

Suggested Amendments to the Registration Regulations of Foreign Company's Branches and Offices in Iraq

Modher Majeed - Senior Associate - Corporate Structuring
m.majeed@tamimi.com - Baghdad

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Accordingly, the Regulation No. 5 of 1989 was passed and is still valid (the "1989 Regulation"). In order to facilitate the mechanism of registration of foreign companies offices and branches in Iraq, the department of Foreign Companies Registry at the Ministry of Trade prepared new draft regulations to replace the 1989 Regulation. The proposed draft will touch upon the most important points covered by the 1989 Regulation and will address several other corporate issues in a different manner.

This article compares some of the key areas of comparison between the 1989 Regulation and the new proposed draft:

Obtaining a license for a branch

According to the 1989 Regulation, a foreign company or economic institution cannot be given a license for its branch unless (i) it was licensed to do permanent business in Iraq on the basis of an agreement or a convention with the Government; or (ii) it was contracted to implement a given project with the State organizations or with the Socialist Sector and thereafter upon it serving a written notification to the Companies Registrar (the "Registrar"). However, this service requirement does not apply to companies and institutions contracted to supply commodities and goods unless they have a real physical presence in Iraq, or if their supply agreements included rendering services of any kind. The Registrar should decide within two weeks of receiving the notification as to whether it approves the registration of the branch license.

Now, with the proposed regulation, the above-mentioned conditions are amended so that any foreign company contracting with any Iraqi public/private sector business can register its branch or office in Iraq, provided that the contract's sum is not less than One Million US dollars. Previously, the company could not register a branch in Iraq unless it had a contract with a governmental entity and was registered as representative office but with the introduction of this law any company can registered a branch whether it has contract or not.

Furthermore, the 1989 Regulation obliges the office [what is an 'office' – do we meant the 'entity'] or the branch to submit the latest balance sheet of the foreign parent company, along with two copies of the Board of Directors' Report attached or annexed thereto, for each fiscal year, along with the final accounting report of that representative office or branch. The proposed regulation, however, obliges the presentation of the fiscal status report of the parent company only when the articles of association are presented for registration, and the branch is not required thereafter to present the annual accounts of the parent company and it is only necessary to present the final fiscal report for the Iraq branch.

As with the 1989 Regulation, the proposed regulation retains the obligation on the foreign company to file an application at the Registrar's office within 75 days from the date of concluding the contract, convention or agreement with a copy requiring to be attached to the application.

Both the 1989 Regulation and the proposed regulation stipulate that the Registrar shall issue the branch's license within 15 days from the date of publishing the approval of the registration in the local newspapers, and upon issuing the license, the branch shall acquire legal status.

The Branch Director's Residency in Iraq

As for the management of the branch in Iraq, the 1989 Regulation stipulates that the director of the branch, or the manager authorized by the foreign company or institution, shall reside in Iraq. Further, in terms of accountability, that individual is treated equally to the Iraqi companies' directors, and such an individual is required to appoint a deputy to manage the branch in their absence.

The proposed regulation provides that the person who manages the branch "has the right to move between Iraq and the countries where his/her business requires his/her presence".

Supervision of the Branch

As with the 1989 Regulation, the proposed regulation obliges foreign companies and branches to pursue activities that fall within the development plans and they are considered as economic units in the same way as Iraqi companies. In order to regulate their activities, the proposed regulation subjects branch offices to a monitoring system similar to that applied to Iraqi companies. The proposed regulation dictates that the branch or representative office should keep regular account books in the Arabic language for all its activities related to its works in Iraq, according to the accounting system referred to in Article 201 of Companies Law. The branch is also committed to submit an annual plan including a comprehensive report on its intended activities in Iraq for the following year, in addition to submitting regular reports related to the implementation of its previous annual plan, to its parent company at least once a year. The proposed regulation also obliges the branch to provide information to the Registrar about the employees of the branch as per the forms adopted for this purpose. It also gives the Registrar the right to request any further information it deems necessary to facilitate the implementation of the regulation.

The proposed regulation also stipulates that the branch management should notify the Registrar when the branch ceases to do business in Iraq, giving appropriate justification for the decision, within 30 days as of the date of stopping the business. The branch management should also notify the Registrar if the foreign company or economic institution declares bankruptcy/liquidation, it merges or if it is in the process of amending its articles of association. The proposed regulation allows the Registrar to nominate one or more of competent specialized inspectors to inspect the works of the branch or office if so required, and the office or branch should extend all necessary assistance for the inspector to carry out his inspection.

Liquidation of Branches Working in Iraq

According to the 1989 Regulation, if the license is no longer valid by reason of the branch being required to liquidate, the branch shall commence the liquidation process within 60 days as of the date in which the license is revoked, by a written request being presented to the Registrar stating the reasons of liquidation, accompanied by a statement that shows the financial status of the branch at that date. The liquidation procedures should be finalised, including presentation of the liquidation accounting reports, and the Minister of Trade has the right to extend this period if a concerned parties so requests, explaining the justifications for such request. Whenever such liquidation is finalised according to the law, the Registrar shall issue a decision to write off the branch from its records, publish the decision within a local newspaper within 10 days after the date of the decision thus completing the liquidation process.

In the proposed regulation, there are two further examples where the branch may be liquidated:

First: The branch shall be liquidated by the Registrar without waiting for its management to present their request for liquidation if the branch practices no business, or makes no contract with any public or private sector party within two years of the issuance of the registration certificate in circumstances where it has not: :

- Appointing a legal advisor for the branch as well as a notarized accountant;
- Opening a bank account in one of the Iraqi banks, or the licensed international banks in Iraq;
- Presenting a certified lease agreement for the administration of the branch in Iraq; and
- Presenting the final annual fiscal statements of the branch.

Second: where the branch has provided the information listed in (a) to (d) above, it shall still be liquidated by the Registrar without waiting for the company to submit a request for liquidation if it does not, within 4 years after the registration of the branch in Iraq, not pursue any business in Iraq or engage in any contract with any entity, whether in the public or private sectors within the above-mentioned period of time.

In light of the above, in the event that the proposed amendments are adopted, it will provide a smoother mechanism for foreign entities in Iraq in terms of the registration and de-registration (liquidation) procedures. It shall further open the way for a more time-efficient and convenient process in terms of transactions with the private sector where the same level of approvals are no longer a requirement.