

Introduction Preface

The Iraqi companies in Iraq were subject, at first, to provisions of Islamic legislation until the issuance of Ottoman Law of commerce at 1850- then at 1882 there had been issued an amendment to this Law pertaining joint venture companies until the issuance of Indian companies Law at 1931. At 1919 a statement of companies was issued by the Commander of British Military Campaign which stipulated to enact the Indian companies Law on the joint venture companies and cancelled the law issued at 1881. After that, the law of commerce of 1943 and the Civil Law NO. 40 of 1951 had been issued which implied the (companies) in some of its provisions, then, the commercial companies Law NO. (31) of 1957 was issued which cancelled the Indian Law and companies statement but it preserved what stated about the company in the above civil law. As the legal provisions applied on the companies are scattered among many legislations, laws and legal resolutions, so it became incapable to follow up the developments of our country in the different fields of economic activity. It was necessary to reconsider and to unify these provisions in order to achieve the principle of legislation unity represented by issuing the law of companies NO. (36) of 1983 as amended which implied principles and bases relied on planning which direct the economic and social development. The companies (as an economic unit) were connected with the competent economic sectors and requirements of development planning. Finally, the companies Law NO.21 of 1997 in force now, has been issued which settled the negative cases of the applications of the above-mentioned Law, and to give the mixed and private sectors a better chance to play a more effective role in the development operation, and it implied too, establishing and organizing investment companies by new provisions. The Department is also applying as well the provisions of the commercial agency law NO. 51 of 2000 and Regulation NO. 5 of 1989 of branches and offices of foreign companies. The Director General of Registration of companies Department has been granted the authority of according to the Revolution command council Resolution NO. 1344 of 1985 which was amended by the Resolution NO. 110 of 1998 in order to consider the violations of the national companies and branches and offices of foreign companies to the provisions of the Law and Regulation. We can enlist the most important tasks of Registration of Companies Department as following: Establish national companies.

Amending the company's memorandum of incorporation (amendment of activity (name), increase or decrease of capital, alteration- amalgamate or liquidation).

Legalizing of minutes of general assemblies and board of directors meetings

Convene of meetings of national companies general assemblies in the Department in case of any disputes occurred among the shareholders.

Make inspections on the companies (legal and accounting inspection)

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Check the objections presented to the Department from the legal and accounting aspect and reply them)

Register the branches and offices of foreign companies.

Provide Government Departments with the required information about the registered companies.

The Department is doing its best to present the services and to put within the hands of the advocates, registration agents, citizens who are owners of economic projects and investors. This guide to clarify, how to register the national companies, branches and offices of foreign companies and commercial agencies, in order be as a lead for them to facilitate and reduce the recurring approaches and to summarize the time and the exerted efforts.

It contains the registration procedures defined by companies Law NO. 21 of 1997 and Regulation NO.5 of 1989 of branches and offices of 21 of foreign companies and economic establishments, and Law NO. 51 of 2000 of Regulating commercial Agencies.

With notice, that this guide can not be sufficient document neither it can replace the provisions stipulated in the afore-mentioned Laws and Regulations.

On behalf of the Iraqi people,

The Presidency of the Republic,

In accordance with the provisions of paragraph (a) of Article

(57) of the Interim Constitution and Article (206) of the

Companies Law No. (36) of 1983, the following regulation is

hereby promulgated:

**Regulation No. 5 of 1989
of Branches and Offices of Foreign Companies
and Economic Establishments**

Article (1)

Firstly: A branch of Foreign company or Economic Establishment shall mean the entity to be licensed in accordance with this Regulation from branches of Foreign companies or Establishment which have permanent activity in Iraq by virtue of a treaty, an agreement or a

contractor with the state, or if they are contracted to execute a specific project with State Departments, Socialist Sector, mixed sector, federations, co-operative societies or the private joint stock companies which their capitals are not less than one million Dinars after obtaining the approval of the competent sectorial department.

Secondly: An office of a foreign company or economic establishment shall mean the entity to be licensed in accordance with this regulation from representative or liaison offices or foreign companies of establishments whose objective is doing markets study, work and production feasibility, display of its products and services or to facilitate communications with its head office. This entity shall be prohibited from making any trading activities including the business of trading agents and mediators.

Thirdly: A foreign company shall mean the juristic personality, which is licensed in accordance with its local legislation, in addition to the individual projects.

Article (2)

Firstly: For the purpose of this Regulation, a foreign nominated subcontractor having a contract with a main contractor shall deem to be contracted with the State Departments and Socialist Sector.

Secondly: The main contractor shall remain responsible for the execution of the whole contract. 4

Article (3)

Firstly: The foreign company or economic establishment which is practicing a permanent activity in Iraq or which has a contract to execute a specific project must submit a written notice to the Registrar of Companies as soon as the treaty, agreement or the contract pertaining to its activity or its project is concluded. This shall not apply to companies and establishments who conclude contracts for supplying commodities or materials unless they have real existence in Iraq or the supply contract includes rendering services of any kind.

Secondly: The Registrar shall, in coordination with other concerned departments, define the measures to determine whether a foreign company or an economic establishment must obtain a license for a branch or not within 2 weeks from the date of receiving the notification.

Thirdly: The Minister of Trade may license opening a representative or liaison office for a foreign company or an economic establishment, which is not covered by the provisions of paragraphs firstly and secondly of this Article after obtaining the opinion of the concerned sectorial authority.

Article (4)

The foreign company or economic establishments subject to the license of the setting. Up a branch or an office must prepare the following documents duly legalized from the competent authorities:

1. Two copies of the license application form.
2. Two copies of the memorandum and articles of association or any other equivalent document of the Mother Company or establishment.
3. Two copies of a valid registration certificate of the company or the establishment issued in the country where it was established.
4. Two copies of the names of the board of directors of the company or the establishment and their nationality and the names of who are authorized to sign on behalf of the company or establishment.
5. Two copies of power of attorney issued by the management of the company or establishment for the branch manager actually residing in Iraq.
6. Two copies of the last financial statements of the company or establishment with two copies of the report of the Board of Director attached there to.
7. Two copies of the certificate of Israel Boycott.

8. A confirmation letter issued from the State Department or the socialist Sector stating the nature of the contract, its date of commencement, and completion, its total amount and the maintenance period, if any.
9. Any other document requested by the Registrar of Companies.

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Article (5)

Firstly: Taking into consideration the provisions of Article (3) of this Regulation, the application for the license of the branch shall be submitted to the Registrar of Companies within (75) days from the data of concluding the treaty, agreement or the contract, together with the documents provided for in Article 4 of this Regulation.

Secondly: The Register of Companies may write to any department which the law, Regulation or Instruction should demand obtaining its approval to license the branch or the office.

Thirdly: The Registrar must issue his decision of accepting or refusing the application within 60 days from its submission. The Minister of Trade, upon request of the Registrar, extends the above period fro 30 days if the procedures provided for in paragraph secondary of this Article justify such extension.

Fourthly: The Registrar shall publish the decision of approving the license of the branch or the office of the foreign company or economic establishment in the special gazette of companies and in a daily newspaper, one at least, after collecting the fees prescribed by the schedule No. 3 appended to the companies Law No. 36 of 1983.

Fifthly: The Registrar shall issue the license for the branch or the office within 15 days from the date of last publication. The branch or the office shall acquire the juristic personality as from the date of issuing the license.

Article (6)

Firstly: The branch or the office should be managed by a manager, or his deputy during his absence, who must be authorized by the management of the foreign company or economic establishment and must reside in Iraq, he shall be responsible similarity to the responsibility of those managing Iraqi companies.

Secondly: When the authorized manager is changed, a notification to this effect must be sent to the Registrar within 60 days.

Thirdly: Taking into consideration the provisions of Article 1 of this Regulation, it may not be allowed for the branch to carry on any activity other than the one specified in the treaty, agreement or contract unless an approve is granted to the branch by the Iraqi contracting partly. 6

Article (7)

Each branch or office must type readably in Arabic language on all its papers, and documents, the complete name as it is stated in the license of the foreign company or economic establishment, as well as its address and the branch management office in Iraq

Article (8)

The branch or the office must keep regular accounting records in Arabic for its complete activity related with its work in Iraq and in accordance with the accounting system referred to in Article 201 of the companies Law No. 36 of 1983.

Article (9)

Firstly: The branch shall prepare a yearly plan comprising a report of its activity in Iraq for the following year.

Secondly: The branch shall report periodically to its head office relative to the execution and the following up of the yearly plan, once a year at least.

Article (10)

Firstly:

1) The Diwan of Financial Control shall audit the accounts and activities of the branch or the office.

2) The branch or the office must submit all statements, information and explanations which the Diwan of Financial Control deems to be necessary in order to facilitate its assignment in auditing the accounts of the branch or the office and controlling its activity in accordance with the provisions of the Diwan of Financial Control Law No. 194 of 1980 and other Laws in force in Iraq and with the international professional standards and principles.

Secondly: The branch or the shall submit annually its accounts and report on its activity in Iraq to the Diwan of Financial Control within 3 months from the closing date of its financial year. In all cases, the branch or the office must submit its audited final accounts and its annual report to the Registrar within 8 months from the end of its financial year.

Thirdly: The branch shall attach with the accounts and report referred to in secondly of this Article the final accounts and the Board of Directors report of the head office together with a list showing the names and nationalities of the Board of Directors of the foreign company or the economic establishment, and this within 8 months following the closing date of its financial year. 7

Fourthly: If there is any legal obstacle, which prevents the submission of the final accounts, then, a document audited by a competent and independent party duly authenticated, showing the financial position of the foreign company or economic establishment shall be submitted.

Article (11)

The branch or the office shall submit to the Registrar information concerning its employees in accordance with the form prepared by the Registrar.

Article (12)

The Registrar may require any information, which is considered necessary in order to facilitate the implementation of the provisions of this Regulation.

Article (13)

The Registrar may choose one or more specialized inspectors to inspect the activities of the branch or the office whenever it is necessary. The branch or the office must furnish all necessary to allow the inspector performing his assignment.

Article (14)

Firstly:

- 1) The management or the branch must notify the Registrar whenever the branch stops to carry on its activities in Iraq and the reasons for this within 30 days from the date of stoppage.
- 2) The management of the branch or the office must notify the Registrar in case of bankruptcy, liquidation, merger or amendment of the memorandum and articles of association of the foreign company or economic establishment.

Secondly: Cases of bankruptcy, liquidation, or merger must be published once, in the gazette.

Article (15)

Firstly: The branch or the office must commence the procedures of its liquidation within 60 days from the date of the absence of the reason for which the license was granted, by submitting a written application to the Registrar implying the reasons for liquidation and a statement of the financial position of the branch or the office as of that date.

Secondly: The Registrar shall, within one week from the date of receiving the application, shall write to the concerned authorities in order to get

their approval on the liquidation; these parties must reply within 30 days from the date of receiving the circular of the Registrar. 8

Thirdly: The liquidation procedures, including submission of liquidation accounts audited in the usual manner from the Diwan of Financial Control, should be performed within six months from the date of submitting the application and the Minister of Trade may extend the above period if any of the competent Authorities submitted a justified reason for that.

Fourthly:

- 1) If the Registrar considers that the liquidation is done in accordance with law, he shall issue his decision to strike off the name of the branch or the office from his records; this decision shall be published in the gazette and in a daily newspaper within 10 days from the date of issuing the decision.
- 2) The juristic personality of the branch or the office shall be considered as terminated on the date of issuing the decision of striking off its name.

Article (16)

The office shall start the liquidation procedures within thirty days from the date of receiving the Registrar's letter approving the application of liquidation.

Article (17)

All State and Socialist Sector Departments must notify Registrar of companies the following:

- 1) A summary of contracts with foreign companies and economic establishments as soon as they are concluded.
- 2) Dates of completion of these contracts 3 months before its expiry and on actual completion.

Article (18)

In compliance with the provisions of paragraphs (firstly) and (secondly) of Article (205) of the companies Law No. 36 of 1983, the renewal of the branch or the office registration shall be made after submitting the following documents and paying the registration fees provided for in the above Law:

- 1) An authenticated certificate confirming that the treaty, agreement or contract which allows the branch to carry on activity is still in force and stating the expected date to complete the work, if the activity of the branch is not permanent, or a certificate confirming that the foreign company or economic establishment has contracted to execute another project.
- 2) An authenticated certificate confirming that the foreign company or economic establishment is still registered in the country of origin.

3) A statement showing the name of the authorized branch manager in Iraq who is actually reside therein and the address of the branch management office.

Article (19)

1. The foreign company or the economic establishment when contracting with the State Departments and Socialist sector to practice and has a licensed office in Iraq or to execute a certain project and has a licensed office in Iraq should start within sixty days from the date of its contract to divert its office to a branch upon submitting the documents specified in Article (18) of this Regulation.
2. The Minister of Trade upon request of the foreign company or the economic establishment, during the liquidation period of its branch, may approve to open an office to it upon completion of the liquidation procedures of the branch.
3. It shall not be permitted for the foreign company or economic establishment to have an office and a branch in Iraq at the same time.

Article (20)

The branch must notify the registrar in case of contracting to execute another project during the period of executing a specific project unless it has already started the procedures of liquidation; in this case, the branch must renew its registration in accordance with Article (18) of this Regulation.

Article (21)

The Minister of Trade may, upon request from the contracting state and socialist sector Departments, exclude contracts, which pertain to the state security from the provisions of paragraph (Firstly) of Article (18) of this Regulation.

Article (22)

Penalties provided for in the Companies Law No. 36 of 1983 should apply to the branch or the office when it contravenes the said Law or this Regulation.

Article (23)

The Regulation No. 17 of 1984 (Regulation for the Branches of Foreign Companies' and Economic Establishments) shall be abolished.

Article (24)

This Regulation shall come into force upon its publication in the official Gazette.

Made at Baghdad this day the Forth of Muharam 1410 Corresponding to the Fifth of August 1989.

Registration of Companies Department

Foreign Companies Section

***Rules For Registration of Branches and Offices of
Foreign Companies and Economic Establishments***

Firstly: Stipulation and Conditions for Opening Branches of Foreign Companies

1. The period of the contract should not be less than (90) days excluding maintenance period.
2. The amount of contracts should not be less than ID (80,000).
3. The number of employees should not be less than two permanent persons provided that one of them must be Iraqi.
4. Each Branch must have a proper and independent domicile to manage it's activities only and should strictly be used for this purpose except the companies of a joint venture.
5. The main Contractor shall be responsible for all obligations rights and violations of his sub-contractor before all Competent Iraqi Sources.
6. All expenses and costs of registration and running the branch of a foreign company should be covered by remittances from abroad in foreign Currency of out of the Iraqi Dinar portion officially received from the contracts with Iraqi sources.

Secondly: Stipulations and Conditions for Opening Offices of Foreign Companies

1. Provide a statement from an Iraqi Commercial Bank confirming the transfer of foreign currency to Iraq of an amount not less than ID (15000) per annum to cover it's registration expenses and costs of running the office.
2. Provide a bank guarantee of an amount ID (10,000) in favor of Registrar of Companies to secure paying any financial obligations and penalties

which might be imposed on the office during it's existence in Iraq for the account of competent Iraqi sources.

3. Each office must have a proper domiciles suitable for the nature and volume of it's activities and should be used for this purpose only. Full address, telephone number and any changes there after should be notified to the Registrar of Companies.
4. The office shall continue having it's legal entity in case of obtaining a contract which does not qualify the office to open a branch according to the stipulations and conditions of opening a branch. Moreover, the office must not practice any commercial activity or any agency and mediation business.

1. The office should be liquidated when the reason for its existence expires. The liquidation assignment must be entrusted to a person holding a proper authorization.

It is decided to add the following details of para (Thirdly) to the announcement No. (1033) published in the Ministry of Justice newspaper No. (3293) of 5/2/1990 concerning stipulations and conditions of branches and offices of foreign Companies and economic corporations.

Thirdly: Permit foreign companies and economic establishment working in Iraq to bring additional amounts in foreign currency by mediation of one of Governmental Banks or cash after declaring the amount through external transference form No. (8) at borders point.

These amounts should be used as following:

1. Permit the foreign company to open a current account in foreign currency at one of the Governmental Banks to deposit the coming amounts and to use this account to pay its obligations in foreign economy inside Iraq and it has the right to re-transfer the remaining foreign currency amount which has not been used.
2. The Company has the right to exchange any amount of its foreign currency account to an account in Iraqi Dinar at the Governmental Banks according to the Rate of exchange announced at the Banks and to use this amount for paying local expenses in Iraqi Dinar.

It is not allowed to re-transfer the remaining of this account to foreign currency account but it should be used to cover its local expenses exclusively.