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Lebanon

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1 General Introduction

Lebanon traversed another dangerous year in 2012. With a war raging in neighbouring Syria, the Lebanese Government sought to implement a policy of dissociation (*al-na'i bil-nafs*) to spare Lebanon from being dragged into the deadly conflict. The government's official policy was unable to completely prevent the Syrian crisis from spilling over into Lebanon. Violence has regularly erupted in Tripoli between pro and anti-Assad elements in the city, and Beirut has, for the first time since May 2008, been host to a number of serious incidents that left it paralyzed for days at a time. Artillery units firing from inside Syria have battered Lebanese villages bordering the Lebanese-Syrian border, causing extensive damage and a number of deaths and injuries. Hezbollah has also increasingly played an important role with hundreds of its soldiers fighting in Syria. In October, a car bomb tore through Beirut's Ashrafieh neighbourhood killing the Internal Security Forces' former Intelligence chief who had uncovered a major bomb plot in Lebanon orchestrated by top Syrian regime officials. The instability Lebanon has faced was reflected in the inability of the government to control the situation. Parliament has also failed to assume its full law making abilities, passing few laws in 2012, of which only a handful are significant. Despite a dismal political climate, breakthroughs were made with respect to the exploration and exploitation of offshore petroleum and gas reserves. A Petroleum Authority was appointed and tenders organized, in the hope of attracting significant foreign investments over the next decade. 2012 represented an interesting year for case law. The Council of State issued a

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number of decisions that have countered government attempts to legalize the destruction of historical sites, and the Constitutional Council issued its first judgment in years.

2 Constitutional Law

The Lebanese Constitutional Council (French *Conseil Constitutionnel*, Arabic *al-majlis al-dusturi*) was called to consider, for the first time after years of inaction, the constitutionality of a law passed by Parliament. The President of the Republic, Michel Suleiman, challenged¹ Law 244 of 15 November 2012 on the grounds that the law violated the constitutional principle of the separation of powers and the equality of citizens.²

Law 244 had the objective of promoting the General Directorate of General Security (GDGS) civil servants to the rank of Grade One employees (*mulazim awwal*). The law made an exception, following which all those who held a license in law and had received a grade of 50% or higher for a public service exam (the results were disclosed on the 8th of November 2002) were to be promoted to the rank of Grade One employees.

The Council held that parliament overstepped its mandate by voting on a law whose content falls exclusively under the competence of the executive branch of power. The Lebanese Constitution clearly states that the Council of Ministers is the only body that has the power to appoint Grade One government employees. The promotion of employees to the rank of Grade One through legislation was in breach of Article 65 of the Constitution.³ The Council also considered whether it was possible to promote, as an exception, public sector government employees. It held that an exception was possible only when the public order was at risk. The promotion of government employees is not an act relevant to public order. Lastly, by only targeting members of GDGS while excluding other Lebanese citizens who took the same exam, the law disregarded Article 12 of the Constitution that guarantees equality between all Lebanese citizens.⁴

1 Decision 1 of the Constitutional Council in Official Journal (*Al-Jarida al-Rasmiyya*, hereinafter OJ) 51 of 6/12/2012, 5885.

2 Decision 2 of the Constitutional Council in OJ 53 of 20/12/2012, 6065.

3 Article 65 of the Lebanese Constitution: 'Executive authority is vested in the Council of Ministers [...] Among the powers that it exercises are the following: [...] the appointment of Grade One government employees and their equivalents [...].'

4 Article 12 of the Lebanese Constitution: 'Every Lebanese has the right to hold public office, no preference being made except on the basis of merit and competence, according to the conditions established by law.'

For the abovementioned reasons, the Constitutional Council ruled that Law 244 was unconstitutional and considered its effects void.⁵

3 Administrative Law, Judiciary and Legal Profession

Parliament passed Law 237 amending Law 129 of 26 October 1999 on the status of judges killed in the line of duty.⁶ The new law recognizes the risks judges face when practicing in a volatile Lebanon. All judges killed in the course of their duty or in relation to their work are given the status of 'martyr' under the new law, and are automatically promoted to a higher rank. This allows for the immediate family, offspring and spouse of the murdered judge to receive increased indemnification for the losses they suffer. This law was passed in a heightened context of political instability. Assassinations continue to mire the Lebanese political landscape, and the publication of Law 237 coincided with the brutal explosion that killed former Intelligence Chief of the Internal Security Forces, Wissam Al-Hassan. Months before the assassination, Al-Hassan had uncovered a conspiracy in which a former minister had received instructions from senior ranking Syrian regime officials to commit violent acts in Lebanon in an attempt to spark civil strife.⁷ The discovery prompted judges to open an investigation, which revealed the extent of the plot, and the law was passed to acknowledge the heightened risk.

Over the last two years, the Council of State (French *Conseil d'État*, Arabic *majlis al-shura*) issued a number of important decisions quashing state attempts to impair private property and destroy historically protected sites and artefacts.

In an important decision, the Council ruled that a decree legalizing the expropriation of a significant parcel of private property was invalid.⁸ The dispute, which lasted close to sixteen years, occurred after the government ordered the expropriation of property in the Medawwar region of Beirut to further expand the Beirut-Tripoli highway. The Council, in its decision, argued that the expropriation had been ordered without the appropriate research. The failure for the state to prove the necessity for the expropriation, specifically within the scope of the fulfilment of the public interest, rendered the decree overbroad and unnecessary. It was further underlined by the high administrative court,

⁵ Decision 2 of the Constitutional Council in OJ 53 of 20/12/2012, 6066–67.

⁶ Law 237 in OJ 45 of 25/10/2012, 4855.

⁷ See Tamer Mallat, "Killing Mr. Lebanon II: Wissam al-Hassan", *ArabsThink*, 21 October 2012.

⁸ Decision 894/2010–2011 of the Conseil d'Etat of 16/9/2011 invalidating Decree 9308 of 24 October 1996. On file with authors.

that any expropriation must respect Article 15⁹ of the Constitution and Article 1 of the Expropriation Law. These provisions ensure that no individual's property be expropriated except for reasons of public utility. Since the expropriation did not fulfil the legal requirements, the Council proceeded to order the annulment of the decree.

In another significant case, a plaintiff challenged a decision issued by the Ministry of Interior to close down his home and prevent him from entering it. For the Council, the Ministry's move was an illegal encroachment on property and privacy in manifest violation of the law. The ruling also held that the Ministry had overstepped its legal mandate by issuing a decision that it was not competent to issue, as it did not have the legal prerogative to prevent persons from accessing their own property. For the court, the two violations combined (encroachment and *ultra vires*) gave the Ministry's decision an *ad personam* dimension completely short of meaning. The personal nature of the decision transformed it into a case of assault on private property, which also stood in violation of the fundamental rights individuals enjoy. For these combined reasons, the Council quashed the Ministry's decision.¹⁰

The Council was also brought to decide a case that caused widespread public indignation after the Minister of Culture Gaby Layoun ordered the dismantling of Beirut's Roman Hippodrome despite an earlier preservation order.¹¹ The site had been subject to much public debate after it was purchased by a real estate company that sought to have the hippodrome destroyed to give way for a development project.¹² In 2009, the former Culture Minister Tammam Salam added the property to the register of protected buildings,¹³ in a move aimed at protecting the site. Salam's decision prevented any construction projects from being implemented, and required that any work on the site receive the prior approval of the General Directorate for Patrimony. The Council, in its decision, argued that the move to dismantle the hippodrome lacked serious motivation. As a result, the Council ordered a halt to the implementation of the new ministerial decision and declared it unenforceable.¹⁴

9 Article 15 of the Lebanese Constitution: 'Rights of ownership are protected by law. No one's property may be expropriated except for reasons of public utility in cases established by law and after fair compensation has been paid beforehand.'

10 Decision 188/2011–2012 of the Conseil d'Etat of 22/12/2011, *al-'Adl* issue 3 of 2012, 1314.

11 Decision 849 of 24 February 2012.

12 "Minister of Culture 'Dismantles' Beirut's Roman Hippodrome", *Al-Akhbar English*, 13 March 2012.

13 Decision 63 in OJ 42 of 10/9/2009, 5738.

14 Decision 329/2011–2012 of the Conseil d'Etat of 29/5/2012.

Despite the Council's efforts to safeguard Lebanon's historical buildings, 2012 represented a bleak year for the country's patrimony. In another move that caused public outrage, the same Minister of Culture allowed the destruction of Beirut's ancient Phoenician port to allow for the construction of new office buildings in the downtown area. This order, unlike the hippodrome decision, was given without legal clearance. The port was bulldozed on the 26th of June 2012,¹⁵ two days before the decisions stripping the property of its historical status were published.¹⁶

In a decision on procedural efficiency, the Council ruled that multiple cases concerning a same dispute should be merged into one. Consequently, the Council would rule in a single decision for the numerous trials. In its decision, the Council also stated that when deciding whether to merge the disputes, there was no need to refer to the parties for consultation.¹⁷ This decision was within the powers of the court to streamline its work and promote procedural efficiency in the country's administrative circuits where it is not uncommon for different parties to open parallel proceedings over the same matter for dilatory reasons.

In a matter pertaining to religious rights, the Council ordered the closing of a makeshift church located in a private home. The Council decided that it is possible to close down a place of worship when it has not been registered and approved by the authorities. Furthermore, it is prohibited to create places of worship that fall outside the control of official religious institutions. Lastly, the property was registered as a residential building. Transforming it into a place of worship was therefore illegal and constituted a potential source of disturbance for neighbouring homes.¹⁸

The Council was also brought to rule on a case that clarified the status of *Banque du Liban* (Lebanese Central Bank or LCB). In its decision, the Council observed that the LCB is subject to a special legal regime and enjoys complete financial independence.¹⁹ Accordingly, the LCB is not subject to the administrative rules that apply to public sector institutions. Also, the LCB is not required to consult and seek the opinion of the Council before issuing a decision, as is the case with other public sector institutions.²⁰

15 "Le port phénicien de Beyrouth complètement détruit, les militants indignés", *L'Orient-Le Jour*, 26 June 2012.

16 Decisions 70 and 71 in OJ 28 of 28/6/2012, 2975.

17 Decision 11/2009–2010 of the Conseil d'Etat of 18/10/2009, *al-Adl* issue 3 of 2012, 1311.

18 Decision 188/2011–2012 of the Conseil d'Etat of 22/12/2011, *al-Adl* issue 3 of 2012, 1314.

19 Code of Money and Credit.

20 Decision 264/2011–2012 of the Conseil d'Etat of 19/1/2012, *al-Adl* issue 2 of 2012, 757.

4 Civil Law

In a landlord-tenant case, a dispute arose when the tenant sought to remove one of the walls of the rented apartment separating two rooms in order to transform the area into a larger space. The landlord opposed the removal of the wall, considering that such action would ruin the building. Under Article 9-B of the Rent Law 22/83 protecting the Landlord's rights, the landlord received a favourable ruling from the Court of Appeal. The court held that the removal of the wall caused the impairment of the property. However, the Court of Cassation overruled the decision on the grounds that the removal of the wall was not prohibited so long as its restoration to its previous state, in accordance with the proper interpretation of Article 9-B, was easy and simple to undertake.²¹

In another landlord and tenant case, a single judge in the court of first instance of Beirut (*al-qadi al-madani al-munfarid*) was tasked with settling landlord/tenant disputes, finding that not all rent cases fell within the scope of public order. Certain rent cases can be settled by arbitration.²²

Two decisions rendered by the Court of Appeals and the Court of Cassation ruled that it was not permitted, under Lebanese law, to retract a decision that was issued by a court. In the first decision, the General Authority of the Court of Cassation found that the "no retraction theory" existed under Lebanese law, and that the possibility for an interested party to request the withdrawal of a court decision does not exist.²³ The Mount Lebanon Civil Court of Appeals held in the same way, considering that even in the event of a gross procedural error, it was not possible for a party to request the withdrawal of the disputed decision. Nevertheless, an exception can be made in cases where a request is submitted to rectify an error in writing upon the transcription of the actual judgment. In the present case, no such error existed. Consequently, the only recourse available is to challenge the appellate tribunal's decision before the Court of Cassation.²⁴

The scope of summary proceedings and judgments was expanded after the Court of Cassation issued a decision underlining the flexibility of the

21 Decision 44 of the First Chamber of the Court of Cassation of 9/6/2011, *al-'Adl* issue 3 of 2012, 1351.

22 Decision 1005 of the First Instance Civil Court Single Judge of 30/6/2011, *al-'Adl* issue 2 of 2012, 1039.

23 Decision 19 of the General Authority of the Court of Cassation of 4/7/2011, *al-'Adl* issue 3 of 2012, 1329.

24 Decision 234 of the Second Chamber of the Mount Lebanon Civil Appeal Court of 10/4/2012, *al-'Adl* issue 3 of 2012, 1448.

procedure. The court held that summary proceedings can be initiated and remain on-going irrespective of whether the dispute has been submitted to regular criminal and civil instances.²⁵

In a case that involved a work accident, the injured employee sought to seek indemnification from his employer before the civil courts of Lebanon. The Appeals Court ruled that it was not competent to oversee employer-employee disputes, even those arising out of an accident. The tribunal stated that the instances competent to settle such disputes are the labour courts of the country. The only exceptions to this rule are cases where a third party is linked to the work contract between the employer and the employee or if the third party is indirectly involved or connected with the accident.²⁶

The first instance civil court single judge was also asked to rule on the conditions required to modify an individual's date of death.²⁷ A family member of the deceased sought to change the death date found in the official registry on the basis that it was incorrect. The family member, considering himself a witness, argued that his testimony was sufficient to authenticate the actual date of death. The judge, in his decision, explained that death is a physical fact, and that a witness could assert this fact in an official testimony. However, in this case the death was already registered. In order to protect the stability of personal status documentation, the judge argued that the presence of an administrative document prevailed over the witness's testimony. In order to prove that there was an error in the transcript, the interested party must request that the General Security Directorate open an investigation into the matter, which is what eventually happened. But the investigation failed to yield any result. Upon which the judge refused to accept the modification of the registered death date.

5 Commercial Law

There have been no significant legislative developments in this area.

25 Decision 107 of the Fifth Chamber of the Court of Cassation of 15/12/2011, *al-Adl* 2 of 2012, 818.

26 Decision of the Fifth Chamber of the Southern Civil Appeal Court of 22/2/2012, *al-Adl* 2 of 2012, 892.

27 Decision 44 of the First Instance Civil Court Single Judge of 16/6/2009, *al-Adl* issue 2 of 2012, 1068.

6 Petroleum and Gas Law

The year 2012 represented a milestone for Lebanon's attempts to pursue the extraction of petroleum and gas reserves recently discovered in the country's maritime waters. Since 2010, the year when Law 132 was promulgated legalising Lebanon's right to begin exploring and extracting petroleum and gas reserves found off its shores, the country had been caught up in a deadlock over who would oversee the implementation of the law and its *modus operandi*.²⁸

In January 2012, the Lebanese government agreed to implement Law 132,²⁹ thereby paving the way for all future works regarding the realization of the project. Three months later, the Minister of Water and Energy signed a decree creating the Petroleum Authority (PA),³⁰ a body tasked with overseeing and organizing the extraction of offshore energy reserves. Amongst other important prerogatives, the PA is responsible for licensing and negotiating deals with companies, and undertaking all administrative matters related to the industry. The PA must also continuously liaise with the competent minister and the different petroleum companies.³¹

The PA is composed of a board of six members. Candidates eligible to sit on the board must have been Lebanese citizens for at least ten years, and must enjoy full political and civic rights. Board members are selected for a 6-year term that can be renewed once for a further 6 years. They are forbidden from disclosing information pertaining to their work, and must comply with strict confidentiality obligations. Board members are also forbidden from communicating with companies in the sector without prior approval from the competent minister. They are also prohibited from issuing any statement without ministerial permission.³² The PA is composed of six administrative committees. These bodies include the Strategic Planning committee, Technical and Engineering Affairs Committee, Geology and Geophysics Committee, Legal Affairs Committee, Economic and Financial Affairs Committee and the Quality Control, Health, Safety and Environment committee.³³

²⁸ Law 132 in OJ 41 of 2/9/2010, 5144–5169.

²⁹ "Cure or Curse? The conundrum of Lebanon's hypothetical hydrocarbons", *Executive Magazine*, 3 February 2012.

³⁰ Decree 7968 in OJ 17 of 19/4/2012, 1466.

³¹ *Ibid.*, article 10, 1468.

³² *Ibid.*, article 1, 2, 3, 4, 5 and 6, 1466–1467.

³³ *Ibid.*, articles 8 and 9, 1468.

The PA determines its own budget, which is then subject to the scrutiny of the competent minister. The PA may also delegate work to subcontractors for a certain period of time under the conditions specified by the decree.³⁴

Despite being announced early in the year, the appointment of committee members to the PA board had to wait until November 2012, when an agreement was finally reached between different Lebanese political factions on the manner in which members of the board should be selected. It was agreed that the board would consist of three Christian and three Muslim members, who would also head the different committees of the PA.³⁵

A tender was organized in early 2013, with 46 companies bidding for stakes in the industry.³⁶ It is not expected for the extraction and exploitation of the gas fields to commence before the second half of the decade. The Ministry of Energy and Water was also criticized for lacking transparency.³⁷ Nevertheless, the successful implementation of these projects will no doubt ultimately benefit the Lebanese economy, which has continually struggled to recover since the Civil War ended more than two decades ago.

7 Employment and Labour Law

The Ministry of Labour passed Decree 7573 that determined transportation and education allowances for all private and public sector employees. The transportation allowance was kept at LP (Lebanese Pound) 8,000 (approx. US \$5.3) for every day an employee attends work.

The Decree also benefits all parents with children enrolled in schools and universities for the 2011/2012 academic year. Parents with children attending public, free and special private schools for the mentally impaired are entitled to LP 300,000 (approx. US \$200) of education allowance per child. Parents with children attending private schools and universities are entitled to LP 750,000 (approx. US \$500) per child, while those with children enrolled at the Lebanese University are to receive LP 450,000 (US \$300). Only one parent is entitled to receiving these allowances for their children, and families with more than three children cannot receive compensation for their other children, with the legal maximum fixed at LP 1,500,000 (US \$1,000) per family. Children above

34 Ibid., article 28, 1474.

35 "A slippery second step: Lebanon's new Petroleum Administration shrouded in mystery", *Executive Magazine*, 9 November 2012.

36 "Lebanon Approves 46 Firms in Oil, Gas Licensing Round", *Fox Business*, 19 April 2013.

37 "Keep Lebanon oil and gas bids transparent", *The Daily Star*, 3 April 2013.

the age of 25 attending university are no longer entitled to receive education allowances. Lastly, allowances do not constitute a part of employee salaries, are not subject to taxes or charges and are not deducted from end of service retirement funds.³⁸

Parliament passed Law 217 that reiterated the provisions of Decree 7573,³⁹ and the Labour Ministry also issued another decree in September of the same year maintaining the transportation allowance at LP 8,000.⁴⁰

Electricity employees staged the longest recorded strike in Lebanese history in 2012. Some 2,500 contract workers employed at the country's *Électricité du Liban* (EDL) began striking in April 2012, demanding full-time employee status at the state-run electricity company.⁴¹ The workers' strike was a consequence of the government's attempts to privatize electricity services by delegating these services to privately held companies in an attempt to cut public expenditures. Contract workers at EDL do not benefit from full-time employment. Their contracts must therefore be renewed regularly, rendering their work situation precarious. To subdue the movement, the Energy and Water Minister offered to hire 700 of the striking contract workers as full-time employees, on the condition that they undergo civil service exams.⁴² The protestors rejected his proposal as a ploy.

On June 14, a parliamentary committee approved a draft law allowing EDL contract workers under the age of 58 to become full-time employees after taking public service examinations to determine their qualifications. The draft law was endorsed by Amal, Hezbollah and the Progressive Socialist Party, all of which are parties in the government, prompting the Free Patriotic Movement to question its coalition allies. Contract employees hailed the draft law as a victory but vowed to continue protesting until the law is implemented.⁴³

The strike continued throughout the months of June and July. Pressure on the Energy Minister reached its peak after the EDL board warned of an imminent nation-wide blackout on the 30th of July. Angry that the draft law had still not been passed and disgruntled because their salaries had not been paid for the months of May and June, contractual workers occupied EDL.

38 Decree 7573 in OJ 9 of 1/3/2012, 640.

39 Law 217 in OJ 14 of 31/3/2012, 1129.

40 Decree 8819 in OJ 39 of 13/9/2012, 4120.

41 "Lebanese electricity workers protest for better conditions", *Al Akhbar English*, 30 May 2012.

42 Id.

43 "FPM fumes at Lebanese electricity workers' 'victory'", *Al Akhbar English*, 15 June 2012.

headquarters.⁴⁴ The strike ended a week later after EDL accepted to stage public service exams for the contract workers. EDL stated that those who passed the exams would be granted full-time employment contracts while those who did not pass would receive compensation.⁴⁵

Matters deteriorated again after the employees refused to sign the full-time employment contracts offered to them by private service providers. Labour heads criticized a three-month probation period clause included in the new contracts, and requested that the Labour Ministry oversee the drafting of the contracts so that they comply with National Social Security Fund (NSSF) regulations. The private service companies responded that the contracts fully complied with these regulations.⁴⁶ There has since been little headway, but the strike ended after many contract workers received full time employment with a number of private service companies. Others remain uncertain about their future.

8 Property Law

There have been no significant legislative developments in this area.

9 Criminal Law/Procedure

The Lebanese penitentiary system has long suffered from overcrowding. Over the past few years, inmates in Lebanese prisons have held massive riots, hunger strikes and committed frequent acts of violence in protest of harsh internment conditions. Arrested suspects can find themselves imprisoned for months, and even years, before receiving a court verdict. Families of prisoners have also protested roads and staged sit-ins to demand faster trials and improve living conditions for the inmates.

In a bid to alleviate the penitentiary system from pressures, Parliament passed Law 216, which significantly shortens prison terms. The law provides that those who are condemned to a year or less of jail will see their sentences reduced on a monthly basis. In effect, under this new law, the monthly calendar will be reduced to 20 days instead of 30. Accordingly, a convict condemned

44 "Lebanon's EDL warns of imminent nationwide blackout", *The Daily Star*, 30 July 2012.

45 "Lebanese electricity workers end strike", *Al Akhbar English*, 3 August 2012.

46 "Workers, private electricity firms wrangle over contract terms", *The Daily Star*, 8 August 2012.

to one month in prison will only have to serve for 20 days instead of 30. For convicts ordered to serve prison sentences over a year, the new Article 112 of the Penal Code states that each full calendar year is replaced by prison sentences of 9 months. Therefore, a prisoner serving a 2-year sentence will only spend 18 months in prison. Repeat offenders and prisoners serving life sentences do not benefit from the leniency. All recidivists and those condemned with life imprisonment will also not benefit from the shortened sentences.⁴⁷

Despite the efforts of Parliament to address the problem of overcrowded prisons, the new law fails to provide remedies for slow and often inadequate criminal proceedings. While it may effectively reduce issues with prison capacity, it sends a wrong signal to potential lawbreakers. Criminals convicted of crimes such as rape and violence against women already receive inappropriately short prison sentences.⁴⁸ In a country where criminals often benefit from the political protection of parties and groups they belong to, there is little that the new law provides to prevent their impunity.

Parliament also passed a new law on traffic.⁴⁹ Law 243 aims at tackling Lebanon's poor driving culture by dealing with infractions more severely and implementing more comprehensive driving rules. Traffic regulation already exists in Lebanon and the problem the country faces has always been linked to poor implementation. It is unlikely that the new traffic law, however more sophisticated, will make much of a difference.

10 Family and Succession Law

Mufti Mohammed Qabbani of the Higher Islamic Council promulgated a new set of regulations to be implemented by the Sunni Islamic Courts. Regulation 46 is intended to organize Sunni Muslim family life by providing a number of new obligations for its members.⁵⁰ None of these new rules represent completely novel dispositions, but they provide detailed descriptions of the obligations of husbands and wives with respect to family life. Three areas are covered in the Mufti's decision: the wife's dowry (*mahr*); the pension and financial support (*nafaqa*) to be provided to the wife, children and other family members

47 Law 216 in OJ 14 of 31/3/2012, 1129; the law effectively annuls Article 112 of the Penal Code and replaces it with the provisions of the new law.

48 In practice one to two years, if found guilty.

49 Law 243 in OJ 45 of 25/10/2012, 4889–5030.

50 Regulation (order, *qarar*) 46 of the Higher Islamic Council in OJ 2 of 12/1/2012, 85.

by the husband; and the obligations and restrictions imposed on custody of children (*hadana*).

This new regulation specifies the financial obligations of the husband towards his wife and family (*nafaqa*). He is required to provide for his extended family's needs. Such obligations include, but are not limited to, hospitalization, medical expenses and education. The judge has the discretionary power of evaluating all expenditures, and may also approve the increase or decrease of these expenditures over the course of marriage. The wife may lose her right to benefit from the *nafaqa* and other financial advantages if she refuses to move into her marital home with her husband; if she leaves the marital home without receiving permission to do so; if she prevents her husband from entering the marital home; and lastly if she refuses to travel or move with her husband, unless otherwise stipulated in the marital contract.⁵¹

The Mufti's decision delineates the restrictions and conditions of custody. Both husband and wife are affected by these restrictions. Neither may leave the Lebanese territory with their minor child⁵² without receiving express permission⁵³ from their spouse or from the competent Sunni Islamic Court.⁵⁴ This rule also applies to any other family member or person wishing to travel with the minor. The mother who has custody may not move with her child for an indefinite period of time within the Lebanese territory without receiving permission from her husband or the competent court.⁵⁵ This rule only applies to mothers.

Lebanon witnessed, in 2012, the first civil marriage to have ever taken place in the region. While the country's laws do not prohibit the registration of a civil marriage contracted in another state that recognizes the institution, this marital regime had never before been accepted when contracted domestically.

On November 10, 2012, Kholoud Succariyeh and Nidal Darwish married before a public notary to force the registration of their civil marriage, the first

51 Ibid., article 3, 4, 5, 6, 7 and 8, 85–86.

52 The word minor (*qaser*) is opposed here to the nursed child (*mahdun*). With respect to travel restrictions on parents, both terms are used interchangeably in the Regulation.

53 The decision differentiates legally between the permission for husband and wife. The decision states that the husband must receive permission from the *woman/wife* who has custody (*hadina*), while the woman must receive permission from the *guardian* of the child (*wali*). While the results of the obligation are ultimately the same, the legal regime applicable on each spouse differs in nature. It is assumed in the Mufti's decision that Sunni mothers are not the formal legal guardians of their children. This role is exclusively that of the father.

54 Article 22, Regulation 46 of the Higher Islamic Council in OJ 2 of 12/1/2012, 88.

55 Ibid., article 23.

in Lebanese history. The couple based their marriage on the provisions of Article 10 of Decision 60 of 13 March 1936 that promulgated the marital regime of the various religious communities recognised in the country. The article states that Lebanese who do not belong to a religious community are subject to civil law in their personal status. By legally striking off their religious sects from their family registries, Mr Succariyeh and Mrs Darwish were left without any affiliation, thereby allowing them to fall within the scope of application of Article 10 of the 1936 text.⁵⁶ Amongst those who supported the move were the current President and former Prime Minister Saad Hariri. Religious authorities almost unanimously denounced it.

The couple were unable to immediately register the marriage in the Ministry of Interior. Initially, the Minister refused to sign the order on the grounds that such a move required extensive consultation. He argued that the inexistence of any civil law texts governing civil marriage in Lebanon rendered the legality of the registration precarious.⁵⁷ The proposal was subsequently submitted to the Lebanese Supreme Judicial Council, which unanimously voiced its support in favour of the registration of the civil marriage.⁵⁸

After another month of public debate, the Ministry of Interior finally registered the marriage, albeit with some reservation. The Minister argued that despite the official registration, the absence of a civil personal status law register in Lebanon rendered the effects of the civil marriage limited. Consequently, and before a law is promulgated to regulate civil marriage contracted domestically, the status of Mr Succariyeh and Mrs Darwish would remain subject to the rules of their respective religious affiliations in their family registries.⁵⁹

11 Tax and Estates

Law 205 exempts all monetary and in-kind donations from the United Nations and its institutions, bodies and projects from certain taxes and fees. These exemptions include custom duties, port authority taxes, internal consumer tax, in addition to the maximum 5% tax imposed on a number of other

56 "Judicial Council Approves Succariyeh and Darwish's Civil Marriage, Charbel Says Will not Sign It", 12 February 2012.

57 Ibid.

58 "*Al-zawaj al-madani ila al-mahakem*", *Now Lebanon*, 8 April 2011.

59 "Un premier mariage civil enregistré au Liban", *Le Monde*, 26 April 2013.

tax-exempted bodies and institutions.⁶⁰ The exemptions are also extended to projects represented by the United Nations Development Program.⁶¹ Parliament also added red diesel fuel to the list of tax-exempted products.⁶²

Law 231 added a new section to Article 157 of the Tax Procedure Law,⁶³ which imposed various new obligations on employers and companies with regard to bookkeeping and mandatory disclosures. The new law states that employers and companies must keep books and register their employees with the Tax Authority. Employers must also notify the Authority of any change in its employees' situation. Information relating to employees that benefit from certain tax exemptions must also be disclosed. The law also states that information relating to other taxes is subject to mandatory disclosure.⁶⁴

12 Intellectual Property, Media and Communications Law

There have been no significant legislative developments in this area.

13 Public International Law

Lebanon entered into a number of international agreements in 2012. Parliament passed Law 209 that ratified a financing agreement for the Hilly Areas Sustainable Agricultural Development Project (HASAD) between the Republic of Lebanon and the International Fund for Agricultural Development.⁶⁵ The loan agreement, worth US \$2,600,000, is intended to benefit poor smallholders who were directly or indirectly affected by the July 2006 war.⁶⁶ The regions to benefit from the loan are the Akkar-Dinniye region, Baalbek, Hermel, the South and Lower Litani region and other Mount Lebanon areas also affected by the war.⁶⁷ The project is intended to reduce rural poverty by "increasing agricultural productivity and income of the target group [...] through:

60 In Lebanon, while certain institutions and bodies may benefit from special tax exemptions, they are still obliged, unless otherwise specified, to pay an obligatory 5% tax.

61 Law 205 of OJ 10 of 8/3/2012, 663–664.

62 Law 207 of OJ 10 of 8/3/2012, 665.

63 Law 44 of 11 November 2008.

64 Law 231 of OJ 45 of 25/10/2012, 4641–4642.

65 Signed in Rome, 17 June 2010.

66 Also known as the Hezbollah-Israel 2006 war or the 33 Day War.

67 Law 209 promulgating the Hilly Areas Sustainable Agricultural Development Project (HASAD) in OJ 14 of 31/3/2012, 1089.

(i) improvements in soil and water management and development of small and medium-size water harvesting and soil and water conservation measures; (ii) improvements in agricultural productivity [...] by provision of technical support services; and (iii) strengthening the capacities of the project implementing agencies and farmer organizations.⁶⁸

Lebanon also signed the Agreement on Economic and Technical Cooperation Between the Government of the People's Republic of China and the Government of the Republic of Lebanon. Under the agreement, China provides Lebanon with a grant of RMB Yuan 50,000,000 (approx. LP 12,165,000,000; US \$8,110,000) to implement projects to be determined in subsequent agreements through the common accord of the two governments.⁶⁹ This agreement comes in a heightened context of mutual cooperation between the two countries.

The agreement for the Implementation of two Sanitation Systems for the Municipalities of Hrajel and Mishmish in Central and Northern Lebanon was signed between the Government of the Republic of Lebanon and the Government of the Republic of Italy. The soft loan agreement will allow for two sanitary systems (waste treatment plants and sewage system) to be constructed in the abovementioned municipalities. The objective of the sanitary systems is to reduce pollution and increase the management skills of the water establishment.⁷⁰

Parliament ratified two loan agreements with the International Bank for Reconstruction and Development. The first agreement concerns the implementation of the Second Education Development Project,⁷¹ under which the World Bank provides Lebanon with a loan of US \$40,000,000 to improve teaching quality and to better the learning environment in general education and in preschool. The loan will be used to rehabilitate 110 existing schools in addition to implementing other projects that enhance the learning environment for children.⁷² The second project agreement was entered into by the IBRD and the Beirut Mount Lebanon Water Establishment. The agreement provides

68 Ibid., 1089.

69 Decree 8061 promulgating the Agreement on Economic and Technical Cooperation Between the Government of the People's Republic of China and the Government of the Republic of Lebanon in OJ 20 of 10/5/2012, 1703–1704.

70 Decree 8945 promulgating the agreement for the Implementation of two Sanitation Systems for the Municipalities of Hrajel and Mishmish in Central and Northern Lebanon in OJ 42 of 4/10/2012, 4318–4343.

71 Law 227 for the Second Education Development Project in OJ 45 of 25/10/2012, 4605.

72 Ibid., 4620.

Lebanon with a loan of US \$200,000,000 to increase the provision of potable water to residents of the greater Beirut region, including those living in the southern suburbs.⁷³

With respect to international environment law, Parliament also ratified Law 228 under which Lebanon commits to protect and address environmental issues faced by Arab countries that are signatories to the convention,⁷⁴ and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).⁷⁵

14 Private International Law

There have been no significant legislative developments in this area.

15 International Investment Law

In June 2012, the International Centre for the Settlement of Investment Disputes (ICSID) issued an Award for an investment dispute between the Lebanese Republic and Toto Construzioni Generali S.p.A., an Italian joint stock company with investments in Lebanon.

In 1997, Lebanon and Italy had signed a treaty on the Promotion and Reciprocal Protection of Investments that entered into force in February 2000,⁷⁶ and provides that investment disputes in each country are to be settled by way of arbitration.⁷⁷

In 1997, Toto entered into a contract with the *Conseil Exécutif des Grands Projets* (later the Council for Development and Reconstruction), a legal entity acting on behalf of the Lebanese government. Under the contract, Toto agreed to construct the Sawfar-Mdeirej section of the Arab Highway that links Beirut to Damascus.

Toto filed a dispute before ICSID after alleging that Lebanon had breached a number of provisions under the treaty, which caused important delays and

73 Law 234 in OJ 45 of 25/10/2012, 4709.

74 Law 228 in OJ 45 of 25/10/2012, 4637.

75 Law 233 in OJ 45 of 25/10/2012, 4642.

76 Treaty between the Italian Republic and the Lebanese Republic on the Promotion and Reciprocal Protection of Investments, the "Italy-Lebanon BIT"; signed on 7 November 1997, entered into force on 9 February 2000.

77 Article 7.2.b of the Italy-Lebanon BIT.

rendered the implementation of the project increasingly difficult. According to Toto, Lebanon failed to expropriate parcels of land necessary for the realization of the project in a timely manner, as agreed in the contract. Moreover, Toto argued that the Lebanese government had failed to remove Syrian troops present on the construction site that prevented Toto from proceeding with work. It also argued that a change in the regulatory framework that led to a hike in taxes and customs duties caused Toto's operational costs to increase significantly.

In its final award, the tribunal rejected all of Toto's claims. The Tribunal ruled that Lebanon had done everything in its power to expropriate the parcels of land,⁷⁸ and could not be held liable for the presence of Syrian troops in the area, which Toto was aware of at the time the contract was signed, and which constituted an occupying force beyond the control of the Lebanese government.⁷⁹ As for increased taxes and custom duties, the tribunal considered that the circumstances "prevailing at the time" in Lebanon did not guarantee the investor that the situation would not change.⁸⁰

78 ICSID Case No^o ARB/07/12, *Toto Costruzioni Generali S.p.A. v Republic of Lebanon*, Award, paragraphs 192–194.

79 *Ibid.*, paragraph 200.

80 *Ibid.*, paragraph 242.