

الامتيازات والحصانات المتبادلة للاستثمارات العامة العربية المشتركة

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الملخص

تعد فكرة الشركات العربية العامة المشتركة إحدى الخيارات المتاحة أمام الدول العربية لتعزيز وحدتها وتنمية اقتصادياتها. ولقد أنشأت الدول العربية -من خلال مجموعة مجلس الوحدة الاقتصادية التابع لجامعة الدول العربية ومنظمة الدول العربية المصدرة للنفط- العديد من الاستثمارات المشتركة في شتى المجالات الاقتصادية. وعلى الرغم من أن كل مجموعة من هذه الشركات تخضع لأحكام قانونية متشابهة، إلا أنها توزعت جغرافياً على العديد من الدول الأطراف. ولقد أسبغت اتفاقيات التأسيس على هذه الشركات العديد من الإعفاءات والحصانات تأسياً بما فعلته مجموعة الدول الأوروبية على مشروعاتها العامة المشتركة، وذلك بغية تمكينها من مزاولتها نشاطها وتحقيق أهدافها وإضفاء نوع من الاستقلالية عليها.

وتهدف هذه الدراسة إلى البحث في نطاق ومضمون هذه الحصانات والإعفاءات التي منحتها الدول العربية المؤسسة لاستثماراتها المشتركة، وتبيان جوانبها القانونية على أساس من المقارنة بينها وبين السوابق الدولية في الاستثمارات المشتركة.

ولقد بدأت الدراسة بفكرة مجملتها ومختصرة عن الحصانات ومدى إمكانية إضفاءها على الاستثمارات الاقتصادية. وناقشت في الفقرة الثانية حالات إعفاء الاستثمارات المشتركة من الخضوع للقوانين الوطنية كقوانين الضرائب والقيود الجمركية، أما الفقرة الثالثة فقد خصصت لدراسة الحصانات القضائية والحصانات ضد الإجراءات الجبرية التي تتمتع بها الاستثمارات المشتركة. أما الفقرة الرابعة فقد ناقشت الإعفاءات والحصانات التي يتمتع بها مديرو وموظفو هذه الاستثمارات.

الكلمات الدالة: الاستثمارات العامة، الحصانات والإعفاءات، الشركات المتعددة الأطراف.

Privileges and Immunities of Multilateral Arab Public Joint Investments*

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Abstract

The Multilateral Arab public joint companies (MAPJC) is one of the choices of Arab countries to enhance their unity and develop their economy. The Arab Countries through OAPEC and AEUC created many joint companies in different sectors. These investments are hosted in different countries, though they are subject to similar provisions. As European countries did to their public Joint Companies, the Arab countries, granted their joint investments companies many privileges and immunities in order to ensure its independence and proper functioning to fulfill their tasks and achieve their goals .

The purpose of this paper is to explain the scope and content of the privileges and immunities granted to the Arab joint companies and to illustrate some of the practical legal aspects on the basis of examples of the international precedents.

This paper is started with a brief background about the concept of privileges and immunities in the First Part point. The Second Part point discusses the extent to which the Arab joint companies are exempted from national law, in particular host state. The Third Part Point discuss the joint companies' immunity from jurisdiction and enforcement procedures. Finally, the Fourth Part point deals with the privileges and immunities granted to the members of the joint companies' executive boards and their staff.

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Keywords: Joint Investment, Privilages Immunties, Maltilateral Joint Companies.

Abbreviations

A.J.I.L :	American Journal of International Law
ASRY :	Arab Shipbuilding and Repair Yard Company
AIO :	Arab Industry Organization
Art :	Article
AEUC :	The Arab Economic United Council
Cf :	Compare
Ed :	Edition
Et seq :	Et sequens
EUROCHEMIC :	The European Company for the Chemical Processing of Irradiated Fuels
EUROFIMA :	The European Company For the Financing of Railway Equipment
Ibid :	Ibidem
IBRD :	International Bank for Reconstruction and Development
I.C.L.Q :	International Comparative Law Quarterly
IMF :	International Monetary Fund
J.W.T.L :	Journal of World Trade Law
MAPC :	Multilateral Arab Public Joint Companies
NY.ULR :	New York University Law Review
OAPEC :	Organization of Arab Petroleum Exporting Countries
O.G :	Official Journal / Official Gazette
Op.cit :	Opero citato (the same reference)
PJI :	Public Joint Investment

1- Introduction

The Arab Public Joint Companies (APJC) in most cases are established either as national,⁽¹⁾ international, supranational institutions. They usually based on one of the parties territory and may act either in some or all of the contracting states.⁽²⁾As many of other International Joint Investments, (PJC) which are participated by Arab countries enjoy privileges and immunities in most order to ensure their independence and proper functioning. In fact, most of the Joint Companies partnered by Arab States have been granted certain privileges and immunities all of which are aimed at securing their independence and effective function as joint economic co-operation corporations.⁽³⁾ These immunities vary in accordance with the operational needs and degree of independence, the participating parties have wished to grant to them. Such privileges and immunities impose limits on the application of domestic law or its adjudication in National Courts.

The Public Joint Investments Companies are usually created on the pursuant of treaties among the concerned governments granting them some privileges and immunities vis-à-vis the member states and the host state in particular. In this context, the term ‘privileges’ means that National Legislation is either not applicable to the company or is differently applicable.⁽⁴⁾ Thus, the MPJCs are partially exempted from National Laws. In contrast to this, ‘immunities’ (immunity from jurisdiction and enforcement) do not affect the applicability of National Law but its enforcement, in addition national authorities and

1- Such as the Arab Petroleum Services Company (APSCo) which was established in 1977 according to an agreement signed between the Member States of OAPEC in 1975. The company is based in Tripoli, Libya. It is one of the Companies affiliated to the Organization of Arab Petroleum Exporting Countries. The authorized capital was stated at (100) Million Libyan Dinars while the subscribed capital was fixed at (15) Million Libyan Dinars. The subscribed capital was raised from (15) Million Libyan Dinars to (44) Million Libyan Dinars. See: <http://www.apsco.com.ly/about.html>. Last retrieved 15/4/2012.

2- http://www.arab-ency.com/index.php?module=pnEncyclopedia&func=display_term&id=160459.

3- Such as Arab Investments Company which was established in 1974 as a Joint Arab Company owned publically by 17 Arab states. Its nominal capital is 800 Million US \$(700 Million paid) . This company enjoys, in all partners states territories, all the immunities and privileges enjoyed by Arabs and foreign investors. See: <http://www.taic.com/> last retrieved 11/4/2012.

4- These are the Joint Investments which were established by the Arab Economic United Council (AEUC) within the Arab League or by the OAPEC. These Companies are usually participated by most of Arab countries.

National Courts are prevented from enforcing them by means of constrain.

Among the privileges and immunities granted to the joint companies: are immunities from judicial process; protection of property and assets from enforcement procedures; privileges of communication; exemption from customs duties; tax exemption; and personal immunities of officers and staff.

The purpose of this paper is to explain the scope and content of the privileges and immunities granted to the (APJCs) and to illustrate some of the practical legal issues compared with the examples of precedents of International Euro Public Joint Companies.

2- General background

Although privileges and immunities are not unusual in Public International Law⁽⁵⁾ but so they are in the field of private relations, particularly in the field of business and companies. However, in view of the fact that the privileges and immunities granted to (PJC)s in many aspects, they are identical with those applicable to numerous International Organizations.⁽⁶⁾ Jenks, writing about protecting the independence of international organizations stated that:

“The proper measure of international immunities is what is necessary for the impartial, efficient and economical discharge of the functions of the organization concerned, and in particular what contributes to the effective independence of the organization from the individual control of its separate members exercised by means of their National Law and Executive authority as distinguished from their collective control exercised in a regular manner through the appropriate international organs. This is not a matter which can be settled on grounds of general legal principle or on the basis of a prejudice in favor of or against a particular immunity, facility or privilege. It is largely a matter of international convenience to be determined on the basis of broad experience”.⁽⁷⁾

Like most of the International Organizations, privileges and immunities

5- As all international and supranational organizations enjoy some sort of privileges and immunities visà-vis their member states in order to enable them to perform their tasks independently and impartially. Dr. A.K.Alwan, International Organizations, Bahrain University, Faculty of Law, 2007, p.27 et seq.

6- Ola Engdahl- Protection of Personnel in Peace, Martinuis Publishers, Netherlands, 2007, p. 148.

7- Jenks W., “International Immunities”, 1961, p. 167. See the same meaning in Alwan, op cit, p. 27 et seq.

of PJICs are usually expressly provided in their documents which means they are based on international agreements.⁽⁸⁾ Therefore, they should not be confused with the privileges provided in National Legislation that are adopted by some states, developing countries in particular, to attract and encourage foreign investments.⁽⁹⁾ However, the case of the Arab Industry Organization provides a unique model for granting such immunities. The Member states passed what was called “The Unified Act on Privileges and Immunities of the Organization”. Apparently this Act can be seen as a kind of International agreement agreed by all Members then passed in each country as a Municipal Law.⁽¹⁰⁾

It should be noted that the status of PJC though they are created according to treaties, they are similar to that of International Organization. In principle, International Organizations enjoy full immunity for all their actions regardless of their nature.

The status of PJs are similar to that of International Organizations as they both enjoy privileges and immunities vis-à-vis other states. The scope and

8- See for an example Article (XIII) of the Memorandum of Understanding on Establishment the Asian –China Centre between the Governments of the Members states of the Association of Southeast Asian Nations and the Government of The People’s Republic of China signed on 25th of October 2009. It states that:

“Privileges and Immunities on Property, Funds and Assets.

1. The Centre, its property and assets shall enjoy immunity from proceedings in the courts except in so far as in any particular case it has expressly waived its immunity. It is, however, understood that no waiver of immunity shall imply Waiver of immunity in respect of the execution of judgment, for which a separate waiver shall be necessary.

2. The provisions of this paragraph shall not apply in case of civil proceedings related to disputes arising out of contracts and out of damage caused by a vehicle.”

<http://www.aseansec.org/15thsummit/MoU-Establishing-ASEAN-China.pdf>. Last retrieved in 17/4/2012.

9- See examples of legislations concerning foreign investments: Foreign Private Investments in the Latin American; Free Trade Area, UN publications 60, 11. G.5, E/CN. 12/55 April 1961. Investments Laws and Regulations in Africa, UN Publication, Sales No, 11. K.3.E/CN. 14/INR/ 28/ REV 2. In Libya see: the Act No 37/1968 concerning the investment of foreign capital. The text of this law was published in 37 L.O.G. Year 6, August 10, 1968. In Morocco, see the Investment Charter No 383 of 31 December, 1960. In Lebanon, the law No 38/ May 22, 1967; the text of this law was published in the Lebanese Official Gazette, May 25, 1967. In

10- The Unified Act on Privileges and Immunities of the AIO was agreed by the Highest Commission of the organisation in its Meeting in Riyadh of Saudi Arabia in March 1976. This law was passed afterwards by the participating states as a national law in each state. The Unified Act contains four chapters: Privileges and Immunities, Personal Immunities, Relationship between States and the Organisation and General Provisions. See Ammer, op cit p. 132 et seq.

nature of their respective privileges and immunities are similar. In principle they both enjoy immunity for their actions regardless of their nature. However, their privileges and immunities are limited in two ways:

Firstly, the geographical scope is in principle, limited to the states which are members of the joint company in question. Third countries are not bound by the rules laid down in the entity's statute unless they have explicitly or implicitly recognized and accepted them.

Secondly, the privileges and immunities granted to Public Joint Investments are conditioned by their functions (principle of functional immunity). The reason underlying that they are created by their Member States for carrying out specific functions. Therefore, they enjoy privileges and immunities only to the extent necessary for the exercise of those functions. Activities outside the functions entrusted to these investments entities (*ultra vires* activities) are not covered by its special status.

3- Partial Exemption from National Law

As a rule, Public Joint Investments, irrespective of their legal forms,⁽¹¹⁾ are only exempted from National Law to the extent that privileges have been granted to them. For other activities, they are subject to National Law.

The reason for this limitation is that (PJIs) are engaged in business and economic activities, therefore in many aspects they deal just like Private law companies. On the other hand, they aim to achieve public interests of

11 - In addition to the large number of legal types which the venture could take the partners are able to contrive other forms as there are no restrictions on them to adopt the most suitable forms to their projects. Thus, parties may adopt the form of Joint Stock Company as known in the Civil Law countries or Limited Liability Company or the form of private companies as known in Britain. If so the venture, most likely, takes the form of a company limited by shares. On the other hand, partners may prefer that their economic relations be governed not by the National laws but by a body of rules mainly based on International agreements. These economic relations may take either the form of an international Company or International Organisation. Therefore, (MAJI) are formed in different types of business forms. Some of them are formed as National Companies such as (ASRY) and others as International Companies such as: Arab Company for Petroleum Services and other as International Organization such as: Arab Organization for Industry: Salem Ghumidh, op cit, p 55 et seq. Shahata I., "Different Forms of Creating Arab Joint Ventures". A legal study submitted to the First Arab Joint Ventures Conference, Cairo, December 14-18, 1974. Published by AEUC, Cairo 1976. Kahn P., "International Companies, A Study of Companies Having International Legal Status", 3 J.W.T.L. 1969, P. 498; Hazem H., "Diplomatic Protection of Joint Ventures", Thesis, Ain Shams University, Cairo 1981, pp. 113 .119.

the contracting parties; hence they may have some privileges that cannot be granted to companies of private sector. Public Joint Companies are therefore subject to the sovereign power of the state on the territory of which they carry out their activities (principle of territoriality).⁽¹²⁾ A state's sovereignty includes the power to regulate and control all activities within its territory. Public Joint Companies are therefore subject to National Law unless a clear and unequivocal exemption has been granted.⁽¹³⁾ The rule that Public Joint Companies are only partially exempted from national law is fully in line with the principle of functional immunity. As outlined above, privileges and immunities are not end in themselves; they are only granted to ensure that the joint company in question can carry out its functions independently. Where a company functions are not affected, there is no need to grant privileges and immunities. These general principles apply to most of the Joint Companies

12- Georg Gruber and Martin Benisch, Privileges and immunities of the European Central Bank, Legal Series, NO 4 / June 2007. P.7
13 - Compare Protocol No 36 on the privileges and immunities of the European Communities (OJ L 152, 13.7.1967, p. 13), as amended by the Treaty of Nice (OJ C 80, 10.3.2001, p. 1).

participated by Arab countries within the AUEC⁽¹⁴⁾ and OAPEC.⁽¹⁵⁾ Most of these companies are only exempted from National Law to the extent that privileges have been granted to it. These exemptions include Custom duty, exemptions from financial and administrative restrictions on holding and depositing of money in different currencies, exemption from direct taxes on immovable and moveable properties, fund and assets, and governmental financial support. Nevertheless, freedom from customs duties and exemptions from taxation are the most important fiscal immunities.⁽¹⁶⁾

14- The Arab United Economic Council adopted the formula of joint investments since 1973 to fulfil the objectives of the Arab Convention of Development and Economic Integration. Therefore, various arrangements have been made between Arab States in different fields of investment activities and many agreements establishing joint ventures have been signed, though only few of them have, in reality, been created. These Companies are divided between the participants in AUEC; for instance: Arab Mining Company in Jordan, Arab company for Developing Animal Property in Damascus, Arab Company for Medicine and Medical Equipments in Jordan and Arab Company for Industrial Investments in Baghdad. The Conventions of these Companies are very similar and any one of them will be sufficient as an example. Therefore, Arab Mining Company is chosen as a model because it is the oldest and also the Bahrain Government is a partner.

The agreement establishing this venture was prepared by the Arab League and agreed by the Secretariat of the Arab Economic Council by its Resolution No 661 in the 23th General Meeting on June 6, 1974. After discussion in the 24th meeting, the Council agreed the provisions of Association and the Contract of Incorporation. However, the location of the company was left to an agreement between the states which wanted the Company to be in their territory on condition of approval by the members of the economic council. The Statutes of this company have been amended to allow other states to participate in the company.

15- The agreement establishing OAPEC provides that the parties, in order to fulfil their full co-operation, shall establish joint ventures. Therefore, five joint companies have been established: Arab Oil Tanker Company which was established on May 6, 1972, located in Kuwait; Arab Company for Building and Ships Maintenance (ASRY) on December 8, 1973, located in Bahrain; Petroleum Investments Arab Company on July 11, 1974 located in Dhammam in Saudi Arabia; Petroleum Services Arab Company on November 23, 1975, located in Tripoli Libya; and Engineering Investments Arab Company on July 18, 1981 located in Abu Dhabi. Agreements of these companies were composed in a similar style so they included, with very simple differences, the same chapters and provisions. Even so, the first four agreements were followed by three Annexes: statutes, conditions of operations, and settlement of disputes; meanwhile the fifth agreement was followed only by two annexes as it was established after the OAPEC Tribunal Court had been formed.

16- In regard to the holding and depositing of money in different currencies, many joint ventures have been granted such immunity. For example EUROCHEMIC was authorised to acquire, hold and use certain currencies and the contracting states undertook to grant the company any necessary authorisation for its currency transaction. See Art 9 of the Convention. The Ethiopian Government undertook to provide the company with currencies in which it has to make payments in return for an equivalent amount in Ethiopian currency determined by applying the rate of exchange fixed by the State Bank of Ethiopia in accordance with the Rules of the IMF. Ethiopia is to provide foreign exchange for the purchase of equipment and fuel necessary for the operating the company. See Arts 9 & 10 of the Treaty.

3.1- Exemption from Import and Export Prestrictions

Most of the agreements on the establishment of PJIs provide them with exemptions from Customs duties and similar charges as well as exemptions from import restrictions for raw materials, machinery and whatever goods are necessary to their operations. For example, EUROCHEMIC⁽¹⁷⁾ has been exempted from all Customs duties and similar charges. It is also exempted from all import restrictions on raw materials, capital equipment and scientific and technical material necessary for its installations and operations. It is also exempted from duties or restrictions on materials produced by the company and exported to contracting states.⁽¹⁸⁾

The Convention on the establishment of EUROFIMA⁽¹⁹⁾ provides that the Government shall take appropriate measures, where necessary to ensure that imports and exports of railway equipment in connection with the operation of the Company shall not entail additional taxation or duties which would not be incurred if the same equipment were imported or exported directly by the railway authorities.⁽²⁰⁾ The parties undertook to grant the company appropriate measures to facilitate Imports and Exports of equipment and to ensure the transfer of funds required for the company.⁽²¹⁾

The Member States of Air Africa undertook to harmonize their respective Legislations so that the aircrafts and other equipments necessary for the

17- The European Company for the Chemical Processing of Irradiated Fuels (EUROCHEMIC) was established as a Joint Stock Company by twelve countries under the auspices of the European Nuclear Energy Agency (ENEA), a specialised agency of the OECD. The purpose of EUROCHEMIC is to carry out research and industrial activities relating to the processing of irradiated fuels and the use of products resulting therefrom, to contribute to the training of specialists in this field and thus to promote the production and peaceful use of nuclear energy.

18- The agreement also provided that materials imported under such exemptions cannot be resold in the territory of the country into which they were imported except under conditions agreed with the government of that country. Art 8 of the Convention.

19- The European Company For the Financing of Railway Equipment (EUROFIMA) was established as a Joint Stock Company by Sixteen European Countries to facilitate the modernization of the equipment of the European railway network on a standardized and integrated basis, with a unified financing system. The company is to supply on the best possible terms to its shareholders or, with the guarantee of one or more shareholders, to other railway enterprises, equipment of a standardized type or performance needed for their operations. To that end, it is to arrange for the manufacture of such equipment, either for its own account or for the account of the railway enterprises concerned. Equipment manufactured for its own account is to be rented or sold to said railway enterprises. The company is empowered to borrow in order to supplement its own capital resources.

20- Art 7(b) of the Convention.

21- Arts 8 & 9 of the Convention.

company's operations might be imported into their territories free of Customs duty and turnover tax or any similar charges. They also undertook to accord the company full funds and to have available foreign currencies necessary for its activities.⁽²²⁾ In the case of the Franco-Ethiopian Railway Co, the parties agreed to exempt it from customs duties on the importation of equipment, fuel and any other supplies which are necessary for its operations and are intended exclusively for that purpose.⁽²³⁾

Finally, the Convention on the establishment of Basel-Melhouse Airport provides exemption from Custom duties for all the equipment and materials imported to France for the purpose of construction of the Airport and its operations. This exemption is also granted in the case of re-exportation.⁽²⁴⁾

Like most of above mentioned international precedents, most of the Public Joint Companies participated in by Arab Governments have been granted the same privileges. They enjoy exemption from import duties on goods, equipment, spare parts and raw materials to be used for their operations.⁽²⁵⁾ The exemption in many cases is inclusive such as in the case of the (ASRY) Arab Ship Building and Repair Yard; the Article 13 of its agreement states that:

“Such raw materials, capital equipment and machinery and goods necessary for the operation of the company, shall be exempted from all customs duties or charges of like effect and from all import restrictions except those related to the health and public security”.⁽²⁶⁾

3.2- Taxation Exemption

Generally, constituent instruments of AJPCs contain provisions concerning

22 - Paragraphs 2 & 3 of the Annex to the Treaty.

23- Art 7 of the Treaty.

24- Art 5 of the treaty provides that if the Airport sold this equipment to other persons, the buyer must pay the customs duty and all other related charges. Dr. Salah Ammer, International Joint Ventures (text in Arab) Dar El Kitab Ala'arbi, Cairo 1984, p. 62.

25- Ibp Usa, USA International Business Publications, Arab League, League of Arab States Business Law Handbook, USA, 2007, p. 107.

26- See also: Art 5 of the agreement of the Mining Arab Co, Art (5/4) of the agreement of the Arab Company For Medicine Productions, Art (6/5) of the agreement of the Arab Co for Industries Investments, Art (59/1) of the Convention of The Islamic Development Bank, Art (14) of the Agreement of the Arab Company of Petroleum Investments, Art(17) of the Agreement of the Arab International Bank For International Trade and Development.

their tax exemptions in the state members' territories. The tax exemption varies in accordance with their functional needs and with the balance of interests of the participating states. In some instance, they have been granted exemptions from taxation on the ground that no member state should derive any national financial advantages by taxing funds jointly owned with other states. The additional rationale supporting these tax exemptions is the same as for privileges and immunities in general, that is, to give Joint Companies the functional independence necessary to free them from national control and to enable them to discharge their responsibilities impartially on behalf of all their members.⁽²⁷⁾ For example, the Treaty on the Establishment of EUROCHEMIC stipulated that the company shall be exempted in the Headquarters State from all direct taxes which might be imposed as regards its property, assets and income as well as from all fees and taxes upon the establishment of the company, subscription or increase of capital, issue of shares, dissolution, or winding up and other formalities which its activities may require in the Headquarters State. It is also to be exempted in the Headquarters State and in other members' countries where its installations are located from fees and taxes upon the acquisition of immovable property and from registration fees. Moreover, the company is to be exempted from taxes of an exceptional or discriminatory nature, levied by the Headquarters State. These exemptions are not, however, to apply to any fee or tax charged in respect of any public utility services.⁽²⁸⁾

According to the Additional Protocol to the Convention on the Establishment of EUROFIMA, Switzerland granted to the company for as long as it maintains its Headquarters in Switzerland exemption from:

1. Taxes on income, capital, and reserves.
2. Stamp duties on issue of shares and instruments representing loans placed abroad that not placed in the Swiss stock market,
3. Taxes on dividends paid,

Similarly, parties to the Convention of the International Moselle Company stipulated that the company should not be subject to any heavier taxation than would be levied if the work were done directly by the Governments

27- Ammer. op.cit, pp. 50, 101, & 144.

28- Art (7) of the Convention..

of the contracting states. For this task they provide that the company shall be exempted from taxes on Incorporation's procedures, increase of capital, extension of duration, winding-up and loans granted by the contracting states, and on the investment of capital in its permanent establishments. In addition, it has been exempted from taxes on its income and operations and on purchases of immovable property (except those the German Tax Authority reserves the right to collect), and from turnover taxes on transactions between the company and the authorities of the contracting states.⁽²⁹⁾

Other Public Joint Investments have not been granted full tax exemptions⁽³⁰⁾ For example, the Franco-Ethiopian Railway is subject in the territories served by the railway only to the taxes to which it was liable at the time the treaty came into force, calculated on the basis of and at the rates prevailing at that time. Income of any kind in the form of wages, salaries, pensions, rents, dividends and interests, paid or distributed by the company is subject to tax in Ethiopia except for income received by the French state, French public entities, individuals and juridical persons normally residing or having their Registered Office in France or in states which are members of the French Community.⁽³¹⁾

Finally, many other Public Joint Companies such as the Luxembourg Railway Company, British Commonwealth Pacific Airlines and Basel-Melhouse Airport have not been given a special tax status in their constituent instruments. Therefore, they are subject to taxation in their host states.⁽³²⁾

Generally, the fiscal immunities granted to the Public Joint Companies participated in by Governments of Arab countries do not differ from those of other International Public Joint Corporations. The constituent instruments of many of them include provisions concerning their tax status in the participating states. Most of them have been granted exemption from taxes on income, capital, reserves, profits and dividends. In general, provisions of many of them are, in many aspects even in their words, identical with

29- Art (46) of the Convention

30- Georg Gruber and Martin Benisch, Privileges and immunities of the European Central Bank, op.cit, p. 36.

31- Arts (8- 9) of the Treaty.

32- See Sundstrom G.O., "Public International Utility Corporations. Case Studies of Public International Institutions in Corporate Form". Leiden, 1972.

those of international precedents. For example, Article (11) of the agreement of the Arab International Bank for International Trade and Development contains provisions resembling those of paragraph (3) of the agreement of the Bank of International Settlements.⁽³³⁾ The exemptions given to the Islamic Development Bank, in general, do not differ from those presented to IBRD.⁽³⁴⁾ Even though, the agreement of the Islamic Development Bank provides them in more detail. It states:

“1. The bank, its assets, property, operations and transaction shall be exempted from all forms of taxes and customs duties. It is also shall be exempted from any obligation of paying such taxes.

2. Securities, bonds and stocks issued by the bank shall be exempted from any kind of taxes;

3. The Bank is to be exempted from taxes of an exceptional or discriminatory nature levied by the Headquarters State;

4. Salaries and wages of the staff shall be exempted from all kind of taxes;

5. Securities, bonds and stock and their profits guaranteed by the bank shall be exempted from taxes of an exceptional or discriminatory nature”.

The fiscal immunities may take the form of providing long term loans without interest or with token interests. They also may take the form of providing real property, such as buildings or land, free of charges or for token cost. The fiscal immunities may also take the form of providing the

33- According to Art 6 of its Charter, the Bank is exempted from:

1. regional and federal taxation on the capital and revenues;
2. taxes on salaries and remuneration of staff other than Swiss Citizens.

Art 15 of the agreement provide that the Bank shall be exempted from all of the following taxes:

- a. Stamp duty and registration fees as well as any other charges on incorporation and solvency procedures;
- b. Stamp duty and registration fees on any elementary issue of securities contributed by any Central Bank, Monetary Fund, group of banks or any other person before or during association;
- c. All taxes on the capital, reserves and dividends;
- d. All forms of taxes on contracts the bank conclude enter concerning loans of Germany's compensations.
- e. Taxes on remuneration, salaries and wages of staff members other than Swiss.

See Ammer, op.cit p.47.

34- Generally, IBRD is exempted from income and all other direct taxes. The USA Government also exempted the Bank from stamp duty on its securities and their profits given to non residences or companies governed by other countries legal systems. Moreover, IBRD is exempted from all direct taxes. See: Najam, A, *The Legal Aspects of International Bank for Reconstruction and Development*. University of Cairo, 1978 (thesis) p.128, Kujiet A., “The Legal Status, Privileges, and Immunities of the Specialised Agencies”, the Netherlands, 1984, p.89.

same support that the citizens of the host state gain when they have the same business.⁽³⁵⁾

3.3 - Communications' Privileges:

These privileges are usually granted to International Organizations. Therefore, only few of joint economic ventures such as IBRD and IMF enjoy them. Article XVIII of the IBRD's Charter provides the bank with these privileges and they were the matter of discussion by the Federal Communications Commission (F.C.C).⁽³⁶⁾ The case in short is as follows. In 1949 the United States Cable Companies proposed to adopt revised tariffs of charges under which the Bank⁽³⁷⁾ would be charged the same commercial rates for its official communications messages as were payable by private persons. Before July 1, 1949 the Bank had paid the same rates as applied to governmental messages sent from United States to other countries. These rates were substantially lower than the commercial rates. The Bank filed a complaint with the Federal Communication Commission which contended that the revised tariffs were unlawful on the ground that, so long as special governmental rates existed, the bank was entitled to the same standard of

35- This kind of privileges is more common in Bilateral Joint Investments for the investments in the form of National companies such as For example the Libyan Government undertook to provide the Libyan Romanian Joint Companies with the necessary land to establish their production constructions and social services facilities and the land to be used as farms. The rent of the land shall be one Libyan Dinar (equal \$ 0.80) yearly for each hectare (10000 sm). The Libyan Government also undertook to provide the company with the necessary long term loans at annual interest of 6.5 % on condition that these loans are used in reclamation of land, and drilling water wells and buildings. These loans, as well as their interest should be repaid within twenty five years from the date of incorporation. The companies are guaranteed to be given other loans to be used in purchasing equipment and machinery. They are also guaranteed to be given other necessary loans for the companies' operations. The Libyan Government undertook to grant these companies the same support as Libyan farmers to import concentrated fodder and chemical fertilizer and insecticide .

36- International Bank For Reconstruction and Development and International Monetary Fund v All American Cables and Radio, The Commercial Cable Company, Mackay Radio & Telegraph Company Inc., R.C.A Communications Inc., The Western Union Telegraph Company. See F.C.C. Docket No 9362. This case was elaborately discussed by Gold J, "The Interpretation by the International Monetary Fund of its Articles of Agreements", 3 I.C.L.Q, Vol. 8, 1954, p.265.

37- The case was brought in the terms of the IBRD's Charter, but the same question arose under the International Monetary Fund's Charter. The two organisations were associated as complainants. The discussion should thus be understood to apply equally to the International Monetary Fund.

treatment and should be charged the governmental rate. The Bank's case was based mainly on Article IX section 7 of its Charter, which had been given "full force and effect" in the United States, its territories and possessions by section 11 of the United States Bretton Woods Agreement Act. The Executive Directors of the bank interpreted Article IX(7) to mean that it embraced the rates charged the Bank for its official telecommunications messages. The Cable Companies argued that Article IX(7) applied to such matters as priorities and freedom from censorship but not rates, and the interpretation was not conclusive. The commission held that the interpretation was binding on the United States Government and therefore on the Commission.⁽³⁸⁾

In respect of Joint Investments participated by Arab Countries Governments, only very few of them, in particular those in the form of international Organizations, enjoy communication privileges. These are the Multilateral International organizations. However, the privileges granted vary from one to another. For example, Article 57 of the Agreement of the Islamic Development Bank provides that communications of the Bank shall be treated equally with those of any other International Organization. Communications of other organizations such as Arab International Bank for Trade and Development are considered as the communications of other states. Article (14) of its agreement states that:

"The member states shall grant the Bank's official correspondence the same preferential treatment as granted to the official correspondence of other states".

The Unified Act on the privileges of the Arab Industry Organization widely

38- It was held that: "We believe that the question as to the application of the term "treatment" in the Bank and Fund Articles to rates has been conclusively determined by the Bank and Fund Executive Directors' interpretation, by unanimous vote, that the language in question applies to rates charged for official communications of the Bank and the Fund. Under the terms of the Bank and Fund Articles of Agreement, this interpretation, in effect, is final. This procedure for issuing interpretation binding member governments does indeed appear novel; but it also appears to point the way towards speedy, uniform and final interpretation. This procedure is not only an integral part of the Bank and Fund Articles, which have been accepted by the United States, but its use was specifically invoke with respect to questions of interpretation by Sections (12) and (13) of the Bretton Woods Agreement Act; and the United States Congress, by directing that an amendment of the Articles be sought if the requested interpretations were not satisfactory, appears to have recognized in these two sections that the United States is bound by the results of the interpretations. The United States Government is therefore bound by the executive directors' interpretation of the term "treatment" and is under an international obligation to act in conformity therewith".

F.C.C's Decision, para (3) of conclusion. See Gold, *Ibid.*, p.267.

elaborated the communication privileges. Article 11 provides that states shall allow and protect the organization's official correspondence which may use any suitable means including: cipher, especially Diplomat messengers and sealed bags all of which enjoy the same privileges and immunities granted to the diplomatic mission in the Member States. States are supposed to protect the bag's holder who is to carry an official identity. The holder enjoys personal immunity and only can be arrested and his belongings seized after notification to the chairman of the Arab Industry Organization.⁽³⁹⁾

3.4. Limitations on the Granted Privileges

(a) Applicability of National Law

As explained above, the Joint Investments institutions are only exempted from national (host state) law to the extent that privileges have been granted to them. Otherwise, National Law, in particular host state law is applicable⁽⁴⁰⁾ The Joint Investments are therefore usually subject to host state Company Law.

(b) Principle of Functional Immunity

The privileges granted to the Joint Investments should be limited by the principle of functional immunity. As explained above, privileges are only granted to the joint investments to the extent necessary to fulfill their functions. In general, activities outside the scope of its tasks should be subject to National Law. Because of this principle, the exemptions provided for in the Memorandum of Association and Articles of association should be limited to the Joint Investments 'official Activities or to goods for their 'official use'. The term 'official' is defined as 'all activities undertaken pursuant to the provisions of the agreement of association and the company's Statute and all activities required to fulfill the Joint Investments objectives and tasks under the agreement of co- operation or the Memorandum of Association.

There is a legal debate about whether the privileges and immunities granted to Joint Investments only to cover activities which are strictly necessary for the performance of its functions or even auxiliary activities, such as the leasing

39- See a comprehensive study of communication privileges of the AIO in Ammer, op cit, p. 138

40- Georg Gruber & Martin Benisch, Privileges and Immunities of the European Central Bank, Legal Working Paper Series, NO 4 / JUNE 2007. European Central Bank, 2007, p. 12

of premises or the purchase of office supplies, are also covered.⁽⁴¹⁾ As regards the agreements of most Public Joint Investments, it is clear from the wording of Articles of Associations that the privileges granted to such companies cover all activities carried out in the fulfillment of their tasks laid down in the agreement of incorporations and the Articles of Association, including auxiliary activities which support the fulfillment of official tasks. Auxiliary activities required to support the fulfillment of the (PJI) tasks include public relations activities (e.g. the publication of information brochures), the leasing as well as the construction of premises for the investment institution,⁽⁴²⁾ the operation of a canteen or a boarding house⁽⁴³⁾ as well as the purchase of furniture, IT equipment and office supplies.

4- Immunities from Judicial Process

Immunity from jurisdiction means that National Courts are not competent to decide on legal disputes between the investment institution and a third party. Any action initiated against an investment is inadmissible and must be dismissed. The principle of immunity from jurisdiction is a general and well recognized principle of Public International Law and it applies even in the absence of an explicit provision.⁽⁴⁴⁾ It is reflected in provisions of National Law which limit the competence of national courts to organizations and persons who are subject to the jurisdiction of the respective state. However, in

41- In this sense see Arbitration Award of 29 June 1990 concerning a dispute between Germany and the European Molecular Biology Laboratory (EMBL) based in Heidelberg (reported by Kunz-Hallstein, NJW 1992, p. 3069, 3072); Austrian Supreme Court (OGH), Judgment of 11 June 1992, 7 Ob 627/91, cited by Georg Gruber & Martin Benisch, op cit. p. 12.

42- Cf. the Judgment of the Austrian Supreme Court (OGH) of 11 June 1992, 7 Ob 627/91, RIW 1993, 237, 238 (with assenting note of Seidl-Hohenveldern) concerning the rented premises of the EPO in Vienna.

43- In the case of Germany v EMBL (reported by Kunz-Hallstein, NJW 1992, p. 3069, 3072) the Arbitration Tribunal considered that the operation of a boarding house was part of the EMBL's official activities because the organization of congresses and seminars (including accommodation for the guests) was part of the EMBL's official tasks. However, the Tribunal denied the official character of the canteen because the EMBL's Headquarters Agreement (unlike the ECB's Headquarters Agreement) limits the privileges to activities which are indispensable to the fulfilment of its tasks. cited by George Gruber & Martin Benisch, op cit. p. 12.

44- This is the modern judicial trend in many countries, see for example: Administrative Court of Bavaria (BayVGH), judgment of 15 March 1995, 7 B 92.2689, Juris and judgment of 8 July 1999, M 29 K 97.8476, GRUR Int. 2000, p. 77; Rensmann, pp. 319-321; Kunz- Hallstein, GRUR Int. 1987, p. 819, 821 Cited by Benisch, op cit, p 15. Note 33..

contrast to International Organizations such immunities are not used in Joint Investments sector. However, recently, some sort of such immunities appeared in agreements of associations of many public investments, in particular, those which were established in the form of International Organization or international company.⁽⁴⁵⁾

4.1- The question in International precedents

Property and assets of many of Public Joint Investments enjoy immunity from legal process and enforced executions. There fore, many cases are inviolable. They are neither to be inspected, confiscated, seized, appropriated nor to suffer any similar act or measures of compulsory procedures.

Archives and documents of these investments are immune and inviolable. Furthermore, participants are usually obliged to secure the continuous and full utilization of joint investments properties in their respective territories. For example, the Convention providing for the establishment of EUROCHEMIC provides that the installations and archives of the company shall be inviolable, and that its property and assets, as well as the materials shipped to or by it, shall be immune from all administrative forms to requisition, expropriation or confiscation. The Convention stated that: “The property and assets of the Company are not to be seized or be subject of measures of enforced execution, except by an order of a Court. Nevertheless, the installations and the materials necessary for the company’s activity may not be seized or be subject of measures of enforced execution”.⁽⁴⁶⁾

However the contracting parties reserved the right of the competent authorities of the headquarters’ state and other countries where installations and archives in their respective territories, to ensure execution of judicial decisions or regulations for protection of public health and security precautions.⁽⁴⁷⁾

Similarly, the Agreement of the Bank for International Settlements provides that the Bank, its assets, rights, deposits and all other properties, whether in

45- See: Georg Gruber and Martin Benisch, Privileges and immunities of the European Central Bank, op.cit, p. 15.

46- Art (6/b) of the Convention.

47- Art (6/c) of the Convention.

peace or war, shall be immune from all administrative forms of requisition, expropriation or confiscation. They also shall not be subject to restriction on importing or exporting gold or foreign currencies.⁽⁴⁸⁾ However, properties and assets of the bank can be seized or be subject to measures of enforced execution only by an order of courts.⁽⁴⁹⁾ Similarly, assets and properties of IBRD, wherever they are situated and regardless of the holder, enjoy immunities from all sorts of administrative forms of requisition and enforced execution unless carried out upon a court order based on a final judgment.⁽⁵⁰⁾

4.2- The Question in Arab Public Joint Investments

Referring to the Public Joint Investments of Arab countries, apparently, assets of only few of them are inviolable. A larger number enjoy immunities from enforced measures, though the majority does not enjoy any judicial process immunities.

The agreement on establishment of the Arab International Bank for International Trade and Development provides that the Bank and its branches, agencies, offices, and archives, in territories of member states, shall be inviolable and be not subject to inspection regulation, administrative measures or judicial and accounting inquisition. The accounts of customers and their deposits shall be also inviolable.⁽⁵¹⁾ The Agreement of Islamic Development Bank is more limited in these immunities. Article (45) provides that archives and all other documents owned or held by the Bank, wherever they are, shall be immune from any violation.

On the other hand, the Arab Industry Organization enjoys very wide immunities. For example, the archive as well as all other documents are considered "Top Secret" and therefore, they are inviolable. Buildings owned or equipped by the Arab Industry Organization, its units, branches and offices, wherever they are situated, are inviolable. Hence host state's security officers are not allowed to enter these buildings for any functions related to their duties unless they are expressly permitted by the chairman of the AIO itself.

48- Art (10) of the agreement.

49- Ammer, op.cit p. 43.

50- Art (3/7) of the IBRD Convention. See also Kahn A., "Bretton Woods Recommendation in the light of International Law", NY.ULR. 1956, p.20. Najam, op.cit, p.125 et seq

51-Arts (12) & (13) of the Agreement

Moreover, the AIO is authorized to establish a special security board having the jurisdiction officer's authority.⁽⁵²⁾

Concerning immunities from legal process, one may say that all of the Public Joint Investments in the forms of international company and international organization enjoy such immunities. For example, Article (9) of the agreement of the Arab International Bank for International Trade and Development states that the bank and contributions of shareholders in its capital as well as all deposits shall be immune from nationalization and all other administrative forms of requisition, expropriation or confiscation or to be seized or subject of judicial enforced execution. However, Article (11) of the agreement provides that only by order of a court based on a final judgment, the property of the bank and its profits can be subject to enforced execution. Provisions of the aforesaid articles conclude that the bank itself and contributions of shareholders in its capital and deposits cannot be seized or be subject to enforced execution. Meanwhile, profits and properties other than shares can be subject to these measures. These provisions may encourage debtors and insolvent persons to deposit their property in the bank to escape detention or be subject to any enforcement measures.

The Agreement of the International Development Bank avoided these consequences by providing that assets and properties of the bank shall be immune from all forms of requisition, expropriation, confiscation or seizure unless decided by a Court.⁽⁵³⁾ This article was supported by article (53) which provided that the assets and properties of the bank wherever situated, regardless of their holder, shall be immune from all forms of Legislative and Administrative Requisition, expropriation, confiscation, nationalization and inspection. Putting articles (52-53) together, members intended to immunize their bank from all the enforcement measures except those decided by order of a court.

Agreements on the establishments of OAPEC joint companies provide similar provisions. For example, Article (11) of the agreement of the Arab Shipbuilding and Repair Yard Company (ASRY) stated that: "The host state is obliged to immune: the company, its assets and property from nationalization

52- Art (2) of the Unified Act. See also Ammer, op cit, p. 136.

53-Art (52/3) of the Agreement.

and all other forms of administrative requisition, expropriation, and confiscation. Other members are obliged to immune the company's branches from similar measures. Only by order of a court, property and assets of the company can be subject to enforced execution".⁽⁵⁴⁾

Agreements on establishment of the AEUC's companies refer to the treaty of encouragement of Arab investments. According to this agreement host states are not to: nationalize, confiscate or expropriate the Arab investments which carry out activities in these states.⁽⁵⁵⁾

On the other hand, most of the public joint ventures in the form of National Companies are not immune from enforcement measures. Therefore, how can participants protect their property, and how they can regain their contribution in the capital of such ventures in case the host state nationalizes or expropriates the assets and property of these companies?

According to international customary law, states may nationalize foreign capital. The matter was described as a national measure based on the rights of sovereignty which has been recognized by American jurisprudence as "the Act of State Doctrine".⁽⁵⁶⁾ Hence, a state may nationalize all the assets and property within its territory regardless of the possessors. Accordingly, PJICs which are not immune from enforced legal measures, in their agreement or separate agreements, may be nationalized or be subject to other measures as the property owned by foreign countries devoted for non official matters is not immune from enforcement measures. According to the international judicial decisions, a state breaks its international obligations if it agreed not

54-See similar provisions in the Art (12) of the agreement of the Petroleum Investment Co and Art (14) of the agreement of the Petroleum Services Company.

55-This agreement was agreed by the parties and passed by the Council Decision No (648).

56-See: Vazquez C. Manuel, "The Four doctrines of Self-Executing Treaties", 89 A.J.I.L. 1995, p. 695; Frederic L. Kirgis (JR), "Understanding the Act of State Doctrine's Effect", 82 A.J.I.L. 1988 p. 58-80; Malvina Halberstram, "Sabbatino Resurrected; The Act of State Doctrine in the Revised Restatement of US Foreign Relations Law", 79 A.J.I.L. 1985, p. 68-91; Karl M. Meessen, "Antitrust Jurisdiction Under Customary International Law", 78 A.J.I.L. 1985 p. 92; Von Mehren and P., Nicholas Kourides, "International Arbitrations Between States and Foreign Private Parties: the Libyan Nationalisation Case", 75 A.J.I.L. 1981, pp. 476- 552; Micheal Singer, "The Act of State Doctrine of the United Kingdom: An Analysis, with Comparisons to United States Practice", 75 A.J.I.L., 1981, pp. 283-323. Huntley, A. Kapranos, "The Protection of Trading Interests Act 1980: Some Jurisdiction Aspects of Enforcement of Antitrust Laws", 30 I.C.L.Q 1981, pp. 213-233.

to nationalize foreign property then afterwards did so.⁽⁵⁷⁾ Therefore, it is very judicious to protect PJICs by immunities from enforcement measures in their agreements or any other related documents.

5-Personal Immunities.

In several instances, the contracting states have found it necessary to make special provisions concerning the immunities of staff and officers of the Joint Public Investments. The personal immunities vary from one entity to another, even though most of them take the form of exemption from taxes on their salaries and customs duties on their personal belongings. However, these privileges are usually not granted to the citizens of the host states. The striking examples of such privileges are in the Bank for International Settlements, Basel-Melhouse Airport and EUROCHEMIC.⁽⁵⁸⁾

Similarly, documents of many of the joint investments participated in by the Arab Governments granted the staff such immunities. However, these immunities, in some cases, may take the form of exemption from legal process and judicial procedures for acts performed in official capacities. For example Article (15) of the agreement of the Arab International Trade and Development Bank provides that the Chairman and Executive members of the Bank as well as all of the staff members shall not be subject to the labor, employment, salaries, wages, and social securities regulations applicable to the officials of the government, public organizations and public enterprises. They shall not be subject to travel restrictions applicable to employees and workers. They are also given exemption from judicial procedures for acts performed in official capacities in addition of exemption from visas and requirement for registrations as foreigners.

The agreement of the Islamic Development Bank went further; it provides the Governors, their Assistants, Executive Managers and Staff with the following:

1. Exemption from legal process for acts performed in official capacities

57-See the decision of International Permanent Court of justice in the case of Certain German interest in Polish upper Silesia. Gillan White, "Nationalisation of Foreign Property", London, 1961, p. 4 et seq; Sadek H.A, "International Protection of Foreign Property", (text in Arabic) Addar Al Jam'ea, Beirut, 1981, p.44

58-Ammer op.cit, p. 47, 101 & 144

2. Exemption from visas and all related restrictions,
3. Their personal effects are provided with immunity and the facilities enjoyed by diplomatic representatives
4. The same facilities made available to foreign diplomats of the same rank.

The Unified Act of Arab Industry Organization granted the widest immunities. Firstly, the whole staff has been granted exemption from all forms of taxes and public charges on salaries, wages and remuneration. Secondly, the Unified law provides the highly ranked officials with the following privileges and immunities:

- 1- Immunities from arrest and detention and their personal effects from the seizure ;
- 2- Immunities from legal process, even after the lapse of official appointment, for acts performed in official capacities. Their documents and deeds are inviolable;
- 3- Privileges to use, freely, ciphers and receive their correspondence by means of special messengers or sealed bags;
4. Enjoy facilities made available to foreign diplomats of the same rank.
5. The staff and their families are exempted from immigration formalities and restrictions.

It should be noted, as Jenks rightly observed, that privileges and immunities granted to the PIJVCs in the constituent instruments or any other document have effect within the territories of the contracting states, but are not necessarily binding on third states.⁽⁵⁹⁾

6- Results and Recommendations

As with other International Joint Investments, the Arab Public Joint Companies, regardless to their legal form, enjoy privileges and immunities in order to ensure their independence and proper functioning. Accordingly, most of them are partially exempted from the rules of National Laws which are considered to be incompatible with their independence and their autonomous power to determine their internal organization and administration. However, they are fully exempted from National Laws. Since the investments premises are part of the host state territory and not an extraterritorial area, the host state

59 - See on this subject Jenks, op.cit, p.166.

law applies unless privileges have been granted to the investment entity.

Privileges only cover the investment official activities which are aimed at the fulfillment of its functions (principle of functional immunity). This includes the investment core tasks as well as auxiliary activities which are necessary for the fulfillment of the core tasks, but not activities outside the scope of functions. Finally, the privileges granted to the joint companies are qualified by the principle of loyal cooperation.

In addition, some investments enjoy immunities from national jurisdiction. This means that in principle National Courts are not empowered to decide on legal disputes involving the investment. Actions against such investments are inadmissible and must be dismissed. However, the investment's immunities from jurisdiction are, as should be, limited. Legal disputes which do not fall under the exclusive competence of the Court may be brought before a special Court Arbitration. The investments immunity is also limited to activities which are aimed at the fulfillment of its functions. No immunity should be applied if the investment waives it.

Furthermore, some corporations enjoy immunities from enforcement. This means that claims against them may not be enforced by administrative or legal measures of constraint without prior authorization of courts. Such authorization may only be granted if the measures do not jeopardize functioning and independence of the corporation. Immunities from enforcement should cover the corporation's premises, its movable assets, archives and communications.

Members of the Executive Board and Staff of some corporations enjoy privileges and immunities to enhance their ability to fulfill their tasks fully independently and impartially. It is emphasized that the privileges and immunities are not personal benefits; they are granted solely in the interests of the companies. Therefore, the concerned company may, under certain conditions, waive them or may even be obliged to do so if an action does not relate to the staff member's tasks.

The implementation privileges and immunities has raised a number of practical legal questions. Some of which could be solved, while others may retain legal disputes and deep debate.

To conclude, it must be stressed that privileges and immunities are not

just benefits granted to the Joint Companies, but are efficient instruments to assure proper functioning of the companies and their independence vis-à-vis Member States. Therefore, it should not be more than they really deserve. And in general, partners should deal with Joint Companies as commercial and economical entities not as political organizations for mutual co-operations.

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