

Companies and their administration in Iraq

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Iraq was a very early pioneer in the area of companies' law. One of the first examples of legislation for companies was found in the Code of Hammurabi (on an obelisk of Hammurabi), dating from the second millennium BC. Fortunately, Iraq has implemented more recent legislation to address local and foreign ownership and administration of companies. As Iraq experiences a steady increase in commercial investment, it is important for local and foreign participants to understand the different laws which regulate doing business in the country. In this article we explore the types of Iraqi company and their administration.

Local vs 'foreign' companies

The Iraqi Companies Law No. 21 of 1997 applies to local companies, while Regulation No. 5 of 1989 applies to branches and offices of foreign companies. Any company that is registered in accordance with the Companies Law No. 21 of 1997 is considered a company of Iraqi nationality. Otherwise the entity is considered as a foreign company which is subject to the provisions of Regulation No. 5 of 1989.

In relation to local companies, the Iraqi Companies Law identifies five different types of companies:

- Joint-Stock Company;
- Limited Liability Company;
- Joint-Venture Company;
- Individual Venture; and
- Simple Company.

The Iraqi Companies Law further differentiates between "capital" companies (the companies where funding is considered in terms of the value of capital and public trading of shares in the financial markets) and "individual" companies (companies more closely tied to their shareholders and founders). Joint-Stock Companies and Limited Liability Companies are considered to be capital companies, whereas a Joint-Venture Company, Individual Venture, and Simple Company are considered as individual companies.

The managing director

Each company has a managing director from its members or unrelated, with experience and competence in the field of company's activity. The managing director of the branch/representative office of the foreign company is equivalent to the position of the managing director of a local company in terms of responsibility.

The managing director is appointed by the board of directors in joint-stock companies and by the general

assembly in other companies. Each will determine the managing director's competencies, powers, remuneration and rewards. The managing director shall be appointed after a company is incorporated or established. The law does not allow the appointment of more than one managing director for the company. A deputy to the managing director can be appointed to handle the company's administration duties in the latter's absence.

The managing director is the person who represents the company and expresses its will in accordance with the powers and authorisations granted to him or her by the general assembly of the company or board of directors.

The law does not specify or impose restrictions on who can act as the management of a company in terms of nationality. Non-Iraqis are generally permitted to be nominated for management. However, some sectoral bodies put restrictions and conditions on managing directors according to the requirements of the companies' activities where there is specific regulation and supervision by government institutions. For example, companies regulated by the Central Bank of Iraq, the Tourism Authority, and the Ministry of Finance have specific requirements.

A managing director may resign from his or her position by submitting a request to the general assembly, so the assembly can accept such resignation and appoint a new managing director.

Administration of Iraqi companies

In a Limited Liability Company, Joint-Venture Company and Individual Venture, the administration of a company is divided between the general assembly and the managing director. For Joint-Stock Companies, administration is allocated to three parties: the general assembly; the managing director; and the board of directors. Below are the competencies, powers, and responsibilities of these managerial parties:

1- The competencies, powers, and responsibilities of the managing director

As prefaced above, the managing director shall undertake all the necessary actions to achieve the company's goals and to practise its activities as set out in the Memorandum of Association.

The general assembly shall determine his or her powers and competencies. The managing director, in particular, has the right to exercise his or her duties, including implementing the decisions of the general assembly, preparing the annual budget, and preparing a report regarding the ways of implementing the annual plan, and what is the expected plan for each coming year. The managing director is also accountable to the general assembly regarding the performance of these duties. A managing director is to ensure he or she performs their duties with the same level of care and prudence which they would apply to performing their own personal affairs. However, if the managing director is negligent in his or her care for their affairs, then they are required to meet the usual standard of care when performing their duties.

A managing director, when contracts have been concluded, is obliged to make sure that they do not have a personal interest in such contracts. If the managing director signed a contract that entailed a conflict of interest, the contract will automatically be deemed invalid and the managing director will be responsible to the company for any damage to the company because of such breach.

It is worth mentioning that the provisions of the Iraqi Penal Code may, in certain circumstances, apply to managing directors. Although the law states that corporate bodies may only be sentenced to a fine (if the law prescribes a specific penalty for that offence other than a fine, then it may be substituted for a fine), confiscation or such precautionary measures as are prescribed by law for the offences committed by their

employees, directors or agents working for them or on their behalf that does not prevent the offender himself or herself from being punished in accordance with the penalties prescribed by law for that offence.

2- The competencies, powers and responsibilities of the general assembly:

The general assembly is considered to be the highest authority in the company. It decides on all matters that serve the company's interests and consists of all the company members. The law determines the general assembly's exclusive powers as follows:

1. discussing and approving the founders' report on procedures pertaining to the establishment of the company at the constituent meeting;
2. deciding on the election of the representatives of shareholders from outside the state sector on the board of directors of the mixed company, and the representatives of all shareholders on the board of directors of a private joint stock company, as well as on their dismissal;
3. discussing the reports of the board of directors of the joint-stock company, the managing director of the other companies, and the accounts' controller, as well as any other reports reaching it from competent quarters and making the necessary decisions on said reports;
4. discussing the company's final accounts and approving the same;
5. discussing and approving the proposed annual plan and the budget for the following year in other joint stock companies;
6. appointing the accounts' controller and specifying his or her remuneration in the case of private companies;
7. discussing proposals pertaining to loans, mortgages and securities as well as making decisions on them in the case of a Limited Liability Company or a Joint Liability Company;
8. approving the percentage profit to be distributed among the members and specifying the percentage of compulsory reserve and any other reserves it deems appropriate;
9. fixing the remuneration of the chairman and members of the board of directors in the mixed and private Joint Stock Companies commensurate with their efforts in fulfilling their tasks and achieving company plans and profits;
10. approving employment rules in the mixed Joint Stock Company as formulated by the board of directors.

Company shareholders are legally obliged not to exercise those voting rights or other authorities which may cause the company to do or consent to acts that harm or disadvantage the company in order to benefit themselves or those associated with them at the expense of other shareholders of the company; or jeopardise the rights of creditors by instigating a withdrawal of capital or transfer of assets in cases where insolvency is imminent or when prohibited by law.

3- The competencies, powers, and responsibilities of the board of directors

A Joint-Stock Company differs from the five other types of companies which can be established in Iraq. A Private JSC can appoint a board of directors that consists of a certain number of original members and reserve members elected by the general assembly. For Mixed Joint Stock Companies (in which the government's share is more than 25 per cent of the capital) some directors are appointed by the relevant government party and the rest are elected by the general assembly.

The board of directors handle the necessary administrative, financial, planning, organisational, and technical duties for running the company's business, other than those that fall within the jurisdiction of the general assembly. The Companies Law mandates that it shall, in particular, assume the following responsibilities:

1. appoint the managing director, specify his or her wages, remuneration, jurisdictions, and powers, supervise and guide his or her work, and also decide on his or her dismissal;
2. carry out the general assembly's decisions and follow up on its implementation;
3. prepare the final accounts of the previous year within the first six months of each year, write up a report on them and on the results of implementing the annual plan, submit them all to the general assembly for discussion and approval. These shall include:
 - the general budget;
 - the profit and loss account; and
 - any other statements requested by the competent quarters.
4. discuss and approve an annual plan for the company's activity for the following year. This plan must be prepared by the managing director during the last six months of the year in light of the company's objectives. The plan shall include a full report on the company's activity and a draft budget outlining:
 - cash reserves;
 - sales;
 - purchases;
 - manpower;
 - capital investments; and
 - production.
5. follow up on the implementation of the annual plan and submit periodic reports to the accounts' controller and an annual report to the general assembly on the results of the implementation;
6. prepare statistical studies with the view to developing the company's business; and
7. make decisions on loans, mortgages, and securities.

The chairman of the board of directors is responsible for following up on the implementation of the board's decisions, and it is impermissible for the chairman or a member of the board to have direct or indirect interests in deals that are concluded with the company, except where permission of the general assembly, with full disclosure of the nature and extent of such interests, has been obtained. The chairman or relevant board member shall be liable to the company for any damage to it arising from any violation of this related party restriction.

Directors also they remain liable for any damage or harm caused to the company in pursuing their personal interests, or acts that may jeopardise the rights of creditors because of the exercise of the voting authority or any other powers which may lead a company to act, or approve actions, that would otherwise cause harm or damage to the company.

Conclusion

- The Iraqi Companies Law imposes different administrative frameworks depending on the category of company.
- In all cases, the managing director is of central importance to the administration of a commercial entities and is expected to meet minimum standards.
- All the administrative functions, the general assembly, the managing director, and the board of directors are subject to civil and criminal liability in relation to performing their duties in managing any of the commercial company types.

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