

GUIDE FOR OVERSEAS ENTREPRENEURS AND INVESTORS WHO WISH TO OPERATE IN LEBANON

Lebanon for Entrepreneurs (LFE)*

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In August 2013, the Lebanese Central Bank issued [Circular 331](#) to incentivize Lebanese commercial banks to invest equity in knowledge-economy start-ups, incubators, accelerators, and venture capital firms. Some key elements of the Circular are outlined in Appendix 1.

This document was drafted to guide overseas entrepreneurs and investors who wish to operate in Lebanon, including those who would like to take advantage of Circular 331. The information below is generic in nature, and does not aim to account for every possible scenario.

SECTION 1: Foreign companies that wish to expand to Lebanon

Q1: I run a company in Paris and would like to operate or have representation in Lebanon. I don't need money through Circular 331. What options do I have?

- 1) Open a Lebanese branch (Appendix 2-A)
- 2) Open a Representative Office (Appendix 2-B)
- 3) Form a standalone Lebanese company, such as S.A.R.L., S.A.L, or Holding (Appendix 2-C, 2-D, and 2-E). These companies must have a minimum of three shareholders or partners at all times.
- 4) Acquire ownership in an existing Lebanese company.

Q2: Which of the options above is best if I don't need capital through Circular 331?

The answer depends on the purpose of your company and the activities you intend to conduct in Lebanon. In general:

- A local branch and an S.A.R.L are cheaper to set up and easier to manage than a joint-stock company (S.A.L. or Holding).
- The registration of a branch is less burdensome and less costly than the registration of a company, but the mother company will not be shielded from the liabilities of the branch as is the case with a standalone Lebanese company.
- A standalone company with non-Lebanese shareholders/partners will be subject to the regulations that limit the acquisition of real estate by non-Lebanese.
- The acquisition of shares in an existing company could lead to a transfer of the preexisting liabilities to the mother company.
- Holding companies offer tax incentives and other advantages to foreign individuals and entities, but their purpose is more restricted than that of S.A.Ls.

Q3: I run a start-up company in Silicon Valley and I'm looking for an equity investor in Lebanon. Can my start-up get access to capital provided through Circular 331?

Foreign companies – whether Lebanese-led or not – are not eligible to receive Circular 331 capital (the “Facilities”), and may not establish a direct relationship with Lebanese banks in

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order to benefit from the Circular. Only Lebanese joint-stock companies with nominal shares are eligible to receive funding through Circular 331.

In order to get access to the Facilities, you will have to:

- 1) Form a new, standalone Lebanese S.A.L. The assets of the Lebanese company may not be comingled with the assets of the foreign company; in other words, the Lebanese company must have separate books.
- 2) Work with your investor (i.e., Lebanese bank or VC that received 331 capital from a Lebanese bank) to determine the most suitable legal structure to link your foreign company with your Lebanese joint-stock company.

SECTION 2: Foreign investors who wish to invest in Lebanon

Q1: I'm an investor based in London. Can I invest directly in a start-up in Lebanon without going through Lebanese banks?

Definitely; the easiest way to do so is by acquiring equity in the Lebanese start-up. Your investment will be governed by local laws, the contractual terms included in the purchase/subscription agreement, the shareholders' agreement, and other documents if applicable.

Q2: I'm a VC based in Singapore. Can I get access to BDL Facilities through a Lebanese bank in order to invest in start-ups in Lebanon?

No. Only Lebanese joint-stock companies with nominal shares may get access to the Facilities through Lebanese banks. To become eligible, you will have to:

- 1) Form a new, standalone Lebanese joint-stock company. The assets of the Lebanese company may not be comingled with the assets of the foreign company; in other words, the Lebanese company must have separate books. In this context, it is worth mentioning that the object of your Lebanese VC fund must be limited to investing capital in start-ups in Lebanon.
- 2) Request 331 Facilities from Lebanese commercial banks. The Lebanese joint-stock company will be able – if approved by BDL – to access the Facilities through a Lebanese bank.

We recommend you work with your lawyer to determine the most suitable legal structure to link your foreign VC fund with your Lebanese VC fund.

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APPENDIX 1: SOME KEY ELEMENTS IN CIRCULAR 331

The full text of Circular 331 is available from this link:

<http://www.banqueduliban.gov.lb/circulars/download/477/>

- The Decision expressly provides that banks may obtain interest free facilities (“the Facilities”) in return for their participation in the capital of specific companies (“Beneficiary Companies”). Consequently, only banks can benefit from the Facilities.
- In order to qualify under the Decision, the Beneficiary Company must be a joint-stock (Holding or S.A.L.) Lebanese company with nominal shares. Offshore companies and financial institutions are expressly excluded and consequently, may not qualify as Beneficiary Companies and may not benefit from the facilities through the banks.
- Based on the provisions of the Decision, the banks cannot invest any part of the Facilities in non-Lebanese companies.
- A Beneficiary Company may only be:
 - a) a start-up that can use the money itself;
 - b) an incubator or accelerator which object is restricted to supporting the development, success and growth of startup companies in Lebanon (by offering administrative support, networking mentoring, training, know-how, logistic support....) ;
 - c) a company whose object is restricted to investing venture capital in start-up companies in Lebanon where they see a profit-making opportunity especially upon exit.
- In the case (a) above, the banks will be investing in the Beneficiary Company that is a startup and will use the money itself.
- In the cases (b) and (c) above, the banks will be investing in the Beneficiary Company that in turn may be investing in another company (the “Target Company”).
- The Beneficiary Company will negotiate deals with the banks to determine the terms and conditions of the investment, and the banks will apply at the BDL to obtain the Facilities under the Decision. The banks will then have to invest part of the money obtained from the BDL in the Beneficiary Company, and the largest part in Treasury Bonds.

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APPENDIX 2: OVERVIEW OF SOME LEBANESE BUSINESS STRUCTURES

A. Branch of a Foreign Company (فرع لشركة أجنبية)

Purpose: A Lebanese branch of a foreign company must have the same object as the mother company, and is part of the foreign company. Lebanese branches of foreign companies may conduct commercial activities in Lebanon, own local business entities, execute contracts, and refer matters to Lebanese courts.

Management: The manager of the Lebanese branch is appointed by the head office, and his/her powers are vetted by the head office.

Considerations for Foreigners: The manager of a Lebanese branch may be a foreigner, provided he/she holds a valid Lebanese work permit.

Legal Obligations: A Lebanese branch of a foreign company must comply with all Lebanese laws and regulations (e.g., labor law, social security law, taxation law), and maintain its books and documents as required by law.

Taxation: The Lebanese branch of a foreign company is subject to corporate income tax on net profits (ضريبة الدخل). In addition, it is subject to a 10% tax on dividend distribution.

Setup Procedure: The steps required to set up a Lebanese branch of a foreign company are outlined here: http://idal.com.lb/Content/uploads/Branch_or_Representative_Office.pdf

B. Representative Office (مكتب تمثيلي لشركة أجنبية)

Purpose: A representative office is limited to providing technical advice and to the promotion of the head office's services and products; it is not allowed to engage in commercial activities.

Management: A representative office is headed by a delegate (ممثل) of the foreign company, acting in accordance with the powers granted to him/her by the mother company.

Considerations for Foreigners: The delegate heading a representative office may be a foreigner, provided he/she holds a valid Lebanese work permit.

Legal Obligations: A representative office must comply with all Lebanese laws and regulations (e.g., labor law, social security law, taxation law), and maintain its books and documents as required by law.

Taxation: Since it does not engage in commercial activities, a representative office is not subject to Lebanese corporate income tax.

Setup Procedure: The steps required to set up a representative office of a foreign company are outlined here: http://idal.com.lb/Content/uploads/Branch_or_Representative_Office.pdf

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C. Limited Liability Company (S.A.R.L., شركة محدودة المسؤولية)

S.A.R.L. companies are governed by Decree-Law No. 35 (dated August 5, 1967), which was modified by Law 120 (dated March 9, 1992).

Purpose: An S.A.R.L. may engage in any activity except insurance, savings, organized air transport, banking, and financial investments for the account of third parties.

Minimum Required Capital: 5 million LBP (~3300 USD).

Instruments: The capital of the company is divided into equal parts (حصص). An S.A.R.L. may not issue tradable instruments in any form, including nominative shares (أسهم إسمية), negotiable shares (لأمر), or bearer shares (لحامليها), and may not offer its capital for subscription by the public.

Number of Partners: At least 3 partners (شركاء) are needed to form an S.A.R.L., and their liability is limited to the amount of their contribution to the company. The number of partners should not exceed 20, unless parts were transferred by inheritance. Partners may be individuals or companies.

Management: An S.A.R.L. should appoint one or more managers (مدراء) to run it. Managers may be chosen from the existing partners, or hired from outside the company. They must be physical persons (i.e., not companies).

Considerations for Foreigners: S.A.R.L. partners may be foreign individuals or companies, and managers may be foreign persons. There are no restrictions on foreign ownership except for certain sectors (e.g., public sector, media, commercial representation, and real estate).

Legal Obligations: An S.A.R.L. must retain and pay a Lebanese lawyer. It must also be registered in the Commercial Registry (السجل التجاري) and pay taxes in accordance with Lebanese law. An S.A.R.L. is not required to appoint an auditor (مفوض المراقبة) except in one of the following three cases: the number of partners has exceeded 20, the company's capital is 30 million LBP (~20,000 USD) or more, or one or more partners holding at least 20% of the capital have requested the appointment of an auditor.

Taxation: An S.A.R.L. is taxed at a flat rate of 15% on net profits.

Incorporation Procedure: The steps required to set up a Lebanese Limited Liability Company are outlined here:

http://www.idal.com.lb/Content/uploads/Setting_Up_a_limited_liability_Company.pdf

D. Joint-Stock Company (S.A.L., شركة مغفلة/شركة مساهمة)

Purpose: An S.A.L. may engage in any activity that does not conflict with public order and Lebanese laws and regulations, and must establish its headquarters in Lebanon.

Minimum Required Capital: 30 million LBP (~20,000 USD).

Instruments: An S.A.L. may issue shares (nominative: إسمية, negotiable: لأمر, or bearer: لحامليها), bonds, and convertible bonds, but may not issue founders' shares that grant the founders the right to share in company profits without prior contribution to the capital.

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Number of Shareholders: At least 3 shareholders (مساهمون) are needed to form an S.A.L., and their liability is limited to the amount of their subscription to the capital.

Management: The Board of Directors is formed by a minimum of 3 and a maximum of 12 members, all of whom must be among the shareholders. The majority of the Directors must be Lebanese (physical persons or companies). The Board must designate one of its members as Chairman, who also serves as General Manager of the company. The Chairman must be a physical person.

Considerations for Foreigners: S.A.L. shareholders may be foreign individuals or companies, and there are no restrictions on foreign ownership except for certain sectors (e.g., public sector, media, commercial representation, and real estate). Directors may be foreign physical persons or companies (as long as the Board is majority-Lebanese). The Chairman of the Board may be a foreigner who resides in Lebanon, in which case he must obtain a Lebanese work permit.

Legal Obligations: An S.A.L. must retain and pay a Lebanese lawyer and at least two Lebanese auditors (مفوضي المراقبة), one of which is appointed by a judge. It must also be registered in the Commercial Registry (السجل التجاري) and pay taxes in accordance with Lebanese law.

Taxation: an S.A.L is taxed at a flat rate of 15% on net profits and 10% on dividend distribution

Incorporation Procedure: The steps required to set up a Lebanese Joint Stock Company are outlined here: http://www.idal.com.lb/Content/uploads/Setting_Up_a_Joint_Stock_Company.pdf

E. Holding Company (شركة قابضة/شركة الهولدينغ)

Lebanese Holding companies are governed by Decree-Law No. 45 (dated June 24, 1983). They are joint-stock companies generally subject to the same rules that apply to S.A.L.s, with some limitations concerning their purpose. Holdings offer incentives to foreigners, and are more advantageous than regular S.A.Ls when it comes to taxation.

Purpose: A Holding company is strictly limited to the following activities:

- Acquiring ownership stakes in joint-stock and limited-liability companies (whether local or foreign), and participating in their incorporation.
- Managing the companies in which it has an ownership stake.
- Granting loans and guarantees toward third parties to the companies in which it has an ownership stake (if such company operates in Lebanon, the Holding may lend it money only if it owns at least 20% of the company's capital). To that effect, the Holding may borrow from banks and issue debentures (سندات دين), provided the total value of debentures does not exceed 5 times its capital and reserves.
- Owning intellectual property such as patents and trademarks, and licensing them to local and foreign companies.
- Owning movable and non-movable property, only if exclusively allocated for the purpose of its operations, and in compliance with the law on the acquisition of real estate by non-Lebanese.

Minimum Required Capital: 30 million LBP, which may also be denominated in any foreign currency. A Holding's books and budget may also be specified in the foreign currency chosen for the capital.

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Instruments: A Holding company may issue shares (nominative: إسمية, negotiable: لأمر, or bearer: لحاملها), bonds, and convertible bonds, but may not issue founders' shares that grant the founders the right to share in company profits without prior contribution to the capital.

Number of Shareholders: At least 3 shareholders (مساهمون) are needed to form a Holding company, and their liability is limited to the amount of their subscription to the capital.

Management: The Board of Directors is formed by a minimum of 3 and a maximum of 12 members, all of whom must be among the shareholders. The Board does not have to include Lebanese individuals or companies. The Board must designate one of its members as Chairman, who also serves as General Manager of the company. The Chairman must be a physical person.

Considerations for Foreigners: Shareholders may be foreign individuals or companies, and there are no restrictions on foreign participation except for certain sectors (e.g., public sector, media, commercial representation, and real estate). The Holding company's headquarters (where all legal documentation is kept) must be in Lebanon. However, Board meetings and General Assembly meetings may be held abroad provided the Articles of Association allow it. The Chairman of the Board may be a foreigner, and does not need a Lebanese work permit if he/she does not reside in Lebanon.

Legal Obligations: A Holding company must retain and pay a Lebanese lawyer and a Lebanese auditor (مفوض المراقبة), and is exempt from the S.A.L requirement to hire an additional auditor. It must also be registered in the Commercial Registry (السجل التجاري) in a special registry for Holding companies (سجل خاص بشركات الهولدنغ), and pay taxes in accordance with Lebanese law.

Taxation: A Holding company is exempt from income tax and capital gains tax on dividend distribution. However, it remains subject to other tax provisions, including a flat tax rate that depends on its registered capital, but that may not exceed 5 million LBP (~ 3,300 USD) per year. (Source: [Ministry of Finance](#))

Incorporation Procedure: The steps required to set up a Holding Company in Lebanon are outlined here: http://www.idal.com.lb/Content/uploads/Setting_Up_a_holding_Company.pdf

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