

REPUBLIC OF IRAQ

MINISTRY OF TRADE

MINISTERIAL INSTRUCTION NO. 149 DATED FEBRUARY 29, 2004

Registration of Branches and Trade Representation Offices by Foreign Companies

Section I

Introduction:

Registration of Branches and Trade Representation Offices by Foreign Companies

1. Coalition Provisional Authority (“CPA”) Order No. 39 on “Foreign Investment”, dated 19 September 2003, as amended by CPA Order No. 46, dated 20 December 2003, establishes that foreign investors may do business in Iraq by, among other things, establishing branches or trade representation offices.
2. Pursuant to CPA Order No. 39, a branch or trade representation office may do business in the name of and for the account of a business entity organized under the laws of a foreign country. In no case shall the branch or trade representation office’s foreign character disqualify it from registering to conduct business in Iraq, whether the business is in the nature of a commercial agency, distributorship, trading company or otherwise.
3. The present Ministry of Trade Ministerial Instruction implements CPA Order No. 39, and in particular Section 5 thereof, as to branches and trade representation offices of entities organized under the laws of foreign countries.
4. By virtue of CPA Order No. 39, Regulation No. 5 of 1989 on “Branches and Offices of Foreign Companies and Economic Establishments” and any instructions thereunder contrary to this Instruction are nullified. Branches and offices currently registered under that Regulation are regarded as registered under this Instruction and shall provide updated information as of the time this Instruction requires.
5. By virtue of CPA Order 39, Law No. 51 of 2000 on “Commercial Agency” and any instructions thereunder are nullified. Commercial agents on behalf of natural or juridical persons outside Iraq shall henceforth be regarded as subject to the same legislation as agents performing similar services on behalf of natural or juridical persons inside Iraq. Any other instruction, regulation or legislation conflicting with CPA Order No. 39 as implemented in this Instruction shall also be regarded as null and void.

Section II
Business Entities Subject to this Instruction

1. Foreign business entities wishing to establish themselves to conduct business in Iraq are subject to registration by the Registrar of Companies, Ministry of Trade, in accordance with this Ministerial Instruction. Unless otherwise exempt under the laws and regulations of Iraq, including CPA Orders, foreign companies working under contract in Iraq are also subject to registration under this Ministerial Instruction.
2. Such foreign entities may conduct any business permissible under the laws and regulations of Iraq, including CPA Orders, without being required to post any advance financial bonds, guarantees or similar surety (except for a foreign investor engaging in retail sales).

Section III
Application and Procedures for Registration

1. A foreign business entity wishing to register to do business in Iraq shall complete and file with the Registrar of Companies an Application in the form attached as Annex I to this Ministerial 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 foreign business entity proposed to be registered by the Registrar of Companies:
 - a. legal name;
 - b. trade name;
 - c. type of business activity;
 - d. business address of its offices in Iraq;
 - e. telephone, facsimile and electronic mail in Iraq, where available;
 - f. name, address and telephone number of: (1) the chief management official in Iraq; (2) the agent for service of legal process in Iraq; and (3) the authorized representative for filings with the Registrar of Companies -- (all of three must reside in Iraq);
 - g. a yes/no question asking if the proposed entity in Iraq will be involved in: (1) land ownership; or (2) natural resource extraction or initial processing; or (3) retail sales;
 - h. name, business address, telephone, facsimile and electronic mail of its agent for service of legal process and chief executive officer (or equivalent) in its home country of establishment or incorporation;
 - i. to the extent applicable: (1) the amount of its charter or authorized capital (specifying currency); (2) net worth at close of most recent financial period (indicating date and specifying currency); and (3) the names and addresses of any owners holding ten percent (10%) or more of its equity; and
 - j. perjury statement to be signed on behalf of the foreign business entity proposed to be registered by the Registrar of Companies.

3. The following documentation shall be submitted with each Application concerning the foreign business entity proposed to be registered by the Registrar of Companies:

- a. certificate of registration, as issued and authenticated by the competent authority in the home country of origin,
- b. a copy of the company's charter or equivalent, authenticated by the competent authority in the home country of origin;
- c. a letter on the stationery of the applicant company, signed by an officer or director of the company, authorizing the registration of the business entity in Iraq, consenting to service of process in Iraq, and identifying the chief management official in Iraq, the authorized agent for service of legal process in Iraq, and the representative for filings with the Registrar of Companies in Iraq (all three must reside in Iraq);
- d. the financial statements of the company for the last fiscal year;
- e. if the proposed entity 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;
- 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 the letter referred to in Item (c) in paragraph 3. above and as in Item (f) 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 foreign business entity to do business in Iraq (including all required information and documents) may be filed in either the Arabic or English language. Translations shall be provided of home country documents not in the English or Arabic 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 company without collecting any fee;
- c. if the Application is complete, provide a signed checklist to the applicant company showing that all the required 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 must approve or disapprove each Application within ten (10) business days from the day of its submission by the applicant company. The Registrar of Companies may only disapprove an Application for failure to comply with this Ministerial Instruction.
7. Upon approval of each Application, the Registrar of Companies shall promptly issue to the applicant company a registration license bearing the corresponding business entity's name and the Registrar of Companies' official seal, together with a permanent unique identification number.
8. The registered business entity shall acquire legal recognition as from the date of issuance of its registration license and permanent unique identification number by the Registrar of Companies. A registered entity is present in and subject to the jurisdiction of Iraq.
9. Upon issuance, the Registrar of Companies shall publish each registration in the "Companies Bulletin" and in at least one (1) daily newspaper of wide circulation in Iraq.
10. 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.
11. 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 single standard registration processing fee shall be due and payable, in the amount of two hundred thousand dinars (ID200,000.00), or equivalent, for each Application 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 Item (ii) above shall not be due or payable, and the one-half (1/2) of the fee referred to in Item (i) above shall be forfeited 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 foreign business entity, the Registrar of Companies must promptly notify the applicant company in writing stating the reasons for its disapproval. The applicant company 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 notification. The Minister of Trade shall review the disapproval within thirty (30) days from the date of submission of the applicant company's appeal. If the Minister of Trade also disapproves the Application, the applicant company has the right to appeal the Minister's decision before the competent court of law within thirty (30) days of the date of the decision, 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 the section of the Companies Bulletin publishing this Ministerial Instruction is published in at least five (5) newspapers chosen to accomplish the broadest possible circulation in all regions of Iraq.

Signed: Dr. Ali Allawi
Name: Dr. Ali Allawi
Title: Minister of Trade, Republic of Iraq