



Official Gazette of Iraq

Public Company Law With its amendments

No. (22) Of 1997

قانون الشركات العامة مع تعديلاته

Translated in
Ministry Of Justice
Iraqi Gazette department
Translation Section
2022



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In the name of people The Presidency of the Republic

Based on what was approved by the National Council and the Revolution Command Council, and pursuant to the provisions of Article (53) of the Constitution, we issued the following law:

No. (22) Of 1997 Public Company Law

Chapter One Objectives of the Law and Requirements for Incorporation

Article 1

For the purposes of this law, the following terms have the meaning indicated thereto:

Minister: The competent minister or the head of an entity not affiliated with a ministry.

Ministry: The competent ministry or an entity that is not affiliated with a ministry.

Public company: The self-financed economic unit wholly owned by the state that enjoys legal personality and financial and administrative independence and works in accordance with economic foundations.

Registrar: Companies Registrar in the Company Registration Department in the Ministry of Commerce.



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Article 2

This law aims to organize public companies by establishing, managing and liquidating them, with unified financial and administrative rules and principles, in order to reach the highest level of growth in work and production, and to adopt the principle of economic calculation, the efficiency of investing public funds and their effectiveness in achieving the goals of the state and raising the levels of performance of the national economy.

Article 3

The Ministry shall submit a request to the Council of Ministers to establish a public company, accompanied by a study that includes economic and technical justifications of its establishment, provided that the request contains the following:

First: The name of the company, its location and headquarters.

Second: the Company's objectives and activity.

Third: The amount of the company's capital or the sources of financing its activity.

Fourth: Any other information that the Ministry finds necessary.

Article 4

After the approval of the Council of Ministers on the request of the establishment of the company, the Ministry shall prepare a contract or statement for the establishment of the company that includes the following data:

First: Company's name, location and headquarters and the name shall be derived from its activity, with the word (Public) added to the name.

Second: Company's objectives.

Third: Company's activity.

Fourth: Company's capital.



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Fifth: The names of the founding parties.

Sixth: Any other information the ministry finds necessary.

Article 5

For statistical documentary purposes, the ministry shall make a special contract or statement for the establishment of the company and the approval of the Council of Ministers to the Registrar, to register the company.

Article 6

The Registrar shall register the company and issue its incorporation certificate, and the Ministry shall publish the certificate, contract or statement of the company in the Official Gazette and in the bulletin issued by the Registrar.

Article 7

The company shall acquire a legal personality as of the date of issuance of its certificate of incorporation.



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Chapter Two The Company's Capital

Article 8

The company's capital shall be determined by the decision issued by the Council of Ministers approving its establishment.

Article 9

First: The public treasury shall pay the company's capital in one go or in installments whose amounts and dates for payment are determined in accordance with a plan set by the company in coordination with the Ministry of Finance.

Second: The values of the movable and movable properties that are transferred to the company shall be considered part of its capital.

Third: When two or more self-financed public legal persons participate in the establishment of a public company, the participating parties shall pay their share in their capital and shall be subject to the same controls established under the provisions of this law.

Article 10

First: ⁽¹⁾

- a. Coordination shall take place between the competent ministry and the Ministry of Finance regarding this if necessary to increase or decrease of the company's capital, upon approving, the ministry shall submit a request to the Council of



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Ministers together with financial study including the justifications for this and its impact on activity, rights and impact on the company's activity, rights and obligations.

- b. The minister, with the consent of the minister of finance, may add the cost of the completed project to the capital of the company upon completion of a project belonging to the investment plan allocation and the ministry shall take the necessary procedures to implement that, including amending company's contract or incorporation statement.

Second: Upon the approval of the Council of Ministers to increase or decrease the capital of the company, the ministry shall take the necessary measures to implement this, including amending the company's contract or the statement of its establishment.

Third: The ministry shall inform the registrar of the amendment to register it and it shall be published in the Official Gazette.

Chapter Three Profits and Loses

Article 11

First: The net Profit for the purposes of this law means the excess of revenues over the expenses shown in the Profit and loss account for the financial year of the company organized in accordance with the legislations in force and the accounting regulations and norms approved and audited by the Financial Control Bureau and approved by the legally authorized body.



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Second: The financial profits and losses shall be excluded, with any profits and losses resulting from unusual activity of the company from the net profit for the purposes of distributing the share of employees. ⁽²⁾

Third: The distributable profit shall not exceed 30% thirty per cent of the cost of the ongoing activity and the remaining shall be distributed as follow:

1. (10%) ten per cent of the net profit and capital shall be reserved as compensation for loss of profits, provided that this shall be deemed within the cost of commercial activity. These amounts shall be exclusively used for expansion purposes over (5) five years period, otherwise the amounts shall be transferred to the Ministry of Finance. ⁽³⁾
2. (40 %) Forty per cent of the excess amount of distributable profit of the general companies of the industrial sector shall be registered in the reserves account and shall be allocated as follows:
 - a. (90%) ninety percent of it to the rehabilitation and developing the productive factories.
 - b. (10%) ten percent of it to build residential units and developing the existing housing services of the workers.
 - c. Resulting amounts of the two per cents stipulated in (a) and (b) of this Item shall be used for the indicated purposes within (5) five years which can be extended if necessary in accordance with the suggestion of the minister and the approval of the cabinet, otherwise, the amounts shall be transferred to the Ministry of Finance .
3. The remaining amount, after the deducting of tow portions stipulated in Para (1) and (2) of this Item, shall be transferred to the Ministry of Finance. ⁽⁴⁾



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Fourth: The Profit provided for in the Item (Third) of this article shall be distributed in accordance with the following percentages:

1. (45%) forty-five per cent for the public treasury.
2. (33%) Thirty-three per cent of profit incentives for the company's employees, the distinguished among them, the members of the board of directors and the employees of the center of the ministry, in accordance with percentages and regulations set by the board of directors and with the approval of the minister.
3. (5%) five per cent for research and development
4. (5%) five per cent of public social services of workers.
5. The rest for the capital reserve.

Fifth: The Council of Ministers may increase or decrease the percentages stated in Items (Third) and (Fourth) of this article and may spend for covering companies covered by the provision of this law from the share of Ministry of Finance exclusively through the achieved profits of the companies based on economic activity and circumstances.⁽⁵⁾

Article 12

(25%) Twenty-five per cent of the net profit before distribution shall be deducted to offset the carry-over losses from previous years, if any.

Article 13

If the company's loss amounts to (25%), twenty-five per cent of its nominal capital, the company's board of directors shall prepare an economic assessment for this loss, in which it shall determine the reasons for the loss, present the proposed treatments for this loss, and submit it to the Ministry to take the appropriate decision regarding it.



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Article 14

If the company's loss amounts to (50%) of its nominal capital, the Ministry shall prepare an economic assessment for it to be submitted to the Council of Ministers to take the appropriate decision regarding the company's continuation or liquidation.

Chapter Four Investment and Borrowing

Article 15

- First: The Company may invest cash surpluses by contributing to joint-stock companies or participating with them in carrying out works related to the company's objectives inside Iraq and obtaining the approval of the Council of Ministers if the project is outside Iraq.
- Second: The approval of the Council of Ministers shall be obtained when investing cash surpluses from Arabs and foreign companies and institutions or those participating with them in the implementation of works related to the company's objectives outside Iraq.
- Third: The company may participate with major Iraqi, Arabic and foreign companies to fulfill works related to the company's objectives inside Iraq.⁽⁶⁾



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Article 16

First: The company may invest cash surpluses in fixed deposits with banks in Iraq for a period not exceeding than (180) one hundred and eighty days, provided that a special account is opened in the company's relevant records for the purpose of recording the interests due on these deposits to be shown in the final accounts in an way facilitates measuring the efficiency of the company's performance in its sector activity.

Second:

1. Insurance and reinsurance companies and banks may invest their funds in various aspects of investment.
2. Council of Ministries may decide to include any other investment entity with the provisions of Paragraph (1) from this Item.

Article 17

The company may lend and borrow or obtain funds from financial institutions and national public companies to finance its activities in accordance with contracts and terms to be agreed upon, not exceeding than (50%) fifty per cent of its paid up capital.

Article 18

Ministry Council's approval shall obtain from when borrowing from outside of Iraq to finance investment and commercial activity.



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Chapter Five Company's Administration & Board of Directors

Article 19

The company's board of directors shall set drawing up the administrative, financial, organizational and technical policies and plans that are necessary for the company's activity and achievement of its objectives, supervising and following up on its implementation, and it shall exercise all rights and powers related to this, and it may authorize the general manager of the company whatever it deems appropriate of the powers.

Article 20

The Board of Directors shall be consisted of the company's general director as a chairman, and eight members named as following:

- First: Four members shall be chosen by the Minister among the heads of formations in the company those have experience and specialization in matters related to its activities.
- Second: Two members shall be elected from among the company's employees.
- Third: Two members have experience and specialization chosen by the Minister from outside the company and with the approval of opinion board.
- Fourth: The Board of Directors shall have three reserve members the employees shall elect one from among them, and the minister shall appoint two other members.



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Fifth: In its first meeting, the council shall elect a vice chairman from among its members, and it shall replace the chairman in his/ her absence.

Article 21

The bylaw shall determine the way for electing the company's representatives of members to the board of directors and the qualifications required for them.

Article 22

The duration of the board of directors' session shall be three renewable years and it shall begin from the date of its first meeting.

Article 23

First: The board of directors shall meet for one time a month by an invitation from its chairman.

Second: Exceptional meeting of the board of directors may be held by an invitation of its chairman or by a reasonable written request submitted by two of its members.

Third: The quorum shall be achieved in the meetings of the council by the presence of the majority of its members, including the chairman or his/ her deputy, and decisions shall be taken by the majority of the members present, and if the votes are equal, the side with which the chairman votes shall prevail.



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Article 24

If any vacancy happens in the membership of board of directors, the chairman of the board shall call the reserve member of the category in which the vacancy occurred to complete the remaining period of the board's term.

Article 25

The decisions of the council shall be implemented when they are issued, except for those related to the following matters, which shall be implemented after the minister's approval:

First: Annual plans and budgets.

Second: the Company's final accounts and annual report.

Third: The legislations.

Fourth: Production incentive systems, which shall be considered one of the costs of production.

Article 26

The decisions of the council in matters mentioned in Article (15) of this law shall be considered ratified if the minister does not object to them within a period of (25) twenty five days from the date of their registration in the minister's office. If the minister objects to them, they shall be returned to the council at its first meeting. If the minister insists on his/ her opinion, a session shall be held under the chairmanship



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of the minister to consider the matter, and the decision issued by a majority of the number of members present shall be final.

Chapter Six The General Manager of the Company

Article 27

The company shall be managed by an experienced and specialized general manager who holds at least an initial university degree. This manager shall be appointed by a decision of the Council of Ministers and shall be the supreme president of the company. This manager shall carries out all the company's necessary work to manage it and conduct its activity in accordance with the powers granted to him/ her by the board of directors.



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Chapter Seven **The Internal Control**

Article 28

The internal control aims to achieve effective control over the company's funds, and in order to achieve this, it may conduct its activity in accordance with programs that ensure coverage of all the control systems required.

Article 29

The internal control shall prepare monthly reports that include the results of its activity for the previous period of the report, which shall be submitted to the general manager of the company. The company's management shall take the necessary measures to liquidate the violations contained in the reports within a period of thirty days from the date of their receipt to the office of the general manager.

Article 30

Internal control shall be linked to the general manager, and none of its organizers may be transferred or punished except with the approval of the board of directors and by a reasoned decision.



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Chapter Eight **Merger of Companies**

Article 31

First: It shall be permissible, by a decision of the Council of Ministers, to merge a public company with another or merge two or more public companies to form a new public company, provided that the new merged companies are of similar or integrated activity.

Second: The ministry shall prepare a study of the technical and economic feasibility of merger and shall submit it to the Council of Ministers to take appropriate decision.

Article 32

After the Council of Ministers approves the merger, the ministry amends the contract of the company with it another company merged, or establishes a contract for the company resulting from the merger. The board of directors also shall amend the bylaw or prepare new bylaw for it.



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Article 33

The ministry shall inform the registrar of the amendment of the contract or provide him/ her with the new contract. The merger shall be effective from the date of Council of Ministers' approval or from any other date determined by the Council of Ministers. This date shall end the moral personality of the company that merged with another company or the companies that merged forming a new company. The registrar shall issue a new incorporation certificate.

Article 34

First: The ministry shall publish the merger decision in the Official Gazette and in the bulletin issued by the registrar.

Second: All the rights and obligations of the merged company shall be transferred to the company with which it was merged, and the right and obligations of the merged companies shall be devolved to the new company.



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Chapter Nine The Transformation of the Public Company

Article 35

The public company may be transferred to a joint-stock company with the approval of the Council of Ministers.

Article 36

The ministry shall develop a study on the economic and technical justifications for transformation, the method of evaluating the value of capital shares and the method of selling them, and it shall submit them to the Council of Ministers to take the appropriate decision regarding them.

Article 37

First: After the Council of Ministers approves the transformation, the ministry shall prepare a new contract for the company that the ministry shall submit it with the approval of the Council of Ministers to the registrar.

Second: The ministry shall publish the transfer decision in the Official Gazette and in the bulletin issued by the registrar.



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Third: The joint-stock company shall acquire the legal personality as of the date of the last publication of the transformation decision.

Fourth: Upon the transformation of the company into a joint-stock company, the Council of Ministers may determine a certain percentage of the nominal capital of the company, which shall be allocated to the employees of the public company transferred for subscription in it as shareholders.

Article 38

The contribution of the socialist sector in the new company shall be determined in accordance with the legal provisions in force.

Chapter Ten

Liquidation of Companies

Article 39

First: When the reasons mentioned in Article (14) of this law are realized, the ministry shall obtain the approval of the Council of Ministers to liquidate the company.

Second: If the Council of Ministers decides to liquidate a company, the ministry shall be required the following measures:



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1. The ministry shall form a liquidation committee in which the Ministry of Finance and the Financial Control Bureau shall be represented and the ministry shall determine committee's terms of reference and powers, and it shall send a copy of the formation of the committee to the registrar.
2. The company shall, as soon as it is notified of the liquidation decision, cease to arrange any new obligation, and its activity shall continue to the extent necessary to fulfill its obligations and it shall retain its legal personality during the period of its liquidation.
3. The liquidation committee shall seize all the company's records and documents, shall make an inventory of its assets and prepare a preliminary report and submit it to the ministry.
4. The committee shall liquidate the rights and obligations of the company in accordance with the contents of the liquidation decision, subject to the provisions of this law.
5. The liquidation committee shall prepare final accounts and a report on the results of the liquidation of the company upon completion of liquidation or at the end of each fiscal year if the liquidation work of the company continues for more than one year, and it shall submit them to the ministry.
6. After the completion of the liquidation work, the committee shall submit its final report to the ministry, accompanied by the auditor's report.
7. If the result of the liquidation indicates the existence of the company's remaining funds. it shall be paid to the public treasury or to the companies established from these funds. The minister shall have the authority to transfer the assets at the estimated value.



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8. The liquidation period shall not exceed three years in all cases; otherwise the matter shall be submitted to the Council of Ministers for taking an appropriate decision.
9. If the ministry finds that the liquidation was carried out in accordance with the provisions of this law, it shall notify the registrar of this, in order to issue his/ her decision to delete the name of the company and publish this in the Official Gazette and in the bulletin he/ she issues.

Chapter Eleven

General and Final Judgments

Article 40

Within a maximum period of one year from the date of entry into force of this law, all self-funded and existing economic units engaged in economic activity shall adapt their conditions in accordance with the provisions of this law.

Article 41

The Council of Ministers may exclude any of the extractive companies affiliated with the ministry of oil from the provisions of this law, if necessary.



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Article 42

The company's activity shall be subject to the control and audit of the Financial Control Bureau.

Article 43

The minister shall issue a bylaw for the company, which shall be prepared by its board of directors of the company, in accordance with the provisions of the law within (60) sixty days of its formation and shall include the following:

First: Duties and powers of the board of directors.

Second: Method of electing employees' representatives in the board of directors.

Third: Qualifications required for the board of directors' member.

Fourth: Administrative structure of the company and determining the scope of work of its administrative and organizational units and their respective duties.

Fifth: Regulating the aspects of monitoring the company's activity and internal control.

Sixth: Any other matters related to the tasks and activity of the company.

Article 44

The service rules in force for employees of the companies covered by this law shall continue to apply until new service rules are issued.



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Article 45

This law shall be implemented from the date of its publication in the Official Gazette and any public or special text that contradicts its provisions shall not be applied.

Written in Baghdad on the fifteenth of Rabi` al-Thani 1418 AH, corresponding to the eighteenth of August 1997 AD.

Saddam Hussein

The President of the Republic



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References

1. It was canceled by a decision of the Presidency Council in its session held on 20 /3 /2002, based on the provision of Item (1) of Article (42) of the constitution, which includes issuance of law no. (9) of 2002, this was published in Al-Waqaa AL-Iraqiya, Issue No. 3925 on 8/ 4/ 2002, Article (2)
2. It was canceled by a decision of the Presidency Council in its session held on 14/ 4/ 2002, based on the provision of Item (1) of article forty-two of the constitution, which includes issuance of law no. (14) Of 2002, this was published in Al-Waqaa AL-Iraqiya, Issue No. 3928 on 29/ 4/ 2002, article (1?)
3. It was canceled by a decision of the Presidency Council in its session held on 1/ 6/ 2000, based on the provision of Item (1) of Article (42) of the constitution, which includes issuance of law no. (39) Of 2000, this was published in Al-Waqaa AL-Iraqiya, Issue No. 3830 on 12/ 6/ 2000, Article (1)
4. The same reference of No. (1)
5. It was canceled by a decision of the parliamentary in its session held on 14/ 4/ 2002, based on the provision of item (first) of Article (61) and item (Third) of Article (73) of the constitution, which includes issuance of law no. (73) Of 2012, this was published in Al-Waqaa AL-Iraqiya, Issue No. 4255 on 22/ 10/ 2002, Article (1)
6. It was canceled by a decision of the parliamentary in its session held on 3/8/2015, based on the provision of item (First) of article (61) and item (Third) of article (73) of the constitution, which includes issuance of law no. (28) of 2015, this was published in Al-Waqaa AL-Iraqiya, Issue No. 4376 on 17/ 8/ 2015, Article (1)