holding companies as from the first fiscal year notwithstanding the duration of their term.
6. Holding companies shall pay the tax once upon submission of the tax declaration within the time limit set for this purpose. A delay fine of 1/1000 shall be applied for each day if the duties are not paid on time.

2-2-4 OFFSHORE COMPANIES (COMPANIES CONDUCTING THEIR BUSINESS EXCLUSIVELY ABROAD)

2-2-4-1 Characteristics

The formalities of registering a holding company are the same of the ones relevant to limited companies. Offshore companies are registered in a special record kept of the commercial register relevant to the first instance trade court of Beirut. The word offshore shall be mentioned clearly following the denomination of the company. Subscription to its capital may be done in foreign currencies provided to execute and fill in its accountancy records and accounts and balance in the same.

A renewable bank guarantee securing the payment of yearly duties and taxes shall be annexed to the instruments provided to the commercial register.

2-2-4-2 Object

The activities of offshore companies are carried on exclusively abroad and are limited but not restricted to the following:

1. Negotiate and sign agreements and conventions related to their transactions and operations executed abroad, using funds present abroad or in duty free zones.
2. Administrate companies and institutions carrying on exclusively their activities abroad and provide administrative, organizational, professional and IT services of all types for companies located abroad based on the requests of such companies.
3. Tripartite or multipartite business operations carried on abroad. For such purposes, the offshore company may undertake any negotiations, sign agreements, consign goods, and re-issue invoices for operations and transactions outside Lebanon, or duty free zones in Lebanon or from the same, inclusive using any facilities available in the foregoing zones to store imported goods in view to re-export the same.
4. Maritime freight activities,
5. Own shares, participations or bonds in non-resident companies and institutions; borrow non-resident institutions in which the offshore company possesses more than 20% of their capital.
6. Own or invest agency rights in goods, merchandises, or representations of foreign companies in foreign markets.
7. Open branches and representation offices abroad
8. Build, invest, administrate and own financial projects of all types at the exception of the red flags mentioned in article 2 of the present code.
9. Open credits and contract loans to finance the aforementioned operations and activities from banks and financial institutions resident in Lebanon or abroad.
10. Lease offices in Lebanon and own any estates needed for their activities and business pursuant to the code on acquisition of real estate rights by the foreigners in Lebanon.

Offshore companies may not carry on insurance activities of any type, operations or activities undertaken by bank or financial institutions or institutions subject to the control of the central bank of Lebanon. It shall also refrain from collecting any amounts or benefits or revenues from

the movable or immovable monies in Lebanon or providing any services to institutions resident in Lebanon at the exception of the revenues of their bank accounts and the ones relevant to subscriptions in Lebanese treasury bonds and negotiation thereof.

2-2-4-3 Administration

- Members of the Board may be foreigners
- Non-resident foreigner chairman or the person entrusted to sign on behalf of the company does not need a work permit.
- The number of the persons constituting its Boards may not be equivalent to the minimal number set forth in article 154 of the code of commerce.
- Foreigner employees performing their activities in Lebanon are exempted from obtaining a work permit whenever the yearly balance of the company is not less than 1 billion LP save to lose such privilege if it is not the case,
- The company shall not be bound to have a legal counselor unless its capital exceeds 50 million LP or the total of its yearly balance exceeds 500 thousand USD.
- The company shall appoint at least a principal auditor resident in Lebanon and beholding the Lebanese nationality for a period of three years and shall be exempted from nominating an additional auditor.

2-2-4-4 The fiscal system applied on offshore companies

Offshore companies are exempted for the income tax on profits. The same will be liable to settle an annual lump tax of one million Lebanese Pounds immediately paid to the financial department of the income tax. This tax shall apply on the company as from the first fiscal year notwithstanding its term

The agreements and all the documents and instruments signed by the company in Lebanon and relevant to its business abroad shall be exempted from the financial stamp duties.

The dividends distributed by the company on the revenues of movable capitals shall be exempted from income taxes as well as the revenues of the movable capitals on income resulting from

investing amounts abroad as the incomes relevant to the interests paid to physical persons or moral entities resident abroad. The offshore company shall also be exempted from paying any taxes on the amounts paid to physical persons and moral entities outside Lebanon for services provided abroad and from any taxes applied on salaries and wages for the employees working abroad. The shares of its shareholders and its shareholders shall also be exempted from any transfer taxes by cession or by succession and any duties of whatsoever type

The 10% tax set forth in the article 45 of the income tax code shall apply on the profit resulting from the cession of the company of its fixed assets in Lebanon.

The wages and salaries of the employees working at the company shall be liable to the second section tax mentioned in the income tax code. 30% of the initial wage of the foreigner employee working at the company shall be considered as a representation compensation and therefore shall not be subject to any taxes on wages or salaries

2-3 LIMITED LIABILITY COMPANY

2-3-1 Characteristics

The limited liability company is a mixture of a civil company and a fund company. The number of shareholders in a limited liability company (mixed companies) ranges generally between 3 and 20 unless in case of succession where the number of shareholders may reach 30 utmost. In case the number of shareholders exceeds this number the company shall be transformed into a joint stock during 2 years of should be liquidated. Shareholders own a percentage of shares in the company and are only liable to the extend of the shares they own in its capital.

The word limited liability company shall be mentioned clearly following the denomination of the company, and its capital should appear on all its printing materials, advertising tools, documents and brochures.

The capital of a limited liability company should not be less than 5 million Lebanese pounds or 3700 USD paid integrally upon registration. In case the capital of the company is more than 30 million (20 thousand USD) an auditor should be appointed.

2-3-2 Constitution

The company shall be constituted once the shares are distributed on the shareholders and their value librated integrally and deposited in a bank. The names of the founders should be mentioned in the articles of association whom shall declare that all the conditions herein mentioned have been fulfilled. The limited liability company is subject to the same obligation of publication applied on joint-ventures.

2-3-3 Registration

The signatures of the shareholders affixed on the articles of association of the company shall be authenticated at the notary public office or before the clerk of the commercial register of the district in which the company is registered.

2-3-3 Administration

The limited liability company shall be administrated by one or two directors selected amongst shareholders or non shareholders. Their nomination shall be mentioned in the articles of association or made public by any subsequent instrument. The appointed director (s) shall remain in office for a defined or an undefined mandate and may be revoked by a decision of the general meeting or a judicial decision. In case the director is revoked for non legal causes he shall be indemnified and get compensation.

At the end of the fiscal year the director shall prepare a report on the companys' activities, inclusive a comprehensive financial report. This report shall be notified to the shareholders whom he shall call within six months as from the closure of the fiscal year accounts to hold a general meeting in order to approve the accounts and acquit directors for their administration. The call for the meeting shall be published in two daily newspapers or sent via registered mails to each of the shareholders at least one month before the date fixed for the meeting. Counterparts of the instruments of the company and its records shall be put at the disposal of the shareholders 20 days at least before the date fixed for the meeting at the head office of the company who shall consult the same and bring up any concern thereof to the directors.

3- FOREIGN COMPANIES

3-1 Choice of a foreign company to operate in Lebanon

Foreign companies may operate in Lebanon through a representation office or an affiliate

3-1-1 Characteristics of the branch or affiliate

The affiliate shall have the same moral entity of the foreign company and shall be subject to its legal articles of association therefore it shall reserve its foreign nationality.

3-1-2 characteristics of the representation office

The representation office shall not have a separate entity from the one of the foreign company and shall be subject to its articles of associations. The activity of the representation office shall be restricted to the marketing of services and goods provided by the foreign company directly.

3-2 Required documents

The concerned person or entity should provide the following documents to the trade administration or the public relation office at the Ministry of Finance and Trade in order to be able to undertake any activity through a branch, affiliate or a representation office in Lebanon.

1- The application

- signed by the director of the branch or the director of the representation office or its representative
- attesting the establishment of the branch or the representation office by the director of the branch or the representative or legal counselor;

2- The articles of association of the foreign company:

Approved by:

- The commercial register in the country of origin
- The Lebanese embassy in the country of origin

- The ministry of foreign affairs in Lebanon

Translated into Arabic by a sworn translator

- approved by the Ministry of Justice

3- Decision of the board or the general meeting or any other competent entity relevant to:

- The establishment of the office or the representation office of the foreign company in Lebanon

Approved by:

- The Lebanese embassy in the country of origin

- The ministry of justice

Translated by a sworn translator and approved by the Ministry of Justice

4- Decision of the board or the general assembly or the competent authority validated pursuant to the articles of association relevant to:

- The nomination of the director

Approved by:

- The Lebanese embassy in the country of origin

- The ministry of foreign affairs in Lebanon

Translated into Arabic by a sworn translator;

Approved by the Ministry of Justice

- Proxy

Approved by a notary public in case issued in Lebanon

The mother company in case issued abroad

3-3- Fees

The establishment fees are fixed to 1.800.000 Lebanese pounds and the publication fees in the gazette shall be subject to the space booked

3-4 Commercial register

Upon approval of the Ministry of Finance and Trade a notification shall be granted to the interested who may register the same with all the required instruments approved by the Ministry of Finance and Trade in the commercial register located in the district where the affiliate or the representation office is situated

The duty to be paid for the registration in the commercial register is 900.000 Lebanese pounds relative to the Magistrates insurance fund in addition to lump registration fees.