
Iraq Business Registry Project
Amman Company Law Seminar

Amman Jordan
January 10th to January 17th 2005

FIRST DAY – OVERVIEW OF MAIN CHANGES

January 10th 2005

FIRST DAY – OVERVIEW OF MAIN CHANGES



Purpose of Company Law of 2004

- To remove most obvious impediments to increased economic activity and reconstruction – sometimes grew beyond this
- Not intended as a permanent solution – a “Phase II” law drafted but never promulgated because of great volume of other work CPA needed to complete before CPA ended

Changes of 2004 amend Company Law No. 21 of 1997

- Amended law intended to cover all parts of Iraq
- No allowance for continued use of 1983 Law in the north
- Conformity with new law in all regions important in order to prevent confusion about Minister of Trade’s authority or validity of company formation, actions, share transfers, etc., that meet requirements of one law but not the other. Many differences (though not every difference) between the 1983 Law and the 1997 Law where amended in 2004 will be noted in coming days.

FIRST DAY – OVERVIEW OF MAIN CHANGES



No More Need for Approval by State Economic Authorities or Conformity with State Economic Planning

- Approvals by Registrar remain but are based on conformity with law, not economic plan
- 1997 Law required State ministry or other authority in company's economic sector to give approvals regarding company formation, capitalization, reorganization, liquidation – these now gone.
- No restriction on multiple lines of business or merger of companies in different businesses

Rationale

- Business attuned to markets rather than plan deemed better for economic growth and reconstruction
- Addition or subtraction of business line should not be affected by artificial divisions among state ministries or agencies – should depend on profitability, judgment of business owners
- Little evidence that State economic authorities played any other useful role, such as protection of shareholders or creditors

Note, however:

- Change only affects the general requirement, does not change need for licensing in special types of business or profession

FIRST DAY – OVERVIEW OF MAIN CHANGES



Fewer Steps and Less Time to Register New Company or Reorganize Existing Company

- Registrar required to act on applications within shorter time limits
- Fewer steps (e.g., no review by economic ministry)

Rationale

- Registrar need not decide whether new company a good idea – only that application meets legal requirements
- Registrar's approval or failure to object does not bar persons harmed by undetected violation of law from claiming appropriate remedy in court
- Easier registration means more companies, more economic activity, more competition, better economy

Questions

- How serious was the problem before? What were true sources of delay?
- What is the proper function of the Registrar? Law of 2004 seeks to reduce Registrar role in normal functioning of business. But should Registrar retain some kind of supervisory role to prevent fraud and abuse, or should Registrar merely be a keeper of basic company records? What other institutions can prevent fraud and abuse? More discussion later.

FIRST DAY – OVERVIEW OF MAIN CHANGES



Equal Treatment for Foreign Investors

- Ban on foreign participation in Iraqi companies eliminated
- Restrictions on foreign ownership of real estate and oil or other extraction industries remain; also certain restrictions on retail business – these restrictions relate to company activity rather than formation

Rationale

- Foreign investment will help Iraq rebuild and grow – law should not discourage it
- Company Law needed to be consistent with CPA Order No. 39 of September 2003, which required equal treatment for foreign investors but made exceptions regarding certain activities such as real estate, extraction industries, retail business, banking and insurance. Impact on mere formation of entity under Company Law – as opposed to entity's subsequent activity – may be small. More discussion later.

Implementation Problems

- CPA Order No. 39 states that it “replaces all existing foreign investment law.” Not so much a problem for companies organized in Iraq, with or without foreign participation, but confusion arose as to status of old laws such as Law No. 51 of 2000 on Commercial Agency, which set up commercial agent system applicable only to foreign companies. More discussion later.

FIRST DAY – OVERVIEW OF MAIN CHANGES



Protection of Minority Owners and Flexibility in Ownership Structure

- Ban on one person owning more than 20% of a joint stock company removed to increase flexibility but
- Owner prohibited from causing harm to company in order to benefit self or associates at expense of other owners
- Conflict-of-interest provisions applicable to company officials strengthened
- Quorum requirements for shareholder meetings strengthened
- Company contract permitted to include items requiring approval by larger majorities
- Other corporate governance provisions added for joint stock companies, such as the requirement of independent audit and compensation committees

Rationale

- 20% limitation unduly restricts variety of capital and control arrangements, interferes with takeover market, may unduly empower management by keeping ownership divided
- 20% limitation too easy to evade by use of friends or relatives as formal shareholder
- Abusive takeovers may be (and are) addressed in new law on securities and in new Company Law provisions against abuse of shareholder position

FIRST DAY – OVERVIEW OF MAIN CHANGES



Note too

- Interim Law on Securities Markets (CPA Order No. 74), section 10, requires any person or persons working together to notify Securities and Exchange Commission if they reach 10% ownership and to comply with Commission rules on minority protection if they reach 30% -- not limited to companies traded on exchange
- Owners also prohibited from withdrawing company capital or transferring assets to cheat creditors

FIRST DAY – OVERVIEW OF MAIN CHANGES



Other Important Changes

Requirement Removed for Labor Representation on Boards of Directors

Rationale

- Labor representatives believed to represent political interests more than worker interests
- New labor law expected to give labor better representation through collective bargaining arrangements

Dinar Amounts Are Adjusted to Reflect New Values

- Higher capital requirements are stated for joint stock and limited liability companies
- Higher fees and fines are stated

Rationale

- Change in the value of the dinar had rendered the former figures almost uselessly tiny. Some already had been altered by administrative regulation to amounts similar to those in the new law

Partial Payment for New Shares Eliminated

Rationale

Simplify capital structure, better align actual company capital with stated company capital

Beginning tomorrow, we review almost all the individual 2004 changes, omitting only the smallest

End of First Day

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)

January 11th 2005

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



Main Rules: Aims, Bases, Validity and Scope (Arts. 1-3)

- **Shift of emphasis from company as part of State-led national economic plan to company as a self-directed pact among its owners, with greater reliance on market forces to serve societal interest (Articles 1 and 2)**

Rationale

Too much State control stifles economic growth and activity, allocates resources less effectively than market would, multiplies opportunities for official corruption.

- **New emphasis on protection of creditors from fraudulent use of company form and on conflict-of-interest problems, protection of company owners from disloyal company officials, protection of minority owners from abusive majority owners, full information for owners about company decisions (Article 1)**

Rationale

Injustice occurs and market forces cannot function effectively when people cheat. Market theory assumes people have reliable information; deceit leads to economically irrational actions; cheaters add risk and thus cost, as well as injustice, to business activity.

- **Specific provision that Company Law does not over-ride special laws for banking, insurance, securities (Article 3)**

Rationale

Three important areas of special regulation specifically mentioned so as not to interfere with specific laws for them. Not intended to suggest that other areas of special regulation not mentioned are necessarily over-ridden by Company Law.

- **Specific limitation on grounds for and effect of Registrar decisions (Article 3)**

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



Rationale

Desire to emphasize that Registrar not part of planning apparatus and that Registrar's decisions – in general - do not make it impossible for others to challenge, for example, unlawful acts that Registrar reviewed but failed to stop. Registrar cannot detect all frauds or violations in matters before him if he is to act expeditiously; third parties harmed by these may not have had realistic opportunity to point out such problems and so should not be cut off by Registrar decision. Examples: formation with insufficient capital, inclusion of invalid Contract provision. Places where law provides explicitly as to procedure and effect of Registrar decision – for example, Article 60 regarding decrease of capital – still operate, however.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



Company Contract and Mutual Obligations (Article 4-5)

Company owners forbidden to harm company for self-advantage at expense of other owners (Article 4)

Rationale

Law must be strongly against self-dealing (direct or indirect transactions between company and company insiders that hurt company and help insiders) an abuse significant in all economies but especially transition economies.

Articles on corporate governance cover self-dealing situations between company officials and company – needed general principle to cover self-dealing by majority or dominant owners at expense of minority owners – idea is that owners owe each other duty of good faith dealing.

Elimination of 20% share cap in Article 32 added reason to clearly state this general principle somewhere in law, though suggested other places (see, e.g., article 27). See also problem of reduced State representation on mixed company boards under amendments to article 103.

Company owners forbidden to withdraw capital or assets from company in order to cheat creditors when insolvency looms (Article 4)

Rationale

This principle is to preserve “limited liability” idea without making it “no liability.” The principle probably better stated in insolvency law than here but needed to be sure it appeared since minimum capital requirements purposely kept modest and wanted to avoid deception of creditors about financial capacity of company.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



- **Limited liability company may be formed by one owner (Article 4)**

Rationale

Critical point is that creditors understand they may look only to the assets of the company for payment, not whether it has two owners rather than one.

Requirement of more than one owner does not assure more capital but does unduly interfere with formation of wholly-owned subsidiary by other companies, raises unnecessary minority owner rights problems when second owner with tiny interest added purely for sake of form.

Might have made same change with respect to joint stock companies but desired to minimize changes in law and expected most subsidiaries to take form of limited liability company.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



Types of Companies and Company Members (Articles 6-12, chapter VII)

- **Minimum number of participants in limited liability company dropped to one and maximum number of participants in joint liability company raised to 25 (Article 6)**

Rationale

Increase flexibility (also see previous remarks regarding limited liability company).

Note on 1983 Law

The 1983 Law did not confine its definition of company types to “mixed or private” companies, although it does provide for mixed companies. Possibly the 1997 change was to recognize separate law for state companies adopted that year. The 1983 Law also did not contain minimum number of members for limited and joint companies in this article but put them in an article 11 that was dropped from the 1997 Law.

- **Mixed company permitted to reduce State (socialist)-sector participation below 25% after formation and then be governed as private company with State-sector owners (Article 7)**

Rationale

Permit mixed companies to raise needed private capital more easily without being subject to special governance rules for mixed companies when State sector participation relatively low.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



Note on 1983 Law

The 1983 Law provided that mixed companies should have at least 51% participation from State (socialist) sector. If there are many such companies, note problem arising from 2004 amendments to articles 103 (reducing State sector representation on board) and 113-114 (removing State sector veto of board actions) of 1997 Law.

Not clear from translation what effect 1997 Law had on formation of mixed company by other mixed companies.

The 1997 Law also removed the 1983 Law's 5% minimum on State (socialist) sector participation in private companies, though added exceptions.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



•Financial investment company defined as one organized in Iraq (Article 9)

Rationale

Fear that foreign private investment companies thinking about investing in Iraq would be deterred by fear of subjection to Iraqi rules for financial investment company, designed to protect Iraqi investors, even if no Iraqi investors participating in the company.

Regulation of foreign-based investment companies with some Iraqi investor participation better left to law on securities markets – this addressed in draft permanent law on securities markets – not yet enacted -- but only briefly mentioned in Section 12(12)(g) of Interim Law on Securities Markets promulgated by CPA Order No. 74. More on this later.

Note on 1983 Law

The 1983 Law did not contain special provision for financial investment companies.

•“Economic projects” in particular sectors no longer required to take form of companies mentioned in law (Article 10)

Rationale

Meaning of “economic project” not clear; if consisted of several entities working together on contractual basis, seemed no clear reason for requiring them to form single entity.

Note on 1983 Law

Article 10 of the 1997 Law raised the capital levels that would have required an economic project to take company form under article 9 of the 1983 Law.

•Banks no longer required to organize as joint stock companies (Article 10)

Rationale

Leave bank regulation to banking law.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



Note also

Nature of “simple company” not made clear in this chapter or in chapter VII, which deals with procedure for simple company formation and governance – appears to be a type of joint liability company because limited liability never mentioned, but this not clear from either old law or new.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



Company Membership (Article 12)

- Membership in Iraqi company opened to persons of any nationality

Rationale

Encourages foreign investment in Iraq, conforms to CPA Order No. 39, consistent with international practice – see discussion from yesterday.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



Requirements for Establishment of the Company (Articles 13-16)

- Law establishes only “minimum” requirements for Company Contract (Article 13)

Rationale

Allow company members to associate on any terms they wish and to add requirements to Contract besides those in Company Law, provided the actual requirements of law not contradicted.

- Requirement that Contract state company name that reflects company activity removed (Article 13)

Rationale

Iraqi companies, like many other modern companies, may wish to engage in many different activities – putting all activities in the name would make it too long.

Also, some companies organized in Iraq will be subsidiaries of companies operating under a well-known name in other countries – they may want to be known by this name in Iraq too.

- Removed requirement that Contract state company name that includes at least one name of a company member if joint liability or sole owner company (Article 13)

Rationale

Cost in flexibility and company choice not justified by what may only be slight gain in public knowledge of company’s creditworthiness.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



Relaxed requirements concerning statement in Contract of company aim and activity (Article 13)

Rationale

Former law brought in consideration of national economic planning which new law eschews.

Wording of new law seeks to have general purpose and business of company stated, but give company more flexibility in modifying its business activities without the inconvenience of amending its Contract.

Companies that wish stricter statement of activity may still have it since law now states only minimum requirements for Contract.

Note on 1983 Law

Unclear from translation whether eighth paragraph of 1983 Law differs from 1997 Law.

Founders required to contribute to company capital in accordance with agreed contributions (Article 15)

Rationale

Although some requirements remain in the law about minimum or maximum contributions of founders to capital, revised Article 15 emphasizes flexible and contractual nature of capital contributions, applicable to all companies (Article 15 formerly applied only to joint stock companies and mentioned only contributing portions specified in the law).

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



- **Minimum capital amounts must be deposited in cash in banks authorized to operate in Iraq (Article 16, corresponding adjustments in several subsequent articles)**

Rationale

Both 1997 Law and new law allow contributions in kind to capital, but new one clarifies that the cash portion must be at least the amounts stated for minimum capital in Article 28, which are very modest amounts.

New law also clarifies that bank used need not be “Iraqi” bank if it is a foreign bank authorized to operate in Iraq – this increases choices and conforms to banking law; also permits use of more than one bank.

- **Role of State economic authorities in setting capital removed (Articles 16, 17)**

Rationale

Explained previously.

Note on 1983 Law

The 1983 Law did not have the provisions added to article 16 in 1997 regarding capital contributions in kind, economic projects becoming companies, founders committees or limit on number of founders.

Note also

- Establishment requirements and procedures for “simple companies” continue to be covered in chapter VII, which 2004 amendments do not significantly change.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



Establishment Procedures (Articles 17-25)

•Registrar consultation with State economic authorities eliminated (Article 18)

Rationale

Previously explained.

Note on 1983 Law

Article 17 of the 1983 Law did not contain the references to in-kind capital and confirmation of its value by the relevant State economic authority that were added in 1997.

•Time limit for Registrar action on establishment application reduced from 60 to 10 days, without extension (Article 19)

Rationale

Registrar's role is limited to making sure required documents and information provided and spotting obvious illegalities – this should take no more than 10 days. A more thorough review might take longer but probably still would not be perfect, so no attempt to achieve perfection.

Error by Registrar in allowing establishment of company with, for example, false statement of capital or invalid Contract provision will not prevent person harmed by these from subsequently suing founders, company or other responsible party.

Previous provision for extension of time related to review by State economic authorities, which is now abolished.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



Questions

When is application “received”? When it is received in complete form or when it is first submitted if submitted in incomplete form?

What about Contract that includes capital contributions in kind that must be evaluated by a committee (Article 29)? See Article 29, paragraph Second, point 3, suggesting this must be taken care of for the joint stock company before the Contract is submitted and therefore before the application for establishment is made.

•Certificate of establishment issued when application approved, except for joint stock company. Approval or disapproval of joint stock company application, however, published when application approved or disapproved (Articles 19, 21)

Rationale

For most companies, no need to delay establishment until after publication of approval decision, since those reluctant to deal with company whose approval not yet published cannot be forced to do so.

For joint stock company, establishment entails public subscription of shares, so issuing certificate of establishment delayed until after subscription (see Article 21); but approval or disapproval of application published (note that CPA Order 64 says “publish” though its annex says “issue”) when that decision is made – provides more information for public subscribers.

•Additional step concerning documentation of Contract removed (Article 20)

Rationale

Any required documentation should be available at time application made, except what is separately required for joint stock companies under Article 46.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



- **Registrar need not publish approval decision in newspaper, only in Bulletin (Article 21)**

Rationale

There are too many newspapers to make publication in one on one day very useful. People looking for Registrar decisions should look at the Bulletin.

- **Specific paragraph regarding founders taking care of matters on behalf of company before establishment removed (Article 21)**

Rationale

States things already implicit and so not necessary; also refers to gap between approval and certificate of establishment of limited liability company – gap has been removed.

Removal not intended to place any liability on company for founders' actions at time prior to company's establishment – they still act on their own responsibility.

- **Issuance of establishment certificate is evidence of corporate existence but not proof of lawful compliance with all registration requirements (Article 22)**

Rationale

Previous wording seemed to suggest that issuance of certificate of establishment prevented anyone from questioning legality of anything done in establishment procedures, including truth of any statements made therein – this puts too great a burden on Registrar and seems to cut off even people not involved in establishment proceedings from recovering compensation for fraud or error that harms them. See previous discussion of effect of Registrar decisions.

Company does, however, become company.

SECOND DAY – MAIN RULES, TYPES OF COMPANY AND FOUNDING (Articles 1-25)



- Requirement added that Registrar state in writing and in detail reasons for rejection of application (Article 24)

Rationale

Clarifies previous requirement that Registrar state reasons for rejection; helps applicant understand problem and makes review by Minister of Trade more effective.

Note on 1983 Law

Articles 19 (extension of time) and 24 (review of decision) of the 1983 Law referred to the head of the company registration body rather than to the Minister of Trade. The 1983 Law also contained no provision in article 24 for review by a court.

End of Second Day

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)

January 12th 2005

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Minimum Capital (Article 28)

Minimum capital increased to 2 million dinars for joint stock companies, 1 million for limited liability companies, kept at 50 thousand for other companies, ministerial discretion to adjust is removed

Rationale

Desire to make starting company as easy as possible, increase economic activity and competition, give opportunity to common people.

Skepticism as to value of capital requirements in protecting creditors since minimum dinar amount unrelated to size of liabilities; losses or withdrawals can destroy relationship between stated capital and actual net worth; and prudent persons dealing with company on any basis other than cash will not rely on legal capital requirements anyway.

Elimination of ministerial discretion may not affect specially regulated areas such as banking (see article 3).

New minima based on existing administrative regulations.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Requirement that liabilities may not exceed three times capital limited to joint stock companies

Rationale

Many businesses can be responsibly run with higher debt/equity ratio than this --- for example, in banking international standard requires capital cushion of only 8% -- desire to increase flexibility. In case of banks, new article 3 will override article 28.

Dangerous for persons extending credit to company to rely on legal capital measures anyway, as noted above.

Logic of introducing distinction between joint stock companies and other companies not so clear, since ratio requirement more for protecting creditors than public share subscribers or stock exchange trading – however, desire not to change all at once in this “Phase One” of reform.

Note on 1983 Law

The 1983 Law differs from the 1997 Law in various capital provisions, including the minimum amounts stated in the law, the existence of maximum capital (the 1997 Law has none, and the 1983 amounts are extremely low in today’s money), the permissible debt-equity ratio (only 150% of paid capital in the 1983 Law, although possibly more flexibility for changing it), and the authorities permitted to make changes (the 1997 Law gives authority to the Minister of Trade; the 1983 Law gives authority to the Planning Council).

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Division of Capital in Joint Stock Companies and Limited Liability Companies (Articles 29-33)

Evaluation committee for capital contributions in kind no longer required for limited liability companies (Article 29)

Rationale

All founders still must approve value assigned to contribution in kind and can be liable to creditors if evaluation is bad (see article 29, second paragraph, point 3).

Forming evaluation committee seemed unduly cumbersome and possibly expensive for small business, so requirement limited to joint stock company, which is more likely to be big business.

Evaluation committee also relevant to protecting members of public investing in shares, and therefore to joint stock companies more than limited liability companies.

State authorities do not appoint evaluation committee, though Registrar must approve it; no judge need be appointed to committee (Article 29)

Rationale

Reduce role of State economic authorities in company formation process.

Make formation process quicker, less burdensome and costly.

Liability remains for bad evaluations as noted above; expectation of more aid from securities market law to remedy false statements relating to value of publicly subscribed shares.

Note on 1983 Law

The 1983 Law makes no specific provision for contributions of capital in kind.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



- **Sale of shares for higher than nominal value moved to Article 55 (from Article 31)**

Rationale

Old text of Article 31 referred to share sales after business has been started, so belongs in articles regarding capital increase.

- **Caps on percentage ownership allowed to one shareholder removed (Article 32)**

Rationale

See discussion from First Day.

20% limitation unduly restricts variety of capital and control arrangements, interferes with takeover market, may unduly empower management by insuring ownership divided.

20% limitation too easy to evade by use of friends or relatives as formal shareholder.

Abusive takeovers may be (and are) addressed in interim law on securities markets and in new Company Law provisions in article 4 against abuse of shareholder position.

5% caps regarding investment companies subject to some similar objections, and restrictions thought better left to specific law on securities or investment companies, though this not really well covered in interim law on securities markets (CPA Order 74).

Note on 1983 Law

Certain provisions of the 1997 Law regarding restrictions on investments by financial investment companies were not changed in the 2004 amendments but did not exist in the 1983 Law.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Division of Capital in Joint Liability Companies and Sole Owner Enterprises (Articles 34-37)

- No big changes

Public Subscription to Capital (Articles 38-47)

- 51% ceiling on founders' shares dropped (Article 39)

Rationale

Let people make up their own minds. As long as transaction is voluntary and degree of control retained by founders is clear, investors can take it or leave it. Anyway, leaving founders with 51% would have provided little practical protection to minority, since that proportion is enough to approve all company decisions unless the Contract provides otherwise – see article 98. Even if a higher vote were required, 51% of the issued shares is usually plenty since many shareholders don't attend meetings.

Note on 1983 Law

The 2004 amendments did not change the requirement that mixed company founders subscribe to at least 30% and no more than 55% of capital, with the State (socialist) sector accounting for at least 25% (though see allowance in amended article 7 for subsequent reduction); the 1983 Law provided for figures of 55%, 75% and 51% respectively. Note earlier comments on 1983 Law under article 7.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Registrar to approve public subscription unless offering materials appear misleading; misleading materials to be referred to State authority for securities market (Article 39)

Rationale

Former law did not indicate grounds on which Registrar might withhold approval. The amendment is to clarify that Registrar reviews the eight points of information listed in article 39, third paragraph, and approves publication unless something appears to be misleading – then will both withhold approval and contact Securities and Exchange Commission established under the interim law on securities markets, which is given authority to regulate information provided to public in public subscriptions. (See section 12(12) of the Interim Law on Securities Markets.)

Subscriber must be furnished with copy of feasibility study as well as company Contract and is liable for misleading statements or omissions in such materials (Article 41)

Rationale

Until Securities and Exchange Commission can enact regulations, need to have more information about the company available for investors, and need to make company responsible for its accuracy. Article 40 covered the subscription statement but not the feasibility study.

Note on 1983 Law

The 1983 Law differs from the 1997 Law in that it had different time limits in article 39, third paragraph, required less information in the subscription notice, and required no approval by the Registrar at this point other than the initial approval to establish a company.

Note on Article 41

The change to article 41 (third paragraph) refers to the liability statement in article 47 – but the English texts of CPA Order 64 (Company Law amendments) and its Annex are inconsistent – sometimes they have the liability statement as a second sentence in the second paragraph of article 47, and sometimes as a separate (third) paragraph. The intent is clear to those who think, but the text is mangled. This problem also affects articles 55 (fourth paragraph) and 79.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



• **Founders, not Registrar or State economic authority, publish extension of subscription statement or reduce stated capital for subscription (Articles 42, 43, and 44)**

Rationale

Registrar adds little but time to these simple steps. 2004 amendments provide that founders will report any reduction of nominal capital to the Registrar. The removal of the State economic authority's right to cancel the subscription under the old second paragraph of article 43 accords with its removal generally from the process of company formation. The second part of the second paragraph in article 44 was dropped because of the ill-defined substantive power it gave the Registrar.

Note on 1983 Law

The 1983 Law is less specific than the 1997 Law in articles 43 and 44 regarding the bank's role and responsibilities in a public subscription.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Time limit regarding sale of unsubscribed shares is changed from four years to six months (Article 47)

Rationale

This was intended to make the provision less restrictive, but may have been based on a translation error. The translation of the 1997 Law said that if some shares are not sold in the public subscription, then “after” four years they can be sold on the stock exchange or offered again for public subscription. However, the 1983 Law said that “within” four years they could be offered again for public subscription. If the true translation for the 1997 Law should also have been “within” and the only change in 1997 was to add a reference to the stock exchange (established in 1991), then the 2004 amendment actually resulted in a provision more restrictive as to how soon a new sale could be attempted and arguably irrational in having no outside limit.

There was also some concern that the provisions regarding sale on the stock exchange suggested that such sales were an unqualified right, without regard to the listing standards of the exchange. It was decided that this was not the case, particularly since amended article 3 notes the primacy of securities law in cases of conflict.

Also note that references to the “Baghdad Stock Exchange” in the 1997 Law were changed generally by CPA Order 64, Section 2(6), to refer to the most appropriate legally authorized stock exchange. The only such exchange in Iraq today is the Iraq Stock Exchange.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



- **Right of an interested party to contest legality of subscription proceedings is clarified to include Registrar and state securities authority (Article 45)**

Rationale

The idea is to allow the Registrar and the Securities and Exchange Commission to intervene for the protection of investors.

- **Company and its responsible persons are liable for misstatements and omissions in selling shares (Article 47)**

Rationale

This is to assure that the company does not resort to misleading people in order to dispose of its shares. It is broader than the liability provision in article 40, but the English text is confused as to whether this addition to article 47 is or is not a separate paragraph – see remarks above regarding article 41.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Payment of Capital (Articles 48-53)

- **Delayed payment for shares is abolished, except for those issued before amendment of the law (Article 48)**

Rationale

The company should actually have the capital it says it has and not have to chase after shareholders to get it. Fully paid shares are also administratively simpler to deal with.

Note on 1983 Law

The provisions in articles 48 and 49 of the 1983 Law regarding installment payments for shares differ somewhat from those of 1997, including, among other things, the possibility of the company selling unpaid shares on the stock exchange.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



•The provisions on issuance of new shares for cash are moved from article 54 to 55, and provisions are added on furnishing the feasibility study to investors, on liability for misleading statements and on referral to securities authorities

Rationale

The rearrangement is merely to remove treatment of a specific type of increase (shares for cash) from the article that otherwise is about capital increases in general. The provisions about the feasibility study, liability, etc., are to make the rules for selling new shares similar to those for the original public subscription. See also last sentence of first paragraph in article 56.

Note on 1983 Law

The 1983 Law has neither a requirement that the joint stock company prepare a feasibility study justifying a capital increase nor a requirement that the Registrar or (see below) relevant State economic authority approve a capital increase. There are also certain differences in article 55 regarding converting surplus or undistributed profits to capital and in article 56 regarding time limits applicable to a public subscription for new shares, cross-references to other articles and sale of unsubscribed shares on the stock exchange. Article 59 of the 1983 Law has no requirement of a feasibility study justifying a capital decrease, although here, like the 1997 Law, it does require State approvals. It is not clear from our translation whether article 62 of the 1983 Law requires, as does the 1997 Law, publication in the Bulletin of Contract amendments reflecting a capital reduction.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Time limits are set and consultation of the relevant State economic authority is dropped (Articles 54, 56, 59)

Rationale

Time limit was deemed advisable to prevent undue delays. Note that for capital increases (article 54), if the Registrar fails to act, the increase is deemed approved. Article 59 (capital decreases) is different, reflecting a fear that capital decreases could be used to cheat not only minority shareholders but creditors too.

Review by State economic authority dropped consistently throughout the amendments for reasons already discussed. See also article 63.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



- **Shares distributed without charge proportionately to existing shareholders may be based on amounts transferred from issuance allowance reserve (Article 55)**

Rationale

Funds in issuance allowance reserve represent actual invested capital and so may reasonably be expressed in new shares of that much nominal value.

- **Current shareholders pre-emptive right to participate in new offer is a right to participate at the offered price (Article 56)**

Rationale

Prior law did not actually say this, although it may have been assumed. A right to participate only at a higher price, of course, defeats the purpose of the pre-emptive right.

- **Exception to preemptive rights for banks where shareholders and Central Bank approve (Article 56)**

Rationale

A new investor bringing a lot of capital to a company may want to buy enough to control the company. In some cases, this will be good for the company as a whole but might be frustrated by exercise of preemptive rights. This exception was added, subject to certain safeguards for minority and other existing shareholders, because certain Iraqi banks were hoping to raise needed capital in just this way. The exception was not widened beyond the banks because these amendments were seen as only an interim solution. A broader exception would be given more thought and saved for the comprehensive new law.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Capital decrease that is part of plan to achieve net increase in capital exempted from capital decrease procedures (Article 58)

Rationale

Say, for example, an investor wants to buy 10% of the company, but because of the company's losses, its net worth is much smaller than its nominal capital. It is not permissible to issue shares to him at less than nominal value, and he refuses to pay nominal value because it is more than the real worth of the shares. So, to get him to invest, the company agrees to reduce its nominal capital down to its net worth. No funds leave the company – rather, new funds come in when the new investor buys new shares. Under these circumstances, the company's creditors are better off, and there is no need for the creditor protection provisions of article 59-63 to apply. However, the net increase should be an inseparable part of the preliminary decrease. The test for interpreting this exceptional provision is whether applying it would jeopardize creditors.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Disposal of Shares and Quotas (Articles 64-72)

- **Restriction on transfer of founder shares limited to joint stock companies and mandatory holding period limited to one year (Article 64)**

Rationale

Restriction limited to joint stock companies since use of limited liability company for public investment swindle not likely; reduction of holding period part of general desire to increase business flexibility, though holding period remains substantial at one year.

- **Ban on sale of state sector shares in mixed company that would bring state sector ownership below 25% eliminated (Article 64)**

Rationale

Consistent with changes to article 7

Note on the 1983 Law

As noted earlier with regard to article 7, the 1983 Law established minimum State (socialist) sector participation in the mixed company at 51% rather than 25%.

Also, with respect to the end of the second paragraph of article 64, it appears from our translation that the 1983 Law and 1997 Law may differ as to whether the required profit distribution is 5% of nominal capital or of paid up capital.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



- **Pro rata pre-emptive rights for limited liability company owners to buy another owner's shares limited to those who offer same price (Article 65)**

Rationale

This was presumably the original intent of the provision, not that an owner offering a lower price would be entitled to participate with one offering a better price; change makes this clear.

- **Application of Shari'a law for inheritance of shares limited to Iraqi citizens (Article 67)**

Rationale

With opening of shareholding to non-Iraqi citizens, needed to accommodate law of the owner's country in settling his estate.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Note on the 1983 Law

The 1983 Law does not expressly refer to Shari'a law in article 67. It also has a different limit on the amount of time allowed to an heir to transfer shares that he is not eligible to own and contains certain wording at the end article 68 regarding documents authenticated by notaries public and the finality of court actions.

The 1983 version of article 66 appears in our translation to differ at the end of the first paragraph, concerning transfers not registered in the company's books, and also at the end of the first paragraph of article 70, regarding Contract amendment. Possible differences also appear in articles 71, end of first paragraph and 72, also first paragraph.

Article 66, however, definitely differs with respect to the possibility of transfer at the stock exchange, for which the 1983 Law makes no provision. It may formerly have been the practice at the stock exchange to have company representatives present to oversee the transfer of shares from seller to buyer. Is this the case today? Section 9(4) of CPA Order 74 (Interim Law on Securities Markets) explicitly overrides the first paragraph of article 66 in the 1997 Law requiring that a company representative be present at share transfers (possibly unnecessary given the second paragraph of the 1997 article). But it says nothing regarding the 1983 Law since the draftsmen of that Order were not aware that anyone applied the 1983 Law. Does this jeopardize share trading at the stock exchange?

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Profits and Losses (Articles 73-76)

- Role of State economic authority in establishing reserves, dealing with company losses is removed (Articles 74, 76)

Rationale

Review by State economic authority dropped consistently throughout the amendments for reasons already discussed.

Note on 1983 Law

The provisions for reserves in article 73 differ somewhat as between the 1983 Law and the 1997 Law.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Credit Bonds (Articles 77-84)

• **Economic study justifying bonds to be provided to purchasers, unless materially misleading, in which case matter referred to state authority for securities market and company liable for use of misleading study. Minister of Trade no authority to stop bond issue if otherwise lawful. (Article 79)**

Rationale

Desire to make bond sale a matter between sellers and adequately informed buyers, not subject to State interference in absence of illegality, more like sale of shares. Does actual wording, however, prevent Registrar from acting even if bond sale illegal, e.g., violates debt-equity ratio required in article 28? Not intended. Note too the citation problem regarding article 47 that was discussed earlier.

Note on 1983 Law

The 1983 Law has no section on credit bonds.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Termination of the Company (Articles 147-180)

- Mergers need not be between companies in same business, nor be consistent with State development plan (Article 149)

Rationale

Mergers between companies in different businesses can often be useful, and the choice, in any event, should be left to the business owners themselves in the more market-oriented approach the 2004 amendments reflect; here as elsewhere, State planning factors removed from Company Law.

Note on the 1983 Law

Due to the absence in the 1983 Law of the articles added in 1997 on credit bonds, the numeration of the articles in this part of the law are different in the 1983 Law and the 1987 Law. Possible other differences (or errors) appear in articles 147 (139 of the 1983 Law), third and fourth paragraphs, and article 149 (141), first paragraph. There is a definite difference in article 149 (141), second paragraph, first subparagraph, where the 1983 Law prohibits mergers resulting in mixed companies becoming private; a similar difference appears in article 153 (145), first paragraph, regarding transformations. In article 149 (141), third paragraph, the 1997 Law drops the reference to capital limits. Articles 150 (142) and 154 (146) have requirements in the 1997 Law regarding an economic and technical study, but the 1983 Law does not. Article 150 (142) also has different time limits in the third (second) paragraph. Article 154 (146) added a provision in 1997 regarding adding new members and issuing new shares in case of transformation to joint stock company form.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Registrar has 15 days to review legality of merger or transformation, no need to consult State economic authority (Article 150, 155)

Rationale

As elsewhere, idea is to require prompt action by Registrar, remove review by State economic authority. Only fairly clear violations may be caught by Registrar's review, but remember that the Registrar's approval will not prevent others from going to court – see article 3. Since Registrar even under old law did not conduct full hearing of all sides, its approval of merger was never adequate substitute for judicial review.

Note on 1983 Law

Article 155 (article 147 in the 1983 Law) does not provide in the 1983 Law for approval by the appropriate State economic authority, and its time limits differ from the 1997 Law.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



•Registrar right to liquidate company that is inactive or has completed the project for which it was started is dropped (Article 158)

Rationale

Not clear just what damage inactivity causes that would justify Registrar interference with owners' decision on whether to liquidate.

Note also

Potential problem here if translation faulty. Amendments of 2004 dropped second paragraph of article 158, which, *in English translation*, did not mention Registrar's power to liquidate a company whose losses have eroded its registered capital. However, first point of first paragraph does mention such losses (by reference to article 147, fifth paragraph); if those losses also were mentioned in the Arabic version of article 158, second paragraph, then dropping that paragraph would deprive the Registrar of a reasonable way to prevent companies from misrepresenting their solvency. What does the Arabic say? If there is a problem created, how fix it? Note, however, that the 1983 Law also appears to have made the same omission. See article 150, second paragraph, of 1983 Law.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



And also note

There is a reference to article 158, second paragraph, in article 167. That reference should have been removed when 158, second, was removed, but it was overlooked.

Further note on 1983 Law

Appointment of a liquidator by the company is handled at different places in the 1983 Law versus the 1997 Law. This is covered in article 158 (which is 150 in the 1983 Law) in the 1997 Law but is a separate article (159) in the 1983 Law; there is also a difference in the substance. A small difference can also be found in article 158 (150), second paragraph.

Time limits for Registrar action and removal of review by State economic authorities also done for liquidation decision (Articles 159-162, 169)

Rationale

Same as rationale for similar changes to merger and transformation provisions. Note, however, that in liquidation registrar must find that reasons for liquidation are not “fraudulent” or unlawful, while other provisions just say “inconsistent with the law.” Not intended to suggest that something fraudulent is consistent with law, but only to remind Registrar of potential use of liquidation proceedings to defraud creditors. Note too slightly stronger wording here – finding lawfulness vs. failure to find the contrary. Nonetheless, article 3 still applies.

THIRD DAY – CAPITAL, SHARES AND TERMINATION (ARTICLES 26-84, 147-180)



Note on 1983 Law

Further differences between the 1983 Law and 1997 Law are seen in article 162 (154 of 1983 Law) as to time limits and possibly publication. Differences appearing in the translations of articles 170 (163), 171 (164), 173 (166) and 174 (167) may or may not be mere translation problems. Article 177 (170) has additional wording in the 1997 Law regarding deletion of a company after five years of unsuccessful liquidation. And there appears to be some difference in article 179 (172) regarding rights to recover from owners after liquidation has concluded and the company has been deleted from the registry.

•Cross reference to dissolution provisions of CPA Order 39 added (Article 178)

Rationale

Since CPA Order 39 also addresses matters related to liquidation, it was thought helpful to mention it. Unfortunately, the citation to Section 12(2) of Order 39 is incorrect. There is no Section 12(2). The correct citation is Section 11(2). This error in the amendments cannot, of course, affect the validity of Order 39.

End of Third Day

**FOURTH DAY –CORPORATE GOVERNANCE, MISC. RULES,
RELATIONSHIP TO OTHER LAWS, QUESTIONS, NEEDED
CORRECTIONS AND PERMANENT LAW**

January 13th 2005

The General Assembly (Articles 85-102)

- **General assembly of joint stock company may meet more than once a year (Article 86)**

Rationale

This may have been true under the prior law as well, but the wording was revised for clarity, since a company may often have special need of meetings more often than once a year.

- **Power of State economic authority to call meeting of company in its sector dropped (Article 87)**

Rationale

As elsewhere in amendments, desire to remove State economic authorities from company governance.

- **Registrar power to call legally required meeting modified (Article 88)**

Rationale

Literally read, this change to the end of the second paragraph may appear only to indicate that the Registrar does not call meetings for other companies the same way he does for joint stock companies. However, there is reason to believe that the intent was to say that his power to call meetings when the responsible person has failed to do so applies solely to joint stock companies. Nonetheless, the first part of article 88's second paragraph continues to refer to other companies too.

• **Manipulating notice or dissemination of information about a meeting in order to affect its outcome is forbidden (Article 88)**

Rationale

Managers can easily manipulate the outcome of an assembly vote if they disseminate notice or information about a meeting in such a way as to only give full information about the meeting or its importance to people on their side. This unfair practice is banned. This is not intended to prevent people from communicating with their fellow-owners about issues in an upcoming meeting, but rather to prevent the management or those calling a meeting from calculating their compliance with legal requirements in such a way as to keep certain owners in the dark.

• **Assemblies not held at company headquarters should be at convenient place (Article 90)**

Rationale

Persons calling a meeting sometimes choose an inconvenient location in order to discourage possible opponents from attending or to accomplish ill deeds with little interference. The amendment bans this practice.



•Ceilings on proxy representation removed (Article 91)

Rationale

The former limitation appeared to inhibit the formation of voting blocks and coalitions, thereby weakening small shareholders unable to personally attend assembly. Removal of ceiling also consistent with removal of ceiling on shareholding and generally less restrictive approach.

Note on 1983 Law

The 1983 Law has no ceiling on the number of owners a proxy holder may represent. It also has a variety of other differences from the 1997 Law with respect to the general assembly, as noted on subsequent pages.

• **Quorum for second attempt at convening assembly is raised to 25%, with possibility of exemption from Registrar or more stringent requirement in company Contract (Article 92)**

Rationale

This is to protect minority shareholders. It is easy for a small shareholder to miss the notification of a meeting unless it is sent directly to him and dangerous to allow company decisions to be made at meetings where few shareholders are represented. This possibility encourages managers who really don't want dissenting shareholders to appear to comply with legal minimum for notice rather than really try to get people to come. If it is just too difficult to get the 25%, the amendment allows the Registrar to grant an exemption. Companies are free to put more stringent requirements in their Contracts, since often minority holders will want to be extra certain no important decisions are made without their participation.

Note also

The amendment fails to say whether there can be a third meeting attempt if 25% is not achieved on the second attempt. The better interpretation may be that additional attempts are permissible, since without them the Registrar might have insufficient evidence that the 25% simply cannot be met and an exemption is needed. Moreover, it is not acceptable simply to forget about a meeting needed to elect company officials, settle important company business or meet legal requirements.

•Sale of most assets and waiver of preemptive rights are added to list of fundamental decisions requiring higher quorum for assembly (Article 92) and higher majority for adoption (Article 98). As with quorum requirement, company Contract may require even higher majority for listed actions.

Rationale

A major sale of assets is a fundamental alteration in the company's business and should therefore be subject to the higher quorum and adoption requirements for such decisions. Waiver of preemptive rights pursuant to new paragraph four of article 56 is also mentioned here since, to prevent abusive insider special deals, that paragraph requires approval of an absolute majority of votes, and not just of those represented at the assembly, for waiver of preemptive rights. Rationale for also allowing Contract to set higher voting requirement same as discussed above re quorum.

Note too

The amendments refer to sale of over half the assets in a "transaction outside its ordinary business" – this would mean, for example, that a company that builds houses and sells them one at a time would not need to get special approval for each one; nor would a company whose main assets are the goods it holds for sale when in the course of its regular business it sells most of them. What about "a transaction"? What if the company breaks what is really a single arrangement into several different transactions; for example, we sell you the front of our factory on Tuesday, the middle on Wednesday and the back on Thursday? Reason, realism and the purpose of the amendments say this should be considered a single transaction.

▪**Right of representatives of State economic authority and employees to attend general assembly dropped; participation of Registrar limited to confirming quorum unless shareholder asks him to stay (Article 93)**

Rationale

The company belongs to its owners, and the general assembly is the owners' meeting. As elsewhere, the role of the State economic authority in the company's internal affairs is removed; and the employees are instead represented through the collective bargaining process in the new Labor Law. The Registrar may still attend to assure that the requisite number of owners is represented to assure a valid meeting. Moreover, if any shareholder wishes the Registrar representative to remain (for example, because the shareholder fears his rights will be violated at the meeting), he may demand that.

▪**Shareholders whose share certificates are held at a depository may present other evidence of share ownership at general assembly (Article 94)**

Rationale

In order to minimize movement of paper back and forth, the stock exchange trading system is supposed to include deposit of share certificates with a central depository that will keep track of owners on its own books as the shares are traded. Such shares would not be available for presentation at a general assembly.

- **Company Contract may require voting majorities higher than those in law (Article 98)**

Rationale

As noted above with respect to quorums and the special majorities for fundamental decisions, this change allows minority owners to bargain for inclusion of special protections in the Contract. Minority protection is a central problem of company law, and the law should not prevent minorities from negotiating provisions for their own protection.

- **Role of State economic authority in approving mixed-company employment rules dropped (Article 102)**

Rationale

Consistency with general removal of State economic authorities from this law.



Note on 1983 Law

Although few of them directly relate to the 2004 amendments, there are many differences between the 1983 Law and the 1997 Law regarding the general assembly, most notably the following: article 86 (which is article 78 of the 1983 Law), regarding the required frequency of general assemblies for companies other than joint stock companies; article 88 (80), regarding general assembly announcements at the stock exchange and reference to addresses in the company shareholder registry; article 89 (81), regarding deviation from a meeting agenda; article 91 (88), regarding proxy voting (one part of which is noted above in connection with the 2004 amendments); article 92 (84), regarding quorums, although the extent of the difference is not clear from our translations; article 93 (85), regarding non-owners attending general assembly; article 94 (86), regarding proof of representative capacity; article 95 (87), regarding initial chairman of general assembly and number of vote-counters; article 96 (88) regarding stamping of general assembly decisions, number of days for Registrar to respond to objections to general assembly and finality of Registrar decision; article 98 (90), regarding resort to a court in cases of tie votes or lack of unanimity on certain votes; article 99 (91), regarding how soon general assembly decisions must be sent to Registrar; article 100 (92), regarding who has right to challenge general assembly decision before Registrar and how urgently court must consider an appeal of Registrar's decision; article 102 (94), regarding election of private sector representatives in mixed companies – note especially in view of the 2004 amendments regarding state representation on mixed company board, discussed further below; also regarding remuneration of board, authority to adopt annual plan and budget, decision on reserves; and possibly regarding securities and guarantees, although this, as in several other spots, may be a mere translation difference.

The Board of Directors in the Joint Stock Company (Articles 103-120)

- **State sector representation on mixed company board reduced, members appointed by trade union federation dropped from both mixed and private companies (Articles 103-105)**

Rationale

Desire to reduce state role in economy, replace influence of General Federation of Trade Unions with collective bargaining agreement under new labor law.

Note

As now written, especially with elimination of veto for state sector representatives in articles 113-114, state may be unable to block mixed company decisions even if it owns majority of equity. What consequences? What impact article 4, third paragraph? Article 117, eighth paragraph? What effect on gradual privatization? Note transition provisions of CPA Order.

Note on 1983 Law

The 1983 Law (article 94 of that law) appears to have expressly said that representatives of private sector on mixed company board would be elected by private sector shareholders. This was dropped in 1997. Does this mean that state sector shareholders can also vote for private sector representatives? That would lessen the problems for state sector shareholders posed by 2004 amendments. There are also extensive differences between the 1983 and 1997 laws regarding the board of directors, its composition, procedures and powers that are noted further below.

- **Person permitted to serve on as many as six company boards, up from three (Article 110)**

Rationale

Six boards seemed practicable, no desire to limit service of able person.

- **Majority needed for quorum or board action need not always include state sector representatives (Articles 113-114)**

Rationale

Desire to remove special privilege for state sector. But note comments to articles 103-105 above.

- **Company's annual plan need not follow State development plans or guidelines (Article 117).**

Rationale

Consistent with general purpose to eliminate State planning controls from this law.

- **Board of directors must form audit committee and compensation committee composed of persons independent of management and large shareholders, departures from their recommendations must be recorded and disclosed to shareholders meeting, audit committee meets privately with external auditors, keeps track of related-party transactions (Article 117)**

Rationale

To help assure that in areas where managers or dominant shareholders might have motive to conceal facts or cheat company, there are objective directors paying attention and that general assembly (shareholders meeting) is informed of departure from recommendations of such directors. Does law contain any other reference joint stock company "external, independent" auditor? This article now implies necessity of such an auditor.

Need emphasized to disclose full facts in obtaining general assembly consent for deals with company where board member has interest; 10% fraudulence standard removed; continuing liability under article 4, paragraph three, noted (Article 119)

Rationale

Necessity of full disclosure of relevant facts to general assembly seemed clearer and stricter than former "10% fraud" standard; approval of deal by dominant shareholder at expense of minority should not immunize abusive transaction. Note remarks regarding equivalent article in 1983 Law further below.

Board members with interest in matter may not participate in matter without approval of most disinterested directors after full disclosure of interest, unless all have interest; matter disclosed to general assembly and external auditors in either case (Article 119)

Rationale

Prevent conflicts of interest from hurting company by establishing general principle that board members should not be involved with matters where they have personal interest, subject to exceptions, and with need for full disclosure stressed. Note that this paragraph does not remove the need to also get general assembly approval for transactions where board member has interest, as provided in preceding paragraph.



Note on 1983 Law

As mentioned above, there are numerous differences between the 1983 Law and 1997 Law regarding the board of directors, although not all are directly relevant to the 2004 amendments. Besides the question of who elects the private sector board members in a mixed company, note the following differences between the 1983 and 1997 laws: article 103 (which is article 95 of the 1983 Law), regarding the number of mixed company board members representing various interests and the role of the General Federation of Trade Unions in selecting employee representatives; as well as a possible difference (this may be only a translation problem) in how reserve members are chosen; article 104 (96), regarding selection of employee board members and reserve members in private companies; article 105, regarding exemption of banks and financial investment companies from required employee representation on board – 1983 Law has no equivalent article; article 106 (97 and 98 in the 1987 Law), regarding share ownership requirement for board members, time allowed to comply; article 108 (100), slight wording differences; article 110 (102), regarding number of company boards one can chair; article 115 (107), regarding absence of board member other than chairman or deputy chairman, and mention of six-month period; article 116 (108), regarding certification of board decisions; article 117 (109), regarding compensation of managing director, as well as board duties and reports relating to annual plan; article 118 (110), regarding prompt execution of board decisions and mixed company board members taking objections to cabinet; article 119 (111) regarding certain wording differences on related-party transactions (1983 Law seems broader in two places – may just be translation); and article 120 (112), wording regarding standard of care for board members.

The Managing Director (Article 121-124)

- Disclosure of compensation required for five best-compensated employees (Article 124)

Rationale

Prevent excessive compensation without knowledge of shareholders or to persons whose job titles conceal their real influence or who are compensated in forms other than cash.

Note on 1983 Law

As elsewhere, there are several areas of difference between the 1983 Law and the 1997 Law in the articles relating to the managing director. Note articles 121 and 122 (113 and 114 of the 1987 Law), regarding qualifications, compensation and dismissal of managing director, and service as managing director in more than one company.

Control of Companies (Articles 125-146)

Conformity to State economic plan dropped as goal of control, conformity with company's Contract added, references to State economic authorities dropped (Article 125-128, 139, 140, 142)

Rationale

As elsewhere in amendments, emphasis on conformity with law, not State economic plans.

Registrar right to obtain documents and information to perform its legal duties stressed (Article 128)

Rationale

Not completely clear how much this change intended merely to remove references to State economic authorities and Central Planning Board and how much rephrasing intended to broaden Registrar's authority to demand documents and information. Clear desire to give Registrar authority to get the information needed to do its job, but what procedural limits to prevent abuse? Compare amended article 141.

Need to consolidate accounts in accordance with international and Iraqi accounting standards stressed (Article 133)

Rationale

Concern that this requirement and applicability of international standards in absence of specific and differing Iraqi standard were not previously clear.

Directors' report on related-party transactions expanded beyond those involving board members and managing director, now includes large shareholders, others with indirect interests (Article 134)

Rationale

Related-party transactions usually present the worst corporate governance problems in transition economies, need to track them closely, availability of international standards to help define them. Previous law too easily evaded by using relatives or controlled entities to accomplish transaction.

Results of operations (including earnings) added to topics in directors' report (Article 134)

Rationale

This seemed an important enough topic to be specifically mentioned.

- **Company given right to ask court to halt abusive inspection ordered by Registrar (Article 141)**

Rationale

Concern that Registrar not be allowed to use power to harass or intimidate rather than to enforce law.

- **Report of inspection given to person whose demand resulted in the inspection as well as to Registrar and company (Article 142)**

Rationale

No sense to give person the right to demand an inspection but no right to see report. Change from report of “violation” to report of “inspection” means only that there will still be report even if no violation found. It does not mean that Registrar power under article 146 to guide company in light of report should aim at anything more than rectifying violations.



Note on 1983 Law

The differences between the 1983 Law and the 1997 Law in articles concerning control of companies also are extensive and include the following: article 125 (117), regarding supervision by appropriate State economic authority; article 127 (119), regarding information sent or available to shareholders (1983 Law seems to have contradiction between its articles 119 and 80 as to joint stock company general assembly notification); article 130 (122), regarding right to demand correction of shareholder records; article 133 (125) – the wording differences here may be entirely translation problems, but this article requires close reading together with article 117 (109) to determine how soon a company’s annual financial reports must be prepared – note too that there are separate requirements on this in the interim securities law for companies with shares traded on the stock exchange; article 136 (128), regarding whether accounting is “modern” and whether violations need be reported if their effect on the company was not “adverse”; article 140 (132), regarding types of claims that may support demand for appointment of inspector and how many may be appointed (latter point may be translation problem); article 144 (136), regarding who must cooperate with inspector and what he may demand (not clear how much of this difference is translation); and article 145 (137) regarding consequence of inspector’s finding that an owner of the company has committed questionable acts.

Miscellaneous Rules (Articles 200-221)

▪Right to appeal minister decisions broadened (Article 204)

Rationale

There are too many important matters decided by the Registrar (for example, legality of merger) to allow only an administrative appeal. What, however, is the limit here – can every tiny matter be appealed to court? – and what is the procedure and scope of review?

Note also

Article 203 is misstated in the English text of CPA Order 64, but is otherwise stated in the Annex to the Order. The Order text omits the exception from the requirement that the Registrar “endorse” the company Contract in accord with article 19. This exception is necessary to accommodate simple companies, which under articles 182-183 seem to require no such endorsement.

▪Company registration process removed from scope of Agency Registration Law, No. 4 of 1999 (Article 208)

Rationale

Intention was to simplify registration by removing need to hire lawyer to register, as required in Agency Registration Law. Note, however, that no amendment made to Lawyer Law, No. 173 of 1965, which still requires in article 34 that a lawyer review a company Contract.

Use of commercial agent to register is made optional (Article 208)

Rationale

Unclear – law did not previously require use of commercial agent (as opposed to registration agent) to register a company. Commercial agents were only for foreign persons, most of whom were not allowed to found companies under old law anyway. Possibly, this change was intended to show that any use of the commercial agents required for foreign entities under the Commercial Agency Law, No. 51 of 2000, was now optional. That, however, is a different subject and relates to CPA Order 39 on Foreign Investment rather than to the company law.

Certifications of tax compliance not to be required for certification (Article 208)

Rationale

Simplification. Question: will this mean less compliance with tax law?

Minister of Trade authorized to coordinate activities of Chamber of Commerce and Registrar regarding approval of commercial trade names (Article 208)

Rationale

Chamber of Commerce, rather than Registrar, has been in charge of name clearance procedure. Purpose of this amendment was to allow the Minister of Trade to issue whatever instructions necessary to coordinate that process with company registration and simplify or shorten the process.

- **Minister of Trade authorized to adjust filing fees in line with processing costs and changes in costs (Article 209)**

Rationale

First purpose was to move authority from cabinet to Minister, since likelihood of cabinet being able to act on such a minor matter anytime soon seemed remote. The second purpose was to align fees with the costs of the functions involved. Note that actual fees in new fee table eliminate fee based on capital, since it may be just as easy for the Registrar to register a company with large capital as one with small capital and there was no reason to discourage founders from capitalizing their company well. New fee remains small for company forms most likely to be used by small business; this is to broaden access to business formation.

Note on 1983 Law

In various articles throughout the 1983 Law, there is mention not of Minister of Trade but of head of company registration organ. That is true in these articles too, for example, articles 204 (which is 197 in the 1983 Law), 207 (201) and 208 (202). The 1983 Law also has separate article 199 establishing a central organ for company registration and giving it duties similar to those of the Minister of Trade in the 1997 Law and, apparently, in law prior to 1983. Other differences between 1983 Law and 1997 Law noted further below.

Note also

Certain provisions of the 1997 Law, such as article 210, were not changed because they appeared to be already inoperative since by their terms they applied only during a period of time that already had passed. Note further that an apparent reference to article 210 in article 215 appears as "21" in the text of CPA Order 64 and as "210" in its annex. The latter would seem to be correct. However, the 1983 Law also referred to an article "21," although to a different paragraph of it. Moreover, 1997 Law repeated requirement in 1983 Law about projects registering as companies, even though time to do that under 1983 Law had passed.

Ordinance No. 5 of 1989 (registration of foreign company branches and offices) replaced by CPA Order 39 and regulations there under (Articles 211, 213, 215)

Rationale

Since CPA Order 39 replaced previous foreign investment law (see Section 3(1) of that Order), it was necessary to replace the reference to Ordinance 5 with a reference to Order 39 and the regulations issued under it. One such regulation was Ministerial Instruction No. 149 of February 29, 2004, concerning registration of branches and offices of foreign companies, which seeks to make registration of foreign companies more similar to registration of Iraqi companies.



Note also

The penalty in article 215, second paragraph, for failure to register foreign branch or office is subject to “applicable legislation.” This was meant to refer to CPA orders exempting military and foreign assistance contractors from various requirements.

Money penalties substantially increased, prison removed as penalty for registration violations (Articles 215-219)

Rationale

Inflation had rendered the money penalties so small as to be no penalty at all. Although some of the fines were further adjusted to reflect differing views about the seriousness of different kinds of violations, the main changes here are the increase in amounts and the removal of the prison penalty for failure to register – the idea behind the latter was that prison was too serious a penalty for failure to register, which might be inadvertent or harmless, while the new money penalties would help assure that the requirement was obeyed.



Further note on 1983 Law

Besides those already mentioned, the 1997 Law differed from the 1983 Law in a variety of ways, including these: article 206 (200 in the 1983 Law), regarding instructions as to Companies Bulletin to be issued by head of central organ for company registration; 207 (201) regarding time limits and responsible state officials; 208 (202) as noted above regarding Minister of Trade but also possibly other phrasing differences (could be just translation); article 209 (203), regarding authority to change fees; article 210 (204), regarding time allowed to comply with new law and scope of compliance; article 211 (205-206), regarding foreign companies – the 1997 law relies on Ordinance No. 5 of 1989; and articles 213 (208), 215 (210), 216 (211), and 217 (212), regarding penalties, which are sometimes higher in the 1997 Law; the articles also contain certain other differences; the final provisions, articles 220-221 (215-216), of course, contain different repeal clauses since the 1997 Law repeals the 1983 Law; the 1997 Law also had a sooner effective date.

Transition Provisions (CPA Order 64, Section 2(4)-(6))

- **Note that although CPA Order 64 heading is dated February 29, 2004, the actual signature on the Order is dated by hand at March 3, 2004 – this is effective date except where otherwise provided – see Section 3 of Order 64.**
- **Penalty provisions took effect 90 days after general effective date, that is, March 3 plus 90 -- or June 1, 2004 – see Section 2(4) of Order 64.**
- **Provisions requiring action by general assembly or board of directors of company were required to be implemented by the later or 90 days (June 1, 2004) or when the body's next meeting was held (or should have been held if it fails to hold a legally required meeting) – see Section 2(5) of Order 64.**
- **Board members whose places are eliminated by the 2004 amendments are permitted to complete their current terms of office, but new member provided for may also be elected – see Section 2(5) of Order 64. Notice that the cross references in this paragraph are wrong because it was not adjusted for late changes in the Order's earlier paragraphs – thus where Section 2(5) refers to paragraphs 91 and 92 of Section 1, it should instead refer to paragraphs 96 and 97. Note too that where the last sentence of Section 2(5) says "seven" in referring to the number on the board, it should instead say "the limit" because seven will not be the limit in every possible case; and where it refers to "an incumbent state sector member," it should say "an incumbent state sector or employee member."**



Open Questions, Relationship to Other Laws, Needed Corrections and Permanent Law

- **Various problems and questions arising under the company law and its 2004 amendments discussed previously**
- **Some important ones summarized on a separate sheet**
- **Remember that 2004 amendments were planned as only first phase in company law reform**
- **Entirely new law was actually drafted but not promulgated due to numerous other matters needing attention as Coalition Provisional Authority came to end in June of 2004. A copy of that draft law is, however, available, along with explanatory materials.**

Thank You For Attending
