

**MEDUPI!**

Promoting social entrepreneurship in the Mediterranean Region

# Social Enterprise: Legal Registration Case Study



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## MEDUP!

Oxfam Italia in partnership with several North and South Mediterranean partners is implementing an EU funded Action entitled "MedUP! Promoting social entrepreneurship in the Mediterranean region" over the course of 4 years that has started in March 2018 in 6 countries of the MENA region namely Morocco, Tunisia, Egypt, Lebanon, Jordan and Occupied Palestinian Territories.

The aim of this project is to increase economic inclusiveness and employment in these countries where adequate policies on social entrepreneurship are in place, public-private dialogue and exchanges of practices are promoted and high-quality services for social enterprises are provided. The action will intervene at three different levels to promote national ecosystems where social enterprises can contribute to tackle socio-economic and environmental challenges:

- the micro level explores the challenges faced by and opportunities available to social entrepreneurs to help them develop their enterprises.
- the meso level examines support provided to social entrepreneurs while identifying social entrepreneurship support organizations (SESOs) and the types of services they provide including technical skills, business development, access to financing, networking, mentoring...
- the macro level looks at policy and advocacy initiatives and public-private dialogue to improve regulatory and policy environments.

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## Social Enterprise: Legal Registration Case Study

Social enterprises may not be new to Lebanon but they are inexistent in Lebanese law. "A social enterprise is a company whose original mission is to solve a social or environmental problem while aiming at financial viability and reinvesting the majority of its profits in its social impact!". Lebanese legal texts do not include any definition or special legislation applicable to social enterprise (SE). As a result, social entrepreneurs seek various different legal options to register their enterprise. The Lebanese Constitution of 1926 protects the right of these entrepreneurs' individual initiatives within a free economic system<sup>2</sup>. "16% of the social businesses mapped are registered as non-governmental organizations. The second most common form is the commercial business registration, be it SAL (joint stock company) or SARL (society of/with limited responsibility), which are purely private businesses but have part of their profits invested in social impact activities {...} while around 10% are not registered<sup>3</sup>". SEs can benefit from various legal protections depending on the type of registration and operation founders choose and regardless of the nationalities of these founders.

This case study presents legal options available in Lebanese laws for registering a SE. It explains legal possibilities to generate profit, revenue, and/or to maintain financial sustainability<sup>4</sup>. It provides recommendations depending on the type of SE whether for profit or nonprofit. The research conducted includes a mapping of legal texts, a literature review, and key informant interviews.

### Non-Governmental Organization

As discussed in the previous section, one of the available options to register SEs can be as non-governmental organizations (NGOs).

**Definition:** An association or an NGO is defined as the entity created by a group of individuals to unify their information or their goals in a permanent way without seeking profit according to the association law<sup>5</sup>. The freedom to form an association is guaranteed in article 13 of the Lebanese Constitution. An NGO has its own independent moral personality<sup>6</sup>. NGOs are known as nonprofits. However, "contrary to their names they can make profit and even participate in commercial activities as long as the profit is used as a revenue and directed towards the goals of the NGO. Profit cannot be distributed between the members of the NGO annually nor at the dissolution of the NGO<sup>7</sup>". In other words, NGOs can only make profit that is directed towards financial sustainability of the NGO namely to fund their activities.

**Tax:** SEs registered as NGOs pay the following taxes: **Income tax on profit**<sup>8</sup> can be applicable to NGOs in the case where the NGOs are implementing commercial profit driven activities<sup>9</sup> that aim at financially sustaining the NGO<sup>10</sup>. **Income tax on salaries** is also applicable to NGOs employees<sup>11</sup>. **Donations** are subject to tax in case they exceed 100 million Lebanese Pounds. In this case the tax is 9% to 20%, depending on the amount donated, in addition to an ad hoc fee of 5 per 1000. Donations are subject to reductions as per article 17 of the legislative decree No.146/1959. **As for the property taxes** of the law of 17/9/1962 amended by law No.366/1994, they are applicable in the case of the use of the property to drive profit and/or by using the property for reasons not related to the mission and goals of the NGO<sup>12</sup> such as in the case of the use of the property to open a coffee shop by a feminist organization. NGOs also pay some **indirect taxes** such as municipal tax, financial stamp tax, property registration tax and concert taxes. **As for the value-added tax (TVA)**, the law exempted in its article 16 the operations done on Lebanese territories and related to non-profit associations and organizations. The

<sup>1</sup> According to the Lebanese Social Enterprises Association; reference mentioned in: "How Social Entrepreneurship Might Very Well Save Lebanon", Berytech, posted on 16 October 2018 on <https://berytch.org/how-social-entrepreneurship-might-save-lebanon/>

<sup>2</sup> The preamble of the Lebanese Constitution states that "the economic system is free and ensures private initiative and the right of private property".

<sup>3</sup> "Social Entrepreneurship Ecosystem Mapping in Lebanon", 2016

<sup>4</sup> Financial sustainability refers to the "ability of administrators to maintain an organization over the long term" according to "Nonprofit Management & Leadership", Bowman, W., 2011.

<sup>5</sup> NGOs and associations are defined in the 1909 law issued on 3/8/1909.

<sup>6</sup> According to "NGOs in Lebanon: a legal study", Me Ghassan Moukheiber, 2002. Having a moral personality means the founders are not financially liable personally towards debtors and it allows the NGO to have access to the following: right of litigation, right of financial administration, right to accept donations, etc..

<sup>7</sup> "NGOs in Lebanon: a legal study", Me Ghassan Moukheiber, 2002.

<sup>8</sup> Legislative decree No.144/1959 amended by law No.374/1994.

<sup>9</sup> Commercial profit driven activities are the activities implemented by commercial companies and/or through commercial enterprises such as the retail businesses.

<sup>10</sup> NGOs in Lebanon: a legal study', op.cit.

<sup>11</sup> Except in the cases mentioned in article 47 of the income law and related to nurses and workers in hospitals, orphanages and other ambulance work

<sup>12</sup> "NGOs in Lebanon: a legal study", op.cit.

exception to this exemption is related to repetitive activities that if exempted would constitute unequal competition to institutions that comply to the TVA law. This is the case when the income exceeds 500 million Lebanese Pounds through 4 consecutive trimesters. Voluntary submission to the TVA may take place if the number exceeds 250 million Lebanese Pounds without crossing the 500 million Lebanese Pounds limit.

**Registration:** The establishment of an NGO does not require a permit, prior authorization or a license and only entails informing the government post establishment according to the 1909 law. The Ministry of Interior issued memorandum No.10 issued on 19/5/2006 to explain the process and documents needed to register the NGO: name of the NGO, its address, its internal regulations, civil extracts and judicial record of the founders who should be aged at least 20 years old. The registration process is long and takes around 6 months<sup>13</sup>. NGOs need to inform the Ministry of Interior (Moi) on a yearly basis of the name of its members, its budget and its expenditure. Any violation of this requirement results in a fine<sup>14</sup>.

Foreign NGOs are governed by another legal text: decision No.369 issued on 21/12/1939. This decision prevents foreign NGOs from being established or from operating in Lebanon without prior authorization. Permits are temporary and are subject to cancellation. A request is presented in this case to the Ministry of Interior (Moi). The minister of the Moi suggests a decree in the council of ministers for approval.

**Foreigners:** NGOs created by Palestinians and Syrians in Lebanon are considered as foreign NGOs and require a permit before their establishment<sup>15</sup>. Running or working in an unauthorized foreign NGO is punished criminally with confiscation, dissolution, prison and with a fine.

Foreign employees in NGOs are subject to the regulations applicable to foreign employees as per the Lebanese labor laws<sup>16</sup>. Both Palestinians and Syrians are subject to the yearly decision of the Ministry of Labor<sup>17</sup> and both need to apply for

work permits. Palestinians are exempt from paying for the work permit fee and from presenting an insurance or medical tests.

**Recommendations:** This model is recommended to register a social enterprise<sup>18</sup>. This type of registration offers the possibility of operating in Lebanon with a reduced tax cost. It offers SEs the possibility to include their social and/or environmental missions in the registration documents of the NGO. The challenge consists of preventing the possibility of making any type of profit that is not directed towards the sustainability of the NGO. This module can be used to register a social enterprise that is financially viable but that does not seek profit. If the social enterprise is registered as an NGO but makes a profit that is shared by the members and not directed towards the viability of the NGO or towards the accomplishment of its goals, the NGO can be requalified judicially to correspond to the module closest to its operations and structure. For example, it can be requalified to a non-registered company. Additionally, in this case the NGO can be subject to various charges such as tax evasion for use of tax exemption benefits without a legal right to do so. Another notable challenge is the length of the registration process, for national and international NGOs. Registering an NGO in practice is more complicated than providing a notification and the challenge of registration increases for foreigners forming foreign NGOs because a decree is required.

## Offshore Company

SEs can be registered as offshore companies in Lebanon in cases limited to specific activities performed abroad or in free economic zones. According to the Ministry of Finance, most of the offshore companies registered in Lebanon take part in wholesale commerce. Offshore-companies are subject to the following regulations and taxes.

**Definition:** The legislative decree No.46 issued on 24/6/1983 and the decree No.5148/2019 include an exhaustive list of activities offshore companies

<sup>13</sup> Interview with Me Mounir El Zoughbi on 17/11/2019. Me Mounir is a lawyer and a legal expert with extensive experience in corporate law and non-profit registration.

<sup>14</sup> Article 7 of the law No.10830/1962

<sup>15</sup> Decision No.369/1939: It is considered a foreign NGO, regardless of the type of registration: NGOs with headquarters abroad; NGOs that are part of foreign NGOs or foreign entities; NGOs belonging or run by foreigners; NGOs with an administrative council consisting of foreigners; NGOs with at least one quarter of its members as foreigners. The decision also considers Lebanese NGOs that have a goal that exceeds the Lebanese context and that are connected in their work to foreign elements as foreign NGOs.

<sup>16</sup> A number of laws regulate various aspects of private sector employment, the most important of which are the Lebanese Labor Law (1946) and the Social Security Law (1963) and their supplementary decrees, in addition to Decree No.7993 on Trade Unions (1952) and Decree No.17561 regulating the Employment of Foreign Persons (1964) and the Law on Collective Labor Contracts, Mediation and Arbitration (1964).

<sup>17</sup> Indicating the list of professions restricted to Lebanese nationals; See Decision of the Minister of Labor No.29/2018.

<sup>18</sup> Interview with Me Mounir El Zoughbi on 17/11/2019. Me Mounir is a lawyer and a legal expert with extensive experience in corporate law and non-profit registration.

can undertake<sup>19</sup>. Offshore companies are only allowed to be formed around the listed activities and cannot make any profit from services presented to institutions located in Lebanon, or from any money or any property in Lebanese territories except for profit gained as interest from banks and from Lebanese treasury bonds. The offshore company can be formed through one or more partners. Its minimal capital needs to be 30 million Lebanese Pounds.

**Tax:** Offshore companies benefit from tax reductions such as: exemption from payment of **income tax on profit**<sup>20</sup>. Companies pay instead a yearly tax of 1 million Lebanese Pounds. The company is exempted from payment of the **financial stamp tax**<sup>21</sup> in Lebanon in the case of documents related to operations done abroad. Companies are exempted from the payment of **income tax on salaries** for employees working abroad<sup>22</sup> and are exempted from the payment of any tax or fee related to the transition of the shares of the company.

**Registration:** An offshore company is registered at the commercial register and in a special register for offshore companies. *“Offshore companies are subjected to the same regulations as joint stock companies, while taking into account the following:*

*An offshore company may keep its books in the foreign currency, provided it remains equivalent to at least thirty million Lebanese pounds<sup>23</sup>.”*

**Foreigners:** Foreign employees are exempt from receiving a work permit in the case where the yearly budget of the company is no less than 1 billion Lebanese Pounds. This privilege provided for offshore companies comes to an end following the year when the budget falls short of 1 billion Lebanese Pounds. Additionally, Offshore companies do not include any quota on the number of Lebanese partners required for its establishment.

**Recommendations:** This module was described briefly due to the unlikelihood of it being used

for registering SEs operating in Lebanon. It can be used in the case where the main profit driven activities are conducted abroad. It is appropriate for SEs aiming at a social or environmental impact that is not limited to Lebanese territories or that is regional or global. It offers multiple benefits such as tax reductions and work permit exemptions. SEs can generate revenue to maintain financial sustainability<sup>24</sup> or to expand. Revenue that is not directed towards financial sustainability or towards the expansion of the enterprise can be distributed between partners as profit. However, in some cases, the distribution of this profit and/or of the profit resulting from the dissolution of the company can take place through donations to an already existing structure such as an NGO<sup>25</sup> which activities fall under the definition and mandate of a SE. Donations in this case are subject to tax exemptions.

## SARL (Society of/with limited responsibility) and SAL (Joint stock company)

SEs can be registered as commercial companies. The SARL and SAL modules limit the liability of the partners of the company and therefore offer them financial protection. This means that SARL and SAL partners and shareholders cannot be liable for more than what they have contributed to the company. For example, in the case of the payment of the debts of such companies, the partners and shareholders will only lose their contribution to the company and will not be asked to sell personal belonging to pay the company's debts.

**Definition:** A SARL is defined as a company of 1 or more people and up to 20 people with a minimum capital of 5 million Lebanese Pounds<sup>26</sup>. A SAL is defined as a company of minimum of 3 partners with a minimum capital of 30 million Lebanese Pounds<sup>27</sup>. Both companies lead to the creation of a moral personality for the company. Both

<sup>19</sup> 1) Negotiation and signature of contracts and agreements about operations and transactions executed outside the Lebanese territory and related to funds (goods and merchandise and elements of fixed material assets) located abroad or in the free trade zones. (2) Management of companies and institutions in Lebanon whose activity is limited to outside the Lebanese territory, and export of professional, administrative, and organizational services, and all types IT services and programs to companies outside Lebanon, based on the request of such companies. (3) Multiparty external trade operations taking place outside Lebanon. For this purpose, offshore companies can negotiate, sign contracts, ship goods, re-issue invoices for activities outside Lebanon, or from and to the free trade zones in Lebanon, for the storage of imported goods with the aim of re-exporting them. (4) Sea transport activities. (5) Owning stocks, bonds, shares, and contributions in non-resident foreign companies and institutions, and giving loans to the non-resident companies that the offshore company owns more than 20% of their capital. (6) Owning and/or benefiting from rights related to representation of goods and foreign companies on foreign markets. (7) Opening branches and representation offices abroad. (8) Building, investing, managing, and owning all economic projects, apart from those prohibited by the law. (9) Leasing offices in Lebanon and owning the necessary property for its activity, subject to the law of the acquisition by non-Lebanese nationals of real estate in kind rights.

<sup>20</sup> Law No.89/1991 and law No.19/2008

<sup>21</sup> Law No.19/2008

<sup>22</sup> Employees working in Lebanon are subject to income tax on salaries. 30% of the salary of the foreign employee is not taxable in the case where he/she is working in Lebanon.

<sup>23</sup> “Commercial companies in Lebanon”, Me Andre Nader, Chamber of commerce, industry and agriculture

<sup>24</sup> Financial sustainability refers to the “ability of administrators to maintain an organization over the long term” according to “Nonprofit Management & Leadership”, op.ct.

<sup>25</sup> According to an interview with Me Mounir El Zoughbi on 17/11/2019: it is very important for commercial companies to donate to an already existing structures instead of simply financing ad hoc social or environmental activities.

<sup>26</sup> Legislative decree No.35/1967 amended by law No.126/2019

<sup>27</sup> Commercial law, legislative decree No.304/1942 amended by law No.126/2019

companies limit the liability of the partners. This means the company is liable alone to its debtors. SARL shares are not as easily transferrable as the shares of a SAL<sup>28</sup>.

**Tax:** SARL and SAL are subject to many taxes that include mainly 17% tax on profit and 10% income tax on dividends.

**Registration:** No permit is required for registering a SAL. It is established through an official document organized by a notary and through a call published in the official gazette, in a local newspaper and in an economical newspaper<sup>29</sup>. As for SARL, the establishment contract should be signed by all partners and presented alongside a bank deposit at the Commerce Register<sup>30</sup>. Both types of companies need to be registered in the Commerce Register and in the first instance court. They are both subject to publication. The registration of a commercial company is faster and easier than registering an NGO<sup>31</sup>. It can be registered within a week.

**Foreigners:** Both Syrians and Palestinians need a work permit to be able to work in a SARL or to be managing partners of a SARL or a SAL. Palestinians are exempt from presenting an insurance or blood tests or from paying for the work permit. Work permits are given to Syrian refugees after applying at the Ministry of Labor for a preliminary work permit acceptance<sup>32</sup> and after presenting a list of documents<sup>33</sup> that include a minimum share of 100 million Lebanese Pounds. The Ministry of Labor has included some conditions on the provision of work permits to Syrian partners in a SARL or in a SAL such as the condition of not being able to own solely an enterprise. This condition is not commonly applied to foreigners in Lebanon<sup>34</sup>.

**Recommendations:** This module can be used to register a SE. It offers the advantage of limiting the responsibility of partners. SEs can generate profit to

maintain financial sustainability or to expand. Profit that is not directed towards financial sustainability or towards the expansion of the company can be distributed between partners. In the case of a nonprofit SE, the distribution of this profit and/or of the profit resulting from the dissolution of the company can take place through donations to an already existing structure such as an NGO<sup>35</sup>. Donations in this case are subject to tax exemptions. This module is easy and quick to register. It is available for foreigners. However, the registration and establishment costs are relatively high.

## Solidarity Company and Not Registering

As mentioned earlier, some SEs are non-registered<sup>36</sup>. A SE can be registered as a solidarity company or can operate informally without registration. If the not registered SE operates as an NGO by only making profit that is directed towards the sustainability of the SE<sup>37</sup>, it can be requalified to a secret NGO. The regulations relevant to secret NGOs will be applied<sup>38</sup>. In the other case, where the SE is acting as for-profit company it will be qualified as a not-registered company. In this case and in the case of a solidary company, the partners are liable personally for the debts of the company.

**Definition:** A solidarity company is a company formed between two people or more. The partners of the company are personally and in solidarity responsible for the debts of the company<sup>39</sup>. The partners of a company that is not registered formally are also responsible personally for the debts of the company.

**Tax:** Solidary companies are subject to a tax that can vary between 4% and 21%. As for the nonregistration of a company it can lead to charges of tax evasion.

<sup>28</sup> The share of a SARL partner cannot be transferred to a none partner without the approval of the partners holding 3/4 of the capital of the company.

<sup>29</sup> Approximative registration cost is 1500000 Lebanese Pounds excluding the costs associated with contracting a lawyer, etc. Actual cost depends on the capital of the company.

<sup>30</sup> Approximative registration cost is 1200000 Lebanese Pounds excluding the costs associated with contracting a lawyer, etc. Actual cost depends on the capital of the company.

<sup>31</sup> Interview with Me Mounir El Zoughbi on 17/11/2019

<sup>32</sup> Interview with an employee at the MoL on 12/11/2019

<sup>33</sup> A Work permit fee that varies between 250000 to 1 million Lebanese Pounds depending on the category of the work permit and whether it is the first time obtaining it. Additionally the Syrian partner has to present an ID, residency documents, entry and exit cards, a certified foundation system for the company, a bank deposit of no less than 100 million Lebanese Pounds contribution for the Syrian partner, a municipality certified rent agreement for the company, the registration documents of the company obtained from Commerce Register, the registration notification, a pledge to hire at least 3 Lebanese employees and to register them in the National Social Security Fund (NSSF), medical tests and two passport photos. The Syrian employees does not have to present the pledge to hire Lebanese, the bank deposit, the rent agreement or the foundation system of the company. Instead, the employee must present the ID of the person authorized to sign on behalf of the company, a contract signed at the notary, an NSSF certificate and an insurance alongside the previously mentioned documents.

<sup>34</sup> Foreigners can fully own SARL in Lebanon. The only limit imposed on foreign investment for SAL is the proportion of foreigners vs Lebanese in the board (3 to 12).

<sup>35</sup> According to an interview with Me Mounir El Zoughbi on 17/11/2019: it is very important for commercial companies to donate to an already existing structures instead of simply financing ad hoc social or environmental activities.

<sup>36</sup> "Social Entrepreneurship Momentum", Beyond Reform and Development, 2016

<sup>37</sup> Financial sustainability refers to the "ability of administrators to maintain an organization over the long term" according to "Nonprofit Management & Leadership", op.ct.

<sup>38</sup> Punishable criminally per article 337 of the Penal law with prison, fine, confiscation and dissolution.

<sup>39</sup> Article 46 of Commercial law, legislative decree No.304/1942 amended by law No.126/201

**Registration:** The establishment of a solidary company can only take place through a written contract organizing the relationship between partners. The contract is presented to the first instance court in the first month of its establishment<sup>40</sup>. This module obliges the partners, whether Lebanese or foreigners, to be registered as traders<sup>41</sup>.

**Foreigners:** The same rules applicable to SAL and SARL employees are applicable to these two modules. Partners in a solidarity company or in a not registered company need a work permit when their share in the company include the provision of a service or of a mental or physical effort that require a work permit. Foreigners working in Lebanon without work permits are subjects to sanctions such as prison, fines and deportation<sup>42</sup>.

**Recommendations:** These modules are not recommended. The not registered NGO module may lead to criminal sanctions. The solidarity company module and the not registered company module do not limit the liability of the partners. The registration and establishment costs of a solidarity company are relatively high. SEs can generate profit in the same mentioned conditions applicable to previously mentioned commercial companies. In the case of a nonprofit SE, the distribution of this profit and/or of the profit resulting from the dissolution of the company can take place through donations to an already existing structure such as an NGO<sup>43</sup>. Donations in this case are subject to tax exemptions if the company is registered or to possible charges of money laundry in the case where the company is not registered<sup>44</sup>.

## Trader with a Commercial Enterprise

A commercial enterprise is a tool that can be used by commercial companies (such as SARL and SAL) to do commerce. It is not another module of registration. The founder of a SE can opt to not

register a company but to register himself/herself as a trader and to use the commercial enterprise.

**Definition:** A trader by law can be a person or a company<sup>45</sup>. The commercial enterprise is the tool of the commercial project<sup>46</sup> that is used by a trader or by a company for their commercial activities. A commercial enterprise is formed by the entire material and immaterial elements of an enterprise. This includes customers, branding, the name of the enterprise, the right to rent, etc.<sup>47</sup>. For example, a company or a trader can own and use a shop to do business. In this case the commercial enterprise is formed through different elements that include: the right to rent the space of the shop, the customers of the shop, the brand and logo of the shop, etc... Commercial enterprises can be used by both companies and individuals. This option offers a person who does not want or can't register a company to do commerce. The commercial enterprise does not have a moral personality. This means the liability of the trader is personal.

**Tax:** There is no notable tax exemption applicable to this category<sup>48</sup>.

**Registration:** The owner of the enterprise needs to register as a trader<sup>49</sup>. The enterprise can be registered at the Commerce Register. Documents include: ID, NSSF certificate, a rent agreement or a property deed, a property certificate and the certificate of registration as a trader. The cost is approximatively 1325000 Lebanese Pounds.

**Foreigners:** The same rules applicable to SAL and SARL employees are applicable to this module. The Syrian individual is not allowed to own a commercial enterprise alone<sup>50</sup>.

**Recommendations:** This module is not recommended. It does not limit the liability of the partners. SEs can generate profit in the same mentioned conditions applicable to previously mentioned commercial companies. The module is not available to Syrian nationals and its establishment is expensive.

40 Approximate cost is 1200000 Lebanese Pounds. Actual cost depends on the capital of the company.

41 Application presented to the Commerce Register with a cost of approximatively 456000 Lebanese Pounds.

42 Organization of the work of foreigners, Decree No.17561/1964

43 According to an interview with Me Mounir El Zoughbi on 17/11/2019: it is very important for commercial companies to donate to an already existing structures instead of simply financing ad hoc social or environmental activities.

44 Covering the source of money or property resulting from Tax Evasion can lead to committing money laundry according to the money laundry law No.44/2015

45 Article 9 of Commercial law, legislative decree No.304/1942 amended by law No.126/2019

46 Article 1 of the legislative decree No.11/67

47 Article 40 of the Commercial law, legislative decree No.304/1942 amended by legislative decree No.11/1967

48 For more information on applicable taxes go to: <http://www.finance.gov.lb/ar-lb/Taxation/Companies/TOC-NCP/GI/Pages/Exemptions.aspx>

49 Application presented to the Commerce Register with a cost of approximatively 456000 Lebanese Pounds.

50 Interview with an employee at the MoL on 12/11/2019

## Cooperation

A SE can be registered as a cooperation<sup>51</sup>. It is one of the most suitable legal frameworks available for registering a SE<sup>52</sup> by Lebanese nationals.

**Definition:** A cooperative association is every association formed from individuals and a capital. A cooperation association does not aim to make a profit. Its goal is to improve the conditions of its members socially and economically<sup>53</sup>. It meets the spirit of SEs by including social impact in its mission. The code of the cooperation can include exceptionally the interest of people who are not members<sup>54</sup>. Members of the cooperation need to exercise a work related to the objectives and to the activities of the cooperation. The work needs to be done within the registered geographical domain of the cooperation. Members need to be aged at least 18 years old. They cannot exercise a profession that conflicts with the objective of the cooperation or be part of another cooperation with similar objectives. The liability of the partners in a cooperation can either be limited or personal and in solidarity. The cooperation has a separate moral personality<sup>55</sup>.

**Tax:** Cooperation benefit from various tax exemptions such as: **built property tax**, tax exemption on donations made to the cooperation and **income tax** on profit. It is also exempt from other various taxes such as **municipal taxes** for work permits, water, electricity and 50% tax exemption on the exportation of its products.

**Registration:** A cooperative association is created through a permit presented to the cooperation general directorial. The minimal number of founders is 10 people. However, exceptions can be made to this principle through reasonable justifications. A copy of the civil extracts of the 10 individuals is presented alongside a social and economic study showing the added value of the registration to the general directorial of the cooperation.

**Foreigners:** Cooperatives can only be found by Lebanese nationals.

**Recommendations:** This module is a good option to register a SE. It offers tax exemptions and

includes the organization of profit-driven activities. It allows to direct revenues and surplus towards the sustainability of the cooperation or towards its goals or as profit. The major inconvenient of this module is its restriction to Lebanese nationals. It is also worth mentioning that the registration process is not simple and requires a permit and a social and economic study. It is a lengthy process that takes at least 2 months.

## Other Models

**Dual registration:** Dual registration is the registration of two modules simultaneously. SEs would be registered as either a SAL or SARL (or any other company or as a trader) AND at the same time as a cooperation or as an NGO. This allows the SE to operate under two modules: one organizing private commercial activity and another organizing nonprofit activity. It is a good option for for-profit SEs that implement different types of activities (commercial activities such as operating a retail shop and nonprofit activities such as donations). This option is costly because it includes two processes of registration and of paying taxes. It is a recommended option as long as the operations and documentation of the two modules are completely separate. The financial transfer between the two options needs to be clearly organized. A consultation with a lawyer and a certified auditor is important in order to avoid suspicions of fraud, tax evasion and money laundry. For example, if the donation provided from the SARL to the NGO was used to pay the salary of the NGO member who is also a partner in the SARL, this can lead to suspicions of tax evasion.

**Foreign registration:** A SE can register in a foreign country that has specific regulations for SEs. In that scenario, the SE would create an affiliate in Lebanon. The foreign country regulations are applicable to the SE except for what contradicts the Lebanese public order. The Lebanese jurisdiction is competent in case of litigation. SEs need to register in Lebanon in the Intellectual property department affiliated to the Ministry of Economy and trade and in the Commerce Register.

<sup>51</sup> Most registered cooperation are related to agriculture according to: "A law that introduces social economy and classifies its institutions". Al Joumhouriya, available on: <https://www.aljournhouria.com/news/index/462773>:

<sup>52</sup> Interview with Me.Nayla Gegea on 12/11/2019. Me Nayla Geagea is a Human Rights lawyer with extensive experience in social enterprises.

<sup>53</sup> Article 1 of the Cooperation law, decree No.17199/1964.

<sup>54</sup> Article 6 of the Cooperation law, decree No.17199/1964.

<sup>55</sup> Interview with Me.Nayla Gegea on 12/11/2019

The foreign employees in Lebanon would need a work permit. The payment of tax depends on the country regulations and on the signatory or on a tax agreement between Lebanon and that country. This module is long and expensive because it leads to the payment of registration fees two times, but it offers the flexibility of shopping for a convenient social enterprise law.

**Sport associations:** Sport, scout and youth associations are regulated by law No.16/1972 and by the decree No.4481/2016 and are subject to the association's law of 1909. SE with sportive or scout objectives can be registered through the Ministry of Youth and Sports who will consult the Ministry of Interior and Municipalities before giving the permit. The number of founders should not be less than 7. These regulations can be applicable to SEs with sportive or scout or youth objectives. This module is similar to the module of nonprofit associations. Profit cannot be made. It must be directed towards the sustainability of the association.

**NGO with public interest:** Associations who have been operating for at least 3 years and with a budget of at least 300 000 Lebanese Pounds can be given, through a decree issued by the Council of ministers, the quality of public interest. These NGOs and associations benefit from tax discounts and donations from the State. They cannot make any profit<sup>56</sup>.

**Civil company:** SEs pursuing a liberal profession are being registered as a civil company<sup>57</sup>. Civil companies are commonly formed by lawyers or doctors or people practicing a profession subject to the Code of obligations and contracts and not to the Commercial law. SEs formed through performing these activities can be registered as a civil company. Civil companies are registered in the specific records of the first instance court. Both the registration and operation processes of a civil company do not include any reporting on revenues<sup>58</sup>. This means nonprofit activities can be exercised through this module. Profit is documented through salaries and remuneration. Partners are responsible personally and in solidarity for the debts of the company. Civil companies are only subject to incomes taxes if their activities are normally subject to income tax. Foreign employees and partners need a work permit in addition to a special permit depending on the activity of the company (for example foreign lawyers need an authorization from the local Bar Association of lawyers to practice law in Lebanon). This module is recommended to register a SE if the main activity of the enterprise is subject to the Code of obligation and contracts.

**Commercial company hybrid module:** The Lebanese commercial law offers partners wanting to establish a company the option of creating a company with two types of partners: partners with limited responsibility and partners without limited responsibility. There are two legal hybrid modules that allow this. Their use for registering SEs is possible within the same limits applicable to other commercial companies.

<sup>56</sup> Legislative decree No.87/1977.

<sup>57</sup> "The social enterprise sector: in Lebanon", Dr.Dima Jamali

<sup>58</sup> Interview with Me Mounir El Zoughbi on 17/11/2019

# Ways Forward

**In practice there is a need to test the theoretical limits of the law. This is true specially for the following questions:**

- In practice, can SEs registered as NGOs make profit without risking sanctions? This research can be done by sending a letter of inquiry to the Ministry of Interior and Municipalities. Another option is to request a consultation with the Ministry of Finance regarding the payment of taxes in that scenario. As for the possible advocacy action it is to set a judicial precedent or to arrange meetings with the relevant Ministers.
- Can SEs registered as NGOs become partners in a commercial company? This research can be done by sending a letter to the Ministry of Interior and Municipalities and to the Ministry of Economy. As for the possible advocacy action it is to set a judicial precedent or to arrange meetings with the relevant Ministers.

**Meanwhile, SEs in Lebanon do not benefit from a legal framework tailored to their spirit and ways of working. Many organizations are working to solve this legislative gap. There are ongoing efforts taking place at the level of the ecosystem to issue a legislation that responds to the specific needs of SEs in Lebanon. "We {Beyond Reform and Development} alongside many other ecosystem partners have developed a policy framework for SEs in Lebanon. As a first phase, we are not pushing for a separate model for the registration of SEs but rather to design a qualification process, without the need to change the SE's existing registration status. This process will allow qualified SEs to benefit from a set of incentives from the public sector as well as from ecosystem actors. One of the advantages of the qualification process is the fact that it maintains space to test the requirements and incentives and thus inform any future legislation or regulation of the social Entrepreneurship sector in the country"<sup>59</sup>.**

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59 Interview with Natalia Menhall on 24/01/2020. Natalia Menha is a partner and consultant with Beyond Reform and Development



