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Lebanon: Law & Practice

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Lebanon: Trends & Developments

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LEBANON



Law and Practice

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Obeid & Partners (previously known as Obeid Law Firm) is a full-service law firm operating across the MENA region from its headquarters in Beirut and its representative offices in Paris and Dubai. It is widely acknowledged as one of the leading law firms both in Lebanon and throughout the Middle East. The firm's expertise is grounded on a strong understanding of local laws and practices, and extends from Lebanon to the wider MENA region and beyond. The firm is regularly sought out for advice on legal re-

forms in various fields across the MENA region, and has been at the forefront of drafting model laws on behalf of the Arab League. The breadth of the firm's capabilities is reflected in the diversity of its clients, which range from foreign governments and public entities to national and multinational companies, including oil companies, investment funds, financial institutions, telecommunications providers, construction and service companies, and SMEs.

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1. General

1.1 General Characteristics of the Legal System

Lebanon has a civil law legal system, so follows the inquisitorial model. The legal process is conducted primarily through written submissions.

1.2 Court System

As it is a unitary state, there are no federal courts in Lebanon. The courts in Lebanon are divided into two parts:

- the judicial courts (those dealing with criminal and civil laws); and
- the courts dealing with administrative matters.

The Council of State is currently the sole judicial body dealing with administrative disputes. Lower level administrative courts have not yet been established.

There are also special courts with subject matter jurisdiction, such as the military court and the religious courts.

Civil Court Chambers and Divisions

The civil courts are in charge of adjudicating civil disputes. They are divided into chambers, depending on the nature of the dispute, as follows:

- the Commercial Chamber is competent in determining/adjudicating commercial and financial disputes between corporate entities;
- the Financial Chamber is competent in determining/adjudicating financial disputes between individuals; and
- the Personal Statute Chamber is in charge of determining/adjudicating matters relating to

nationality, inheritance, matrimonial issues, etc.

In addition to the above, there are special chambers that deal with lease issues, real estate issues, labour law and bankruptcy matters. There are also courts with a sole judge for summary proceedings, and an Enforcement Bureau that deals with enforcement proceedings.

The civil courts are divided as follows:

- courts of first instance, which are presided over by a single judge or a panel of three judges, and are in charge of examining civil law claims – the sole judge usually examines specific matters such as leases and claims of a lesser value than the ones examined by a panel of three judges;
- courts of appeal, which are based in the administrative centre of each district (*Mouhafazat*) and are mandated to serve as a second-degree court reviewing the decisions of lower courts (ie, the courts of first instance); and
- the Court of Cassation, which is a court of law as opposed to a court of fact, and serves as the ultimate judicial recourse.

Constitutional Council

Another aspect of the judiciary in Lebanon is the Constitutional Council (*Conseil Constitutionnel*). This branch oversees the review of statutes before they are enacted, in addition to overseeing national elections and responding to questions from citizens regarding the constitutionality of laws.

Military Court

The military court system in Lebanon is an exceptional judicial system that falls under the jurisdiction of the Ministry of Defence. The

jurisdiction of military courts relates to military-related offences and also extends over civilians, including in cases involving espionage, treason, unlawful contact with the enemy of the state, any conflict between civilians and military or security personnel, etc.

1.3 Court Filings and Proceedings

In civil and commercial matters, court proceedings are subject to the provisions of the Lebanese Code of Civil Procedure (LCCP), issued by Legislative Decree No 90/83 and its subsequent amendments.

Civil court filings are public and the parties are not anonymised in judgments. Pursuant to Article 484 of the LCCP, civil hearings are public unless the court decides on its own volition, or upon the request of any of the parties, to keep a hearing private in order to preserve public policy or for family privacy; however, the judgments will still be publicly announced.

TV cameras and photographers are not permitted in court.

1.4 Legal Representation in Court

In principle, legal representatives should be qualified in Lebanon in order to appear before the Lebanese courts. A Lebanese lawyer should hold a power of attorney from their client in order to appear on its behalf before courts of law – ie, the courts of first instance, the courts of appeal and the courts of cassation. However, appointing a lawyer is not a necessity before the Labour Arbitral Council, as the individuals concerned may attend on their own behalf. Furthermore, a trainee lawyer is not entitled to attend hearings before the courts of appeal and cassation, except in specific criminal matters (eg, before the court of appeal on behalf of the defendants in misdemeanours).

Pursuant to Article 115 of the Lebanese Legal Profession Act, a foreign lawyer may plead a specific case before the Lebanese courts if they have received a special permit from the President of the Bar, provided Lebanese lawyers receive similar treatment from the Bar of which the foreign lawyer is a member, and provided such permission is issued on a case-by-case basis.

2. Litigation Funding

2.1 Third-Party Litigation Funding

The law does not address this issue. As far as is known, there have been no lawsuits in Lebanon involving third-party litigation funders.

2.2 Third-Party Funding: Lawsuits

This is not applicable in this jurisdiction.

2.3 Third-Party Funding for Plaintiff and Defendant

This is not applicable in this jurisdiction.

2.4 Minimum and Maximum Amounts of Third-Party Funding

This is not applicable in this jurisdiction.

2.5 Types of Costs Considered Under Third-Party Funding

This is not applicable in this jurisdiction (insofar as third-party litigation funding is concerned).

2.6 Contingency Fees

The Lebanese Legal Profession Act provides that legal fees are determined by an agreement concluded between the lawyer and the client. The Act does not provide an indication nor a restriction on the nature of the agreement, which remains subject to the parties' contractual free will. However, the Lebanese Legal Profession Act

grants the court the right to reduce the fees in civil cases if they exceed 20% of the value of the contended matter. Insofar as third-party funding is concerned, a careful structure is required to ensure that such arrangements would not fall under the prohibition of excessive *riba* under Lebanese law (see Usury Law of 24 June 1939).

2.7 Time Limit for Obtaining Third-Party Funding

This is not applicable in this jurisdiction.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

The court does not impose any rules on the parties in relation to pre-action conduct, *per se*. However, a notice is usually sent to the defaulting party to remedy the breach before initiating proceedings. The notice in some instances is mandatory and usually provides a time limit for the defendant to reply and remedy the breach before the plaintiff commences judicial proceedings.

It should be noted that, in some instances, the creditor is exempted from sending such notice – ie, when the performance of the obligation becomes impossible, or when the obligation was to return an item/asset that was stolen, or when the term of the obligation has lapsed (Article 258 of the Code of Obligations and Contracts (COC)).

3.2 Statutes of Limitations

The statutes of limitations concerning civil suits are regulated by the COC. In general, the statute of limitation in civil matters is ten years (Article 349 of the COC). However, statutes of limitations of shorter duration apply in some specific types of disputes (Article 350–352 of the COC).

The statute of limitation runs from the day the “debt” (ie, generally the obligation) becomes due, and can be invoked before the courts by a party.

Furthermore, Article 509 of the LCCP allows the parties to request that the lawsuit be dropped if the proceedings remain inactive for a period of two years, starting from the date of the last valid procedural step. The same decision may be taken by the court, without a request from any party, if the proceedings remain inactive for a period of five years (Article 512 (2) of the LCCP).

3.3 Jurisdictional Requirements for a Defendant

In general and unless otherwise stated by law, the competent court is determined in light of the defendant’s domicile (Article 97 of the LCCP). Jurisdictional requirements are governed by Articles 97 *et seq* of the LCCP, and will differ depending on the nature of the dispute. For instance, if the lawsuit is in relation to real estate, the competent court is the one where the plot is located (Article 98 of the LCCP). For disputes arising out of the performance of a civil or commercial contract, jurisdiction is granted to the court where:

- the effective residence of the defendant is located;
- the defendant has its chosen domicile;
- the contract was concluded and one of its principal obligations was to be performed; or
- the contract was entirely performed (Article 100 of the LCCP).

For disputes relating to legal entities, the court where the legal entity’s head offices are located is competent. If a branch of the legal entity is the party concerned with the dispute, then the court where the branch is located may look into

the dispute (Article 101 of the LCCP). Moreover, the parties may not exclude the obligatory territorial jurisdiction stated in Articles 108–112 of the LCCP.

- Article 108 provides that claims arising from bankruptcy issues fall under the competence of the court that declared the bankruptcy.
- Article 109 provides that claims relating to life insurance fall under the competence of the court that is located within the residence of the insured.
- Article 110 states that claims related to insurance accidents fall under the competence of the court that is located at the residence of the insured or at the place of the accident.
- Article 111 states that claims related to fire insurance fall under the competence of the court located at the place of the fire incident.
- Article 112 provides that claims which the law explicitly requires to be filed before a specific court must be filed before said court to the exclusion of other courts (eg, the Labour Arbitral Council, which has jurisdiction over most work relation disputes).

Regarding public prosecutions, the lawsuit is filed before the court where the crime has occurred, where the defendant has its domicile, or where the defendant was arrested (Article 9 of the Lebanese Criminal Procedure Code).

3.4 Initial Complaint

Proceedings in civil and commercial matters are initiated by filing a submission before a clerk of the relevant court's office. The plaintiff should have the requisite locus standi to file a claim (Article 9 of the LCCP). The initial complaint should be filed before the competent court and should include the following information (Article 443 of the LCCP):

- the name of the court before which the claim is filed;
- the plaintiff's and the defendant's respective names, professions and residences, and the names of their representatives, if any;
- the facts, legal grounds, evidence and relief sought;
- the date of the claim and the plaintiff's signature or the signature of its legal representative; and
- the exhibits enclosed with the complaint.

By reference to Article 365 of the LCCP, the dispute subject matter is specified by the parties' requests for relief as stated in the initial complaint and the subsequent submissions. Pursuant to Article 31 of the LCCP, the plaintiff may file incidental requests intended to correct the initial complaint, or to complete it or amend its subject matter or its purpose. In the same context, Article 32 of the LCCP provides that the defendant may also file incidental requests, particularly a set-off request or a damages request for the harm incurred due to the filing of the initial complaint or due to a procedural act during the proceedings.

It is important to note that the above-mentioned incidental requests should satisfy the requirements stated in Article 30 of the LCCP, which requires the correlation of the incidental requests with the initial complaint, to be within the jurisdiction of the court ruling on the initial complaint, and not within the jurisdiction of an arbitral tribunal.

3.5 Rules of Service

Rules of service are provided for under Articles 397 et seq of the LCCP. As such, notification is prima facie served by a bailiff. It may also be carried out via the police, the interior security forces or a court clerk.

In civil matters, the plaintiff is usually required to initiate service of the lawsuit. However, the procedure of service is undertaken by judicial employees. In other words, the court clerk is responsible for drafting the notice, and the bailiff is responsible for delivering it.

A party may be sued outside the jurisdiction (Article 7 of the LCCP).

In this respect, Article 413 of the LCCP provides that a registered letter with acknowledgement of receipt must be sent. Notification may also be made through the Lebanese embassy or consulate located in the country where notification is sought, or in accordance with the latter's local law.

3.6 Failure to Respond

According to Article 468 of the LCCP, paragraph 1, if the defendant fails to appear before the court at the first Hearing without a reasonable excuse, despite being duly notified, the court may render a judgment upon the plaintiff's request.

3.7 Representative or Collective Actions

Class actions are not available under Lebanese Law. However, certain associations and unions may bring actions for the defence of the collective interests of its members. For instance, trade unions and professional organisations whose members are engaged in collective labour contracts are entitled to institute legal proceedings concerning such agreement on behalf of their members. No proxy from the members is needed in this regard, provided that the latter have been notified of the matter and have not objected (Article 24 of the Collective Agreements, Mediation and Arbitration Law, enacted by Decree 17386/1964).

3.8 Requirements for Cost Estimate

The Bar has put in place a scale for lawyers' fees, including a company's incorporation fees, contract fees, annual companies and individuals' proxies' fees, and lawsuit percentage fees; however, this scale is not mandatory for lawyers and is usually referred to as a guideline.

Furthermore, Law No 8/70, dated 11 March 1970, regulates the legal profession by addressing lawyers' fees. Article 69 thereof states that a lawyer's fees are prima facie agreed upon in writing between the client and the lawyer.

Pursuant to the same Article, the courts are competent to determine the lawyer's fees where no written agreement exists between the client and the lawyer. However, such determination should be made in light of the Council of the Bar's opinion and in consideration of the importance of the case, the work undertaken by the lawyer and the situation of the client.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

The trial judge and the judge of summary measures can order provisional and conservatory measures for the protection of rights and the prevention of harm, such as affixing of seal, setting an asset's inventory, ordering the sequestration or selling of perishable assets and describing the status quo of a situation (Article 589 of the LCCP), upon the request of any of the parties, either in consideration of a guarantee or without it. The petitioner has to show that its rights are in danger of imminent harm that necessitates interim relief as a matter of urgency in order to protect its rights.

Procedural pleas to dismiss the case at a preliminary stage before addressing the merits of the case are also available under Lebanese law (*exception de procédure*), such as lack of jurisdiction, *lis pendens* or the connectivity of the claims, the nullity of the complaint or other procedural acts, a request for an extension of time, the transfer of the lawsuit due to legitimate doubts or the existence of a family relationship (Articles 52–68 of the LCCP).

4.2 Early Judgment Applications

Early judgment applications are usually related to interim relief (see 4.1 **Interim Applications/Motions**) or *ex parte* proceedings (Articles 594–612 of the LCCP), such as the appointment of an expert, initiating estate proceedings, etc.

4.3 Dispositive Motions

This is not applicable in this jurisdiction.

4.4 Requirements for Interested Parties to Join a Lawsuit

The involvement of third parties in proceedings is regulated by Articles 36 et seq of the LCCP. Pursuant to Article 36 of the LCCP, a third party can intervene in the trial proceedings and become a party upon the submission of a reasoned request before the court. The court shall rule on such request and authorise a third party to join a lawsuit.

In the same context, Article 38 of the LCCP provides that any party to the trial may request the joinder of a third party to hear the judgment, or to condemn it with respect to claims similar to those of one of the parties, or for warranty purposes. However, the failure to join a particular party does not preclude a litigant third party from bringing the same or similar claims against that party.

4.5 Applications for Security for Defendant's Costs

This is not applicable in this jurisdiction.

4.6 Costs of Interim Applications/Motions

The judge may grant the interim application in consideration of a guarantee. The LCCP does not provide further details as to the costs. In practice, the costs are subject to the court's discretion. In general, the losing party incurs the costs of the proceedings only in relation to judicial costs. The court will generally not rule on attorney fees.

4.7 Application/Motion Timeframe

The LCCP does not explicitly provide a timeframe for a court to deal with an interim application. However, Article 583 of the LCCP states that the judge of summary proceedings, who is competent to look into applications, shall render the decision without delay.

5. Discovery

5.1 Discovery and Civil Cases

Discovery is not covered by Lebanese legislation.

5.2 Discovery and Third Parties

This is not applicable in this jurisdiction.

5.3 Discovery in This Jurisdiction

This is not applicable in this jurisdiction.

5.4 Alternatives to Discovery Mechanisms

According to Article 203 of the LCCP, a party may request the opponent to produce any document essential for the outcome of the dispute, provided that:

- the law allows the above party to request such document production or deliverance;
- the document is common between the requesting party and the opponent (the document is considered common if it is drafted in the interest of either party) or evidences their mutual rights and obligations; and
- the opponent relied on the document at any time during the proceedings.

5.5 Legal Privilege

Attorney-client privilege is clearly set out in Law No 8/70 regulating the legal profession, which applies solely to lawyers registered at the Bar. According to Article 92 thereof, a lawyer is prohibited from disclosing any information confided in them, or that they became aware of via their profession, even after the termination of their mandate. A lawyer is also prohibited from testifying against their client in a lawsuit in which they currently act or have previously acted as counsel.

However, it should be noted that a lawyer may testify against their client in a lawsuit relating to the attorney's fees. The testimony shall be limited to the case at hand.

To the extent that in-house counsel are registered lawyers at the Bar, the application of legal privilege is extended to them.

In addition, the violation of professional secrecy by a lawyer could constitute a criminal offence under Article 579 of the Lebanese Criminal Code.

However, it should be noted that the Anti-Money Laundering Law No 44 of 2015 introduced an exception to attorney-client privilege in the context of anti-money laundering and counter-terrorist financing, imposing certain obligations on lawyers to combat money laundering when

carrying out certain services for their clients, which generally fall outside the lawyer's typical professional capacity (purchase and sale of real estate, management of customers' movable and immovable assets, management of bank accounts and securities accounts, etc).

5.6 Rules Disallowing Disclosure of a Document

There are no particular rules in the LCCP with respect to disallowing disclosure of a document. This is usually subject to specific rules or regulations with respect to disclosure of documents, such as bank secrecy laws, professional regulations, privacy protection, etc.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

As mentioned in 4.1 **Interim Applications/Motions**, the trial judge and the judge of summary proceedings can order provisional and protective measures that necessitate relief to be granted as a matter of urgency, in order to protect rights.

It is worth noting that the amended law on Lebanese banking secrecy (Law No 1/1956 as amended by Law No 306/2022) provides that funds held at banks operating in Lebanon may be frozen by a decision from the Special Investigation Commission as per the Lebanese Anti-Money Laundering Law, and contains language to the effect that such funds may be seized by a decision of the competent courts in other circumstances listed in that law, such as in the event of corruption and financial offences listed in the Lebanese Penal Code.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

The LCCP does not provide a particular time-frame in which the judge must issue urgent injunctive relief. However, it does provide that the judge should render their decision without delay (Article 583 of the LCCP). In addition, when the circumstances so require, the judge may decide to hear the parties outside of court hours and during public holidays (Article 582 of the LCCP).

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Injunctive relief can be obtained on an ex parte basis pursuant to Article 593 of the LCCP onwards.

6.4 Liability for Damages for the Applicant

The applicant may be held liable for damages suffered by the respondent if the former abused their right in bringing a lawsuit (Article 10 of the LCCP). As such, the applicant may be subject to a penalty, ranging from LBP40,000 to LBP2 million (Article 11 of the LCCP).

6.5 Respondent's Worldwide Assets and Injunctive Relief

As a general rule, the Lebanese judge has jurisdiction over assets located within Lebanese territory, which is a matter of sovereignty. Unless provided otherwise in a treaty concluded between Lebanon and another country, injunctive relief cannot be granted against the worldwide assets of a respondent.

6.6 Third Parties and Injunctive Relief

Injunctive relief can be obtained against third parties. For instance, a seizure may be obtained against the debtor's assets that are in the possession of a third party. As such, the third par-

ty will be prohibited from disposing of those assets. This possibility is restricted to the following assets (Article 881 of the LCCP):

- the amounts and liquid debts, even if incumbent upon a condition;
- financial papers that are priced or priceable in the stock exchange and issued as shares, nominal bonds or mixed bonds;
- income and profits generated by companies;
- parts in companies, even before the company's dissolution; and
- fungible assets and movable assets.

6.7 Consequences of a Respondent's Non-compliance

The judge of summary proceedings may order a penalty if the respondent fails to comply with the terms of an injunction (Article 587 of the LCCP).

7. Trials and Hearings

7.1 Trial Proceedings

The trial process in civil cases is mainly conducted in writing. However, the procedure may involve witness examination (Articles 245–298 of the LCCP) and expert examination (Articles 308–362 of the LCCP).

7.2 Case Management Hearings

The court has discretionary power over the organisation of hearings in civil matters. However, certain proceedings may be conducted without any oral hearing, such as the summary proceedings in certain claims of value that do not exceed 30 times the minimum statutory wage (Article 500-bis et seq of the LCCP). In this case, the claims, factual and legal reasoning, and the judgment shall be submitted in writing. However, the court remains entitled to

cross-examine the parties, witnesses or experts if it deems necessary.

7.3 Jury Trials in Civil Cases

This is not applicable in this jurisdiction.

7.4 Rules That Govern Admission of Evidence

The burden of proof lies with the party asserting a fact, and what is to be proved should be relevant to the dispute and possible to prove (Article 132 of the LCCP). The court may order an investigation to complement the parties' evidence (Article 135 of the LCCP). Generally, the types of evidence admissible under Lebanese law include documentary evidence (eg, authenticated and private deeds), confessions, testimonies, investigations, etc, and are specifically regulated under the LCCP.

7.5 Expert Testimony

According to Article 313 of the LCCP, the court may designate an expert to contribute expertise, submit technical advice or undertake a technical investigation for a specific matter.

Depending on the circumstances of the case, there is nothing preventing a party from submitting expert reports/opinions, which would be treated as documentary evidence in the file.

7.6 Extent to Which Hearings Are Open to the Public

See 1.3 Court Filings and Proceedings.

7.7 Level of Intervention by a Judge

The judge is in charge of the proper conduct of the proceedings. During the examination of witnesses and experts, the judge plays an active role and is the one in charge of conducting the examination of witnesses and experts.

7.8 General Timeframes for Proceedings

Depending on the complexity of the case, the proceedings before the court of first instance vary between three months and four years.

In this regard, delays have occurred over the past three years due to the court suspensions during the pandemic, as well as delays incurred by the various components of the legal system (eg, courts, court staff and lawyers).

8. Settlement

8.1 Court Approval

At any time during the trial proceedings, the parties can conclude a settlement, even partially, and ask the judge to render a decision ratifying such settlement (Article 461 of the LCCP). The COC explicitly excludes certain issues from settlement, such as issues of personal statutes, public policy or personal rights that are not within the compass of trade. However, it is permissible to settle over a money interest resulting from a personal status issue or from an offence (Articles 1037 et seq of the COC).

8.2 Settlement of Lawsuits and Confidentiality

The settlement of a lawsuit may remain confidential if agreed upon by the parties.

8.3 Enforcement of Settlement Agreements

Settlement agreements can be enforced before the judge of execution.

8.4 Setting Aside Settlement Agreements

Lebanese law does not specifically provide a mechanism for the setting aside of settlement agreements. However, settlement agreements are subject to contract law.

9. Damages and Judgment

9.1 Awards Available to the Successful Litigant

A successful litigant will obtain either specific performance or damages.

9.2 Rules Regarding Damages

Damages are, in principle, assessed by the court. They can also be determined by law or pursuant to the parties' agreement (Article 259 of the COC). In addition to material damages, Lebanese law further provides for compensation for moral damages (Article 263 of the COC).

As a general rule, damages must correspond to the damage incurred and to the loss of profit (Article 260 of the COC). Indirect damages are taken into account if they are directly connected to the non-performance of the obligation (Article 261 of the COC). The competent judge may also exceptionally order compensation for future damages if there is certainty as to their realisation, and if they can be precisely assessed (Article 264 of the COC).

Regarding contracts, compensation only encompasses damages that were foreseeable at the conclusion of the contract, provided that the debtor has committed no fraud (Article 262 of the COC).

The parties may also set in advance the amount of damages that will be due in case of partial or total non-performance of the obligations incumbent upon the debtor ("penal clause" or, in French, *clause pénale*). This clause may be inserted either in the contract or in a separate deed. The judge may reduce the amount if it is deemed excessive, or if the main obligation has been partially performed (Article 266 of the COC).

9.3 Pre-judgment and Post-judgment Interest

Interest will be computed when the claim/right becomes due, which, according to the circumstances of the case, may fall before or after the judgment is entered.

The statutory limit is five years, which runs from the day the obligation/right becomes due (Articles 348 and 350 of the COC).

9.4 Enforcement Mechanisms of a Domestic Judgment

The Enforcement Bureau is the competent entity through which a domestic judgment is enforced (Article 828 of the LCCP). A domestic judgment cannot be enforceable unless it has the force of *res judicata* (Article 836 of the LCCP).

A request for enforcement should be presented at the clerk's office of the Enforcement Bureau and should include all relevant details (ie, the name of the person requesting enforcement, the name of the opponent, their residence, titles (or nicknames), capacity, and elected domicile) along with the judgment for which execution is sought, the requested amount, and the assets to be sequestered where relevant, etc (Article 837 of the LCCP).

9.5 Enforcement of a Judgment From a Foreign Country

Foreign judgments are recognised in Lebanon via an *exequatur* request, which is an *ex parte* procedure. Article 1014 of the LCCP provides that *exequatur* is granted to a foreign judgment that satisfies the following conditions.

- The judgment should be rendered by competent judges in accordance with the laws of the country in which the decision was rendered, on the condition that their competence is

not only determined by the nationality of the plaintiff. If two foreign judgments are rendered by two/in the name of two different jurisdictions but in relation to the same subject matter and among the same opponents, the Enforcement Order is granted to the judgment that is in conformity with the rules of the Lebanese law pertaining to international competence.

- The judgment should be enforceable and should have acquired the force of *res judicata* in the country where it was rendered. Nevertheless, the Enforcement Order can be granted to provisional and *ex parte* decisions that have become enforceable in the country concerned.
- The losing party should have been duly notified of the lawsuit that resulted in the judgment and the right of defence should have been duly accorded/provided to them.
- The judgment should be rendered in the name of a country whose laws allow the enforceability of Lebanese judgments on its territories after scrutinising them or after giving them an *exequatur*.
- The judgment does not violate public policy.

10. Appeal

10.1 Levels of Appeal or Review to a Litigation

Article 639 of the LCCP provides that all decisions issued by the court of first instance may be subject to appeal, except those that are excluded by the law. According to Article 640 of the LCCP, the decisions adjudicating a dispute of an amount not exceeding LBP3 million cannot be subject to appeal. However, the decisions issued by the Labour Arbitral Council are not subject to appeal but only to cassation.

10.2 Rules Concerning Appeals of Judgments

The procedure of appeal is governed by Articles 638–667 of the LCCP. As stated in **10.1 Levels of Appeal or Review to a Litigation**, all judgments issued by the courts of first instance may be subject to appeal, unless provided otherwise by law (Article 639 of the LCCP). Furthermore, the appeal is filed by virtue of a submission at the court registry. It shall be signed by a lawyer and include the appealed judgment with mention of the court of first of instance that issued it, the date, the reasons upon which the party is relying in its request and the requests for relief (Article 655 of the LCCP). The grounds for appeal are set out under **10.4 Issues Considered by the Appeal Court at an Appeal**.

10.3 Procedure for Taking an Appeal

Unless otherwise provided by law, the timeframes to lodge an appeal (Article 643 of the LCCP) are as follows:

- eight days from receiving notification of a decision issued by the judge of summary proceedings, the President of the Execution Bureau, and all decisions ordering interim measures; and
- 30 days from receiving notification of other types of decisions issued by the court of first instance.

Expect when provided in a special text of law, the time limit to file an appeal starts running from the day of receipt of the decision (Article 643 of the LCCP).

10.4 Issues Considered by the Appeal Court at an Appeal

Appeals

An appeal may not be made in relation to disputes with an amount that does not exceed LBP3 million (Article 640 of the LCCP).

However, lower court decisions (ie, decisions rendered by a court of first instance) are subject to appeal regardless of the amount in dispute in the following cases:

- a lack of jurisdiction;
- an annulment of the judgment when such judgment is vitiated or based on fundamental procedural acts that have been deemed null;
- a contradiction in the dispositive section of the judgment;
- an omission to rule on one of the parties' claims; or
- a judgment that ruled on a claim that was not raised by the parties or that ruled on more than what has been claimed.

The court of appeal will review the case as a whole – ie, the facts and the law.

New Claims

In principle, new claims are not allowed at the appeal stage, unless:

- these new claims were part of counterclaims;
- they arose explicitly or implicitly out of the initial claim;
- they relate to a set-off;
- they were used as defences to reject the counterparty's claims;
- they aimed to decide on issues arising out of the interference of a third party; or
- they aimed to prevent or discover a factual circumstance (Article 662 of the LCCP).

In any event, new claims will be accepted in the absence of an objection from the opposing party (Article 662 of the LCCP).

10.5 Court-Imposed Conditions on Granting an Appeal

The courts may not impose conditions on granting an appeal other than those stated by the law. As stated in **10.1 Levels of Appeal or Review to a Litigation**, all judgments issued by the courts of first instance may be appealed, unless provided otherwise by law.

10.6 Powers of the Appellate Court After an Appeal Hearing

After hearing an appeal, the court of appeal either validates or invalidates the court of first instance's judgment. The court of appeal's decision may be subject to appeal to the court of cassation (*pourvoi en cassation*) if certain conditions are met.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

In principle, a losing party bears the costs of the successful party. Said costs include the fees, costs and expenses the successful party paid in order to file and plead its claim. Lawyers' fees are not usually reimbursed in full.

11.2 Factors Considered When Awarding Costs

The court has discretionary power when awarding costs and takes into account the circumstances of the case.

11.3 Interest Awarded on Costs

This is not applicable in this jurisdiction.

12. Alternative Dispute Resolution (ADR)

12.1 Views of ADR Within the Country

ADR is well received in Lebanon, with arbitration being the most popular method. Judicial mediation is another method that has been favoured recently through the enactment of Law 82, which entered into force on 18 October 2018, regarding judicial mediation.

12.2 ADR Within the Legal System

As set out in **12.1 Views of ADR Within the Country**, the legal system in Lebanon favours ADR, notably arbitration and mediation.

It should also be noted that the LCCP stipulates that conciliation between the parties is inherent in the judge's duties (Article 375 of the LCCP). However, such conciliation made by the judge during the court proceedings is not mandatory and there are no sanctions for refusing to engage in conciliation.

12.3 ADR Institutions

The main institutions offering and promoting ADR are:

- the Lebanese Arbitration Centre of the Chamber of Commerce, Industry and Agriculture of Beirut and Mount Lebanon, founded in 1995, which has its own Arbitration Rules and Mediation Rules; and
- the Chartered Institute of Arbitrators (CI Arb) Lebanon Branch, which principally serves as a forum for education and training in ADR and may sometimes act as an appointing authority.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitration

The LCCP devotes its second chapter to arbitration and its provisions are based on the old French arbitration law decrees No 80-354 of 14 May 1980 and No 81-500 of 12 May 1981. The LCCP makes a distinction between domestic arbitration and international arbitration, with the latter being governed by more liberal rules.

Lebanon is a signatory to the New York Convention with a reservation that the government of Lebanon will apply the convention, on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another contracting state. Lebanon also ratified the Washington Convention, among others, on 26 March 2003.

13.2 Subject Matters Not Referred to Arbitration

Under Lebanese law, the following types of disputes are not arbitrable and are subject to the exclusive jurisdiction of the Lebanese national courts:

- questions of personal status (nationality, age, adoption) and questions of social status (divorce and marriage), although Article 1037 of the COC allows for an exception regarding financial compensation resulting from personal status disputes – in this case, arbitration is confined to the compensation sought;
- non-negotiable personal rights such as the right to physical integrity, human dignity, privacy and the right to food. However, similar to the questions of personal status, any dispute relating to monetary compensation associated with those personal rights is arbitrable;

- rights of succession – arbitration over acquired hereditary rights is possible where the value of such rights is determined;
- questions of public policy, including all matters considered by law as guaranteeing social, economic or political interests;
- questions of insolvency – as provided by Article 490 of the Code of Commerce, state courts have exclusive jurisdiction in insolvency matters;
- questions of employment contracts and social security, which fall under the exclusive competence of the local Labour Arbitral Council; and
- contracts for commercial representation – Article 5 of Decree Law No 34, dated 5 August 1967, provides for the exclusive jurisdiction of Lebanese courts in respect of disputes arising out of commercial representation agreements. However, it should be noted that in recent years the Lebanese courts have adopted a more permissible stance towards the arbitrability of such disputes in specific circumstances.

13.3 Circumstances to Challenge an Arbitral Award

In domestic arbitration, an arbitral award can be subject to appeal, unless agreed otherwise by the parties (Article 799 of the LCCP). The arbitral award can also be subject to the setting-aside action (Article 800 of the LCCP).

When an arbitration is conducted *ex aequo et bono*, an arbitral award cannot be appealed before the Court of Cassation unless a court of appeal has annulled the arbitral award. In this case, the grounds for appeal before the Court of Cassation are limited to the annulment grounds as set out below. However, in international arbitration, the appeal is not an available recourse

and the arbitral award can only be subject to the setting-aside action (Article 819 of the LCCP).

In both domestic and international arbitration, the setting-aside action is of public policy and cannot be excluded by the parties' agreement.

Domestic Arbitrations

The grounds for annulling awards in domestic arbitration are set out under Article 800 of the LCCP as follows:

- the award has been rendered without an arbitration agreement or on the basis of an agreement that is null or void due to the expiry of the relevant time limit for rendering the award;
- the award has been rendered by arbitrators who were not appointed in accordance with the law;
- the arbitrators ruled without complying with the mission conferred upon them;
- the award has been delivered without due respect of rights of defence;
- the award does not contain the mandatory requirements related to the relief sought by the parties, along with the grounds and means substantiating such relief, the name of the arbitrators, the ratio decidendi of the award, the date of the award and the signature of the arbitrators; and
- the award has violated a rule of public policy.

International Arbitrations

The grounds for annulling awards in international arbitration are set out under Article 819 of the LCCP as follows:

- the award has been rendered without an arbitration agreement or on the basis of an agreement that is null or void due to the expiry of the relevant time limit for rendering the award;

- the award has been rendered by arbitrators who were not appointed in accordance with the law;
- the arbitrators ruled without complying with the mission conferred upon them;
- the award has been delivered without due respect of rights of defence; and
- the award has violated a rule of international public policy.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

The recognition and enforcement of an award in Lebanon is made through ex parte proceedings.

The competent court to grant exequatur varies depending on the nature of the dispute. In civil and commercial matters, exequatur requests are filed before the President of the courts of first instance, either at the place where the award was made if an international award was rendered in Lebanon, or in Beirut if the award was rendered outside Lebanon. In administrative matters, exequatur requests should be filed before the President of the Council of State (Articles 770, 775, 793, 795 and 810 of the LCCP).

The exequatur application must contain the arbitral award and the arbitration agreement or a certified copy of these documents, regardless of whether the award is domestic or foreign. For international or foreign awards, the judge will principally verify the existence of the award and that recognition of the award does not manifestly violate Lebanese international public policy (Articles 795, 814 and 815 of the LCCP).

A court decision granting recognition or enforcement of a domestic, foreign or international award rendered in Lebanon is not subject to any recourse (Articles 805 and 819 of the LCCP). A court decision denying recognition or enforcement of a domestic award or a foreign or international award rendered in Lebanon is subject to appeal (Articles 806 and 816 of the LCCP).

The appeal of an award (in domestic arbitrations) or the action for setting aside the award (in both domestic and international arbitrations) de facto entails a challenge of the decision granting exequatur, and the judge of exequatur will no longer hear the dispute (Articles 805 and 819 of the LCCP).

14. Outlook

14.1 Proposals for Dispute Resolution Reform

A new arbitration law was being discussed but is currently on hold.

Trends and Developments

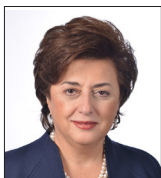
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Obeid & Partners (previously known as Obeid Law Firm) is a full-service law firm operating across the MENA region from its headquarters in Beirut and its representative offices in Paris and Dubai. It is widely acknowledged as one of the leading law firms both in Lebanon and throughout the Middle East. The firm's expertise is grounded on a strong understanding of local laws and practices, and extends from Lebanon to the wider MENA region and beyond. The firm is regularly sought out for advice on legal re-

forms in various fields across the MENA region, and has been at the forefront of drafting model laws on behalf of the Arab League. The breadth of the firm's capabilities is reflected in the diversity of its clients, which range from foreign governments and public entities to national and multinational companies, including oil companies, investment funds, financial institutions, telecommunications providers, construction and service companies, and SMEs.

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LEBANON TRENDS AND DEVELOPMENTS

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Introduction

Three years have passed since the onset of the financial, economic and monetary crisis in Lebanon, described by the World Bank as one of the top three financial crises since the Industrial Revolution. Lebanon still experiences the lingering consequences of this economic crisis, from the rapidly deteriorating standards of living, rampant inflation, precipitous deterioration of the national currency's exchange rate, to the pervasive corruption permeating all levels of society and the economy. With regards to the financial crisis, disputes surrounding the issue of local banks exercising “de facto” capital controls have been and still are increasing, whether before Lebanese or foreign courts.

In 2023, Lebanon experienced a notable absence of recent legal and judicial developments, primarily attributed to the prolonged political deadlock that has gripped the nation over the past year.

The financial crisis has taken a substantial toll on the judicial system, with the impact lingering long after judges concluded their strike, which spanned from August to December 2022. Hundreds of judges have opted to suspend their work until further notice, citing the

government's inability to meet their essential needs for healthcare and medication, as well as the absence of suitable working conditions. The deterioration of working conditions, coupled with political interference, has fueled discontent within the judiciary, contributing to the decision to strike. This ongoing judicial inactivity has paralysed Lebanese courthouses, leading to hundreds of unresolved cases. Consequently, the extended strike accounts for the absence of substantial case law and jurisprudence in 2023.

Beyond the financial crisis, Lebanon faces severe political instability, caused by the presidential vacancy since 31 October 2022, and the prime minister's decision not to assume presidential powers. This vacancy poses challenges concerning the legality of the parliament exercising its legislative powers during the constitutional period for electing a president, should the parliament fail to elect a new leader. As of now, parliamentarians have refrained from exercising their legislative powers, further explaining the absence of newly enacted laws over the past year. The legal landscape in Lebanon has largely been dominated by issues relating to these predicaments.

Cases Against Lebanese Banks

The cases against the Lebanese banks are still a hot topic in Lebanon with the consistent inability of the Lebanese government to find a solution to resolve the financial crisis. In this regard, depositors continue to initiate legal actions against local banks, turning superficially to the judge of summary proceedings, seeking expedited relief and judgments ordering banks to pay in foreign currency or execute an international transfer.

While the previous predominant position of the judges of summary proceedings was to rule against local banks and uphold the interest of the depositors, recent decisions, rendered by the court of appeals and the Court of Cassation, seem to adopt an opposing stance. In a recent decision, the Lebanese High Court considered that matters related to the transfer of funds abroad fall beyond the purview of the judges of summary proceedings. This conclusion is drawn from the fact that such disputes require thorough examination of the merits of the case.

The recent stance adopted by the Court of Cassation has foreclosed an avenue that depositors might have pursued to reaffirm their rights in transferring personal funds overseas. Nevertheless, alternative courses of action are available to depositors, and encompass:

- filing an action on the merits against the bank seeking the same relief;
- filing an ex parte provisional seizure application against the bank to lay marks on its assets in Lebanon as a security for the debt. However, this action would typically need to be followed by an action on the merits to maintain the seizure pending the determination of the dispute; and

- filing against Lebanese banks for cessation of payment, which could give rise to insolvency and bankruptcy proceedings.

Possible Retaliatory Measures

Banks, in response to claims raised by their customers, attempt to close those customers' accounts. In doing so, banks would typically ask customers to collect their funds via a banker's cheque deposited with the notary public pursuant to a tender and deposit procedure set out under the Lebanese Code of Civil Procedures. However, Lebanese Courts have determined that these cheques are no longer recognised as a valid form of payment and cannot serve as a substitute for cash, having forfeited their nominal value. Resorting to such a payment method would result in depositors being denied their full entitlement, as the debt owed to them by the bank would remain unsatisfied, introducing an element of uncertainty regarding the settlement of the debt.

Therefore, when banks proceed in this manner, depositors understandably reject the bank's offer to pay by banker's cheque. This in turn prompts the bank to initiate a validation action seeking to confirm the validity of its offer.

Currency of Payment

With the surge of the Lebanese financial crisis, the question of the currency of payment arises within agreements denominated in foreign currency. Particularly, these issues arise in loan agreements signed between a bank and its client. In this regard, Lebanese courts have supported both perspectives for local contracts – either demanding debt reimbursement in accordance with a foreign currency agreement, or permitting payment in national currency despite a clause stipulating payment in a foreign currency.

The aforementioned issue regarding the currency of payment could also potentially arise between a bank and a foreign investor or a foreign fund. In this regard, the prevailing position of the Lebanese courts is to rule, if the agreement is deemed to be an international contract, that the debtor must fulfil its obligation by utilising the specific foreign currency and value designated in the contract.

Foreign Judgments Against Lebanese Banks

Several lawsuits have been, and still are being, filed before foreign courts (eg, English and French courts) by customers against Lebanese banks, challenging the restrictions imposed by these banks on their accounts, including restrictions on transfers outside Lebanon.

Most of the foreign judgments are issued in favour of the depositors. Other than the famous case of *Manoukian v Bank Audi S.A.L.* and *Société Générale de Banque Au Liban S.A.L.* in which the English High Court of Justice issued its judgment on 22 March 2022, ordering the Lebanese banks to execute the international transfer requested by the claimant, and the case *Bitar v Bank of Beirut S.A.L.*, in which the English High Court issued its judgment dated 15 August 2022, ordering the bank to release the depositor's held funds (in specific performance), similarly, there has been a pending proceeding in a case involving Lebanese bank Saradar. Having been ordered by the Court of First Instance and the Paris Court of Appeal to pay USD2.8 million to one of its depositors, the Lebanese bank Saradar is intending to challenge, before the French Court of Cassation, the Paris Court of Appeal's decision.

It remains to be seen whether the depositors will seek to enforce the foreign judgments in Leba-

non pursuant to the provisions of the Lebanese Code of Civil Procedures.

Anticipated Capital Controls Laws

The year 2022 witnessed many reports, plans and draft laws aiming to address the Lebanese financial crisis. There have been recent discussions about the draft "Law for Rebalancing the Financial System in Lebanon", some calling it the "Resolution Gap Law". Additionally, there is the draft "Law Addressing the Condition of Banks in Lebanon and Restructuring", also known as the "Bank Resolution Law".

Alongside these drafts, several draft laws were prepared with a view to setting temporary controls on banking operations and services, otherwise known as the capital control draft laws. Some of these drafts were submitted to the Plenary Session of the Parliament, but they have not been approved and passed into effective legislation, and some are still under discussion but have not been approved to this date. In March 2022, a draft publicly circulated was approved by the Council of Ministers as a draft law and referred to the Parliament. This draft aimed to impose exceptional and temporary controls on bank transfers and cash withdrawals. The draft law is supposed to be revised by the relevant parliamentary committees before being approved and referred to the Plenary session for final approval. However, on 30 August 2022, it was reported that the joint parliamentary session postponed the discussions until the government settles an economic reform plan. On 16 January 2023, the joint parliamentary committees approved a newer capital control draft law, titled "Draft Framework Law for Restoring Financial Regularity in Lebanon", which closely resembles the current Capital Controls draft law. The parliamentary committees subsequently referred it to the Parliament for final vote. How-

ever, as at the time of writing, the current draft laws and their implementing regulations have not been adopted, which is preventing Lebanon from accessing the billions of dollars promised by the International Monetary Fund (IMF).

If a capital controls law is rendered, questions would arise around the fate of all the cases filed before local or foreign courts against Lebanese banks for imposing restrictions. The issuance of a formal capital controls law might close all depositors' judicial attempts to retrieve their deposits.

If these formal capital controls are enacted, other avenues may need to be considered, for instance under bilateral investment treaties (BITs). Investors may consider challenging the "de facto" capital controls through recourse to investor-state arbitration, considering the impact such restrictions might have on businesses. In that context, potential claims could be raised under BITs for the violation of free transfer of funds, fair and equitable treatment and full protection and security provisions. It remains to be seen whether foreign investors resort to investor-state arbitration to challenge Lebanon's unofficial capital controls.

Enhancing Anti-Corruption Efforts: A New Banking Secrecy Law

In recent years, efforts have been made to combat corruption. In this regard, important developments have been made in banking secrecy.

In April 2022, Lebanon and the IMF reached a staff-level agreement for a four-year USD3 billion extended fund facility (the "Agreement"), aimed at assisting in the reconstruction of the country's economy. This Agreement was contingent on the Lebanese authorities agreeing to undertake a series of reforms, including a banking restruc-

turing strategy, capital controls, and a reformed banking secrecy law.

Consequently, in response to the Agreement's requirements, the Lebanese Parliament passed a new law (Law 306/2022 or the New Law) in October 2022. This New Law introduced amendments to certain provisions of the old Banking Secrecy Law (Law 1/1956 or the Old Law) which had been in effect until the enactment of the New Law.

The Old Law, modelled after the Swiss banking system, established a stringent banking secrecy policy. This policy prohibited Lebanese banks from disclosing the names, accounts and activities of their customers, including the information of government officials. Law 1/1956 featured minimal and narrow exceptions for lifting banking secrecy, even prohibiting access to bank accounts by the country's tax officials and the judiciary.

The Lebanese banking system quickly evolved into a safe haven for investors, foreign businessmen, and Lebanese expats, who deposited and transferred their funds to Lebanese banks. However, despite its initial positive impact on the Lebanese economy, the Old Law soon turned into a channel for corruption. The stringent banking secrecy it imposed created a fertile ground for financial misconduct, allowing individuals to exploit the loophole in the system and empowered those engaged in corrupt practices to conceal their financial activities from regulatory authorities. As a consequence, the law meant to safeguard financial privacy inadvertently became a tool that contributed to malfeasance within the financial system, undermining the integrity and transparency that are essential for a healthy and sustainable economy.

In response to the financial crisis and in compliance with the Agreement, Lebanon was compelled to adopt revisions to the existing banking secrecy law. The amendments introduced through Law 306/2022 aimed to address these shortcomings and enhance the regulatory framework, seeking to strike a balance between financial privacy and the imperative to combat corruption. Nevertheless, the adoption of a new law proved challenging due to the substantial influence of certain investors, businessmen, politicians, and banks benefiting from the old law. Indeed, the Lebanese Parliament continuously sought to impede efforts to lift banking secrecy. However, under international and domestic pressure, the Lebanese Parliament ultimately adopted Law 306/2022.

A significant amendment introduced by Law 306/2022 is the prohibition of Lebanese banks from opening anonymous bank accounts, marking a departure from the previous regulatory framework. This New Law specifically addresses the pre-existing challenge of anonymous accounts, mandating that all banks replace them with regular bank accounts and vaults within six months from the publication of the Law 306/2022.

In addition, one of the key features of the new Law 306/2022 is the narrowing of the scope of banking secrecy by introducing additional exceptions related to (i) the entities authorized to lift banking secrecy and (ii) the permissible reasons for lifting secrecy.

In relation to the entities authorised to request banking information from financial institutions, Law 306/2022 specifies the judicial authorities, the Special Investigation Commission, the National Anti-Corruption Commission, the Tax Administration, the Lebanese Central Bank, the

Banking Control Commission, and the National Institute for the Guarantee of Deposits as entities with the ability to lift banking secrecy.

As for situations where banking secrecy may be selectively disclosed, Law 1/1956 delineated only four scenarios where banking secrecy can be lifted:

- when explicit written consent from the client or their heirs is given;
- when the client declared bankruptcy;
- when legal disputes between the bank and the client regarding banking operations are initiated; or
- when an illicit enrichment case is being pursued by judicial authorities.

In contrast, Law 306/2022 has introduced standalone exceptions to banking secrecy obligations, which, prima facie, appear to empower judicial authorities and the specific bodies mentioned above to directly request account information from banks for investigatory purposes.

This is particularly applicable when the investigation pertains to illicit enrichment (Law No 189/2020), corruption, offenses outlined in Law No 44/2015 on the Fighting Money Laundering and Terrorist Financing, offenses specified in Article 19 of the Lebanese Code of Criminal Procedures (LCCP), and financial offenses delineated by the Lebanese Penal Code (LPC). The financial offenses under the LPC encompass crimes such as theft, usurpation/seizure and criminal intimidation, unlawful/unauthorised use of others' property, fraud, non-sufficient funds cheques, breach of trust, and embezzlement.

In light of these amendments, and if the interpretation of the new exceptions is correct and that, procedurally, new proceedings can be started

in Lebanon, this should allow anyone to seek assistance from the Lebanese judiciary to start an investigation into the fraud/corruption/theft/usurpation offences perpetrated by the other party using Lebanese banks to facilitate its activity, to compel the banks to disclose information relating to the other party's accounts. In this regard, Law 306/2022 could be an important tool in combating corruption.

That said, while the Law 306/2022 is technically considered applicable, there is still uncertainty surrounding the implementation of its provisions. To date, no decisions seem to have applied the said law. Practitioners in Lebanon are presently awaiting its implementation by the Lebanese courts and the issuance of implementing regulations.

It is worth noting that Law 306/2022 also affected and introduced changes to other laws such as the Lebanon Code of Money and Credit adopted through Decree-Law No 13513/1963, Lebanon Law No 44/2008 On Tax Procedures, and Lebanon Decree-Law No 144/1959 regulating income tax. The Lebanese legislature reiterated the obligation of disclosure, as well as the obligation of co-operation between private and public authorities, for the purpose of tax compliance. For instance, Law 306/2022 introduced Law No 44/2008, mandating the public prosecution office to refer, through the Ministry of Justice, any information related to suspicions of tax evasion uncovered during a judicial investigation to the tax authorities. Furthermore, the amendment introduced a new obligation for both public and private administrations, as well as relevant stakeholders, to inform tax authorities of any requested information. This requirement applies even to information protected by banking secrecy. Additionally, any individual or entity in Lebanon, including those protected by Law

1/1956, must furnish tax authorities' controllers with any document or information requested, which is essential for determining the tax liability of that person or any third party.

Competition Law

Lebanon has enacted a Competition Law No 281, which was published in the Official Gazette on 17 March 2022 (the "Competition Law"). The enactment of the Competition Law impacted certain provisions of the Commercial Representation Decree-Law No 34 of 1967 (Decree-Law 34/67), namely the exclusivity feature which was protected for more than 50 years under Decree-Law 34/67. The Competition Law does not abolish Decree-Law 34/67, therefore, exclusivity remains an existing concept under Lebanese legislation currently in force, and a person who satisfies the definition set out under Article 1(2) of the Decree-Law 34/67 would still be regarded as an exclusive distributor in the sense of Decree-Law 34/67. However, the Competition Law brings developments with regards to the enforceability of such exclusivity rights vis-à-vis third parties. As such, a third party may not personally suffer adverse consequences from the existence of such exclusivity clause or any breach thereof, for instance by purchasing products from a manufacturer/principal who has an exclusive distributor in Lebanon. On the other hand, the exclusivity clause remains valid and enforceable as between the parties. In light of the enactment of the new Competition Law, it remains to be seen how courts will deal with cases pending before it concerning exclusive dealership agreements.

Oil and Gas

Another key step in the revival of the Lebanese economy are the recent developments in the oil and gas sector. Since 2018, Lebanon has completed its first offshore licensing round (FOLR).

LEBANON TRENDS AND DEVELOPMENTS

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It has also been awarded two exploration and production agreements (EPAs) which stand as production-sharing agreements (PSAs) for offshore blocks four and nine. In addition, Lebanon has launched a second offshore licensing round (SORL) for the award of rights in offshore blocks one, two, five, eight and ten (which has not been concluded to date, despite this being scheduled for June 2023).

Despite these improvements, and in light of the rampant political and economic instability, disputes remain a significant risk, namely investment disputes between foreign entities and host states. Particularly, disputes could arise under the PSAs, and when they do, it is necessary to determine whether foreign entities can benefit from the protections and the dispute resolution mechanisms provided for in the international investment law, since the PSAs are governed by laws over which the government has full control.

Various considerations would, however, need to be met for the investor to access the protections and dispute resolution mechanisms. These considerations include the nationality of the investor; the definition of investor, and the definition of investment (ie, in the context of oil and gas, whether assets and money placed, deposited or spent for the purposes of exploration drilling and production activities constitute an investment under the treaty).

It remains to be seen whether foreign investors will resort to investor-state arbitration in case of disputes arising from the exploration, drilling and production activities under the PSAs. Whether they will succeed in convincing a tribunal that the assets deposited constitute investments and that Lebanon is in breach of its obligations under various investment treaties will ultimately turn on the language of the treaty in question.

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