

# The Management Of A Joint Venture Company - A Comparative Study –

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## *Abstract:*

Trade represents one of the most important economic activities in all times and times and is considered today the economic backbone of the state, as it is the scientific through which the material needs of society and the individual are met from goods and commodities, it is managed either by the joint venture manager agreed upon in the contract or by another person chosen by the partners in the joint venture company and called the irregular manager, may be chosen by the judiciary, and the manager deals with third parties in his personal name and not in the name of the company.

Keywords: Joint Venture Manager, Partners, Third Party, Management, Joint Venture Company.

## **First: Management of the Joint Venture Company**

The joint venture company, like other companies, must have a manager who manages this company, and this management or manager is chosen by the Joint Ventures, the management of this company is usually divided between two sources, namely The joint venture manager and the other are the non-managers, and participation in this company results in different types of management, where the manager may be the joint venture manager or each partner who manages part of the company and is the manager of that part, and in fact the appointment of the manager is as follows:

Appointment and dismissal of the manager in the joint venture company The partners in the joint venture company often agree to choose one of them to manage the company's business by agency or on behalf of all the

partners, and the partner who performs the management work is named (The joint venture manager)<sup>1</sup> who deals with third parties in his own name, but for the benefit of the rest of the partners and for their account and is solely responsible for all dealings and actions he performs with third parties<sup>2</sup> and this seer has been adopted by Egyptian jurisprudence<sup>3</sup> if the company's manager is not chosen, the partners may agree among themselves that all of them, whether two or more, will manage the joint venture company without one of them alone, in other words, that all partners in each contract with third parties<sup>4</sup> are bound as joint and several, in the face of third parties, to pay the debts, in application of the general rules in the presumption of solidarity in business in article 47 of the Egyptian Trade Law No. 17 of 1999<sup>5</sup>.<sup>6</sup> The French jurisprudence agrees with this, as it states that if the manager of the company is not appointed, it is managed by all the partners, and each of the partners deals with third parties in his personal name and for the benefit of the company without mentioning the names of the remaining partners, this occurs when each partner in a joint venture company has retained ownership of his share and the partner then invests it for the company's account<sup>7</sup>.

If the ownership of the shares in the joint venture company has been transferred to the partners in common, all the partners carry out the company's business and sign it (on contracts) with third parties, but also for the benefit of the joint venture company, and in this case, as in the Egyptian law mentioned above, they shall be jointly liable for the company's debts and the implementation of all obligations resulting from this contract towards third parties if the company is commercial<sup>8</sup>, in application of the general rule of supposed solidarity in trade matters<sup>9</sup>. The agreement may be that all partners manage the company, provided that each part of the company's business is the competence of one of the partners, as if the partners agreed that a partner will manage his share that he owns in the joint venture company and manage it unit, then each of the partners provides an account of the results of the commercial operations carried out in its part and they divide the resulting profits or losses and in this case each partner in his dealings with third parties is independent of his partners and thus each partner contracts in his personal name and then the results of this transaction and its effects are transferred to the partners collectively in accordance with the agreement between them and in the event that the partners do not agree on the method of management between the partners of joint venture. Each partner in the joint venture company is considered a manager of his share<sup>10</sup> and all of the above is in both in jurisprudence determined by the company's contract, i.e. what the partners agree upon among themselves and the contract determines which of the partners will manage the company in their relationship with each other, if it is silent followed in this area the general rules applicable to partnership

companies and each of the partners with authority in this area, which is what was adopted by the Syrian jurisprudence on the management of the joint venture company<sup>11</sup> the Syrian law also stipulated this in Article No. (52) of the Syrian Companies Law No. 29 of 2011, stipulating (specifying that the joint venture contract has mutual rights and obligations between the partners and its duration) and the Mount Lebanon Court ruled on 3/8/2016 that all partners are responsible before the plaintiff for the debts that occurred on the company (.....) this is because the company's contract concluded between the three partners (X), (Y) and (P) has stipulated in the company's management item that the company's management shall be by everyone according to the contract concluded on 2/4/2015 and signed by the three Joint Ventures, and thus the three partners are jointly liable for the company's debts as stated in the general rules as joint and that solidarity is assumed in commercial matters<sup>12</sup>.

In this regard, the Egyptian Court of Cassation ruled that the establishment of a joint venture company is hidden and that the participation of a number of persons in it and their authorization to manage to two of the Joint Ventures according to the contract concluded between them on 7/8/2016, which talks about a private hospital in the Sheikh Zayed area in Egypt and the contract that was concluded was that the hospital is managed by the partner doctor (S, Y, P) and the administrative (A. M. A.) and the contract was hidden with each of the other three parties, each of (P. M. H) K.N., K. and H.T.H., after the hospital fell into trouble with one of the patients, which prompted him to file a complaint against the rest of the partners and claim compensation, and for the lack of reason for the claim, the lawsuit was overturned because the parties in the hospital administration, although they were not present at the time of the lawsuit, but they are responsible for the administration according to the contract concluded and attached to the lawsuit<sup>13</sup>. In fact, we agree with giving shares to The joint venture manager to manage the company in his name and for the account of third parties, i.e. the Joint Ventures, then divides the profits and losses between the partners after the completion of the process or commercial operations that have been completed or in accordance with the contract concluded between the partners, but this method may be the most dangerous in the management of the joint venture company and need to control the work of the manager, but be less effort and simplicity in the management of the company, as for the collective method in the management of the joint venture company, it is a method that may lead to a kind of complexity in dealing between partners, as visions and opinions may differ in commercial dealings between the parties and may be the least successful way in managing the company, but this method provides a kind of guarantee for those dealing with the company, that third parties, where all partners are jointly liable in fulfilling the obligations that arise from the company's management. As

for the last type of management, which is that each person manages part of the company or manages his share, we see that this type is not any connection with the company, and if the agreement is on this type, there is no need for agreement, as each person manages his money and share away from third parties, one of the partners in a joint venture may be a legal person<sup>14</sup>.

Where there is no legal or practical impediment that prevents the participation of a legal person in the joint venture company, as well as at the same time there is no legal impediment to the management of the joint venture company by a legal person (in which he is basically a partner) and to appear before third parties in his name and commercial address that he enjoys before his participation in the joint venture company, and this is not considered as the appearance or disclosure of the joint venture company in front of third parties<sup>15</sup>, the legal personality in this case plays the role of The joint venture manager and at the same time the partner and thus acts as the partner and is considered as if he is doing business for his own account alone, as a result, the legal person is liable against third parties and not for the rest of the partners in the joint venture company<sup>16</sup> and the responsibility of the legal person in this case according to the management system may be asked jointly as we talked a little while ago or may be asked directly responsible for the management of the company in the face of third parties as a result of the work carried out in the management of the company, the manager may be appointed in the joint venture company in the company's contract or by a subsequent agreement between the partners, and if the appointment is made in the company's contract, he shall be considered a statutory manager<sup>17</sup>, if the manager is appointed in the contract, then he may not be removed except in accordance with the conditions prescribed in the contract or by a decision of the judiciary and for legitimate reasons according to French jurisprudence<sup>18</sup>.

If the manager of the joint venture company is not a partner and manages the company, he is called the irregular manager or the non-agreement, as well as if it is not agreed upon in the contract (joint venture company contract) when it is concluded, he is called the irregular or non-contractual manager, where this is stipulated in the canceled Iraqi Companies Law in Article (13) Law No. 31 of 1957 (which came as follows (the management of the company for all partners and management may be entrusted to one partner or a number of partners or another person as stipulated in the system) as for the new Iraqi law in force, when it is examined, the authorized manager is appointed in general in companies, if he did not specify and did not distinguish between the regular and non-formal manager, and the essence of the possibility of distinguishing between the regular and non-formal manager is that the

former is part of the company's founding contract and it is necessary to change it to amend the company's contract<sup>19</sup>.

We have mentioned that the manager in the joint venture company is dismissed either by the partners or by the judiciary, but the result of his dismissal is not the dissolution of the company unless he is a regular manager from among the existing partners in the joint venture company and his dismissal resulted in an important dispute between the partners<sup>20</sup>, the regular manager may not be amended except for legitimate and important reasons such as incapacity, gross error, committing fraudulent acts, etc. The manager may resign, so his resignation is valid and legal towards the partners, but provided that it is not submitted at an inappropriate time, with which the abuse of rights will be realized. However, despite his resignation, he remains liable to third parties with whom he dealt for all the work he has done despite his resignation<sup>21</sup>.

The powers of the manager in the joint venture company are determined by the company's contract and often these powers or authorities are broad not limited only to administrative work or management work, but include all actions necessary to achieve the company's objectives, especially since the manager deals with third parties in his personal name without indicating the names of the partners, as if the manager works for his own account, but he is associated with his partners, he sits and is committed to his partners to convey to them the results of the contracts he made for the benefit of the company.

### **Second: The legal relationship between the joint venture manager and the partners in the joint venture company**

A description of this relationship can be given as an agency without representation, in other words, the manager deals with third parties or is called here by third parties in his personal name and does not announce the names of the partners and therefore does not have any relationship with the partners in the joint venture company, but here his relationship with the manager is limited only, which means that the contract with third parties results are limited between the manager and the results here rights, duties and mutual obligations between them<sup>22</sup> this is what was referred to previously in the characteristics of the joint venture company, where we mentioned what distinguishes the joint venture company from other commercial companies stipulated by the law is that it is hidden in the face of third parties, so it is not known about the existence of the company or its composition because it is not registered in the commercial register of companies.

Committed to this work in the face of third parties, as we mentioned the partner who initiated it, even if the third party is aware of the existence of the company (joint venture company) among the partners, but even if the contracting partner shows him what indicates the existence of the company so that he (to third parties) gives him a kind of reassurance, confidence and guarantee to encourage dealing with him,

the mere fact that third parties are aware of the existence of the company is not sufficient to hold any other partner accountable as long as no one or all of the partners has acted to benefit from their consent to be bound as partners in a company, in this case, the knowledge of third parties is called the existence of partners as factual science<sup>23, 24</sup>.

The Egyptian Court of Cassation has ruled that the establishment of a hidden joint venture company in a transaction does not make the partners responsible for the third party contracting it with one of the partners in his own name, unless it is proven that the partners have agreed otherwise and issued an acknowledgment of participation in the contract, and it is not sufficient to hold the partners directly accountable before third parties the abstract statement that may be issued by one of them that he is a partner in the transaction if this statement is not accompanied by an acknowledgment that he is a party to the contract, the participation of some individuals in a transaction does not necessarily mean that they are a party to the contract concluded for this transaction with third parties until they are all asked before it, if the appealed judgment has inferred from the case papers that and what the trial judge obtains in this regard is such as understanding the facts in the case and assessing the evidence presented therein, the appealed judgment is not contrary to the law<sup>25</sup>.

The opinion of Court of Cassation was successful in its decision, as one of the advantages of the joint venture company is concealment, and that the disclosure of concealment does not mean that the company has become public and the position of the Jordanian legislator was wonderful in the Companies Law in force No. 57 of 2006, where the article stipulates the following (third parties have no right of recourse except to the partner with whom he dealt in the joint venture company), if one of the partners acknowledges the existence of the company or issues evidence to third parties of its existence among the partners, it may be considered an already existing company and the partners become jointly liable to third parties, it hopes that the Iraqi legislator in the event of the inclusion of the joint venture company in the Companies Law to add to it the following proposal (in the joint venture company, the partner dealing with third parties is solely responsible for the actions he has taken

towards third parties). Because there is no guarantee except the liability of the partner (The joint venture manager) or the liability of the person who dealt with him, and he may not file lawsuits directly against any of the partners in the joint venture company, also, third parties cannot refer to one of the partners on the pretext of wealth without reason for the benefit he has reached as a result of the joint venture manager's contract, as the partner in the joint venture company other than the manager considers the reason for his partnership to be the company's contract concluded between the partners with the manager, however, the creditor of the joint venture manager can refer to the partners in the joint venture company in an indirect action to claim rights before the (joint manager)<sup>26</sup>.

From what we have noticed, if the joint venture partner deals in his personal name with third parties, he is considered responsible in all his funds in the face of this third party, even if he agreed in the contract (joint venture company contract) to determine his responsibilities with the rest of the partners, and because, as we have already mentioned, the contract between the partners in the joint venture company is not invoked in front of third parties or in the face of third parties, and the hidden partner in the joint venture company is not subject to commercial or industrial profits tax, but the one who is subject to this tax is the apparent partner only in front of third parties who conclude transactions in his name, however, this does not prevent the apparent partner from recourse to the rest of the partners in the joint venture contract with the expenses and tax he paid, because in fact and in fact he works for them, and this is what was stated by a ruling of the Egyptian Court of Cassation, whereas<sup>27</sup>, the Court of Cassation has decided the following (It is decided in the judgment of this court that the tax on commercial and industrial profits for joint venture companies is imposed on the apparent partner only without the partners investors, whatever their capacity, because the reality of the situation is that there is one person visible in front of third parties dealing in his name and is committed to himself since that was and the appealed judgment had violated and subjected the appellant to tax on commercial and industrial profits, although he is a hidden partner in one of the joint ventures, it is defective and the decision of the Court of Cassation was Sound, this is because it is not possible to hold any of the partners in the joint venture company accountable other than The joint venture manager, and then the company's contract is the one that determines the possibility of the joint venture manager returning to the rest of the partners for any commercial tax that is considered an expense, however, if more than one of the Joint Ventures or all the Joint Ventures contract with third parties, the latter may refer to them all jointly because there is no legal personality of the company, and each of them is jointly liable against third parties for carrying out a commercial business<sup>28</sup>, we agree with this

opinion because if the joint venture company had a legal personality, third parties would be able to refer to the company itself, and here in this case, each person in the place of the company is jointly.

The manager is responsible to the partners for the management of the company, the responsibility of the paid agent or the so-called commission agent, and this is on the basis of the rule of the good head of the family, he would therefore be held accountable for any abuse of the agency and any mistake he had made. Even if it is a slight error or negligence in management, he shall be liable to the partners, in particular in the event that he competes with the company illegally<sup>29</sup>.

If the manager is arbitrary, and deviates from the agreed agency or the signed contract, then the partners are entitled to claim compensation if this causes damage to them or their damaged property, and this is compensation in return<sup>30</sup> if there is more than one manager in the management of the company, such as if each of the directors manages part of the company and more than one of these people causes damage to the company or the rest of the partners suffer damage caused by these people, each of them is responsible for compensating the part that caused the damage<sup>31</sup>.

Here we return to the Iraqi law as a joint venture company agency, but the Iraqi legislator did not impose in the civil law on the agent to respond to any situation in which his interests conflict with his commitment towards the principal and therefore in the event of a conflict of interest must retire the agency or take the license from the principal in the exercise of commitment or work or not<sup>32</sup>.

As soon as the partners recognize the fact that the company's manager has breached his duty, they may forgive him for this violation and forgive him<sup>33</sup> they may also prosecute the manager for the offence of squandering the funds of the partners and the abuse of trust if he squanders the funds delivered to him for the purpose of carrying out the common objective if he is obliged to return them to the partners<sup>34</sup>.

It is the duty of The joint venture manager to provide a periodic account to the partners for his work as well as for his management, the right of any partner in the joint venture company to demand the submission of the account on the specified periodic date, usually every six months or a year, and some went to consider the submission of the account to the partners of the rules related to the general system of the joint venture company, which may not be violated, therefore, any condition in a contract that exempts the manager in the joint venture company, whether the appointment in the original contract as a



regular manager or an irregular manager who stipulates or provides for his exemption from submitting the account periodically, this condition is considered null and void and the contract is valid.

Therefore, another jurisprudential opinion was held, but it is obligatory for the manager who is concerned to submit the accounts with the papers proving their authenticity<sup>35</sup>, in general, none of the comparative laws in question provided for the meeting of the partners in a general assembly to discuss and approve the accounts. It also does not include the contracts of joint venture companies, samples of which we will mention in the annex to the General Assembly meeting.

In another jurisprudential opinion, the manager must submit a copy of the account to each partner in the joint venture company and share with him the supporting documents for the submitted accounts, the approval of the account by the partners exonerates The joint venture manager, provided that the joint venture manager has informed the partners of the reality of the accounts and has not hidden anything from them, this was the case with regard to Lebanese jurisprudence<sup>36</sup>.

Another opinion of the Jordanian jurisprudence believes that the partners are directing the company in accordance with the policy that was the basis for its formation and they have the right to direct the manager if there is a specific manager or chosen from among the partners and the manager must adhere to the policy set in the contract (Memorandum of Association) and what is agreed upon between the partners and the partners in the joint venture company have the right to indicate how to distribute profits and losses as in other companies, here, the decisions of the partners are issued as a general body of the joint venture company, and the decisions are by the majority specified in the company's founding contract, and through this body the annual budget is determined and the profits to be distributed are determined, the relationship of the General Authority with the Director appointed by the Authority shall be the same as the relationship of the principal with the agent, and the Authority shall not have a relationship with third parties except within the limits of the relationship of each of them with the third party with whom he has any commercial relationship and this relationship shall be limited directly and personally<sup>37</sup>.

In the legislation that regulated the joint venture company, the legislator did not regulate the manner of meeting the partners in the general assembly regarding the issuance of decisions and orders related to the formulation of the general policy of the company or the appointment,

accounting and dismissal of the manager, this is due to the understanding among the partners in any form that is considered as a decision that must be implemented by the managing share<sup>38</sup>, this is also the view of French jurisprudence, which considers that the company's contract may provide for the possibility of the partners in the joint venture company meeting in a general assembly that takes the decision by an agreed majority on the approval or disapproval of the work carried out by the manager<sup>39</sup>.

The joint venture manager, whether appointed or a partner to manage the joint venture company in his management, is subject to the control of the Joint Ventures as mentioned earlier, but third parties are not entitled to access the papers and books of the joint venture company except with the permission of the judge and for an important reason, under the Code of Obligations and Contracts in Article 890 (Whoever is not a partner in the joint venture company is not entitled to view the company's books and papers except for an important reason and by order of the judge)<sup>40</sup> I agree that no one has the right to see details related to the company or partners except with the permission of the judge, especially the books and letters and even the papers and books of the merchant, although part of the legislation allows the full submission in the case of liquidation of the company, as in the case of liquidation of the company after the agreement on a liquidator who reviews the books and trade, article 132/2 of the Iraqi Companies Act No. 21 of 1997, as amended, also stipulates that in joint-stock, limited and joint stock companies, the company's records shall be submitted to the attention of members during the ten days preceding the meeting of the General Assembly and during the duration of its convening<sup>41</sup>. We hope from the Iraqi legislator in the case of the inclusion of a joint venture company in the Companies Law after the amendment of the text as follows (In joint-stock companies, limited, joint venture and joint ventures, the records are presented for review.....) the partners may determine the authority of the manager by agreement as stated in the contract or customarily pursuant to the rule known customarily as conditional condition, and in the absence of specifying, The joint venture manager can carry out all the administrative work and even have to carry out the disposition work involved in the company's subjects, however, if the manager transgresses these powers, as we have already mentioned, he has a liability towards the partners for exceeding the limits of the agency entrusted to him<sup>42</sup>. The remuneration of the joint venture manager and his civil liability is a wage in return for the efforts he makes in managing the company, and this wage is often determined in the contract of his appointment or the company's memorandum of association, the management wage may be a lump sum or a percentage of the profits of the joint venture company for the operations carried out by it, or both, salary with the ratio, if the wage is not determined, it shall be appointed in accordance with the custom

followed in the profession, as mentioned earlier, which is known customarily as conditional condition, the manager shall also be liable to the partners for exceeding the limits of his agency, mistakes and negligence, even if these errors or negligence are minor, the joint venture manager is also responsible for his negligence and bad faith in his actions during the management of the company and it has been ruled that if the parties agree that one of them sends goods and the other party discharges the goods and shares the profits even without the existence of the contract, this agreement is the right of the joint venture company, the second party shall be responsible in the event of the sale of the goods without the knowledge of the owner and shall be fully responsible for the failure to discharge part of the goods also by his negligence and bad faith, this is stated in the judgment of the Court of First Instance in Beirut No. 183 of 21/2/1950<sup>43</sup> and guarantees the value of the loss that was placed.

As for the debtor's liability, it does not exceed the limits of error and damage to them, and it shall also be responsible for unfair competition for the company's business, embezzlement, fraud, exchange of instruments without balance and any other financial crime that can be proven against him during the management of the joint venture company, according to French jurisprudence and jurisprudence from the French Court of Excellence, the company's contract does not negate the existence of the agency, the partner who manages the company's business shall be punished if he embezzles, loses or destroys any of the company's funds, whether it is a joint stock company, joint venture, partnership or simple partnership, whether civil or commercial<sup>44</sup> the Lebanese jurisprudence have adopted the same direction, as it ruled that the farmer is not a type of civil company and that the partner in the farmer must be responsible for what he has in his hand from the company's money, it is therefore subject to criminal action as stipulated in Article 870 of the Code of Obligations and Contracts, and where it was stated in the judgment of the Zgharta Court in Resolution No. 808 of 2012 on 24/6 published in the Lebanese Journal of Jurists, p. 21, it is proven from the words of the plaintiff \_\_\_ and the defendant\_\_ the first party was responsible for the money handed over to him by the second party in order to use it in cultivating the agricultural land owned by the first party under the attached title deed and then the first party disposed of the amount for personal purposes not related to the cultivation of the agreed land, therefore, the first party is guilty of being responsible for disposing of the money according to the agreed requirements of the agricultural land interest, if we go back to daily life, we find many of these companies between people, where one party gives the other a sum of money to herd animals or cultivate the land and ... a lot, therefore, we commend the Iraqi legislator to speed up the organization of a special law for joint venture companies so that the judge can adapt the lawsuit correctly legally and resort to the Commercial Companies

Law instead of addressing such lawsuits within the civil law and so that there is no justification for diligence in the text resource, as these lawsuits are called in the Iraqi judiciary (accounting lawsuit) where in a decision issued by the Federal Court of Excellence in Iraq, the decision was stated upon scrutiny and deliberation, it was found that the discriminatory appeal is within the prescribed legal period and decided to accept it in form, and upon considering the distinguished judgment, it was found to be incorrect and contrary to the law, this is because the court, before the defendant answered the subject of the lawsuit, understood the conclusion of the pleading and ruled to dismiss the plaintiff's lawsuit on the pretext that there is no written partnership contract between the two parties to the lawsuit and that this does not require the dismissal of the lawsuit and in the event of denial is to grant the plaintiff the right to direct the decisive oath to his opponent after the formulation of the decisive oath in accordance with Article 118 of the Evidence Law and the issuance of the judgment in light of that, therefore, it was decided to overturn the cassation judgment and return the lawsuit to the joint venture company and the judicial receiver to its court to follow the foregoing, provided that the discriminatory fee remains for the result and the decision was issued by agreement<sup>45</sup>. It may happen that the work of the administration is disrupted for any reason, such as a dispute between the partners or the vacancy of the position of the manager for any reason such as death, dismissal, resignation or any other reason, in such a case, there is an urgent need to establish a judicial guard to maintain and manage the company's affairs temporarily and to preserve its funds until the end of the dispute between the partners or between the manager and the partners or until they appoint a new manager or liquidate the company, provided that the dispute is serious<sup>46</sup>. Based on the foregoing, the companies of persons, whether it is a simple partnership, a partnership or a joint venture company, can be placed under receivership if there is a dispute between the partners on the management, as if any of the partners took over its management contrary to the company's contract, or one of the partners took profits without the rest of the joint partners, or a dispute arises between one of the joint venture partners and the managing director of the joint venture company about the ownership of some of the company's funds, or the partners disagree among themselves about the procedures necessary to liquidate the company or if the managing director (appointed) under the contract seriously breaches his obligations that requires his removal from management and fear that the funds will remain under his control until the competent court decides to dismiss him and replace him with third parties, in all cases, space receivership may not be imposed on the joint venture company except as a temporary precautionary measure necessitated by the need to preserve the rights of the rest of the Joint Ventures, space guarding is not permissible if it is found that its purpose is to amend the company's contract or articles of association without

the consent of all the Joint Ventures, or to convert the company into another company or to limit the authority of The joint venture manager vested in him under the company's contract because of the prejudice to the provisions of the contract agreed upon between the partners<sup>47</sup> the task of the judicial guard appointed by the judge and urgent matters or what is called in Lebanon the judge of urgent matters differs, in companies of persons, specifically in the joint venture company, the task entrusted to the space guard is to manage the company's business according to the objectives for which it was established. It should be noted that there is nothing to prevent the director of the company himself from being a guard to whom another guard is organized to supervise only his work and monitor it if the nature of the company's business so requires<sup>48</sup>, in application of the principle of the subordination of companies, including the joint venture company, to the judicial receivership system, the Cairo Court of Appeal ruled that the monopolization of some of the partners in a joint venture company by the company's management and profits without the other partners allows them to request the placement of the funds of the joint venture company under space receivership until the court decides the matter in the dispute between them<sup>49</sup>.

### **Third: The legal relationship between the joint venture manager and third parties**

As we mentioned earlier, the manager deals with third parties in his personal name and does the work himself as if the manager works for his own account and is a cover for the partners so he does not show their names, therefore, the contracts concluded by him and the actions he performs against third parties are considered as having taken place on behalf of the managing director. In the event that the partners agree to appoint one of the Joint Ventures to carry out the management work, the rest of the Joint Ventures shall refrain from carrying out external administrative work, provided that this does not prevent each partner, as seen by a jurisprudential opinion, from having access to the books, discussing the progress of work in the company, and giving advice and guidance<sup>50</sup>, another opinion believes that the right of the partner to manage in the joint venture company is what distinguishes the company from the loan contract and the employment contract that includes participation in profits, the joint venture partner receives profits whose percentage varies according to the company's profits and does not recover his share until the end, provided that the company achieves sufficient success to pay its debts and achieve profit. As for the loan, the interest is often fixed and its borrowed capital is recovered on time, whatever the results of commercial operations, its wage in the company, whatever the means of determining this wage, however, in the latter two cases, neither of them has the right to monitor the actions of the

labor management and the relationship of the worker is often a dependent relationship, although the worker has the right to audit the company's accounts if he works for a wage and a percentage of the profits<sup>51</sup>.

The joint venture partner does not have the right to view the company's books, documents and documents only, but he has the right to authorize a person instead of him, whether the person entrusted by the company or third parties, and the use of the right of access is one of the general rules, this right is part of the public order, which may not be agreed upon by the partners to contravene, that deprive any of the partners of the right of access, according to some jurisprudence<sup>52</sup>.

In fact, we do not agree with this idea, which gave the right of power of attorney to third parties to see the company's papers, this is because basically the company is hidden and that the power of attorney of third parties has a kind of announcement of the existence of the company and the names of the company, and the right of power of attorney should have been limited between the partners only to see the company's papers.

The manager shall have the authority to dispose of the funds belonging to him, which includes the private funds of the joint venture manager and the funds transferred by the partners to his disposal in order to achieve the purposes and objectives of the company<sup>53</sup>, some French jurisprudence believes in addition to the above, the funds he bought in his name for the company's account, equipment, buildings, etc., and the funds resulting from the management of the joint venture which is still in his possession is also considered as the property of the manager towards third parties, even the money that the partners handed over to the manager for joint investment, even if it remains in their possession and they still retain ownership because it appears to third parties as if it belongs to the manager and they deal with him on this basis<sup>54</sup>.

The issue of the powers of the manager and the limits and extent of these powers towards third parties does not arise from what they deal with because he does the work in his personal name and thus the manager has powers that are almost absolute if not for some of the internal restrictions that have already been mentioned, as the authority of The joint venture manager is not matched by the authority of any manager in a company of persons known as a limited partnership or limited liability company as a complete access to the powers of the Chairman of the Board of Directors in joint stock companies, this is because those who deal with him or third parties are ignorant in principle of the existence of the company and therefore the status of the manager and his

powers are absolute. Thus, the partner is solely responsible to the third party with whom he deals, while other partners have little responsibility for them<sup>55</sup> and here third parties cannot refer to the company because in his dealings with the manager did not reveal to him the personality of the company or the personality of the rest of the partners, and the manager only used his personal name, also cannot refer to the partners because they are third parties in relation to his dealings with the manager of the shares, they were not a party to the contracts concluded between them and third parties cannot refer to the partners if it is confirmed that they benefited from the results of the contract under the pretext of wealth because the main reason for enriching the partners here is the joint venture contract between the partners and the joint venture manager<sup>56</sup>.

The joint venture manager shall become the sole creditor and debtor before third parties and the aforementioned provision shall not change in that there is no relationship between third parties and the partners of the joint venture company even if the third party is aware of the existence of the company and the partners or even if he knew about it afterwards as long as the partners did not take any step or action that would disclose their desire to show the company to third parties as a legal person, the Egyptian Court of Cassation ruled these principles in its judgment issued on the twenty-fifth of February 1995, which stated (That the partner in the joint venture company shall refrain from asking third parties to implement the contracts concluded by another partner, but the partners in them bear the effects of the contracts concluded by one of the Joint Ventures with third parties to achieve the purposes of the company as their agent)<sup>57</sup> The joint venture manager may not take the company as an address, whether in the façade of the place where he trades or his dealings with third parties, and the joint venture manager may not mention next to his name the name of the partner or to use the phrase and his partners, if the manager does so without the knowledge of the partners or without their consent, the aforementioned partner does not lose his capacity as a joint partner, and third parties do not have the right to a direct action against this partner<sup>58</sup>.

In a joint venture company, the issue of prohibiting some partners is not raised, that preventing them from managing the company or managing part of the company, nor is the issue of managers or one of the partners doing another work, provided that the other work does not affect the joint venture company and compete with it, because a joint venture company does not have a legal personality unless the law imposes on some of them not to perform certain acts depending on the circumstances and cases that require such prohibition<sup>59</sup>.

Also, there is no objection to the manager delegating one or several operations related to management because the manager engages in a personal activity in the face of third parties and the partners work for the manager, however, if the partners intervene in the work of the administration with the manager without having the role of agent before third parties, they are asked with the manager as if the act took place on their own account and the responsibility of all here is joint if the joint venture company is commercial<sup>60</sup>.

The legal relationship remains limited to the contracting parties (the manager and third parties) without the Joint Ventures when the disposition with third parties occurs in the name of the manager, and it follows that third parties may not sue the manager or the dealing partner except before the court of personal residence, i.e. in a personal form of personal residence, in particular, the joint venture company does not have a primary place of residence to be prosecuted before its court, this is what the Lebanese judiciary went to, considering that the joint venture company does not have a legal personality, so if the company does not have a center, the lawsuit must be filed before the place of the court of the defendant partner, this is what was stated in the decision of a ruling issued by the Beirut Court of Appeal, which came as follows (The joint venture company does not have a legal personality and this right is given to file a lawsuit against the defendant before the court of his place of residence in Beirut)<sup>61</sup>. the creditor is only entitled to claim the manager and can execute on all his immovable and immovable property, competing with all creditors, considering that the funds delivered to him do not constitute security for the creditor with whom he dealt because of the lack of legal personality of the company<sup>62</sup>.

This is what the Lebanese judiciary has worked hard to do and the Court of Appeal in Beirut has determined in a decision that (it is not possible to request the bankruptcy of the partner in the joint venture company because this company is limited to the contracting parties and no third party has a legal bond except with the partner with whom he contracted)<sup>63</sup>.

In the event that the joint venture manager files a lawsuit against third parties for the benefit of the company, he shall file it in his personal name and not in the name of the company that is not recognized by third parties, and third parties who deal with the joint venture manager have the right to mortgage his funds without the funds of other partners, considering that the creditors trusted the manager and dealt with him in a personal capacity<sup>64</sup> if the joint venture manager has personal creditors and these debts arise as a result of the manager's dealings in other than the company's operations and other creditors whose debts arise as a result of the joint venture manager dealing with them in



his capacity as a manager of the joint venture company in such a case, there is no privilege for one party at the expense of the other party, this is contrary to the rule in companies of persons in which the partners are responsible with their personal funds for the debts of the company, as in the partnership company and the limited partnership company with regard to negotiating partners the reason for this is also that a joint venture company does not have legal personality to have creditors claiming the company in its capacity<sup>65</sup> also, third parties do not have a legal relationship except with the manager or partner with whom they contracted, and this is confirmed by Jordanian law this has been expressly stipulated that third parties do not have the right to recourse to anyone other than the contracting partner as long as no acknowledgment of the existence of the company is issued by one of the partners or an indication therefor has been issued by him, article 51 of the Jordanian Companies Law stipulates this (A third party does not have the right of recourse against the partner with whom he dealt in the joint venture company, if one of the partners acknowledges the existence of the company or issues evidence of its existence among the partners, it may be considered an already existing company and the partners in it have become jointly liable towards third parties)<sup>66</sup>.

There is an important issue referred to by the Lebanese jurisprudence that in the case of the use of fraud or one of its various methods by one or more of the partners, third parties do not fall into error about the nature of the company through advertising or any other way, the partners here and jointly assume responsibility before third parties, the same is the case if one or more partners participate in an original or in a division with the manager in response to the guarantee request issued by the third party contracting with the company<sup>67</sup>, we hope that the Iraqi legislator in the event of the organization of the joint venture company will add a text and apply the following (In the event that the partners in the joint venture company use fraud or one of its methods by one or more partners to trap third parties, everyone who participated in this shall be held responsible for a text indicated in front of third parties)<sup>68</sup>.

If one of the partners intervenes in the work of external management in a way that appears to third parties that he is a manager, in this case he becomes responsible jointly with the manager, in application of this, the sole commercial governor of Beirut ruled (That the hidden partner in the joint venture company is considered a clear intervener in the work of the external management and therefore liable to third parties if he is appointed as an agent for the hidden partner if they pay debts to the creditors of the plant, declaring that it is paid from the property of the said partner and in his capacity as his agent)<sup>69</sup>.

It may be one of the methods of deception and fraud towards third parties that the company called a joint venture company ostensibly is in fact, since its formation, a partnership company or a simple partnership company, in this case the provisions of the partnership or simple partnership company shall be applied with third parties, because the lesson is not the name adopted by the partners, but the apparent legal situation that the judge sees and that applies to the contract, in this case, the person dealing with the company or one of the partners has the right to claim the general partners, and here the right to sue the joint venture manager or the partners by direct invitation<sup>70</sup>.

The third person dealing with the manager may become a creditor of that manager or at the same time the joint venture manager may be a creditor of one of the Joint Ventures in this case, the third person has the right to sue the partner through an indirect invitation, not obliging him to pay what he owes to the manager, as well as the Joint Ventures have the right to sue third parties (using the right of the managing collector (creditor) towards third parties if the debt is due to the transactions belonging to the company through indirect invitation, if the partners are creditors of the manager because of the management of the company, the joint venture manager may hold the third party to claim the company's debt<sup>71</sup>.

### Conclusions:

1. The joint venture manager is chosen either by the joint venture manager agreed upon in the contract or another person or he is chosen by the partners in the joint venture company and is called the irregular manager, and he may be chosen by the judiciary.
2. The joint venture manager deals with third parties in his personal name and not in the name of the company.
3. The joint venture manager shall be personally responsible and not jointly.

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<sup>3</sup> Dr. Tharwat Abdel Hamid, *Egyptian Commercial Law*, Dar Al-Nahda Al-Arabiya, Cairo, 1999, p. 487, as well as Dr. Samiha Al-Qalioubi, op. cit., *Commercial Companies*, p. 405.

<sup>4</sup> Dr. Samiha Qalioubi, *Commercial Companies*, op. cit., p. 403.

<sup>5</sup> Hanan Abdulaziz Makhoul, *Principles of Commercial Law*, Al-Nahda Al-Arabiya Press, Cairo, 2008, p. 200.

<sup>6</sup> Article 47: First, the parties who are jointly bound by a commercial debt shall be jointly liable in this debt unless otherwise provided by law or agreement.

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- <sup>15</sup> Dr. Samiha Qalioubi, *Commercial Companies*, op. cit., p. 408.
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