

Client Alert: Amendment to Iraqi Companies Law No. 21 of 1997

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Iraq has passed an amendment (“Amendment”) to certain articles of the Companies Law No. 21 of 1997 (“Companies Law”), which may disrupt existing foreign investment in the country.

Percentages of Iraqi ownership in companies (Article 12)

When the Companies Law was enacted in 1997, Article 12 mandated that companies be fully owned by Iraqis or the citizens of certain Arab countries. In 2004, the CPA No. 64, amended the Companies Law and abolished this provision, allowing foreigners to hold full ownership of Iraqi companies.

Unfortunately, the Amendment modified Article 12 to provide that Iraqi individuals or corporations must hold at least 51% of the capital in Iraqi joint stock or limited liability companies (LLCs). This change will substantially impact both foreign investment and businesses currently operating in Iraq, as well as possible future ventures.

The Amendment is silent regarding the status of existing companies that do not satisfy this requirement under their current structure.

Depositing powers of attorney (“POA”) or proxies related to general assembly meetings with the Iraqi Securities Commission (Article 91)

According to the Amendment, companies must now deposit certified POAs or proxies regarding attendance at general assembly meetings with the Iraqi Securities Commission, instead of the company’s headquarters, at least three days before the meeting date. Additionally, the Iraqi Securities Commission now has the authority to issue related guidelines, including the approved POA form, its contents, and its preparation method, rather than the Companies Register.

Deputy authorized manager (Articles 121 and 122)

Previously, a LLC had only one manager. The Amendment introduces the position of the deputy authorized manager who may exercise the authorized manager’s powers during the latter’s absence. This is expected to facilitate easier operation of the LLC entity. The same rules regarding appointing and dismissing the authorized manager apply to the deputy authorized manager.

Holding companies now recognized (Article 7)

For the first time, Iraq recognizes the concept of a holding company. The Amendment defines a holding company as any joint stock or LLC that controls one or more joint stock or limited

liability company, referred to as “affiliated companies,” via one of the following arrangements:

1. Holding at least 50%+1 share/allotment of the company and maintaining control over its management.
2. With joint stock companies, controlling the board of directors.

The holding company name must include the word “holding.” The company name will be included in papers, correspondence and announcements issued by the company.

The objective behind recognizing holding companies is to support the national economy, and these companies may:

1. Own movables and immovables properties within the scope of its activity;
2. Establish and manage affiliated companies or manage other companies in which it owns shares;
3. Invest its funds in stocks and bonds;
4. Provide loans, funds and guarantees to its affiliated companies; and
5. Own patents, trademarks, exclusive rights and other moral rights, exploit them and lease them to affiliated companies or other companies.

At the end of each financial year, the holding company shall prepare consolidated financial statements for both itself and its affiliated companies, as well as profits and loss accounts, according to international accounting standards.

The Amendment is silent about the status of existing companies that satisfy one of the new criteria for a holding company and whether these companies will be considered holding companies or remain unaffected by these provisions.

Minimum required capital of companies and the applicable debt ceiling (Article 28)

The Amendment has added a third paragraph to Article 28, which allows the Cabinet, following a recommendation by the Minister of Trade, to amend:

1. The minimum required capital for companies; and
2. The percentage of the company’s debt ceiling (300% of the capital and the shareholders’ rights).

Company termination and the role of the Companies Registrar (Articles 147 and 156)

Prior to the Amendment, a company could be terminated if it failed to conduct its activity, without a legitimate reason, for a period of one year, either from the company’s date of establishment or during its operation. Now, under the amended First and Second sections of Article 147, that time period has been extended to two years.

The Amendment has added a second paragraph to Article 156 under which the Companies Registrar can direct the liquidation of a company after providing 60 days’ notice that the company may be terminated under Article 147 for one of the following causes:

1. Failing to conduct its activity within two years of its date of establishment;
2. Suspending its activity for more than two years; or
3. The completion or the impossibility of completing the project for which the company was established.

Imprisonment as a penalty for conducting activities without registration (Article 215)

Before its amendment, Article 215 of the Companies Law included a fine, not to exceed IQD 3 million, for conducting an activity without registration. Under the amended Article 215, the penalty now includes imprisonment for a period of no fewer than three months and not exceeding one year and/or a fine of no less than IQD three million and no more than IQD five million. Persons engaged in business should pay additional care to whether they operate within the scope of their permitted activities.

Adjustments to fines for delaying handover of information or a required statement and not maintaining legal records (Articles 216 and 217)

The Amendment provides a floor of IQD one million for the fine imposed for failure to maintain records as required by law and reduced the limit for the fine incurred for delaying handover of required statements and information by law to a governmental entity from IQD 300,000 per day to a range of no less than IQD 50,000 and no more than IQD 250,000 per day. Furthermore, a ceiling of IQD 5 million for the total fine amount has been introduced.

Priority status for Iraqi companies in government contracting (new Article 222)

A new article 222 introduced by the Amendment gives priority to Iraqi companies, including those participating with foreign companies, in all government contracts. Prior to Parliament's vote, the Amendment included a strict restriction that required governmental entities to demonstrate necessity and obtain Cabinet approval in order to contract with foreign companies; however, the Cabinet approval requirement was removed by Parliament.

Electronic exchange and express mail for procedures and correspondence with the Companies Registrar (new Article 223)

The Amendment has added a new Article 223 that allows companies to use electronic exchange and express mail for all correspondence, submission of data and all procedural matters with the Companies Registrar. The Companies Registrar will prepare the requirements for operating the electronic system.

No Effect in Iraqi Kurdistan

The Iraqi Kurdistan Parliament in Erbil is not currently reviewing the Amendment. Therefore, it will not be applicable in the territories controlled by the Government of Iraqi Kurdistan, unless and until it is finally approved.

Publication and Next Steps

The Amendment has been published in the Official Gazette on 9 September 2019 and it is effective as of that date. It is unclear if there will be any grace period during which existing

companies may adjust their status in accordance with the Amendment or whether existing companies are exempted from the application of the Amendment.

Foreign investors who own more than 49% of Iraqi companies or have other investments in Iraqi businesses should seek counsel to understand how the Amendment may impact their operations. One point to determine is whether existing companies satisfy the holding companies criteria. Additionally, foreign investors may consider restructuring their Iraq-based companies as they evaluate the Amendment's practical implementation.

If you would like more information about this topic, please contact us.

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