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Law Firm

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Public–Private Partnership

Municipalities or Union of Municipalities

**Badri and Salim El
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Overview of El-Meouchi Law Forms work in the field

- Providing legal advice to IFC as part of an international consortium in the Beirut International Airport Expansion Project in the context of public-private partnership projects.
- Providing legal advice to the European Bank for Reconstruction and Development as part of an international consortium in the context of a preliminary feasibility study for the Qleiat Airport development project in the context of public-private partnership projects.
- Providing legal advice to the European Bank for Reconstruction and Development as part of an international consortium in the project of constructing a highway between Beirut and Oqaiba in the context of public-private partnership projects.
- Providing legal advice to the International Bank on an infrastructure project with the aim of developing the public transport network in Beirut and its suburbs.

Scope of Application of the Public–Private Partnership Law

(Law No. 48 dated 7/9/2017)

- The **joint projects** undertaken by the state, public institutions and other persons of public right shall be subject to the provisions of this law.
- A joint venture is any project of public interest in which the private sector contributes through financing and management.
- A municipality or a Union of Municipalities may subject their joint projects to the provisions of this law, i.e. the matter is optional, but the joint projects stipulated in the laws regulating the telecommunications, electricity and civil aviation sectors are obligatorily subject to the provisions of the Partnership Law.

Overview of the Stages of Establishing a Joint Venture

(Two Main Stages)

First Stage: The joint venture proposal stage

- Joint projects are proposed by: (1) the president of the municipal council or (2) the president of the union council by submitting a file to the council, which includes a preliminary study for the project.
- Approval of the Supreme Council for Privatization to accept the proposal and proceed with the project.
- The council forms a **project committee** (chaired by the council's Secretary General and includes a representative of the concerned minister, a representative of the Ministry of Finance, the head of the sector's regulatory body, if any, and the **president of the municipal council** or the **president of the union council**).

- The project committee selects financial, legal and technical advisory firms to cooperate in its work, provided that the council contracts with them.
- The project committee prepares a comprehensive study on the joint project, dealing with the technical, economic, legal and financing aspects.
- After the council agrees to proceed with the joint project, the project file is referred to the president of the municipal council or the president of the concerned union council to obtain the necessary approvals.

Overview of the Stages of Establishing a Joint Venture

(Two Main Stages)

Second Stage: Selecting the Private Partner

- Publishing an announcement of a public invitation containing qualification criteria.
- Studying and evaluating submitted qualification applications.
- Submit a reasoned report to the council containing a proposal of the names of qualified and non-qualified candidates, provided that the number of qualified candidates is not be less than three.
- Preparing a draft rulebook, by holding consultations with all qualified candidates and funders.
- The project committee submits the finalized rulebook to the council

- After being approved by the council, the rulebook is referred to the president of the municipal council or the president of the concerned union council for the necessary ratifications.
- The rulebook shall be communicated to the qualified candidates by the project committee.
- If at least three bids are not submitted, the invitation to joint venture will be re-announced, and if this does not result in three bids, then two bids may acceptable subject to the council approval.
- The project committee opens the submitted technical offers, evaluates them and determines the accepted technical offers.
- If at least two technical offers are not accepted, the invitation to joint venture will be re-announced to ensure competition is secured.
- The project committee shall open the financial offers corresponding to the accepted technical offers in the presence of the bidders and then submit a report to the council with its recommendation for the best bidder, attached to the said report.

Partnership Contract

The partnership contract shall include the following:

- All kinds of obligations and rights of the parties.
- Principles of joint venture funding.
- The duration of the partnership contract, provided that it does not exceed thirty–five years.
- Revenues that the project company will collect from the public part, or that the public party will collect from the project company.
- Fees, allowances and royalties of the joint venture authorized by the government to be collected by the project company in the name and account of the concerned public party.

- Guarantees and obligations given for the implementation of the joint venture by the project company, private partner and/or public party.
- Funds and properties belonging to the public party, which shall be placed, for the duration of the partnership contract, at the disposal of the project company to fulfil its obligations.
- Procedures to ensure the continuity of the subject project of the partnership contract upon its termination.
- The rules to be followed in resolving disputes, including local and international mediation and arbitration.

The Public Party's Monitoring of the Joint Venture

Foundation Stage

- The public party shall appoint a **Steering committee** that includes representatives of the concerned minister, the general secretariat of the Supreme Council for Privatization and Partnership, the Ministry of Finance and the sector's organizing body, if any.
- The public party shall appoint a **Foundation Stage Management Office** comprising of competent experts and consultants, which will serve as a connection point between the steering committee and the project company.
- The project management office shall prepare and submit quarterly monitoring reports to the steering committee.
- The steering committee shall meet quarterly and at any emergency event with the aim of reviewing the monitoring reports, giving the necessary guidance and reporting to the public party, the concerned minister and the general secretariat of the council.
- A non-state public person may, with the approval of the concerned minister, take the necessary measures and decisions based on the reports of the steering committee and the project management office.

The Public Party's Monitoring of the Joint Venture

Operational Stage

- The public party shall appoint an **Operational Stage Management Office** comprising a representative of the sector's organizing body, if any, and the necessary competent experts and consultants.
- The operational stage management office shall carry out the following functions including but not be limited to:
 - Monitoring the work carried out by the project company.
 - Submitting proposals for the plan to address the project company's breach of its obligations.
 - Contributing to the management of the settlement of arising disputes.
 - Ensuring that the operations of the project company are conforming with the conditions stipulated in the partnership contract.
- The operational stage management office shall prepare semi-annual reports on the results of monitoring, and whenever the need arises, which reports shall be communicated to the public party to take appropriate decisions on them, and to the general secretariat of the Supreme Council for Privatization, for their information and opinion.

Foremost Features of Projects Subject to the Partnership

- Exemptions granted to the project
- The project company will not be subject to the control of the Audit Bureau.
- The public party may place its properties that are necessary for the implementation of the joint venture, at the disposal of the project company for the duration of the partnership contract.
- The provisions of the partnership law do not prevent the private partner and the project company from benefiting from the provisions of the law on the promotion of investments in Lebanon (Law No. 360/2001).
- Local and international mediation and arbitration can be adopted as rules to resolve disputes that may arise from the partnership contract.

Thanks!

Any Questions?