

MINISTRY OF TRADE

MINISTERIAL INSTRUCTION NO. 196 DATED MARCH 15, 2004

The Registration of Companies

Section I

Introduction: The Right to Register a Business Entity

1. Pursuant to Coalition Provisional Authority (CPA) Order 64, dated March 3, 2004, certain amendments have been effected to Company Law No. 21 of 1997. This Instruction implements these changes pursuant to Article 208 of that Law and, consistent with CPA Order 39, provides for equal treatment of foreign and domestic investors in most respects. In no case shall the nationality of a founder disqualify a company from being established, whether its business shall be in the nature of commercial agency, distributorship, trading company or otherwise.
2. This Instruction implements the new law. Any other instruction conflicting with this Instruction shall be considered inoperative.

Section II

Persons Subject to this Instruction

Persons (natural or juridical) establishing mixed or private Iraqi companies pursuant to Company Law No. 21 of 1997, as amended, or any successor law, are subject to the provisions of this Instruction.

Section III

Application and Procedures for Registration

1. Persons wishing to found a company under the laws of Iraq shall complete and file with the Registrar of Companies an Application in the form attached as Annex I to this Instruction. Two (2) copies of the completed form should be brought to the Registrar of Companies at the time of application (the Registrar of Companies will keep one and the other will be returned with a signed checklist to the applicant).
2. Each Application shall include the following information concerning the business entity proposed to be registered by the Registrar of Companies:
 - a. name;
 - b. type of business activity;
 - c. business address, phone number, facsimile number, and e-mail address of its offices in Iraq;
 - d. corporate form (joint-stock, limited liability, joint liability, sole owner enterprise, or simple company);
 - e. ownership structure (wholly Iraqi owned, wholly or partially foreign owned);

- f. a yes/no question asking if the proposed entity will be involved in:
 - (a) land ownership;
 - (b) natural resource extraction or initial processing;
 - (c) retail sales; or
 - (d) acting as a commercial agent.
- g. name, address, telephone number, fax number and e-mail address of
 - (a) the agent for service of legal process in Iraq (must reside in Iraq);
 - (b) the authorized representative for filings with the Registrar of Companies (must reside in Iraq; pursuant Article 208, Paragraph 2 of the Company Law of 1997, as revised by CPA Order 64, The Agency Registration Law No. 4 of 1999 shall be inapplicable to the registration of a company, and a company is not required to retain a registration agent to register, though it may choose to do so); and
 - (c) each founder (as well as of its managing director or equivalent officer in the case of founders who are juridical persons) (founders do not need to live in Iraq or be Iraqi citizens);
- h. perjury statement signed by the authorized representative for filings with the Registrar of Companies.

3. The following documentation shall be submitted with each Application:

- a. the contract of the company, signed by the founders or their legal representatives, covering:
 - (a) the points required in article 13 or 14, whichever is applicable, of Company Law No. 21 of 1997, as amended, and
 - (b) the information regarding shares issued for property-in-kind required by article 29, paragraph Third of that Law;
- b. a bank statement from a bank authorized to operate in Iraq evidencing that the founders of the proposed company have deposited, for the proposed company pending registration by the Registrar of Companies:
 - (a) capital for a joint stock company of not less than two million dinars (ID2,000,000),
 - (b) capital for a limited liability company of not less than one million dinars (ID1,000,000), and
 - (c) capital for all other business entities of not less than fifty thousand dinars (ID50,000);
- c. if the Application is for foundation of a joint stock company, additionally, the subscription document signed by the founders and the technical and economic feasibility study;
- d. if the proposed entity has a foreign ownership component and is planning to operate in retail sales in Iraq, a bank statement showing that the sum of one hundred thousand United States dollars (\$100,000.00) has been deposited in a non-interest bearing account (this can be furnished to the Registrar of Companies at a later date and the non-submission of it shall not be grounds for rejection of the Application; however, the bank statement will have to be furnished before actual sales activity may begin) in accordance with the Ministerial Instruction on retail trade;

- e. if the proposed entity is to be a commercial agent, then additional documentation must be submitted to the registrar pursuant to the Ministerial Instruction on commercial agencies (this can be furnished to the Registrar of Companies at a later date and the non-submission of it shall not be grounds for rejection of the Application; however, the materials will have to be furnished to the Registrar before commercial agency activity may begin)
 - f. a copy of the passport (for a foreign citizen) or civilian identification card (for an Iraqi citizen) of the authorized representative for filings with the Registrar of Companies, as prescribed in Item g.(b) in paragraph 2. above (this is the person who is to actually submit the Application and he or she should also bring at the time of application, and in all future interactions with the Registrar of Companies, the original of his or her passport (for a foreign citizen) or civilian identification card (for an Iraqi citizen)).
4. An Application for the registration of a company (including all required information and documents) may be filed in either the Arabic or English language.
5. Upon receiving an Application, the Registrar of Companies shall:
 - a. review the Application for completeness;
 - b. if the Application is incomplete, return it to the applicant without collecting any fee;
 - c. if the Application is complete, provide a signed checklist to the applicant showing that all the required information and documentation has been received;
 - d. log the accepted Application in the Registrar of Companies' official record as of the date of its receipt; and
 - e. assign a temporary unique identification number to the Application.
6. The Registrar of Companies shall conduct (through other agencies if necessary until this capacity has been established within the Registrar's office; pursuant to Article 208, Paragraph 2 of the Company Law of 1997, as revised by CPA Order 64, the Minister of Trade is authorized to issue instructions to coordinate the activities of the Registrar of Companies and the Chamber of Commerce regarding the registration and approval of commercial trade names) or verify that a search has been conducted to determine whether the company's business name has already been registered in Iraq by a person other than the founders. In the event the company's business name has already been registered in Iraq, the Registrar of Companies shall afford the founders the opportunity to select a name (also subject to search) under which the company might do business without confusion as to its true identity and without implying an association with the person (natural or judicial) who already has registered the name. If this is not possible, the application will be rejected with the advice that the applicant may challenge the prior claim on the name under separate regulations and law.

7. The Registrar of Companies must approve or disapprove each Application within ten (10) business days from the day of its submission. The Registrar of Companies may only disapprove an Application for failure to comply with this Ministerial Instruction.

8. Upon approval of each Application, the Registrar of Companies shall promptly issue to the applicant a certificate of establishment bearing the corresponding business entity's name and the Registrar of Companies' official seal, together with a permanent unique identification number, except that for a joint stock company these shall be issued only after its public subscription is completed, in accordance with article 21, paragraph First, point 2, of Company Law No. 21 of 1997, as amended.

9. The registered business entity shall acquire legal personality as from the date of issuance of its certificate of establishment and permanent unique identification number by the Registrar of Companies.

10. Upon issuance, each registration shall be published in the "Companies Bulletin" and in at least one (1) daily newspaper of wide circulation in Iraq.

11. The Registrar of Companies shall forward copies of each Application as approved, together with its respective permanent unique identification number as issued, to the Ministry of Finance (Tax Department), Ministry of Planning, Ministry of Labor and Social Affairs, and such other Iraqi Government departments and agencies, as reasonably necessary.

12. The Registrar of Companies shall enter basic summary information on registered companies into a Ministry of Trade electronic database accessible to the public, including over the Internet. Implementation of this function shall not, however, be grounds for delay of registration.

Section IV Fees Payable

1. A fee of 200,000 dinars shall be payable for the registration of a joint stock company, and a fee of 20,000 dinars shall be payable for all other corporate forms. The fee is payable as follows:

- a. one-half (1/2) of the fee shall be paid upon submission and filing of the Application;
- b. the remaining one-half (1/2) of the fee shall be paid upon issuance of the registration and permanent unique identification number by the Registrar of Companies; and
- c. provided, however, that in the event of disapproval of an Application, the remaining one-half (1/2) of the fee referred to in Subsection b. directly above shall not be due or payable, and the one-half of the fee referred to in Subsection a. directly above shall be returned to the applicant by the Registrar of Companies.

2. The Registrar of Companies shall collect said fees and issue the proper receipt evidencing payment directly to the Applicant or its representative.

3. The Registrar of Companies shall keep regular and accurate records and accounts to account for all registration fees collected.

Section V

Appeal for Disapproval of Application

In the event the Registrar of Companies disapproves the Application for the registration of a business entity, the Registrar must promptly notify the applicant in writing stating the reasons for its disapproval. The applicant has the right to contest the disapproval of the Registrar of Companies before the Minister of Trade within thirty (30) days from the date of receipt of notification. The Minister of Trade shall review the disapproval within thirty (30) days from the date of submission of the applicant's appeal. If the Minister of Trade also disapproves the Application, the applicant has the right to appeal the Minister's decision before the competent court of law within thirty (30) days, which court shall have final disposition of the matter.

Section VI

Update of Information at the Registrar of Companies

Information filed in connection with each registration must be correct as of the time of filing. Subsequent changes may be filed as they occur but at least by December 31 of each year, and address changes for the company's principal office in Iraq or its agent for service of legal process within seven (7) days of their occurrence. Companies will be held responsible for notifications and correspondence delivered to the address in the Registrar of Companies' files.

Section VII

Entry into Force of this Instruction

1. This Ministerial Instruction shall enter into full force and effect upon its publication in the Companies Bulletin, as of the date of its signature.

2. The Registrar of Companies shall ensure that these instructions are published in one newspaper of wide circulation in Iraq.

Signed: _____

Name: Dr. Ali Allawi

Title: Minister of Trade