

**Achievement of Market-Friendly Initiatives and Results Program
(AMIR 2.0 Program)**

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**Legal Due Diligence
Middle East New Exchange
(ME-NEX)**

Final Report

**Deliverable for Capital Markets Component, Task No. 635.3
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1. ME-NEX to incorporate in Jordan.

According to the provisions of the Jordanian companies' law No.(22) of 1997 and its amendments I find that the best options for ME-NEX would be for it to register or to be incorporate as the following:

- ME-NEX to be incorporated as a public shareholding company.

This type of company to be established shall consist of a number of promoters not less than 50 who subscribe for shares that can be listed on stock exchange and may be traded and transferred. The term of the public Shareholding Company shall be indefinite unless the objectives thereof is to carry out certain business, in which case, the duration thereof shall end upon the completion of that business.

The financial liability of each shareholder in public Shareholding Company is independent from the financial liability of the company itself. Thus, the shareholder shall be liable, to the company's debts, only to the extent of his share in such company. The application for the registration of the company shall be submitted by the company's promoters to the company's controller at the ministry of industry and trade accompanied by the company's articles of association, its memorandum of association, names of its promoters,... . However, upon the recommendation of the company's controller, the minister of ministry of industry and trade shall issue his resolution (approving or disapproving) the registration of such company. In the case of disapproving the registration the company's promoters may challenge this decision before the higher court of justice.

Since ME-NEX shall be considered as a financial entity, it can only be registered as a public share holding company. Hence, it was stipulated in the companies law of Jordan that banks operations, financial institutions, and all types of insurance activities may not be operated nor conducted except by public shareholding company, which are formed and registered in accordance with the provisions of the companies law.

- ME-NEX to be incorporate as a limited liability company.

A limited liability company may be formed with a minimum of two persons or more. The liability of any partner therein for its debts, obligations and losses shall be in proportion to his shareholding in its capital. The minimum share capital required to form an LLC is thirty thousands Dinars. The capital must be divided into equal shares, and the value of each share must be at least one Dinar. Each partner is liable to the extent of the value of his shares. The partners of the LLC must submit an application to the company's controller, at the Ministry of industry and trade, requesting permission to incorporate a LLC. Such application must be accompanied with memorandum and articles of association of the company. The company is incorporated once it is registered in the Commercial register at the Ministry of Industry and Trade. The name of the LLC must be derived from the object of the company and may include the name of one or more of its partner. Additionally, the word " Limited Liability Company" must be included in the name.

As we have mentioned before the companies law of Jordan stated clearly in its Articles that financial institutions must be established only as a public shareholding company. And according to the Instructions on Licensing of Activities of Financial Services Companies and Certified Financial professional No.(1) for the year 1999 provisions, issued by the Board of Commissioners of the Securities commission. It was stated in Article (5) of the these instructions that “ granting licenses to practice any of the activities of financial services or renewals thereof shall be subject to the following conditions:

-the license applicant shall be a public shareholding company or limited liability company, or limited partner in shares company...”.

By viewing this provision it seems that any financial services company has to get a license to be able to practice financial activities. Such license might be granted, according to these instructions, to other types of companies than the public Shareholding Company.. However, the term Financial Services Company shall mean a company licensed by the Commission to practice one or more of the following activities: investment trusteeship, investment management, financial advisory, financial brokerage, depository service, management of primary issues, any other activities specified by the board. With reference to this definition, ME-NEX has to fall within the scope of the aforesaid definition in order to be recognized as FSC. Thus, to be incorporated as a LLC company.

-ME-NEX is to be incorporated in Aqaba special Economic Zone.

Having reviewed the Aqaba Special Economic Zone Law. It seems that this zone is established to develop and qualify Aqaba city to attract investments. And create advanced investment environment to stimulate trade and services in the zone. and to enhance the role of the private sector in participating in the development of the zone, including infrastructure services and any public services. Additionally, it encourages registered enterprises to conduct and support research and development.

According to the provisions of the Aqaba Free Zone, especially those related to the companies incorporation; The promoters shall submit the application for the registration of any company in Aqaba Free Zone to the company’s controller or his representative in the Zone. It is particularly important to be noted that there are some taxes and duties shall not be collected in this zone such as custom duties, importation duties, income tax, and social service tax. The exemption, mentioned above, stipulated in the Aqaba Special Economic Zone Law shall not include nor cover any income accrued for banks, financial institutions. These institutions shall be subject to the provisions of The Income Tax Law in force, whether these institutions are registered in this zone or not. In addition, the terms and the rules of The Banks Law and The Central Bank Law shall apply to any bank or financial company conducting banking or financial activities in the zone or opening therein. Thus, by reviewing the above facts I can not find numerous privileges granted to the financial institutions which are established in Aqaba Special Free Zone. Since, the establishment of ME-NEX in this

zone shall be subject to the same rules and conditions related to Shareholding Company, limited liability Company, which have been discussed before.

2. ME-NEX to be incorporated in Bahrain:

In light of the provisions of the Bahraini Commercial Companies Law No. (21) of 2001 (the Law), we find that the best options for ME-NEX would be for it to register as a limited liability company, or as an exempt company. The Limited Liability Company will be registered at the Ministry of Trade and Industry of Bahrain in accordance with articles 261-288 of the Law.

Accordingly, the maximum number of partners in a limited liability company is of 50, and the minimum capital required by the Law is twenty thousand Bahraini dinars, which will be divided into equal shares the value of each share will be of 50 Bahraini dinars minimum.

The articles of the association shall include:

- 1) The partners' names and their nationalities.
- 2) The address of the main office of the company.
- 3) The name of the company (which can be any particular name or even originating from the purposes of the company) and its address, and it should be followed by the phrase "a limited liability company".
- 4) The purposes for which the company was established.
- 5) The capital of the company, the in-cash shares, the real shares with their detailed description and their value.
- 6) The conditions of assigning the shares.
- 7) The period of the company, if any.
- 8) The names of the managers of the company whether they were from the partners themselves or from a third party, and the names of the supervision committee where it is required by the Law to establish one.
- 9) The manner in which the profits and losses will be distributed.

However, the company cannot be considered as established until the partners have paid all the in-cash shares into a bank account in Bahrain and distributed among them and the real shares submitted to the company. The management of the company will be handled by a manager or more from the partners or from a third party, appointed by the general assembly. The general assembly is constituted by all the partners of the limited liability company, and it meets at least once a year during the four months after the end of each financial year. It can also meet any time at the request of the manager/s, the supervision committee, the auditors, the Ministry of Trade and Industry, or a number of partners constituting $\frac{1}{4}$ of the capital of the company.

In addition to the above general outlook into the provisions of the Bahraini Commercial Companies Law, the partner in the limited liability is liable only in the limit of his share in the company. As a matter of fact in order to establish limited liability Company at least 51 percent of the capital must be owned by Bahraini nationals. Since Bahrain's share in ME-NEX will be less than 51 percent of the

capital, I do not believe that it is possible for ME-NEX to be registered as a limited liability company.

In addition to the aforementioned entity, Ministerial Order 25 of 1977 created a specific entity known as the exempt company, an offshore company introduced in order to encourage foreign companies to locate their headquarters in Bahrain. Many of the offshore entities are banking units and investments bank. Exempt companies are joint stock companies that have been exempted from some or all of the requirements of the Law of Commercial Companies by the Minister of Commerce and Agriculture. It is exempted from the requirements of local Bahraini participation in ownership applicable to most Bahraini companies. This type of company must register and situate its main office in Bahrain. However, without the consent of the Ministry of Commerce and Agriculture, an exempt company is not allowed to conduct any business or to undertake any commercial activity within Bahrain.

Accordingly, exempt company must consist of two members, and the maximum number of members is unlimited. It is managed by a board of directors of not less than two and not more than ten directors. A portion of its capital is required to be deposited with the Bahrain Monetary Agency. The Directorate of Commerce and companies' affairs of the Ministry of Commerce and Agriculture has complete discretion to accept or to reject an application for registration of an exempt company.

If it is decided that Bahrain will be the chosen country where to establish the company. In this case I believe that ME-NEX may be established only as an exempt company. And to enable it to practice its activities within Bahrain it needs to get the consent of the Minister of Commerce and Agriculture and the consent of the Bahrain Monetary Agency is necessary.

3.ME-NEX to be incorporated in Dubai.

One of the most important laws in the UAE is the United Arab Emirates Commercial Law No (8) of the 1984, and its amendments. It is a federal legislation, which all commercial companies in the UAE must comply with its provisions. This law is to regulate the formation and the registration of companies and to lay down the different types establishments which are allowed to be registered as companies in the UAE. It is important to mention here that fifty-one percent participation by UAE nationals is the general requirement for all UAE established companies. But according to the new Federal Law No.13 of 1998 there are companies exempted from the provisions of the Commercial Companies Law, which makes options open to international companies to establish a business and other financial operations within the UAE. Under this new Federal Law companies are exempted from the provisions of the CCL are: those established in any of the UAE's free zones, companies whose activities are in the oil and gas industry and any other company excluded by resolution of the Cabinet of ministers.

Accordingly, if Dubai is the chosen country, I believe that ME-NEX shall be incorporated, as a Limited Liability Company, in any of Dubai's free zones. Since, the only form of financial entities one may establish there are a) a Limited Liability company under a license issued by the free zone. b) Branches of foreign companies. There are some advantages in establishing a legal entity in any of the Dubai's free zones such as a 100% foreign ownership of such entity, taxes exemption for a number of years not less than 10 years.

Note:

?? The Laws and the regulations that have been reviewed are the following:

- 1) The Jordanian companies law.
- 2) Aqaba Special Economic Zone Law.
- 3) The Jordanian Securities Commission Law.
- 4) The Instructions on Licensing of Activities of Financial Services Companies and Certified Financial professional No.(1) for the year 1999.
- 5) Bahraini Commercial Companies Law No. (21) of 2001.
- 6) The United Arab Emirates Commercial Law No (8) of the 1984, and its amendments.
- 7) Dubai Technology, Electronic Commerce and Media Free Zone Law.

?? The Laws that are needed, and have not been reviewed yet, are the following:

- 1) Dubai Internet City Law.
- 2) UAE's Federal Law No.13 of 1998.