

# Lebanon and Europe: Forging New Partnerships

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## Joint Ventures within Lebanese and European Law

*Dr. Chibli Mallat, Attorney at Law, Professor, University St. Joseph*

### Summary

It is often noted that joint ventures lack legally defined boundaries in the United States, which is the very country in which the concept developed to reach the world. This is not any different in other countries, whether Lebanon or European countries.

In the US, a distinction is often made between contractual, or non-equity joint venture, on one hand, and equity or corporate joint venture on the other. Narrowness of purpose and closeness to the two main US types of companies partnerships and corporations- are the guiding points of difference between the two. The first type, non-equity joint venture, is a special case of

partnership. The second type brings the joint venture into the corporate world, which is much wider in scope, time, and institutional organization.

Another distinction is made between putting together resources for a durable or open time, or more narrowly for a particular venture the partners set out to accomplish. Once the purpose (building a factory, carrying out an infrastructural project under BOT contract, etc.) accomplished, the contract of joint ventures comes to an end.

In European law, joint ventures are similarly elusive legal concepts, which are better defined under rules of company law. After the failure of the European Union in creating a special type of European company which would bring together English, French, and German company law traditions, joint ventures remain a fleeting concept which is regulated, from the inside, by the complexities of contract and company law, which are specific to each tradition (English, French, German), and, from the outside, by a regulatory remark, comprising anti-monopoly principles, EU competition laws, and depending on the field, technological norms, environmental concerns and so forth.

In England "joint ventures" are frowned upon as a category which lawyers do not recognize outside the specific rules of company law. In France, the word is still translated variously by French lawyers, as *entreprise conjointe*, or co-enterprise, or even *entreprise commune*, which is of course when the word "joint ventures" itself is not used. And in Germany, the area in company law that the joint venture falls in belongs to various combinations of companies, such combinations possibly obtaining under the rules of German law of groups (*Konzern*).

Nor is the concept clearly delineated in a Middle Eastern framework. In Lebanon, international joint ventures also dovetail the rules of civil law, company law, and foreign investment. To that extent, they are not self-standing legal vehicles, but must be viewed as commercial associations with a foreign participation, and appreciated against other such vehicles of foreign participation as appear in

- distribution networks, mainly agency;
- the establishment of branches or subsidiaries, or
- the participation in the French equivalent of the US corporation, the *Societe anonyme*.

The issue of agency is special and corresponds to distributorship/importation schemes with special regulations falling outside the field of "joint ventures". The other two possibilities offer advantages and peculiarities which are analyzed in more detail in the paper, whilst comparisons will be made from time to time with other countries in the light of the relevant principles of company law.

It is primarily in this context that the discussions with the EU over the Euro-Med agreement and the opening up of Lebanon to foreign investment should be appreciated.

*The author, a practicing lawyer, is principal of his law firm in Beirut. He is a professor of law at Saint Joseph's University, and author of several books. Research for this paper has also been contributed by his colleague Me Samir Doumit.*

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## **Certification and Accreditation in the European Market**

*Mr. Frank Hiersekorn, Lead Auditor, RW TUV International*

### **Summary**

The paper examines the establishment, in 1985, of a European Community market where products and services are distributed without restrictions. This measure applies not only to the removal of all customs barriers, but also to all other limitations, i.e. the technical barriers piled up by national standards and regulations. While various European directives have been agreed upon and published, the tremendous work of harmonizing the different national standards to European standards is currently in process.

The paper states that the conformity assessment, as defined in the European Union's global concept, requires the involvement of a Third Party. Without this factor, the notified body has to comply with the criteria as stated in the European standards EN 45011 to EN 45613. The Examination of the Third Party Certification Body is termed 'accreditation'.

The paper concludes by pointing out that the general idea held by the system is to build confidence between potential business partners. The instruments to be used in this process are harmonised standards such as the EN ISO 9000, and various product-related European Directives.

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## **The Trade in Services: The Hidden Face of the Euro-Med Partnership**

*Ms. Tania Friederichs, Administrator at DGI/M/1(External Relations-Commercial Policy-Trade in Services), European Commission*

### **Summary**

The paper emphasizes the importance of having a well-developed services network. In the last ten years, the service sector has been the main area of economic growth; generating employment, business opportunities and a greater variety of choices for the consumer. Services are an essential part of a modern economy, and a necessary component in the liberalization of trade. Furthermore, countries with more liberal economies develop a greater dependence on service trade. This dependence will necessitate the establishment of financial systems allowing for payments and transfers in all currencies, as well as the development of a good telecommunications network.

The paper states that it is essential that services are fully addressed in the Partnership with the European Union. Currently, the hidden framework of an agreement is being discussed and yet to be sufficiently developed. The paper expounds that it is important for both sides, the European

Union and Lebanon, that all services be comprehensively covered under the agreement. Additionally, the agreement should offer each side the possibility to establish trade on a cross-border basis. This trade should occur under fair and transparent conditions.

Services are traditionally highly regulated and this tradition should be respected. Regulations should continue to be applied in order to safeguard the interests of the consumer and to ensure that an orderly supply of services in the territory continues. However, regulations should not be used to discriminate against foreign suppliers. Fully addressing the liberalization in a bilateral context with the European Union, among other entities, will prove that Lebanon is interested in opening up its market. The paper favors Lebanese entry into the World Trade Organization (WTO). This act would allow the country to open up its market at non-discriminatory conditions. Competition in trade, particularly in the trade of services, is favorable due to the many needed technological and capital investment services which cannot be supplied by Lebanese companies alone.

The paper suggests that joint ventures are useful tools towards opening up the market economy. Joint ventures allow both parties to have access to the market. However, the sole application of joint ventures is not sufficient enough to effect market liberalization. Businesses are also looking at possibilities to set up individually owned companies that can give more flexibility in their operations and plans. The paper states that this should not be seen as a threat to a country's economy, but rather as another means used to open up the market.

In conclusion, the Partnership agreement should be seen as an important step towards opening up the market. This would be a beneficial necessity for the economy if Lebanon wants to compete on a worldwide basis. The paper concludes by pointing out that Lebanon, with its excellent geographic situation and its historic status as a trading nation, should have the ability to live up to this challenge. The Euro-Med Partnership is merely a means towards this achievement.

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## **Joint Ventures between Lebanese and European Partners: Issues faced by the Lebanese Companies in Entering Joint Ventures.**

*Mr. Antoine Maroun, Legal and Financial Advisor*

### **Summary**

The paper reveals the obstacles facing Lebanese companies entering into a Joint Venture with European partners, and describes the formation phases of joint ventures. It compares the establishment of joint ventures to the development of a marital relationship between two partners. The process of entering into a joint venture should gradually develop through a 'Getting to Know Each Other' phase. This phase should include a background check on character and professionalism. This first phase should develop into the second phase described as a joint market, and 'Business Assessment' phase, whereby a preliminary co-operation agreement (dealing with distributorship, technical and management support) should take place. The third phase is based on detailed business objectives and long term goals. The final challenge to this

association is the formation of a "happy ending" phase as opposed to one ending with a "nasty divorce".

The paper concludes by providing recommendations to potential problems which might occur when forming joint ventures.

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## **The Formation of European-Lebanese Joint Ventures with Small and Medium Sized Enterprises**

*Mr. Silvio Bottazzo, Consultant, External Service of the Milan Chamber of Commerce for the Promotion of International Activities and Public Relations (PROMOS)*

### **Summary**

- Small and medium size enterprises (SMEs), even in the same meceological sector, vary according to place and its relative state of economic development.
- Focusing on the Italian case, and particularly the Lombardy Region, it is clear that areas with a high percentage of SMEs have the highest rate of growth. Very often these SMEs are grouped in industrial districts.
- SMEs interested in new markets or looking for partners abroad need a strong supportive external milieu. In SMEs numerous job functions are distributed among a few persons. Thus, the entrepreneur has little time available for foreign relations.
- Joint ventures- Importance from the European Side:
  - Entering the Lebanese and regional markets
  - Overcoming custom barriers, high transport costs
  - Getting new sources of raw material, semi-finished goods, and finished goods
  - Delocalization
    - Joint Ventures- Importance from the Lebanese Side:
      - Achieving new technologies and know-how
      - Acquiring management and marketing techniques
      - Expanding export-oriented production
      - Replacing imported goods and saving currency

- Modernizing and improving quality

- Creating new employment

- Some difficulties and problems:
  - - Insufficient management, bureaucracy

- No time enough to assure a long-lasting presence on the field

- Lack of flexibility

- Intermediate modalities for collaboration: commercial dealings, agreements for marketing the respective products, franchising, agreements for maintenance of plants, on license production.
- Supportive measures for European partners- an Italian case:

Bill number 49 of 1987, article 7

Up to US\$12 million loan to the Italian partner, repayment in 10 years.

- Policies and measures at the Lebanese level:

Financial instruments, human resources, infrastructure and other services (e.g. stable and clear legal framework), effective and educational structure, research and training organizations, technology centers.

- With reference to the creation and development of enterprises, and having in mind industrial cooperation, interesting supportive measures should be :

- Consulting services for the preparation of business plans and feasibility studies;

- Assistance in drawing of contracts;

- Advising on marketing of products at domestic and foreign countries' level;

- Facilities for lowering cost of training and use of training and use of long-term expatriate expert after the end of the start-up of joint ventures and new business activities in general.

- Under the umbrella of the MEDA program:

- In general: To provide an enabling environment for private investments; to support the efforts of export-oriented enterprises; to raise the standard and the level of the services and quality of products.

- In particular: entrepreneurial training; project assistance, partner research abroad; stages of managers and entrepreneurs abroad

- PROMOS (Milan Chamber of Commerce) and MEDA:

- PROMOS Euro-Mediterranean project concerns the countries coinciding with the Barcelona framework.

- It mainly develops through the promotion of contacts and direct collaboration between businesses of the area and aims to connect, catalyze, and possibly support cooperation between bodies that already exist at the Euro-Mediterranean level.

- The central priority regards the company level and supports internationalization of SMEs. Collaboration is provided at the horizontal and vertical level and in the field of services.

- PROMOS project and Lebanon:

- Training to improve the skills of bank executives and bank clerks in credit and financing SMEs.

- Establishment of cooperation agreements with local Chamber of Commerce and business associations.

- Gas, water, energy, and environmental services in the planning establishment and management of plants and services

- Proposal: SMEs joint venture participation in RDP.

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## **The Role of Associations in Promoting Partnerships**

*Dr. Peter Gopfrich, Delegate of German Industry and Trade for Lebanon, and Executive Director of the German-Arab Chamber of Commerce*

### **Summary**

The paper explains how business associations can play an important role in the promotion of partnerships between Lebanese and European member state companies. Business associations are self-help associations used by businesses and industries alike. They can provide foreign companies with reliable and objective information about Lebanon's role in the Middle East and North African (MENA) region, as well as the country's market potential and the advantages of Lebanese production facilities.

The paper illustrates how business associations can identify and connect potential partners. It states that the general level of Lebanese production facilities can be improved by organising vocational training, management training, and marketing training. Other important tasks

performed by business associations can include lobbying governments and international organisations for joint venture oriented financial, as well as technical assistance programs. In turn, terms of trade and business can be improved.

Lastly, the paper urges trans-national cooperation between national and international business associations, and the organisation of partnerships to create a support network for companies. At the same time, Lebanon can be further integrated into the Euro-Mediterranean and MENA scenarios.

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## **Financing Corporate Partnerships**

*Mr. Xavier Cagnion, European Community Investment Partners.*

### **Summary**

Created in 1988, the ECIP instrument can claim an increasing success in helping SMEs from the European and the eligible ALAMEDSA (Asia, Latin America, Mediterranean Region, South Africa) to have access to different kinds of EC financing support when they enter together the sometimes hazardous process of joint-venture creation.

This intervention will detail

- 1.** the overall purpose and architecture of the ECIP instrument;
- 2.** the technical modalities of its 4 financing facilities;
- 3.** the frequently asked questions in relation to the access of its funds; and
- 4.** how it can fit with the current needs of Lebanese entrepreneurs, companies and investment or professional organizations.

Documents provided for the conference:

- Council Regulation of the European Communities on ECIP
- Tri-fold brochure on ECIP
- List of the financial institutions members of the ECIP network + contact persons
- Users' guide on Bac I Applications
- Intervention summary
- 1994 report on ECIP activities

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## **Strategic Options for the Lebanese Private Sector**

*Mr. Fady Frem, Director, Business Development, INDEVCO*

### **Summary**

The paper addresses INDEVCO's experiences with joint ventures. This organisation considers "joint venturing" with international companies as a primary step for the establishment of Lebanese industrial projects serving the Middle Eastern markets. This step allows for the strategic development of new industrial ventures at sustained rates of growth. This development cannot be realized without the co-operation of international companies.

Additionally, the paper states that "joint venturing" requires special skills combining art and science, tangible and intangible evaluation elements, and excellent interpersonal communication skills with partners of different nationalities and cultures. "Joint venturing" can become the right option used by local companies in attracting international partners whose aim is to expand in the Middle East. "Joint venturing", if cultivated at the national level, can position Lebanon as the preferred entrance gate used by multinational countries desiring access into Middle Eastern markets.

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## **Strategic Options for the Lebanese Private Sector**

*Dr. Nabil Fahd, School of Business Administration, AUB, and Middle East Capital Group*

### **Summary**

Globalization of business, the liberalization of trade and the associated formation of trade blocks have resulted in a new set of rules for business worldwide. Countries that have adopted policies of trade liberalization and integration into the world economy have experienced higher rates of economic growth, which renders any protectionism or interventionist measures counterproductive and detrimental to the economy. As Lebanon contemplates being a member of the Euro-Mediterranean agreement, companies in the Lebanese private sector will be facing new competition as new entrants into the market will start making inroads and exert serious competitive pressure. Responding to such challenge requires the courage to accept the gravity of the situation, the need to formulate new strategies, and having the will to implement them. Three generic strategic options are identified:

1. internal development,
2. mergers and acquisitions, and
3. joint ventures.

Internal development is an attractive option for companies that have access to financial markets, technological advancement, and a strong distribution and marketing resources locally and in the export markets. Although mergers could be an attractive alternative, there have not been many recent cases in Lebanon. This is explained by the fact that competition has not reached a level where companies are pushed either to merge or face liquidation. The Joint Venture option is considered to be attractive to a local company, because it allows it to retain its identity and provides the new venture with an advantage over other competitors. The traditional reasons of financial resources and access to export markets are being overshadowed by the growing importance of having access to continued improvements in process technology, the use of information systems strategically, and the streamlining of operations to reduce costs and increase efficiency. Recent studies of joint ventures have been reviewed and have shown that a joint venture is considered the best alternative when the basic elements of going-it-alone are not present. In addition, failure rates of 27%, 50%, and 60% have been reported, while those that survive get terminated after 7 years and they are mostly between parties of comparable size and resources. The formation of a joint venture is a fragile affair that needs to be nurtured carefully and methodically. Both parties to the joint ventures need to align their incentives and they must realize that a joint venture is a dynamic relationship that changes over time.

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## **Lebanese Industry and the Process of Globalization**

*Mr. Marco Ayyoub, Industrialist, Member of the Board of Directors of the Association of Lebanese Industrialists*

The paper reveals that the state of Lebanese industry today, six years after the end of the war, is one of stagnation and anticipation. This state is due to several factors:

- \*Lack of new and important industries;
- \*Annual industrial investment does not equal the consumption of assets; and
- \*The net number of industrial firms remains constant.

The paper also warns that the Lebanese industry faces a crisis of identity and the signs of this crisis are apparent in those sectors where progress and development have ceased or declined. Constructive solutions have not been found and future strategic plans have not been prepared for these sectors. This situation is exemplified in the textile, clothing, dye, furniture and wood-working sectors.

If other open markets have benefited from the so-called process of globalization, then Lebanese industry has failed in reaping the benefits from this progress. Regarding the attraction of foreign capital, the paper indicates that, if flows of capital to Lebanon were to take place, they would be concentrated in the financial, real estate and tourism sectors before the industrial sector can benefit from this influx. The paper suggests the following options that the Lebanese industry can take to remedy the situation:

- A new interventionist or pro-active attitude must be adopted by all parties concerned, including the state, associations and individuals (the author mentions the example of Japan's MITI, as well as an example occurring in South Korea). This type of attitude will be realised when official and public commitments make industrial growth a national issue.
- Huge and intensive assistance in the fields of technology and marketing must be provided in order that it can become centralised in certain sectors (However, the author does not imply the provision of direct or indirect financial subsidies).
- The paper concludes that saving the Lebanese industry requires more than market forces alone are able to provide; i.e., by the practice of a laissez-faire policy. This type of policy would only suffice for a launching period of limited duration.