

The Legal and Factual Environment of the Public Private Partnerships in Lebanon

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Introduction

Lebanon falls short of solutions when it comes to meeting its internal urgent needs for modernization and infrastructure due to its struggling economy and political instability. Lebanon has been facing a depressed GDP¹ growth that stagnated around 1% over the past four years². This stagnation saw the fiscal deficit further worsen, reaching around 8% of the GDP.

High expenditures, aggravated by the rise of the number of Syrian refugees, a limited efficiency of the tax collection and the decision of the Government to rely on issuing debt to finance the budget make that Lebanese public finances remain structurally weak and in urgent need of reforms. Public debt (as a ratio to GDP) continues to be one of the highest in the world with more than 150% of GDP³. Lebanon is ranked only a little above default grades by the major rating agencies.

As a result, public infrastructures are in a bad shape, while rehabilitation and development of projects are put on hold. With oversized fixed current expenditures, Lebanon cannot invest properly in capital expenditure such as roads or power plants.

With the election of the President of Lebanon and the recent appointment of the new Government, Lebanon is recovering a kind of normal functioning of its institutions after years of political instability. Conscious of the limits put on public investment and of the opportunities that could be provided by the model of Public Private Partnerships (PPP) for the financing of infrastructures, the Parliament passed the long-awaited PPP law in 2017⁴, which endowed the tendering process for PPP projects with transparency and professionalism by mandating the High Council for Privatization and PPP (HCPP) as the country's PPP unit.

This positive move led the international community and international bodies to consider an assistance to Lebanon. Consequently, CEDRE (Conférence Économique pour le Développement, par les Réformes et avec les Entreprises), the international conference in support of Lebanon's development and reforms, was hosted by France on the 6th of April 2018. Forty-eight countries and institutions participated in the meeting to address these issues.

CEDRE assigned USD 11.619 billion to develop the economy, mainly by financing the Capital Investment Program (CIP)⁵ of the Lebanese government that focuses on infrastructure, development and rehabilitation, and by supporting monetary and fiscal stability. To convince the international community, the Lebanese government presented its vision based on four pillars:

- ✓ Public investment,
- ✓ Restructuring public finance,
- ✓ Implementing structural reforms, and
- ✓ Diversifying its economy

¹ Gross Domestic Product

² Lebanon | Data. (2019). Retrieved from <https://data.worldbank.org/country/lebanon>

³ Lebanon: Staff Concluding Statement of the 2018 Article IV Mission. (2019).

Retrieved from <https://www.imf.org/en/News/Articles/2018/02/12/ms021218-lebanon-staff-concluding-statement-of-the-2018-article-iv-mission>

⁴ PPP Law 48 of September 7, 2017

⁵ Agency, N. (2019). CEDRE Joint Statement: USD10.2 billion loans and USD860 million grants. Retrieved from <http://nna-leb.gov.lb/en/show-news/89831/nna-leb.gov.lb/en>

The CIP was unveiled at the CEDRE conference. The CIP mainly focuses on infrastructure development and rehabilitation, emphasizing some sectorial priorities of Lebanon's government such as transportation, energy, water, and waste management. The total cost of the first phase of the CIP (covering 6 years for preparatory works and implementation) is estimated at USD 10.8 billion (including expropriation costs), of which around 35% is expected to come from private investment. As such, it recognizes that concessional financing and private investment are the best instruments to finance infrastructure and create jobs, along with the implementation of a consistent budgetary and fiscal adjustment program⁶.

In view of the scope and ambition of this CIP, and the overall constructive assessment by the World Bank Group⁷, participants at the conference decided to contribute to the 1st phase of the Program, while, in parallel, insisting on the Government's implementation of reforms and institutional strengthening, which are critical to the CIP's successful delivery and Lebanon's macroeconomic stability.

⁶ Ibid

⁷ Bank, T. (2019). Strategic assessment: a capital investment plan for Lebanon – investment opportunities and reforms. Retrieved from <http://documents.worldbank.org/curated/en/935141522688031167/Strategic-assessment-a-capital-investment-plan-for-Lebanon-investment-opportunities-and-reforms>

I. Political and Economic Environment

Lebanon is situated in the Middle East, specifically on the east coast of the Mediterranean. It has a total area of about 10 452 km and spreads over 205 km from North to South. Lebanon has borders with Syria and Israel; its west end is the Mediterranean Sea. Lebanon's population is about six million including about two million Palestinian and Syrian refugees⁸ while roughly 14 million Lebanese are assumed to live abroad mainly in South America and Africa⁹.

Beirut, the capital city, and its suburbs contain nearly half of the Lebanese population. While Arabic is the official language, French and English are also widely spoken. Despite its small size, Lebanon has had massive cultural impact. It is considered as one of the most liberal countries in the region.

Lebanon is a parliamentary democratic republic within the overall framework of confessionalism, a form of consociationalism in which the main and highest offices are proportionately reserved for representatives from certain religious communities. Lebanon is based on respect for public liberties, especially the freedom of opinion and belief, and respect for social justice and equality of rights and duties among all citizens without discrimination.

As stated in the Lebanese Constitution, direct elections must be held for the parliament every 4 years however after the 2009 parliamentary election, there was no election held until 2018¹⁰. According to the Lebanese Constitution, the Parliament elects a President. The President's term is six years. He may not be re-elected until six years after the expiration of his last mandate.

The President appoints the Prime Minister in consultation with the parliament. Political parties may be formed, and most are based on sectarian interests¹¹. Within the scope of the Doha Agreement that also took place in 2008, the Lebanese politics underwent a new twist. Through the latter, the opposition is allowed a veto power in the Lebanese Council of Ministers today. The agreement also confirmed the religious confessionalism in the distribution of political power.

Until this day, the multi-confessional structure of the country is founded by the National Pact of 1943 also known as the Taif Agreement. It is basically an unwritten agreement that stipulates the key major distribution of people within the state. According to it, there was mutual consent between Christians to accept an Arab-affiliated Lebanon instead of a Western one and Muslims to abandon their aspirations to unite with Syria. According to this custom, the President of the Republic and the Commander of the Lebanese Army shall always be Maronite Catholic. On the other hand, the Prime Minister of the Republic shall always be a Sunni Muslim and the Speaker of the Parliament a Shia Muslim. The Deputy Speaker of the Parliament and the Deputy Prime Minister are Greek Orthodox Christian and the Chief of the General Staff of the Armed Forces is always a Druze. Lastly, there shall always be a ratio of 6:5 in favour of Christians to Muslims in the Lebanese Parliament¹².

A high number of political activists or leaders are religious across the sectarian spectrum and differences arise between and amongst Muslim and Christian parties concerning the role of religion in state affairs.

⁸ World Population Prospects - Population Division - United Nations. (2019).

Retrieved from <https://population.un.org/wpp/DataQuery/>

⁹ The International Migration Report – United Nations. (2017).

¹⁰ Lebanese elections 2018: All you need to know. (2019). Retrieved from <https://www.thenational.ae/world/mena/lebanese-elections-2018-all-you-need-to-know-1.727219>

¹¹ Political parties – Lebanese Ministry of Information. (2019).

Retrieved from <https://www.ministryinfo.gov.lb/en/category/political-parties>

¹² AUB: The Lebanese Civil War and the Taif Agreement. (2019). <http://ddc.aub.edu.lb/projects/pspa/conflict-resolution.html>

The interplay for position and power among the religious, political, and party leaders and groups produces a complex political system.

1. Constitution and fragmentation of powers

The Lebanese Constitution was enacted on May 23, 1926. It has been amended several times, most notably, on the 21st of September 1990 putting an end to the civil war. Lebanon is an Arab country by allegiance and identity and a founding member of the Arab League. Its constitution promotes and guarantees personal freedom.

Lebanon is governed by customary rule. It provides that the three key positions in the State are distributed among the three main sectarian communities: The President must be a Christian Maronite, the Prime Minister must be a Sunni Muslim, and the Speaker of the House must be a Shia Muslim. Although this rule has been in place since Lebanese independence in 1943, the constitutional amendment of 1990 altered the functions and authorities of each of the respective positions in order to restore a balance dictated by the demographical evolution of the Lebanese population. The Muslim Sunni and Shia gained more power since the Taif agreement at the expense of the Christian community.

The 1990 Amendments shifted the balance of executive power from the Presidency of the Republic to the Council of Ministers. The Constitution guaranteed basic individual rights and freedoms and provides for a parliamentary form of government based on the democratic principles of protection individual rights and freedoms. The Constitution divides power among the legislative branch and the judicial branch. The most unique feature of the Lebanese Constitution is the requirement to have religious communities represented in the formation of the Council of Ministers and the selection of members of parliament. This transformed the Lebanese political system into a confessional régime, where religious affiliation determines the extent of one's political rights and privileges.

2. Judicial System

The Judicial system comprises a court system with one administrative court, the State Council Court (Conseil d'État) and judicial courts.

The judges of the various courts (excluding certain members of the Constitutional Council) are appointed by the Government after favorable recommendation of the Supreme Council of Justice.

The Lebanese judicial system is governed by, inter alia, the following principles:

- The principle of equality: all Lebanese and foreign persons or legal entities have the right to have recourse to the Lebanese courts
- The principle of multi-level jurisdiction: Court of First Instance, Court of Appeals. A supplementary recourse level before the Supreme Court is possible under certain conditions mentioned in the law.
- The principle of separation of powers between the legislative, executive and judicial authorities enabling judges to freely carry out their duties
- The possibility of having recourse to arbitration to solve disputes resulting from commercial, civil, and administrative contracts (with the Lebanese State). The last kind of contracts requires certification on the arbitration clause by virtue of a decree issued by the Cabinet according to the proposal of the concerned minister

Constitutional Council:

Created in 1990, the Constitutional Council rules upon any Constitutional matters and conflicts related to parliamentary or presidential elections and to ensure that laws conform to the Constitution. It is composed of 10 members who serve 5 years terms. Five are appointed by parliament and five by council of ministers.

Administrative Courts:

The highest administrative court is the State Council Court (Conseil d'État), mandated to draft and review legislation promulgated by the legislature, and to review decisions of first-degree administrative courts.

Civil Courts:

Civil courts are divided into:

- First degree courts headed by one Judge or a panel of three judges have jurisdiction over civil claims. One judge is generally assigned cases of lesser value.
- Courts of Appeal, there are six appellate courts, one located in each district or Mohafazat. They are each divided into chambers with one presiding and two associate judges and are mandated to serve as a second-degree court reviewing the decisions of the lower court.
- The Court of Cassation or Supreme Court is the highest court of appeal for civil, commercial, and criminal matters. It sits in Beirut. It is organized into 4 divisions, each with a presiding judge and 2 associate judges. The Court of Cassation is Lebanon's highest court. Cases from all courts may eventually be appealed to the Court of Cassation.

Criminal Courts:

The first degree or trial courts hear felonies and misdemeanors subject to the review of the Court of Appeal. The Court of Appeal serves as a second degree or appellate court for felonies and misdemeanors and as a first degree or trial court for more serious criminal offenses.

Other Courts:

Other courts of specialized jurisdiction include Personal Status Court, Labour Court, Military Court and Juvenile Courts.

3. Structure of the Economy

3.1. Overview

Lebanon's economy is considered a developing one due to various factors. In 2018, the nominal GDP was estimated USD 54.1 billion, with a per capita GDP amounting to USD12,000¹³, on the other hand, the government spending amounted to USD15.9 billion in 2018 or 23% of GDP.¹⁴ The Lebanese economy significantly developed after the war of 2006, with growth averaging 9.1% between 2007 and 2010. However, it was affected again by the Syrian civil war in 2011, hardly growing by a yearly average of 1.7% between 2011 and 2016 period and by 1.5% in 2017.

¹³ Lebanon's Economic Outlook - October 2018. (2019).

Retrieved from <https://www.worldbank.org/en/country/lebanon/publication/economic-outlook-october-2018>

¹⁴ "Middle East: Lebanon — the World Fact book - Central Intelligence Agency" February 2018.

Concerning the ratio of debt-to-GDP and according to Mckinsey & Co¹⁵, Lebanon is the third-highest indebted country in the world. The government's ability to invest in infrastructure is limited due to the interest payments on these debts which consumed 48% of the domestic government revenues in 2016¹⁶.

Apart from that, the Lebanese economy is service-oriented with a strong tradition of laissez-faire. According to the Lebanese Constitution, the economic system is free and ensures private initiative and the right to private property'. The most important economic sectors in the country are metal products, banking, agriculture, chemicals, tourism, services, and transportations equipment. The banking sector is a major player when it comes to the stability of the Lebanese economy since it highly enhances growth and progress. The Banking Secrecy Law in Lebanon commits the banks absolute secrecy, meaning, a bank account cannot be disclosed to private entities or public authorities, whether judicial, administrative, financial, or military¹⁷. Additionally, there are no restrictions on foreign exchange or capital movement, except for some recent obligations pertaining to financial information exchange.

3.2. Infrastructures

Historically, there has been a disparity between the accessibility of Lebanon's mainly urbanized coastal regions and its partly accessible mountains. Paradoxically, the lower mountains are the least accessible, as they are extremely steep, whereas the higher mountains are the location of winter and/or summer holiday resorts.

Until 1975, Lebanon was a modern state with a good infrastructure, one of the best in the region. This prosperity gave a competitive edge to the country to become a major services provider. However, the Civil War of 1975 brought this to an end. While buildings, roads, and communication centers were being destroyed in Beirut and other cities, other countries were developing their infrastructure. From 1990, Lebanon – and Beirut in particular – developed a feverish building activity: roads, apartment blocks, and business offices were constructed at a great pace. Unfortunately, these buildings underwent another series of attacks. In 2006, for instance, large parts of the Beirut area were bombed by Israel. 5,000 private homes were damaged, 62 bridges, 72 overpasses, 22 fuel stations, 3 dams, 600 kilometers of roads, the lighthouse, the ports of Beirut, Tripoli, and Jounieh, Beirut International Airport, as well as Qoleiat domestic and Rayak military airports, over 150 businesses, power plants, a sewage plant, a mobile phone antenna¹⁸. In 2008¹⁹, 97% of the infrastructure had been repaired at a total cost of USD 345.4 million.

According to the Investment Development Authority of Lebanon, Lebanon has 7,200 kilometers of paved roads, 97% of all roads are paved. Beirut is largely served by private taxis and local rail services have been resumed. However, a new city transport authority, the TCB, was established in 1993. Municipal bus services were suspended in 1975 but bids were invited in early 1994 for the supply of 140 city buses. Private companies run bus services connecting all major Lebanese cities and towns with one another.

Widespread damage to the road network occurred during Israel's aerial bombardment of 2006 and much of the 2007 and 2008 budgets were devoted to repairing this.' On the international Logistics Performance Index (LPI), measuring infrastructures, border procedures, services – but also factors such as bureaucracy and corruption, 96 out of 155 in 2012 (with infrastructure ranking 102), down from 33 in 2010 (infrastructure ranking 41).

¹⁵ Lebanon Economic Vison report p. 41

¹⁶ Ibid

¹⁷ Except in certain cases.

¹⁸ The Lebanon-Israel War of 2006: Global Effects and its Aftermath | Small Wars Journal. (2019).

Retrieved from <https://smallwarsjournal.com/jrnl/art/the-lebanon-israel-war-of-2006-global-effects-and-its-aftermath>

¹⁹ www.Lebanon.gov.leb.

3.3. Water and electricity

Unlike the other Arab countries, Lebanon is rich in natural resources specially water due to its climate, environmental nature and many mountain rivers. Both water and electricity could be abundant, yet, lack of power capacity of the main energy supplier Électricité du Liban (EDL) has led to daily power cuts all over the country on a permanent basis. Power cuts ranging from 3 to 23 hours a day affect households and businesses. According to Middle East Economic Survey (MEES), a supply of less than 1,500 MW does not cover the demand of more than 2,400 MW. Consequently, both households and businesses rely heavily on private generators. Electricity from the public network is permanently available in only 14.3% of residences, the 73.7% others have to cope with daily power cuts. Subsidies to EDL, which is a public enterprise, cost the government USD 1 to 1.5 billion a year, widening the fiscal deficit²⁰.

Consecutive governments have failed to implement progress and reforms to the energy sector, prolonging the critical energy crisis. As a World Bank report, Lebanon Social Impact Analysis (2009), “*One of the most striking aspects in the electricity sector is the heavy dependence on the informal, private generation sector, which nonetheless operates outside any state supervision or guiding framework. Bearing in mind the potential drawbacks of introducing regulation, the fact that such a large and monopolistic energy sector player operates in the grey economy requires attention*”. The report also states that ‘both the electricity and water sectors suffer from inadequate supply.

4. State of play of the implementation of the decisions made in the CEDRE conference

4.1. The content of the commitments: reforms over funding

Lebanon submitted at the fundraising conference two arguments: **(i)** the sum would be well allocated through the CIP and **(ii)** reforms will guaranteed through the four pillars vision.

Negotiations led to a list of requested reforms so that the sum could be granted to Lebanon. It also led to the allocation of the financial funds to defined projects.

4.1.1. Lebanon: From proposed vision to effective reforms

Lebanon proposed a four pillar visions to guarantee the seriousness will to reform²¹:

- a. Enhancing public investment projects in the short term, financed by external loans, especially in the fields of infrastructure that supports economic growth in the long term.
- b. Maintaining financial and economic stability through the restructuring of public finances and increasing the scope of public investments, in a framework of macroeconomic and fiscal policies.
- c. Implementing structural reforms: Combating corruption, restructuring and modernizing tax, public sector, customs administration, reforming capital markets, and strengthening the private sector role.
- d. Diversifying the economic sectors, productive and services, and enhancing export capacity, enabling business environment that lifts investment barriers and supports macroeconomic and financial stability.

Albeit they are more detailed in the Joint Statement, these reforms have led to a more tangible list:

²⁰ crippling, S. (2019). Subsidies render electricity overhaul crippling. Retrieved from <http://www.dailystar.com.lb/Business/Local/2018/Oct-10/465879-subsidies-render-electricity-overhaul-crippling.ashx>

²¹ CEDRE Conference, *Joint Statement*, 6 April 2018

- i. **Fiscal reform**, mainly the reduction of the fiscal deficit-to-GDP ratio by 5% in 5 years through:
 - a. Enhancing overall collection;
 - b. Reducing the existing gaps in the public finance system;
 - c. Rationalizing spending as possible;
 - d. Reducing the financial transfers from the government to Électricité Du Liban (EDL)²²;
 - e. Seizing employment in the public sector;
 - f. Reconsidering the pension system for the public sector employees;
 - g. Increasing the rates of some taxes such as VAT and fuel taxes.

- ii. **Structural reform**, by enhancing private and adopting international standards pertaining to:
 - a. Anti-corruption actions in line with the international agreements of the UN;
 - b. Reform and governance in the fiscal and customs sectors.
 - c. Government digital transformation (e-government).
 - d. Modernization and restructuring of the public sector.
 - e. Justice Reforms.
 - f. Governance in the oil and gas sector.
 - g. Promotion of the private sector activity and initiatives.
 - h. Reforms in the capital markets.

- iii. **Sectorial reform**, mainly in the following sectors:
 - a. Electricity, by creating new production units, modernizing existing production units, upgrading existing infrastructure, PPP projects, and restructuring EDL and its corporatization to function as a private sector entity;
 - b. Solid wastes, by creating new factories, and modernizing existing factories to manage such wastes in the direction of producing new energy sources;
 - c. Water, by modernizing the Law of Water for 2012 so as to better manage and expand the underground water resources, existing water networks, and sewage and waste water treatment; besides introducing new water tariffs; and enforcing the existing water legal framework.

- iv. **Telecom reform**, liberalization to attract private investments. This requires reconsidering the telecoms law number 431, in the direction of assigning a regulatory authority to manage this sector and introduce the private sector philosophy.

4.1.2. International community: From promises of funds to effective allocation

Lebanon did present an ambitious Capital Investment Program (CIP) pertaining to 7 sectors²³: Transport; water and irrigation; wastewater; electricity; telecoms; solid waste; infrastructure for tourism and industry.

The document was supported by a sample of possible PPP infrastructure projects²⁴ essentially in wastewater and solid waste sectors. To be noted the projected creation of a Tripoli Special Economic Zone.

The total investment costs (divided in 2 cycles) are estimated at USD 17.25 billion. The cycles are of a period of 4 years each. Lebanon expected to receive between 16 and 17 billion USD for both phases.

²² Such transfers exceeded 4% of GDP in recent years.

²³ Government of Lebanon, *Capital Investment Program*, 6 April 2018

²⁴ Government of Lebanon, *Potential PPP Infrastructure Projects*, 6 April 2018

It resulted from the CEDRE conference the following distribution, structure and allocation of aid:

○ **As to the distribution of the aid:**

Name	%	billion USD	Form
World Bank via IFC	34,4	4	Soft loans
European countries and organizations	34,2	3,807	Soft loans, grants, credit lines
Arab countries and organizations	29,5	3,430	Soft loans, grants
Other countries and organizations	1,9	0,382	Soft loans, grants
TOTAL	100	11,619	Soft loans, grants, credit lines

It should be noted that such an implication has given confidence, since the conference, to other actors. The Federation of Global Lebanese Investors has launched a 100 million USD investment fund to support infrastructure projects in the country as to PPP projects that were included in the CPI²⁵.

○ **As to the structure of the aid:**

Most of the aid comes under the form of soft loans then grants and very few credit lines²⁶:

- 10.2 billion USD loans have been pledged, including 9.9 billion in concessional terms;
- 0,86 billion USD grants (including grants to subsidize loans).

However, not all the aid from the Previous Paris Conferences has been used and a small part of it is listed as new aid while it is just the same allocation under a different frame.

○ **As to the allocation of the aid:**

These loans and grants are allocated to finance 280 projects in the infrastructure sectors and PPP. These projects are valued at 5 billion USD, according to the High Council for Privatization and PPP (HCPP)²⁷. No detailed allocation of the aid, and their agenda, has been displayed so far.

4.2. Current implementation and its perspectives

The implementation of reforms, and tangible allocation of fund, has been delayed by the lack of government and is far from complete. However, current difficulties could be surpassed in a near future.

As to the state of play, the anticipatory reforms are still incomplete and the formal process has started with a 6-month delay, its compliance with the requested reforms has not been assessed yet.

²⁵ BusinesNews.com.lb, *Expat businessmen launch USD100 million investment fund*, 29 January 2019

²⁶ CEDRE Conference, *Joint Statement*, 6 April 2018

²⁷ BusinesNews.com.lb, *Government to implement CEDRE pledges and projects*, 7 February 2019

- **A good start:** The PPP law

By anticipation of the CEDRE conference, and to preparer the necessary future reforms, Lebanon enacted Law 48 dated 7 September 2017 Regulating Public Private Partnerships.

Even if the new PPP Law and the investment protection framework provide for protection for investors in Lebanon, it includes certain gaps that must be bridged.

However, as of 18 February 2018, 3 projects have been launched and two others are subject to pre-feasibility study²⁸. The most advanced is at the 2nd progress report stage (27 December 2018)²⁹.

So far, the reform pertaining to PPP is incomplete but the issues at stake can be addressed.

- **Delayed legislative process:** The policy statement stage

The money funders were waiting for the government to be established for the reform process to start:

- 29 January 2019: A new government is approved and prepare a policy statement on reforms;
- 07 February 2019: Ministers approve Cabinet’s policy statement on the reforms;

The exact statement has not been disclosed but includes reducing subsidies to EDL freezing public hiring, convert the Beirut Stock Exchange into a joint stock company with an electronic platform.

- 12 and 13 February 2019: Lawmakers discuss the policy statement. Several MPs said they would not approve the policy statement³⁰. PM expects to secure the vote from at least 100 of 128 MPs.³¹
- Next step: Confidence vote in Parliament. No date on the agenda yet. No project of bill to be expected yet. The result of the confidence vote will be a good indicator of the difficulty to draft it.

- **Compliance with the requested reforms** is doubtful till assessed

At this stage, no project of bill has been publicly released nor the complete policy statement. Therefore, it is not possible to assess if this first step complies with the expectation of the money funders.

However, the tangible allocation of funds will depend on the degree of compliance of the project with the list of reforms requested by the international community.

The Joint Declaration does not organize suspension of funding but says: “*Participants attach the utmost importance to a robust follow-up mechanism for this conference, to ensure that commitments, reforms and pledges will be implemented*”³².

However, there is no clear reference to the setting up of a body comprising representatives of international participants and Lebanese government that would monitor the proper allocation of

²⁸ <http://hcp.gov.lb/public-private-partnership/>

²⁹ <http://hcp.gov.lb/public-private-partnership/airport-expansion/>

³⁰ The National, *Lebanese MPs get feisty in debate on government policy*, 1 » November 2019

³¹ The Daily Star, *Berri calls for sessions to vote on policy statement*, 07 February 2019

³² CEDRE Conference, *Joint Statement*, 6 April 2018

CEDRE funds, the due performance of the commitments of Lebanon and the progress of the elected investment programs.

Pierre Duquesne, a diplomate representing France at the conference, puts it more clearly: "*If reforms are not implemented, there will be no funding. CEDRE is not Paris III*"³³. Since his declaration, more pressure as to reforms has been imposed on Lebanon. Pierre Duquesne did insist on the importance on setting priorities as to the first projects of PPP, for instance with the electricity sector³⁴. The diplomat gave Lebanon a deadline expiring end of April/May to launch several reforms, saying that the country does not have "*the luxury of time*"³⁵.

³³ L'Orient-Le Jour, *CEDRE : pas de financements sans réforme*, 13 Octobre 2018

³⁴ imlebanon.org, *دوكان: الحكومة لا تملك ترف الانتظار*, 1 March 2019. Retrieved from : <https://www.imlebanon.org/2019/03/01/pierre-dukan-cedre-government/>

³⁵ Lbcgroup, *French envoy urges reforms, says Lebanon does not have luxury of time*, 1 March 2019 . Retrieved from: <https://www.lbcgroup.tv/news/d/news-bulletin-reports/430405/french-envoy-urges-reforms-says-lebanon-does-not-h/en>

II. The Law on Public Private Partnerships (PPP)

Following a decade of debates and discussions at the Council of Ministers and parliament commissions, the Law 48 dated 7 September 2017 regulating Public Private Partnerships was finally issued and published in the Official Gazette (the **PPP Law**).

The PPP Law sets forth the general framework and procedures for the implementation of PPPs in Lebanon. So far three projects have already been launched and are at the stage of the study by the relevant PPP Committees that is before the launching of the tendering step:

- Expansion of Beirut Rafic Hariri International Airport
- Khalde-Nahr Ibrahim Expressway
- National Data Center

Two projects are at the stage of the feasibility study:

- Olympic Swimming Center
- Sport Complex

Several other PPP projects with different levels of development:

- Municipal solid waste to energy system
- Interim storage facilities for hazardous waste
- Kleiaat Airport
- Jounieh Touristic Port
- Saida New Port
- El Bared Dam
- Ain Dara – Azounieh Dam
- Maasser El Chouf Dam and Lake
- Qortada- Sfaileh – Deir Khouna – Hlaliyeh wastewater system
- Aley wastewater system
- Kfarhai Wastewater system
- Shabtine wastewater system
- Zahrani and Selaata Independent Power Producer projects
- Tripoli special economic zone

1. The main actors

1.1. The High Council of Privatization and PPP (HCPP)

The HCPP has been established pursuant to Law 228 of 2000 also vested with PPPs (comprises a Board and a Secretariat General with technical, financial, legal and economic experts).

The HCPP is a ministerial committee chaired by the President of the Council of Ministers and composed of four permanent members that form its “BOARD”: The Minister of Justice, the Minister of Finance, the Minister of Economy and Trade, and the Minister of Labour. On a project by project basis, the Minister responsible for the sector under discussion joins the Council also as a member.

The HCPP resolutions are taken by unanimous consent, otherwise, by absolute majority of the HCPP members. Its main role is to assess and evaluate potential PPP projects, establish a PPP Project Committee

for every approved project, decide the prequalification outcome and approve the final version of the tender document and confirm the winning bidder who submits the best offer based on the Committee's evaluation.

1.2. The Secretariat General (SG)

The HCPP has a secretary general who heads its Secretariat General (SG) and handles the daily business of the HCPP.

Decree number 5540 dated 23 May 2001 separated between the HCPP and its Secretariat General. The Secretariat General is a team that consists of economic, financial and legal experts in addition to media coordinators, research, administrative and IT assistants.

In preparing the tendering process, it basically draws on the expertise of local and international consulting firms experienced in privatization and PPP transactions

1.3. The PPP Committee

For each proposed PPP project, the HCPP has decided to proceed with, the HCPP shall establish a committee (the PPP Committee) chaired by the Secretary General and comprised of representatives of the competent minister (depending on the project being procured), the Ministry of Finance, the chairman of the relevant regulatory authority and the chairman of the municipal council for municipal projects.

The PPP Committee will be assisted by a team including financial, economic, legal (etc.) consultants appointed by the PPP Committee, a representative of the public entity who will benefit from the project, experts from ministries and regulatory authorities and a representative of the SG whose role is to coordinate the efforts of the work team.

2. General Principles and Requirements

2.1. Scope of PPP Law

- Any project of public interest initiated by the government, public entities or other government bodies can be developed together with the private sector under the PPP Law.

The municipalities and unions of municipalities have the option to subject or not such projects they may have to the PPP Law.

- PPP projects are projects of Public Interest with Private Parties taking part through **Financing and Administration AND to at least one** of the following activities: **Design, Construction, Restoring, Equipping, Maintaining, Rehabilitating and Operating.**
- However, the PPP Law (and the procedures it organizes) does not apply or regulate the concessions that require the approval of the parliament for their validity.
- PPP Law covers all kinds of infrastructures, including projects relating to roads, airports, ports, energy, water management and wastewater treatment, solid waste management, telecommunications, data centres, etc.

2.2. The contract: The Partnership Agreement

The PPP Law provides that the Partnership Agreement shall address the following matters:

- a. the rights and obligations of the parties;
- b. the basis for the financing of the project;
- c. the term of the PPP contract, provided that it shall not exceed 35 years from the signature date of the PPP contract;
- d. the revenue that the project company will generate from the public entity OR that the public entity will generate from the project company, depending on the nature of the project, in consideration of the project company carrying out the required activities pursuant to the PPP contract and the terms of payment;
- e. fees or taxes relating to the PPP project that the government or municipal council allows the project company to collect in the name and on behalf of the concerned public entity;
- f. the key performance indicators applicable to the project;
- g. reports relating to the implementation of the project that the project company has to prepare and raise to the public entity and the HCPP;
- h. the risk allocation between the public entity and the project company and the measures to be adopted for the mitigation of such risks;
- i. the limitations applicable to the modification of the initial terms of the contract;
- j. the guarantees, undertakings and representations that may be granted by the project company, the private investor or the public entity for the implementation of the project;
- k. the assets and property owned by the public entity put at the disposal of the project company throughout the term of the project for the fulfilment of its obligations, as well as the rights and obligations of the project company in relation to such assets and property;
- l. the transfer of the project to the public entity upon expiry of its term;
- m. project and services continuity upon expiry or termination of the PPP contract or upon breach by the project company of its contractual obligations thereunder;
- n. remedies and penalties applicable to contractual parties in case of breach of their contractual obligations and detailed procedures for the implementation of such penalties; and
- o. dispute resolution procedures including mediation, and national and international arbitration.

The PPP Law remains silent or vague on many aspects of the PPP scheme and calls the parties to the PPP contract to define a large part of the terms and conditions. In particular, the following points are to be considered:

Types of Partnership Agreement: the PPP Law does not give a definition of the Partnership Agreement contrary to other PPP laws and does not define the various types of partnership schemes and agreements.

Allocation of risks: the parties to the Partnership Agreement are invited to agree on the allocation of risks of the PPP project in the Partnership Agreement. The PPP Law does not refer to any prior assessment and determination of the allocation of risks, but one may consider that assessment and definition of risks allocation are vested to the SG when it prepares the initial study of the proposed PPP Project and submits to the HCPP its recommendation regarding the feasibility of the proposed PPP Project through a Partnership Agreement. This task shall also be carried out by the PPP Committee within its works. The PPP

Law does not state specifically that the Partnership Agreement shall define the allocation of risks and consequences thereof in case of hardship or Force Majeure with due consideration of the maintenance of the balance of the agreement.

The PPP Law is also silent on the fact that risks associated with the different phases of the PPP project must be identified and decomposed and should be borne by the party held the most capable of supporting them so as to minimize their costs by taking into consideration the general interest and the characteristics of the project.

Duration: the PPP Law is clear on the maximum duration of a Partnership Agreement that is set at 35 years. However, certain PPP projects may require an extended duration due to their complexity, technical, economic, accounting and financial characteristics. A faculty of extension to 50 years would have been welcome.

Sovereign Guarantees and stabilization undertakings: the PPP Law does not define in detail the kind of guarantees that could be provided by the Lebanese State, just mentioning that the Partnership Agreement shall deal with the guarantees given by the public entity. Pursuant to the constitution any undertakings resulting in financial obligations on the government must be approved by an Act. Such act would in our sense extend to the granting of tax stabilization agreements that may be requested by the sponsors and the financing parties to ensure the financial balance of the PPP project over its total duration. The PPP Law however states that any competent regulatory body in the field of a specific PPP project shall exercise its duties, provided that they do not violate the provisions of the PPP Law and the provisions and terms of the Partnership Agreement, “especially those related to the amendment of service prices set in the agreement”.

Step-in Right for lenders: The PPP Law is silent on the right that lenders of the PPP project may have to “step-in” the project and the project company in case of financial difficulties of the PPP project. This is however not prohibited and could be agreed in the Partnership Agreement.

2.3. The Project Company

The Project Company must be established by Private Party under the unique form of a Lebanese Private Joint Stock Company (S.A.L.).

By derogation to the Code of Commerce, none of the nationality restrictions shall be applicable as per shareholders and members of the Board of Directors. The PPP Law also exempts the Project Company’s Chairman and/or CEO from the obligation of obtaining a work permit.

The PPP Laws set forth however certain restrictions and in particular prohibits the Private Party as shareholder of the Project Company to transfer its shares, without the approval of the Council of Ministers, before the Start of Operational phase of the relevant PPP Project.

The Public Party can make contribution in kind of public assets to the Project Company without being bound to have such contributions in kind appraised by an expert appointed by the competent commercial court.

3. Approval and Tendering Process

3.1. PPP tendering process

PPP tendering process is governed by the principles of Transparency, Equal Treatment, Competitive Bids and Protection of Private Parties.

3.2. PPP Project Development and Allocation Process

- **Stage 1: Definition and Approval of PPP Project within the Lebanese governmental authorities and bodies (HCPP, Secretariat General, Ministries, Council of Ministers)**

PPP projects are proposed by the chairman of the HCPP or by any competent minister. Municipal projects are proposed by the chairman of the municipal council.

A preliminary study is required to be submitted to the HCPP. It is managed by the SG, which shall prepare a report concerning the feasibility of the proposed project and submit it along with its recommendation to the HCPP.

The HCPP then decides whether to proceed with the proposed project or not.

In case of favorable decision, the HCPP established the PPP Committee for the relevant project. The PPP Committee then selects and appoints a team of experts and advisers and together prepare a comprehensive study of the project covering technical, economic, legal and financial aspects, including the project award criteria and the level of interest of potential investors and lenders. This study is then remitted to the HCPP.

If based on this study, the HCPP decides to proceed with the PPP project, it shall seek the approval of the Council of Ministers. Upon receipt of this approval the PPP Committee launches the tendering process for the project.

- **Stage 2: Tendering Process**

1. Publication of invitation to manifestation of interest and bidding rules:

Advertisement of a public invitation for interested parties, including the prequalification criteria consistent with the relevant PPP project. The invitation is published in local and international newspapers, specialized publications and the website of the HCPP one month prior to the deadline for the submission of expressions of interest.

2. Pre-Qualification of bidders:

Based on a report prepared by the PPP Committee. HCPP takes a decision in relation to the prequalified and non-prequalified participants.

3. Secretariat General prepares Tender Documentation and Draft Partnership Agreement submitted to Pre-Qualified candidates: The pre-qualified candidates can comment on the draft Partnership Agreement and all technical, financial, economic and legal aspects of the project.

4. Finalization and Approval of Tender Documentation by HCPP and Council of Ministers

5. Final Bidding Process: Once the draft of Partnership Agreement and the Tender documentation are solidified and approved by the Council of Ministers, the PPP Committee notifies it to all prequalified participants, who are then required to submit their technical and financial proposals to the PPP Committee

In the event that less than three bids are submitted, the project must be retendered. If only two bids are submitted in response to the retendering procedure, then the procurement process may be resumed, subject to the approval of the HCPP.

6. Review and assessment of bids and publication of winning Bidder: the PPP Committee assesses the technical bids that are admissible in accordance with the project evaluation criteria detailed in the Tender documentation. If at least two technical bids are not compliant, the project must be retendered. The PPP Committee then opens the financial bids submitted

by the participants whose technical proposals have been accepted in their presence and makes a report to the HCPP with ranking of the preferred bidders. The PPP Committee makes its recommendation as to the best offer based on the project evaluation criteria.

7. Negotiations with preferred Bidder for technical improvement of offer.
8. Negotiation of Partnership Agreement.
9. Signature of Partnership Agreement between preferred Bidder (Private Party) and competent Ministry or other Public Party.

The PPP law does not provide for a specific timeframe between a proposal and the signature between the parties, which may discourage the private sector if the process is unreasonably lengthy.

There are no specific rules governing any recourse against the decisions of the HCPP. Normal administrative procedures apply.

III. Other Lebanese Legal Aspects Relevant for PPP Projects

1. Main aspects of the Private Joint Stock Company

The Lebanese Code of Commerce derives from the old French Code of Commerce. However, throughout the years, the Lebanese Code of Commerce did not follow the wave of reform that have transformed and modernized the French Code of Commerce, and remains, till date, to great extent, quite rigid.

Nevertheless, it is expected that the Lebanese Code of Commerce will be subject to major modifications to be enacted in 2019.

1.1. Incorporation of a Private Joint Stock Company

The PPP Law requires that the sponsors of an approved PPP project establish a project company under the legal form of a Lebanese Private Joint Stock Company - Société Anonyme Libanaise (“S.A.L.”) for the sole purpose of carrying out the approved PPP project.

A S.A.L. may be incorporated by three or more founders. The PPP Law has lifted the nationality restrictions usually applicable for S.A.L. companies; thus, the foreign sponsors may be entitled to hold 100 % of the share capital of the S.A.L. formed for a specific PPP project (under general rules, one third of the capital of a S.A.L. serving public interest must be represented by registered shares held by Lebanese shareholders and only transferable to other Lebanese persons).

The S.A.L. shall have a minimum share capital of thirty million Lebanese pounds (LBP 30,000,000) which is approximately equivalent to twenty thousand American dollars (USD 20,000). The entire capital must be subscribed by the founders at the time of the formation, and at least 25% of the value of each share must be paid upon subscription. The balance for each share shall be paid up at the time determined by the Board of Directors.

The capital can be paid up in cash or in kind. Contributions in kind must be officially appraised by an expert duly appointed by the competent commercial court and, to the contrary of contributions in cash, must be entirely put at the disposal of the company at the time of the formation of the company. Public Parties becoming shareholders of the project company of a PPP project are exempted from this obligation of appraisal of their contributions in kind.

The capital is divided into shares of equal value of no less than one thousand Lebanese pounds (LBP 1,000) per share. The shares are negotiable or transferable. The liability of each shareholder is limited to the value of the shares held. All the shares issued by a S.A.L. established as project company of a PPP project must be registered shares.

Shares representing in kind contributions are subject to the same rules applying to shares representing contributions in cash, except that they are not transferable before the end of a two-year period from the date of formation of the S.A.L.

Ownership of shares in the S.A.L. entitles each shareholder to the following rights:

- The right to sit on the board;
- The right to take part in the management of the company;
- The right to vote in general meetings;
- A preferential subscription right in case of capital increase; and
- The right to dividends.

However, the Articles of Association of the project company can allow the creation and issuance of preferential shares by virtue of a decision of an extraordinary general assembly. Such shares give their owners preferential rights over material benefits only. They may be created at the formation of the company or later.

Each share entitles its holder to one vote, but fully paid-up registered shares held for at least two years before the convening of each general assembly meeting, gives right to two votes. However, outside this statutory rule, the shareholders cannot agree to create shares granting multiple voting right.

The Articles of Association may subject the transfer of shares to a pre-emption right granted to the other shareholders. This can be combined with an obligation of agreement of transferees.

1.2. Corporate bodies of a Private Joint Stock Company

General Meetings

The supreme and deliberative body in a S.A.L. is the shareholders' general assembly. In addition to the constitutive general assembly, there are the ordinary general assembly and the extraordinary general assembly. At these assemblies, minutes of the meetings must be drafted and signed by the members of the bureau for the general meeting to be considered validly held.

The Ordinary General Assembly Meetings must be convened within six months from the end of the fiscal year to decide on the company's accounts, the allocation and distribution of profits and the election of new members of the Board of Directors in case of vacancies, and the appointment of the statutory auditor. The Ordinary General Assembly Meeting has quorum if attended by shareholders representing at least one third of the capital. If the quorum is not reached, discussions in the second meeting are considered legal regardless of the shares represented, unless otherwise stipulated in the company's Articles of Association. Decisions are taken by a simple majority of the shareholders present or represented.

Extraordinary General Assembly Meetings have competence to amend the Articles of Association of the company, but not to change the nationality of the company, increase the commitments of the shareholders or temper with third parties' rights. The Extraordinary General Assembly Meeting must represent at least two thirds of the company capital. If such quorum is not reached, another meeting must be called and shall be validly held if the number of the shareholders represents at least half the company capital. If such quorum is not reached, a third meeting can be called for. The third meeting will be valid if at least the third of the capital is represented. In the case of decisions regarding a change in the company object or form, the legal quorum must always represent at least three quarters of the company capital. Decisions in Extraordinary General Assembly Meetings are passed by a majority of two thirds of the present or represented shareholders.

Board of Directors

The administration of a S.A.L. is entrusted to a Board of Directors (*Conseil d'administration*) composed of a minimum of three and a maximum of twelve members. Each member of the Board of Director must hold the number of guarantee shares of the company stipulated in the Articles of Association. These shares are not transferable.

Directors are elected by the general assembly meeting of the shareholders. The first directors may be appointed by the statutes for a maximum of five years, while those appointed at subsequent shareholders' Ordinary General Assembly Meetings shall remain in office for three years.

Similarly, the shareholders may revoke the Directors *ad nutum* by decision taken at a general assembly meeting.

The Board of Directors shall elect one of its members as chairman. The latter may be revoked by either the Board of Directors or by the General Assembly, indirectly, in its capacity as a member of the Board of Directors. The Chairman of the board shall serve as general manager. The Chairman may propose to the Board of Directors to appoint an assistant general manager.

1.3. Process of incorporation of a Private Joint Stock Company

The founders shall form a S.A.L. by signing its Articles of Association. The aforementioned document should comprise the following compulsory items: company name, object, duration, head office, capital, number and value of shares, securities, profit distribution and management, members of the Board of Directors and their prerogatives.

The founders shall afterwards subscribe the entire capital and deposit at least 25% of cash contributions at any recognized bank in a special account opened in the name of the company followed by the phrase “under establishment” with a list of the subscribers’ names and the amount paid by each. The deposited amounts can be withdrawn from the bank account after the company is duly established and registered at the commercial register. Contributions in kind must be officially appraised and made available entirely at the time of the incorporation.

The founders shall convene a constitutive general assembly meeting at the end of the capital subscription. The quorum of the constitutive general assembly meeting is met if shareholders representing at least two-third of the company capital are present or represented. If such quorum is not met, a new meeting may be held by virtue of a notice published in the official gazette, in an economic newspaper, and in a local daily newspaper, over two times with one-week interval. In the second call, the agenda of the previous meeting is listed as well as its results. Discussions in the second meeting are considered legal if the number of its shareholders represents at least half the company capital. In case there is no quorum, a third meeting can be held whereby only the third of the capital of the company needs to be represented. As far as in-kind shares, the quorum is calculated according to the subscribed shares or shares owned by the shareholders owners of the cash shares, regardless of the shareholders owners of the in-kind shares. Decisions in the constitutive general assembly meeting are taken by the majority of two thirds of votes of present or represented shareholders.

The constitutive general assembly meeting must elect the first Board of Directors and, where required, an auditor. The PPP project company is relieved by law from the obligation to appoint an additional auditor. Upon assessing that the procedure of foundation of the S.A.L. has been duly completed, the members of the Board of Directors have the obligation to publish the company by registering it with the court register.

The following documents must be registered at the commercial register: (a) Minutes of the company’s constitutive general assembly meeting and the relevant attendance sheet, (b) Minutes of the first Board of Directors meeting during which the chairman-general manager was elected and the relevant prerogatives were determined, (c) Articles of Association duly authenticated before a notary public, (d) Commercial Circular showing the authorized signatory of the company. After publication is completely done, a company is considered duly formed.

The bank where the subscription money has been deposited must be provided with certified copies of the above-mentioned documents in order to release the capital that has been deposited and blocked during the subscription period.

1.4. Financial Aspects

The fiscal year usually correspond to the Gregorian calendar and runs from January 1st to December 31. Companies may opt for a different fiscal year.

The Board of Directors must set aside 10% of company's net profits to form a legal fund reserve until such amount becomes equivalent to one-third (1/3) of the company's capital.

A joint stock company must appoint an external auditor.

1.5. Contractual Arrangements between the Shareholders of the Project Company

The shareholders of the project company may agree on certain topics in a shareholders' agreement. This is consistent with the international legal practice, but the Lebanese Code of Commerce does not expressly deal with shareholders' agreements. Such agreements, given their contractual nature, are naturally inspired by the freedom of contracting, and will follow the provisions of the Lebanese laws. However, they cannot derogate to compulsory rules. For example, convention on the vote of the shareholders in general meetings are considered as illegal.

2. Protection of Lenders

2.1. Legal framework as to securing investments in Lebanon

Securing the situation of the funds necessary to set up a PPP projects is essential. It includes the general insolvency risk but also more specific lender's issues. All are necessary in order to assess the investors' legal risks.

Lebanese legislator is in process of amending several legal rules relating to insolvency.

a) Insolvency: poor content of the legal framework

Prior to insolvency proceedings, the debtor is entitled to file for a preventative composition before the competent court (articles 459 and 460 of the Code of Commerce) within ten days from the date it ceases paying its debts.

In order for the proceedings to be accepted by the Court, the debtor must be able to pay "*at least 50% of his unsecured claims payable within a year, of 75% if maturity is within eighteen months, of 100 if it is three years away*" (article 460).

A trustee is then appointed by the Court in order to inter alia, supervise the commercial aspect of the preventative composition and to set up debt's payment schedule (article 462). Said schedule must be approved by the majority of the creditors who have participated in the vote and the majority must represent at least 75% of a trader's total unsecured debt (i.e. only unsecured creditors may participate in a preventative composition). Secured creditors are allowed to waive their securities and participate in the preventative composition and be treated as any non-secured creditor (article 471).

However, this preventative composition is quiet rigid as the payment schedule shall not be amended unless the debtor becomes solvent. In case of breach of the payment schedule, the Court will declare the debtor bankrupt.

The main steps of bankruptcy proceedings, as provided for in the Lebanese Code of commerce, are the following:

- The bankruptcy proceedings may be initiated either by the debtor within twenty days since he suspends the payment of its trade debts (article 491) or by the Court of primary jurisdiction in the principal place of business acquainted by the writ of one or several creditors (article 492) or directly by the same Court if it incidentally ascertain an evident insolvent state of a trader (article 498);
- Then the court will fix the date at which payments have been suspended. This date shall not exceed 18 months prior to the date of declaration of bankruptcy by the court (the Suspect Period) (article 495). The Code of Commerce provides that transactions carried out by a trader during the Suspect Period must be declared void and distinguishes between two types of transactions: (i) the first type includes certain transactions listed in Article 507 of the Code of Commerce and which the seized court is obliged to declare void and (ii) the second type includes certain transactions set out in Article 508 of the Code of Commerce and in respect of which the seized court has a discretion in determining whether they should be declared void or not.
- The court also appoints two controllers among the creditors to control and manage the debtor's assets under judicial supervision (article 513) and to prevent the debtor from carrying out any operations that might be against the creditors' interest (articles 507 to 511).
- In the event the court assessed that the assets of the debtors are not sufficient, it will close the bankruptcy procedure (article 601).

This legal framework suffers different deficiencies. First, the current procedure does not offer enough protection to the creditors and impedes them from taking any legal measures. Second, the procedure is lengthy and costly, in particular if the amounts to be recovered prove to be limited. It requires an average 3 years, costing around 15% of the debt³⁶.

One could add another more subjective point: the lack of sufficient practice and training from relevant professionals. Indeed, in the MENA region, few countries provide training in economics and on insolvency procedures to administrators³⁷. The result is a poor-quality ranking in the last Doing Business report.

Despite drawbacks, remedies and positive perspectives can be implemented. Structural reforms are ongoing and could be accelerated in the wake of the CEDRE conference, same for new practices.

First, as to structural reforms, a draft insolvency and insolvency practitioners' law was approved by the Cabinet (government) in April 2018 and communicated to the Parliament for enactment. No date has been scheduled.

The project has been prepared with the help of the International Finance Corporation (IFC) and aims at "*establishing an efficient loan recovery, restructuring, and insolvency system. This shall allow unviable firms to close efficiently, while viable but financially distressed ones reorganize operations and restructure debt*"³⁸.

³⁶ World Bank, *Doing Business 2019*, 15 October 2018

³⁷ Richard McNally, "*Insolvency Regimes in the MENA Region*", lebanon.law.asia. 06 2014

³⁸ Ministry of Economy & Trade, *M/SMEs in Lebanon*, April 2018

Second, Lebanon has already implemented important measures to modernize its insolvency legal framework. On 26 October 2015 and through the circular n°135 of the Banque du Liban (BDL), Lebanon has introduced an out of court workout mechanism.

This mechanism makes it possible to “*restructure the debt of individuals and corporates in agreement with the debtor via an informal out-of-court debt workout, where all relevant parties negotiate a debt restructuring plan, and agree to adjust the debt terms and allow the debtor to continue in business, albeit with different conditions as a rule*”³⁹.

The restructuring process can include the partial or full liquidation of the company, or capital injections, in order to revive its activity.

Therefore, this procedure is less rigid than the composition procedure of the Lebanese Code of commerce and let much more possibilities for the creditors to defend their rights.

Third, the time consuming and costly judicial process could be improved or avoided. The judiciary mediation law (n°82/2018) was published in the Official Gazette n°45 of 18 October 2018. It establishes a court-referred mediation mechanism before one of the certified private mediation centres operating in Lebanon and certified by the Ministry of Justice. This can ease the material process.

b) Lenders’ rights and protection: Irregular protection

Lender’s rights and protection are an important part of the investor’s risk assessment process. Albeit uneven, lender’s rights and protection as well as the possibility of governmental guarantees benefit from a legal framework.

As to Government Economic Assistance/Guarantees, such measures are not prohibited *per se*. Article 88 of the constitution provides that no public loan or undertaking involving an expenditure from the treasury funds may be contracted except by virtue of a law. Such law would typically provide the terms and conditions of the guarantee on a case-by-case basis, depending on the particularities of each project.

As to collaterals and securities, they are developed under Lebanese laws. Collaterals can be of four kinds: **(i)** guarantees over real estate, **(ii)** mortgages over real estate, **(iii)** pledges taken over movable property, **(iv)** assignment of insurance rights or payouts.

However, extracting a collateral to perfect a security interest must be anticipated because the creditor needs to execute an agreement with the debtor. Moreover, certain securities, for instance pledge of shares or stock, require special formalities like registration with the Commercial Register.

Other lender friendly securities, such as step-in rights and rights over assets, are possible even if there is still a lack of historic PPP exposure where this kind of securities are more common.

However, if the legal framework of collateral and securities seems complete, there are still deficiencies affecting the full protection of lenders’ rights. For instance, the following points could be improved:

- Non-possessory security rights in a single moveable category of assets, require a specific description of collateral, limiting its impact;

³⁹ Chamber of Commerce Industry and Agriculture of Beirut, *Newsletter n°67*, April 2017.

- There is no notice-based collateral registry in which all functional equivalents would be registered and, in a more general manner, no collateral registry both complete (all kind of entities and assets and geographically unified) and useful (research online by debtor's name and accessible to third parties);
- Secured creditors do not benefit from certain advantages, common in other jurisdictions, like being paid first when a debtor defaults outside an insolvency procedure nor are subject to an automatic stay on enforcement when a debtor enters a court-supervised reorganization procedure.

2.2. Securing lenders' position and financial investment in PPP

The PPP law does not provide for a complete framework for lenders' issues, but certain remedies are possible and the CEDRE conference and could be an incentive for such remedies.

a) Difficulties, assets and remedies under the PPP Law

At first sight the PPP Law does not offer substantial help in securing lender's rights, however it does not prevent certain lenders' friendly tools and may even encourage them.

Indeed, the law does not deal specifically with PPP financing nor gives specific tools to help parties to the project find the necessary financing from the lenders. However, article 10 refers to three elements that should be included in the partnership agreement:

- Point 8 on the provisions dealing with the allocation of risks and "*the actions to be taken and procedures to be followed to reduce the impact of such risk*". Therefore, no security of collateral seems to be excluded from the scope of the provisions of the partnership agreement.
- Points 10 on including "*The guarantees, commitments and obligations*" which may be given by the Public Entity and/or the project company and/or the private partner. State guarantees may be granted in favour of the project company or its sponsors, but this requires to be approved by a specific law.

Indeed, guarantees have been considered in the presentation of future PPP projects by the HCPP⁴⁰ and even in the presentation of certain specific PPP projects presented by the Government of Lebanon, like the construction of a national data center⁴¹.

- Point 13 on including "*the procedures required to ensure the continuity of the PPP Project and the works performed under the Partnership Agreement upon termination of the Partnership Agreement*" in case of "*expiration or early termination*" or even "*failure by the Project Company to perform any of its contractual obligations*".

This point, combined with point 8, let the possibility for the public entity and the project company to agree and enter into direct agreements with lenders to grant them step-in rights in order to carry on with the project in case of an event of default by the project company.

The PPP Law, despite incomplete and not specific enough on financing, provides room for agreeing on the protection of lenders' rights.

b) Practice so far and implication for the projects from CEDRE conference

⁴⁰ HCPP, *Invest in Lebanon – The PPP guide for private companies*, 2018

⁴¹ Government of Lebanon, *Potential PPP infrastructure projects*, April 2018

The conference allocated USD 11.619 billion to develop the economy, mainly by financing the Capital Investment Program (CIP) of the Government to invest in infrastructures through PPP projects. However, lenders' rights have not been in the frontline during the conference or in previous experience of PPP.

Has the security of funding been evoked during the conference? Not directly but it may not have been expected at this stage of fundraising and political declarations. However, certain elements of the joint statement imply that lenders' protection is part of the required reforms. Elements like demands for justice reform, promoting private sector will be incentives to conclude the legislative process leading to the new insolvency law.

Have securities and insolvency been a subject for previous PPP? Lebanon has, despite a very recent PPP law, an ancient but scarce history of PPP projects starting with the concession for the Beirut-Damascus road in 1958. However, there is not much practice as to lenders' protection or insolvency issues.

Currently, five PPP projects are ongoing before the HCPP, including 2 under study of feasibility, but none has been launched under the new law. The last stage of the most advanced one is dated of December 2018.

3. Urbanism rules and Expropriation for public interest

The Lebanese urbanism and construction laws consist of several legislative and administrative rules, which, if they have the virtue of existing, are considered in practice as quite hard to read and understand. Certain bodies are vested with overlapping competences.

However, one can assess that in practice urbanism and construction issues rarely lead to administrative litigation. Experts have identified two major factors: A posteriori regularization of illegal situations became a frequent administrative practice and prevents litigation cases, and the legal interest vested to third parties in bringing proceedings against a decision of urbanism is particularly restricted.

3.1. Urbanism rules

3.1.1. Involved administrative bodies

The High Council of Urbanism (*Conseil Supérieur de l'Urbanisme* - CSU): The CSU is competent for giving opinion on urbanism plans and regulations, on projects of laws and regulations dealing with urbanism and building permits and on every infrastructure project. The CSU must as a general rule deliver its opinion within one month (subject to certain limited time extension if needed). The CSU decides when technical issues are the subject of disagreements between involved administrative bodies.

The General Directorate of Urbanism (*Direction Générale de l'Urbanisme* - DGU) is in charge of planning works, studies, land consolidation, zoning, drawings for specific roads and significant projects and assistance to municipalities.

The Council for Development and Reconstruction (CDR), that is engaged in all phases of project implementation from planning, feasibility analysis, detailed design, bidding, expropriation, execution, and operation and maintenance of most public facilities on the behalf of the Government of Lebanon or other Lebanese public establishments, is committed to complying with the national laws. The Government of Lebanon transferred to the CDR extensive powers for all the phases of

the development of major infrastructures in Lebanon, including the Airport of Beirut and the development of the motorways making this administrative body the key actor in large projects.

The Municipalities, who are competent for local planning and zoning, planning of utilities networks (water, sewage) and the issuance of local building permits.

3.1.2. Planning Programs

At the national level, Lebanon has adopted in 2009 the Planning Program of the Lebanese Territory “*Schéma Directeur d’Aménagement du Territoire Libanais (SDATL)*”. This program constitutes the general framework of urbanism and allocation of soils in Lebanon. All administrative bodies dealing with urbanism and the norms and plans they approve must comply with the SDATL.

At the local level, the authorities can prepare and approve a General Planning Program and/or a Detailed Planning Program. Adoption of such programs lead to zoning works and therefore creation if needed of certain zones where building is no longer permitted, definition of a coefficient of permitted construction in a given area, definition of protected zones (archeological zones, etc.), etc. Implementation of these plans can trigger expropriations for public interest, land consolidation, creation of *non aedificandi* zones, etc.

3.1.3. Specific Regulations

The development of specific and significant infrastructures like airports, roads and motorways may lead to the consideration of specific regulations.

- a. Construction Code: The Construction Code mainly applies to the issuance of building permits for the erection of buildings. It set forth the applicable procedures depending on the size of the relevant constructions. The Construction Code also defines the construction coefficients, size of buildings, etc.
- b. Code of Environment (Act n°444-2002): The Code of Environment prescribes that any person of the public and private sector must carry out a preliminary assessment of the impact on projects that are likely to harm the environment due to the size, the nature, the impact or the activities linked to such projects. Its rules must be considered when implementing a significant infrastructure project.
- c. Coastal Law: Lebanon has adopted a Coastal Law since 1966 in the form of a decree, which reserved to the public the enjoyment of the coast and prohibited the alienation of any part of the coastal zone to private interests. This rule suffers however, exceptions when the exploitation of the public domain is deemed as in the public interest for touristic or industrial reasons.
- d. Forest Code: The Forest Code deals with the protection of wood zones.
- e. Law of 1939 on the protection of natural sites and monuments (8 sites protected in Lebanon).
- f. Decree n°166 of 7 November 1933 on the protection of historical monuments and archeological sites.

3.2 Expropriation rules

Land acquisition and resettlement issues under a significant project are addressed through relevant laws and regulations of the Government of Lebanon.

The processes of land acquisition and involuntary resettlement are governed by the Expropriation Law No. 58 dated 29 May 1991 (as amended in 2006) and the Tenancy Law of 1991.

Where the Lebanese regulations are absent or silent, expropriation issues can be interpreted based on the World Bank Group Safeguard Policies.

The exercise of eminent domain, in Lebanon, for expropriating private property in the public interest, is governed by the Expropriation Law. The Expropriation Law is comprehensive and governs many cases.

Considering that the ownership right and related rights are protected under the Lebanese Constitution, a public authority may only expropriate land rights when such expropriation is to be declared in the public interest, and against payment of a prior and equitable compensation. All compensation takes the form of a financial award determined through legal assessment.

An expropriation process cannot be stopped unless the validity of the public interest decree itself is challenged. In case of recourse filed against the decree, at least 50% of the compensation is paid in advance while in cases where no structures are found to be existing within expropriation limits, an additional 25% is paid and the expropriation party reserves the right (only if it wishes so) to hold the remaining 25% until the decision of takeover is issued.

The Expropriation Law establishes general provisions for prior compensation of expropriated assets, and easement fees for other restrictions imposed on property. The procedure of payment when compensating for acquisition of land is organized in practice in several phases but does not define a timeframe between taking over of land and final payment.

The decisions of the Expropriation Committee may be appealed before the Appeals Committee by the CDR or any affected individual property owner. Compensation is determined by an Expropriation Committee set up by a decree according to proposals from the relevant ministers from each Governorate.

When a procedure of expropriation affects the rights of tenants of expropriated properties, pursuant to the combined application of the Expropriation Law and the Tenancy Laws of 1991, expropriation commissions divide the expropriation compensation between landlords and tenants according to the economic value of the tenancy, enabling tenants to secure alternative housing by rental or down payment for the purchase of a housing alternative.

The Expropriation Committee determines all compensations for any economic consequences resulting from an expropriation, decides on requests for total expropriation and full compensation, and determines the value of small portions of land which cannot be exploited. It also resolves disputes over the division of compensation between shareholders. It provides for expropriation only by due legal process and after compensation has been paid for all tangible losses of property and economic prejudice at current market rates or better; and it provides for a mechanism of appeal and review.

The Expropriation Committee determines compensation based on prevalent local market rates. Every factor that affects its value is taken into consideration, and transition costs are accounted for. Replacement cost for an affected asset is calculated based on the cost of replacing the lost asset plus any transaction costs associated with bringing the asset to its pre-displacement value. Indemnities are paid after signing of the

“*Take-over Decision*” by the Head of the Expropriation Committee and take-over can be executed within 15 calendar days of the date of notification for vacant lands and within 30 calendar days for lands and buildings. The Expropriation Commission proceeds based on a proposal which the expropriated party is invited to provide. The Expropriation Committee considers any loss or damage to a legal entitlement which can be reasonably demonstrated. The law requires the compensation to consider any factor that might affect the value of the prejudice. The major assets concerned are lands, buildings, and businesses and specific rules apply for the valuation of any of such categories of assets.

It must be noted that the government of Lebanon committed to undertake the necessary expropriation for some of the future PPP projects evoked during the CEDRE conference (some of the expropriation have already been initiated and the Government committed to finalize it)⁴².

4. Taxation regime

In Lebanon, tax is charged on the total income or profit derived in Lebanon.

According to the principle of territoriality and based on the income tax law, taxes are due on profit realized in Lebanon and income derived from an activity in Lebanon.

Tax is levied on all individuals and legal entities, resident in Lebanon or abroad, on all revenues of Lebanese source.

A new Law no. 64, dated 20 October 2017, (published in the Official Gazette on 26 October 2017) introduced new tax measures and amended several tax articles to fund the increase of the minimum wages and the cost of living for the public sector.

The corporate income tax (CIT) for joint stock companies rate increased to 17% and value-added tax (VAT) rate increased to 11%.

The 2018 Budget Law no.79, dated 18 April 2018 (published in the Official Gazette no.158, dated 19 April 2018) did not apply any further changes to the CIT and VAT rates.

4.1. General taxation considerations

Under the income tax law in Lebanon, tax is levied based on the nature of the income. Accordingly, the income tax law is divided into the following three categories:

- Chapter I: Tax on Profits from industrial, commercial, and noncommercial professions.
- Chapter II: Tax on Wages and Salaries and Pensions.
- Chapter III: Tax on Income from Movable Capital.

When a taxpayer has different types of income, each type of income is taxed according to the tax chapter it falls under.

Lebanon has signed several Non-Double Taxation Treaties to avoid double taxation (e.g. with France, Italy, Turkey, UAE, Iran, etc.).

4.2. Categories of taxes, contributions and duties (incl. custom duties)

⁴² Government of Lebanon, *Potential PPP infrastructure projects*, 6 April 2018.

a) Corporate Income tax (CIT)

CIT is calculated based on the real profit method on the taxpayer's net profits. It is fixed at a flat rate of 17% of the business income.

The local rules and regulations refer to basic principles of transfer pricing and anti-avoidance rules. The arm's length principle applies to determine the taxable base of related party transactions. In Lebanon, there are no clear or detailed thin capitalization rules, but certain rules apply for oil and gas sector.

b) Capital gains tax

Companies are permitted to reevaluate their fixed assets every five years. Capital gains from such a revaluation, as well as any profits that may be realized from the disposal of fixed assets, are subject to a capital gains tax of 15%.

c) Withholding Tax (WHT) on interests

The income, revenues, and interest earned from accounts opened at Lebanese banks and from treasury bonds are subject to a 7% WHT that is non-refundable and cannot be carried forward.

d) WHT on dividends

Dividends paid to resident and non-resident shareholders are subject to a 10% WHT in Lebanon. The dividend distribution tax rate may be reduced to 5% under specific conditions.

e) Movable Capital WHT

A 10% WHT is levied on income derived from movable capital generated in Lebanon. Taxable income encompasses the following items:

- Distributed dividends, interest, and income from shares.
- Directors' and shareholders' fees.
- Distribution of reserves or profits.
- Interest from loans to corporations.

f) Payroll taxes

Employers are responsible for withholding and declaring payroll taxes on behalf of their employees.

Payroll tax is levied at progressive rates of 2% to 20%. The territoriality principle applies, therefore, the beneficiary from the salary should be resident in Lebanon, the service against which the salary is paid should be performed in Lebanon or the salary is charged to an entity located in Lebanon.

g) Social security contributions

Social security contributions are the following:

- Borne by the employer: 7% for the maternity and sickness benefit schemes (ceiling LBP 2,5 million per month), and 6% for the family and education allowance (ceiling LBP 1,5 million per month, in addition to 8.5% of total annual earnings for the end-of-service indemnity, with no ceiling).
- Borne by the employee: 2% for the maternity and sickness benefit schemes, on a maximum base of LBP 2,5 million per month.

Foreigners are completely exempted from paying social security contributions if they are working in Lebanon pursuant to a contract concluded abroad with foreign enterprises and if they are covered by a similar benefit at home.

A foreign national employee working in Lebanon will benefit from the social security fund if there is a reciprocal agreement between the two countries (i.e. their home country offers the equivalent or better program to Lebanese residents who are employed there) and the employee holds a valid work and residency permit.

h) Value-added tax (VAT)

The standard VAT rate in Lebanon is 11%, instead of 10%, effective 1 January 2018.

Unless specifically exempt, VAT is levied on all commercial transactions undertaken by business entities. Export of goods and services and export-related services, international transport, and some of the intermediate operations are zero-rated. Banking, financial services, and insurance operations are exempt from VAT.

i) Built property tax (BPT)

The BPT is an annual progressive tax, ranging between 4 % and 14% of net rental incomes (gross rental income less deductible expenses, such as depreciation and management costs).

j) Stamp duties

Two kinds of stamp duties are levied. A proportionate stamp duty of 0.4%, effective from 26 October 2017, is levied on all deeds and contracts (written or implied) that mention specific payments or other sums of money. A fixed stamp duty ranging between a minimum of LBP 250 and a maximum of LBP 2 million is applicable on documents in accordance with schedules appended to the stamp duty law.

k) Custom duties

Customs rates are adopted based on the need of the Lebanese markets of some goods and the will to protect national production sectors when an increase of imports is witnessed.

The rates are determined based on a specific schedule created in conformity with the Harmonized System of Nomenclature. This conformity with the unified system allows Lebanon to represent an 'importer friendly' environment for importers.

The normal rates are applied where there is no preferential agreement. When the origin of the good or part of the good is from a country with which Lebanon has a preferential customs treatment, preferential rates apply. Customs rates in Lebanon are either determined in percentage or paid as a lump sum per unit of imported products.

l) Lump Sum Tax

The lump sum tax on businesses and professionals is due September 30 of each year. It is suspended for the time being.

With some exceptions for certain types of companies (holdings and offshore companies, institutions exempt from tax as per Article 5 of the income tax law), the annual lump-sum tax is as follows:

LBP 2 million for joint stock companies.

LBP 750,000 for limited liability companies.

LBP 550,000 for establishments assessed based on real profit.

LBP 50,000 for taxpayers assessed on assumed profits.

The lump sum tax applies to local head offices, branches, outlets, and to any place in which the taxpayer carries on its activity or receives customers. For income tax purposes, the lump-sum tax is considered as a non-deductible expense.

Taxpayers (individuals and corporations) who have not performed any professional activity and are still not performing any effective activity related to their business are exempted from this tax provided that they submit a written commitment to the Ministry of Finance (MoF) before the 30th September of each year and will notify the MoF as soon as they resume their professional activity.

4.3. Rules of taxation and audit

a) Accounting requirements

All business enterprises are required to maintain adequate financial records.

Companies are required to adopt an accrual basis of accounting for financial accounting purposes and following the International Financial Reporting Standards ('IFRS').

b) Taxable period

Lebanon's fiscal year runs from January to December and is based on the Gregorian calendar. With the special approval of the local tax authorities, companies may, however, use their own accounting year.

c) Tax returns

Taxes on business income in any given year are based on the profits of the previous financial year. Tax returns of S.A.L must be filed within 5 months after the end of the elapsed fiscal year of the taxpayer.

d) Payment of tax

The same deadlines for tax returns apply for tax payments. If taxpayers fail to make payment by the end of the deadline open for submission of the tax returns, late payment penalties will apply.

e) Tax audit process

The most common ways for the tax authorities to select companies for tax audits are the size of the company, the type of business, and certain risk assessment measures. Tax audits typically cover a single type of tax. In a typical situation, a tax audit is likely to take less than one year from first information request to substantive resolution.

f) Statute of limitations

The tax authorities have four years to claim or collect their tax claims.

The period is calculated from the end of the year that follows the current business year. The taxable person may request the refund of excess tax within four years starting from the end of the year where the refund right was created.

The tax authorities can extend the statute of limitations in cases where a profit or revenue has been proven by a court order, arbitration, or inheritance clearance. The extension is limited till the end of the calendar year following the end of the year in which the tax authorities were notified of such event. Under the statute of limitations, a company shall keep its accounting books and documentation in archives for ten years.

g) Rulings

Tax rulings are still not available in Lebanon. Taxpayers can obtain explanations for the tax treatment of new transactions, but such explanations are not binding on the tax authorities.

5. Employment law

The Lebanese Labour Law has been enacted in 1946. The Ministry of Labour is the public authority responsible for developing and implementing the Labour Law. Arbitral Labour Councils are the competent courts to examine labour disputes.

Employer with more than 15 employees must submit written internal regulations to the Ministry of Labour for approval. The internal regulations should be in compliance with the Labour law provisions and the applicable international treaties in this regard.

5.1. Employment Contract

Employment contract can be concluded verbally or in writing. Written contracts shall be formulated in Arabic and can be translated to a foreign language if the employer or the employee is a foreigner and unacquainted with Arabic language.

The employees are subject to a three-month probation period. During this period, either the employer or the employee may terminate the employment contract without notice, motives or liability.

Employees must be registered with the social security fund within 15 days of their employment.

Employees are entitled to the minimum wage defined by the government (minimum monthly wage is LBP 675,000 and minimum daily wage is LBP30,000 as per the latest modification dated January 2nd, 2012).

5.2. Working hours

The maximum weekly working hours are 48 regular hours (except agriculture sector).

Employers can add extra hours to an employee's regular shift subject to a prior notification to the Ministry of Labour and additional compensation.

Employees must be given a minimum daily rest of nine consecutive hours, and a rest period of at least an hour when the working day is longer than six hours for men and five hours for women.

5.3. Vacations and Leaves

a) Annual Leave

Employees are entitled to 15 days fully paid vacations due at the end of their first year of employment. The annual leave must be increased pro rata the seniority (number of years of employment) up to 21 working days per annum.

Employees can accumulate annual leaves of two consecutive years. The employee should request the annual leaves and it is at the employer's discretion to approve such request within the work's requirements and circumstances.

b) Sick Leave

Employees are entitled to sick leave as of the end of their probation period. The length of which varies in accordance with the seniority as follows: i) from three months to two years employment: 100% of the salary payable for half a month and 50% of the salary payable for another half month; ii) from two to four years employment: 100% of the salary payable for one month and 50% of the salary payable for another month; iii) from four to six years employment: 100% of the salary payable for one and a half month and 50% of the salary payable for another one and a half month. iv) From six to ten years employment: 100% of the salary payable for two months and 50% of the salary payable for another two months. v) Above ten years employment: 100% of the salary payable for two and a half months and 50% of the salary payable for another two and a half months. The sick leave is granted pursuant to a medical report. The employer is entitled to delegate a physician to check the accuracy of said medical report. In the event the sick leaves exceed one month, the employer is entitled to reduce the employee's annual leave to eight days instead of fifteen.

During the sick leave, the employer may not terminate the employee's employment contract nor send a termination notice, otherwise such termination shall be deemed abusive and the employee would be entitled to abusive dismissal compensation.

c) Maternity Leave

Pregnant employees are entitled to a paid leave of ten weeks for delivery, in addition to their annual paid leave. Employer may not terminate the employment of a pregnant woman nor send a termination notice during her pregnancy and her maternity leave.

d) Specific Leaves

An employee is entitled for a two days bereavement leave to be used on the death of close family members (specifically parents, spouse, children, grandchildren, and grandparents).

e) Holidays

There are only two compulsory holidays in Lebanon: the Labour Day (May 1st), and the Independence Day (November 22). However, there are other holidays that are recognized by the government but not compulsory, and each employer has the discretion to choose these holidays.

These holidays are inter alia: a) New Year's Day, b) Eid El Fitr c) St. Maroun's Day, d) Eid El Adha e) Muslim New Year f) Ashoura, g) Good Friday and Easter Monday (Eastern), h) Good Friday and Easter Monday (Western), i) Prophet's Day, j) Christmas Day.

5.4. Termination of employment contract

According to the Lebanese Labour Law, each of the employer and the employee is entitled to terminate the employment contract entered for an indefinite period, provided one gives the other proper written notice. The duration of said notice is determined by law and cannot be reduced even by mutual consent of employer and employee. The notice varies pro rata the length of the employment: i) Under three years employment: One-month prior notice; ii) Three years to six years: Two months prior notice; iii) Six years to twelve years: Three months prior notice; iv) Over twelve years: Four months prior notice.

However, in situations where one party unilaterally terminates the contract, the affected party is entitled to compensation. If the employee was dismissed without any notice period, he must be compensated for the notice he is entitled to.

If the motives of termination are not stated clearly in the notice, the employee is entitled to ask the employer to clarify the reasons for the dismissal. The employer's answer will enable the employee to determine whether to file an unfair dismissal claim or not.

An employer wishing to dismiss an employee is not bound to let him/her carry on working during the notice period. The only legal obligation on the employer is to pay the applicable wages for that period ("giving wages in lieu of notice"). If the employer requests from the dismissed employee to carry out work during the notice period, he should be allowed to leave work for one hour per day for the purpose of seeking another job.

Employment contracts entered into for a determined period cannot be terminated prior to their expiry date, except by mutual agreement between the employer and the employee, and/or if such early termination is provided for in the contract and in compliance with the provisions of such contract.

The employer may terminate the contract without indemnity or prior notice in the following cases:

- If the employee's work during probation period was not up to the required level by the employer;
- If the employee has committed a proven deliberate act or negligence that may cause damage to the employer's material interests provided that the employer informs in writing the Ministry of Labour of such infringement within three days as of the verification of said act);
- If the employee has committed three times in the course of a single year, a serious infringement to the internal regulations, despite written notices served on him in this respect;
- If the employee has declared fake nationality;
- If the employee was absent with no legal excuse or valid reason for more than fifteen days in a single year or more than seven consecutive days.

If the employer misuses the right to terminate the employment contract, the employee will be entitled to a compensation (two to twelve monthly salary) for unfair dismissal determined in light of several factors such as the nature of employment, age of the employee, period of employment, family status, health status, estimated damages etc. In addition, the employee is entitled to all other legal indemnities such as the notice period, and all other contractual allowances.

In the event, employee unfairly terminates his/her employment contract, he/she shall be bound to pay a compensation for unfair termination amounting up to four monthly salaries.

5.5. Employment of foreign employees

Foreigner intending to work in Lebanon, with or without pay, is required to obtain a prior approval from the Ministry of Labour.

The Ministry of Labour may revoke the prior approval if the foreigner fails to arrive to Lebanon within a maximum period of three months from the date of approval.

There are certain professions and work positions that are strictly for Lebanese and foreigners, from any nationality, are forbidden to work in. Exceptionally, if justified, an approval from the Minister of Labour can be obtained despite said prohibition.

a) Work Permit

Foreigner, who once obtained the prior approval from the Ministry of Labour, must apply for a work permit before the same Ministry within a maximum period of ten days as of the date of his/her entry to Lebanon.

The work permit may be granted and renewed for a maximum period of two years from the date of its issuance. The Lebanese law entitles foreign workers who are in possession of a work permit from the Ministry of Labour, to enjoy full employment rights.

According to the PPP Law, the Chairman and/or CEO of the project company are exempted from work permit requirement.

b) Residency Permit

Any foreign employer/employee shall apply for a residency permit before the Lebanese General Security Directorate and submit the required documents.

c) Totalization agreements

A foreign national employee working in Lebanon will benefit from the social security fund (solely from sickness and maternity section) only if i) there is a reciprocal agreement between the two countries and ii) the employee holds valid work and residency permit Lebanon has entered into totalization agreements with 13 countries (among these countries France, Belgium, Italy and the United Kingdom).

5.6. Collective labour relationships

a) Collective employment agreements

Some sectors benefit from collective employment agreements. There is no obligation to have such agreements; however, in the event a collective employment agreement exists in a given sector. If it is extended by a decision of Minister of Labour pursuant to a favorable proposal of the Higher Committee For Collective Bargaining Agreements, the collective employment agreement becomes mandatory for all the employees and employers in same sector.

b) Unions

Unions are authorized under Lebanese Labour Law provided a prior authorization.