

LICENSING FOR PRACTICING COMMERCIAL AGENCY BUSINESS

ALAA MEDHAT OBEID^{*1}, DR. RAED AHMED KHALIL²

^{1,2}LAW DEPARTMENT / COLLEGE OF LAW AND POLITICAL SCIENCE / KIRKUK UNIVERSITY / IRAQ.

EMAIL: ¹lawm23015@uokirkuk.edu.iq, ²raedahmed@uokirkuk.edu.iq

Abstract

Managing and distributing the products of the producing company to markets outside the country of origin is the primary task of commercial agents. The wider the scope of product distribution, the stricter the required supervision of their commercial activity. So, granting a commercial agency license requires the fulfillment of certain conditions. This procedure represents one of the forms of state intervention to monitor the activity of commercial agents and ensure their compliance with laws to maintain stability in market transactions.

Keywords: License, Commercial Agent, Legal (Corporate) Commercial Agent

INTRODUCTION

This research divides the introduction into the following:

First: Definition of the Topic:

Commercial agency gains its prominence because it stands for a crucial link between exporting and importing. It is not limited to the scope of a single country but extends to several countries depending on the distribution range of goods and products. Accordingly, granting its license requires the fulfillment of a set of conditions, which differ depending on whether the commercial agent is a natural person or a legal entity. The Iraqi Commercial Agency Organizing Law No. (79) of 2017 assigned this task to the Companies Registrar. The whole process represents a form of prior supervision exercised by the state when granting the license, ensuring that it is only granted to those who meet the necessary requirements to practice this profession correctly.

Second: Importance of the Study:

The importance of study can be embedded in:

1. Monitoring the business of commercial agents can contribute to protecting national consumers, as they are the ones who purchase the goods imported by these agents.
2. A strict and comprehensive control process over the business of commercial agents can eliminate any unregistered commercial agency.
3. Reinforcing the principle of equal opportunities among traders by granting licenses only to those who have fulfilled the legally prescribed requirements.

Third: Problem of the Study:

By examining the provisions of the Law No. 79 of 2017 in force concerning organizing the Iraqi Commercial Agency, it becomes evident that the Iraqi legislator was not fully successful in establishing effective control over the business of commercial agents, as some of the provisions show deficiencies and lack the necessary strictness to ensure the desired results.

Fourth: Research Questions:

1. What is the mechanism adopted by the Registrar of Companies to monitor the business of commercial agents?
2. What are the legal conditions required to be met by a natural or juridical commercial agent?

Fifth: Scope of the Study:

The scope is limited to conditions that must be met by a natural or juridical commercial agent according to the provisions of the Law No. 79 of 2017 in force concerning organizing the Iraqi Commercial Agency, and the Egyptian Law No. 120 of 1982 concerning Organizing Commercial Agency and some Mediation Businesses, in force.

Sixth: Methodology of the Study:

This study adopts the analytical and comparative approach through comparing the Law No. 79 of 2017 in force, concerning organizing the Iraqi Commercial Agency, with the Egyptian Law No. 120 of 1982 concerning Organizing Commercial Agency and some Mediation Businesses, as amended by Law No. 21 of 2022.

Seventh: Structure of the Study:

To comprehensively cover the aspects of topic, the study is divided into two main sections. In the first section, it discusses granting a license to practice commercial agency business for a natural commercial agent. In the second section, it addresses granting a license to practice commercial agency activities for a juridical, legal entity, commercial agent.

Section One: Granting a License to Practice Commercial Agency Business for the Natural Commercial Agent

For a natural person to engage in commercial agency business, they must obtain a license. The conditions and procedures for granting such a license vary from one country to another. This section is divided into the following two sub-sections:

- Sub-section One: Granting a commercial agency license to the natural commercial agent according to the provisions of the Iraqi law.
- Sub-section Two: Granting a commercial agency license to the natural commercial agent according to the provisions of the Egyptian law.

Sub-section One: Granting a Commercial Agency License to the Natural Commercial Agent under the Provisions of the Iraqi Law

The conditions required to be met by the natural commercial agent according to the provisions of the Law No. 79 of 2017 in force concerning organizing the Iraqi Commercial Agency) are as follows: (Article (4 / First) of the Iraqi Commercial Agency Law No. 79 of 2017 in force)

First / The applicant for the license must be:

- a. Iraqi.
- b. Fully competent.
- c. Not convicted of a felony or a turpitude misdemeanor.
- d. Has a commercial office in Iraq to practice his work.
- e. Member of a Chamber of Commerce in Iraq and have a commercial name.
- f. Not an employee or mandated for public service.
- g. Hold at least one commercial agency contract that is duly certified in accordance with the law.

We will address the above conditions by explaining them in detail as follows:

According to the first condition, the commercial agent must be Iraqi. An Iraqi (is a person who enjoys Iraqi nationality) (Article (First / Sixth) of the Iraqi National Card Law No. 2 of 2016) and nationality is “a document technically organised by the competent authority in a state and granted to a group of individuals for the purpose of conferring upon them the national status.” (Al-Asadi, 2022). However, with the promulgation of the Iraqi National Identity Card Law No. 3 of 2016 (in force), nationality was effectively replaced by the national identity card by providing that: “reliance shall be placed on the national identity card by governmental and non-governmental entities to prove the identity of its holder and to indicate his Iraqi nationality, and it shall be an alternative to the Iraqi nationality certificate, the civil status identity, and the residence card.” (Article (35 / First) of the Iraqi National Card Law No. 3 of 2016 (in force)). According to the second condition, the agent must possess fully competent to engage in commercial agency business. (Article (8) of the Iraqi Commercial Law No. 30 of 1984 (in force)

A person attains full legal competence under the Iraqi Civil Code upon reaching the age of (18) years. (Article (106) of the Iraqi Civil Code No. 40 of 1951 in force. The type of capacity relevant to this study is capacity to act, which refers to “a person’s competence to engage in transactions and legal acts, the basis of which is discernment and understanding.” (Murad, n.d.). Since the foundation of legal capacity to act lies in discernment and understanding, it is affected by reaching the age of majority, which results in the person enjoying full legal capacity. (Komani, 2018). The provisions governing legal competence were established to protect individuals from the consequences of their actions, particularly those they might undertake without being able to foresee their outcomes, which could potentially be detrimental to their own interests. (Qasim, 2017)

As for the third condition, which stipulates that the agent must not have been convicted of a felony or a misdemeanor involving turpitude, this requirement is based on the principle that the commercial agent is entrusted with the principal’s assets. Therefore, if the agent has been convicted of such crimes, he cannot be deemed trustworthy. This condition aligns with the provisions of the Commercial Law, which defines commerce as “an economic business that must be conducted on the basis of trust, honesty, and strict adherence to the rules of law; anyone who fails to observe these principles shall be subject to civil and criminal liability.” (Article (3) of the Iraqi Commercial Law No. 30 of 1984 (in force)). Since the commercial agent conducts business as a representative of others in commercial transactions, the scope of his business naturally expands over time. Therefore, it is necessary for him to have a commercial office, as stipulated in the fourth condition. The operations of a commercial agency are based on the idea that the agent carries out sales, distribution, or service activities inside Iraq on behalf of the party he represents abroad. (Al-Ibrahimi, 2019) The agent’s office is thus considered his business domicile, enabling him to communicate and negotiate with clients, as well as allowing third parties to serve notices, send notifications, and file legal actions. Verification of the office’s existence is done by requiring proof of ownership or a lease agreement. (Amin, 2021). The justification for this requirement is to ensure the seriousness and continuity of the agent’s engagement in commercial activity. (Sharif, 2024)

It is worth noting that the Iraqi legislator did not require the commercial agent to reside in Iraq, unlike the previous Commercial Agency Regulation Law No. 51 of 2000, which has since been repealed. (Article (4) of the Iraqi Commercial Agency Law No. 51 of 2000 (repealed)). The fifth condition for granting the license stipulates that the commercial agent must be a member of one of the chambers of commerce and must adopt a distinct trade name. The

internal regulations of the Federation of Iraqi Chambers of Commerce state that “An Iraqi trader, whether a natural or juridical person, must be affiliated with the chamber of commerce within whose jurisdiction his business premises are located.” (Article (17 / First) of the Internal Regulations of the Union of Chambers of Commerce, issued under the Iraqi Union of Chambers of Commerce Law No. 43 of 1989 (in force).

Chambers of commerce are defined as “professional economic organizations that aim to support economic business and represent those engaged in them within the framework defined by the laws and regulations governing economic activity. They work for the public interest in the national economy, safeguard the interests of their members by providing a comprehensive range of services, and contribute to community development by enhancing the effectiveness of the sectors they represent.” (Shadid, 2024)

The Iraqi legislator, in the Iraqi Commercial Law, has clarified an individual’s right to use a commercial name by stipulating that “Any person who registers a commercial name in the commercial register in accordance with the provisions of this law shall have the exclusive right to use it, and no other person may use the same name for the same type of business conducted by the name’s owner within the boundaries of the governorate in which it has been registered.” (Article (24) of the Iraqi Commercial Law No. 30 of 1984 (in force)

The need for a commercial name arises from the necessity to organize and establish protective measures for both the producer and the consumer, as well as to serve as an advertising tool that reaches the public. (Saleh, 1987). When selecting a commercial name, it must be registered in the commercial register, which is a record designated for registering the names of traders and manufacturers along with all data related to their commercial business. The President of the Chambers of Commerce and Industry is responsible for the commercial register and undertakes all duties related to it. (Ali, 2024). A commercial name is defined as “the name adopted by a trader to distinguish his business establishment from other similar or identical establishments in the commercial market.” (Mohsen, 2022). The trader has complete freedom in choosing the trade name, which may take the form of either a realistic or a fictitious name. (Zain Al-Din, 2005). It is also considered a financial right that may be subject to disposition; however, it cannot be transferred independently from the business establishment itself. (Taha, 2006)

Under the sixth condition, the Iraqi legislator prohibits employees and individuals assigned to public service from engaging in commercial agency business. To avoid confusion between the two terms, it is necessary to define them “public employee” is “any person entrusted with a permanent position included in the official staffing structure of employees.” (Article (2) of the Civil Service Law No. 24 of 1960). Whereas “persons assigned to public service” are defined as “individuals who assume specific responsibilities aimed at achieving public benefit.” (Lutfi, 2024). Such individuals are prohibited from engaging in commercial business, establishing companies, or holding membership in their boards of directors. (Article (1 / Third) and Article (5) of the Iraqi Law on Discipline of State and Public Sector Employees No. 14 of 1991.)

The prohibition on their participation in commercial agency business is based on two main reasons: (Amin, 2021)

- **First:** To prevent conflicts of interest that may arise in the duties of the commercial agent, for example, situations where an employee contracts with the administrative body in which he works, acting as an agent for a foreign principal.
- **Second:** To ensure that the employee dedicates his time fully to public service and does not compete with others in engaging in commercial business. This measure also serves as a means to reduce unemployment.

As for the seventh and final condition, it requires that the commercial agent has at least one commercial agency, in order to verify the seriousness of the license applicant and his genuine desire to engage in commercial business. This is achieved by obliging him to provide the Registrar of Companies with at least one agency contract. However, this does not prevent the agent from holding multiple commercial agencies, since the current regulation differs from the repealed law, which previously prohibited the registration of more than three commercial agencies for a single person. (Article (4/4) of the Iraqi Commercial Agency Law No. 51 of 2000 (repealed).

The rationale behind that earlier restriction was to prevent monopoly in the practice of this profession. Nevertheless, this consideration is counterbalanced by a practical and significant factor, the promotion of fair competition, which allows those with greater experience, knowledge of the market, and integrity to succeed in commercial agency work. (Amin, 2021)

Sub-section Two: Granting a Commercial Agency License to the Natural Commercial Agent According to the Provisions of the Egyptian Law

The Egyptian Law No. 120 of 1982 concerning Organizing Commercial Agency and some Mediation Businesses (in force) sets forth the following conditions for a natural person to be registered as a commercial agent: (Article (3 / A-8) of the Egyptian Law concerning Organizing Commercial Agency and some Mediation Businesses No. 120 of 1982 (in force).

First: Regarding the registration of natural persons:

1. The applicant must be an Egyptian national. In the case of a person who has acquired Egyptian nationality by naturalization, at least ten years must have elapsed since obtaining it.
2. The applicant must be fully legally competent.

3. The applicant must be of good reputation and must not have been convicted of a felony or of a freedom-restricting offense involving moral turpitude or dishonesty, or any of the offenses specified in laws relating to import, export, currency, customs, taxation, supply, companies, or commerce, unless he has been rehabilitated.
4. The applicant must not have been declared bankrupt, unless he has been rehabilitated.
5. The applicant must not be an employee of the government, local administrative units, public authorities, or public sector companies. As for former employees of these entities, at least two years must have passed since they left service, whether by resignation or disciplinary action.
6. The applicant must not be a member of the People's Assembly, the Shura Council, or local popular councils, nor be dedicated to political work, throughout the period of such membership or political activity, unless he was already engaged in commercial agency work prior to that membership or dedication.
7. The applicant must not be a first-degree relative of any person holding political office or of any of the categories specified in the previous clause.
8. The applicant must not be a close relative of any employee holding the rank of General Manager or higher, or anyone of equivalent level in procurement, sales, or decision-making committees within the entities mentioned in clause 5.

We will discuss the above conditions as follows:

According to the first condition, non-Egyptians are prohibited from directly engaging in commercial agency business within the country. This restriction aims to provide adequate protection for local agents by preventing competition from foreign traders and ensuring their ability to safeguard the interests of the national economy more effectively than foreigners. (Radwan, 2003)

It should be noted that Egyptian nationality is not limited to original citizens but also includes naturalized persons. (Al-Sayyid, 2012) Naturalization is a voluntary act by a foreign individual, submitted as an application to the competent authorities requesting citizenship. The application may be accepted or rejected, and eligibility typically requires legal competence and a minimum period of residence. (Al-Jubouri, 2022). Since the Egyptian legislator has set the residence requirement at ten years, this indicates reliance on naturalization acquired through long-term residence. (Al-Taie, n.d.). A foreigner residing in the country demonstrates his intent to integrate into the state, which can only be effectively achieved through prolonged residence and settlement within its territory. (Al-Sayyid, 2012). According to the second condition, the commercial agent must have full competence, as this is a fundamental requirement for engaging in commercial business. Full capacity is defined as "the legal competence of a person to practice commercial business and conduct a trade, subject to the obligations imposed on traders." (Omar, 2008) Under Egyptian commercial law, full capacity requires a person, Egyptian or foreign, to have attained the age of (21) years, even if the law of their country of nationality considers them a minor at that age. (Article (11 / 1) of the Egyptian Commercial Law No. 17 of 1999 (in force). According to the law, anyone who has reached the age of twenty-one (21) is considered legally competent to engage in commercial activity. This rule applies to both Egyptians and foreigners, since the stability of commercial transactions requires that parties in Egypt can rely on the legal capacity of the trader without having to investigate foreign laws. This prevents parties from being surprised by engaging with someone who lacks full legal capacity. (Abd Al-Sadiq, 2015). The requirement of good reputation and conduct ranks third among the prescribed conditions. It includes the absence of criminal convictions involving imprisonment for offenses of moral turpitude, as such offenses undermine the trust expected between traders. The underlying principle is that anyone operating in this field must possess integrity and honesty. (Al-Eisawi, 2016)

According to the fourth condition, the commercial agent must not be bankrupt, as this would prevent him from paying his due commercial debts. (Duwaidar, 1997). However, the debt must be undisputed, its amount clearly known, and it must be due for payment. (Othman, 2019). Bankruptcy is defined as a legal system for collective enforcement on the merchant's assets when he is unable to pay his debts due to financial distress. It aims to achieve several objectives, including: (Duwaidar, 1997)

- Ensuring equality among all creditors, so that no single creditor monopolizes the proceeds of the debtor's assets, allowing all creditors to recover their rightful shares.
- Protecting the interests of the debtor who is unable to pay his debts, by providing solutions that allow him to avoid liquidation and continue his commercial activity.

Bankruptcy consequences are removed if commercial rehabilitation is granted, which restores the trust previously granted to the trader. This procedure effectively returns the individual to his former commercial status, which he lost due to bankruptcy. (Mousa, 2023). Regarding the categories mentioned in the fifth and sixth conditions, which concern government employees, these individuals are prohibited from engaging in commercial agency business. The rationale is to ensure the proper functioning of public institutions where they are employed, and to prevent the misuse of their positions to obtain personal commercial advantages. (Al-Eisawi, 2016)

As for the conditions concerning first-degree relatives specified in the seventh and eighth clauses, they are also barred from practicing the profession. The purpose of this prohibition is to prevent the exploitation of their family connections to facilitate their commercial business and to ensure their full dedication to their official duties, since commercial business generally require full attention and commitment for proper management. (Al- Qalioubi, 2015). A notable

criticism of the text is that it does not explicitly define “holders of political positions”. This leaves interpretation open to discretion. It would have been preferable to clearly specify the intended category, as the general principle is freedom to work, and the restriction is the exception. (Al- Qalioubi, 2015)

The Egyptian Law No. 120 of 1982 (in force) did not originally require prior experience in the field of commercial agency. However, the executive regulations issued under Ministerial Decree No. 342 of 1982 addressed this gap by mandating that the agent or commercial intermediary provide a certificate of experience issued by the relevant chamber of commerce and validated by the General Union of Chambers of Commerce. (Article (15/4) of the Executive Regulations of the Law concerning Organizing Commercial Agency and some Mediation Businesses Egyptian Law No. 120 of 1982 in force. Through a comparison between the Iraqi and Egyptian laws, the following points of difference can be unveiled:

1. Both the Iraqi and Egyptian laws require the commercial agent to hold the nationality of the state where the license is requested. However, the Iraqi law is preferable because it restricts practice to holders of original nationality, which benefits the public by protecting nationals from competition with foreigners who may temporarily reside in Iraq and later acquire Iraqi nationality through naturalization.
2. Both the Egyptian and Iraqi laws require the commercial agent to have full legal capacity. The Egyptian Civil Code No. 131 of 1948 sets the age of majority at (21) years, whereas the Iraqi Civil Code No. 40 of 1951 sets it at (18) years. The Egyptian approach appears more appropriate, as raising the age of majority aligns with the importance of the agent's role and the potential impact of his work on consumers. Accordingly, it is recommended that the Iraqi legislator amend Article 4 of the Commercial Agency Regulation Law to raise the minimum age of the commercial agent, thereby ensuring sufficient maturity and experience.
3. The Iraqi legislator, in the Law No. 79 of 2017 in force concerning organizing the Iraqi Commercial Agency, stipulates that the commercial agent must not have been convicted of a felony or a misdemeanor involving moral turpitude, a condition also adopted by the Egyptian Law No. 120 of 1982. However, the Egyptian law extends this prohibition to include offenses under other laws, such as customs, taxation, and currency regulations.

The Iraqi approach is considered more precise, as limiting the restriction to crimes of turpitude or dishonesty aligns directly with the principle of integrity in commercial activity, whereas the broader Egyptian provision may create ambiguity and limit the freedom to engage in commerce.

Section Two: Granting a License to Practice Commercial Agency Business for the Juridical (Legal Entity) Commercial Agent

The concept of a juridical person refers to a group of individuals or assets established to achieve a specific objective, recognized by law as having legal personality, with an independent financial estate and capacity limited to the purpose for which it was created. This section is divided into two sub-sections:

- Sub-section One: Granting a commercial agency license to the juridical commercial agent according to Iraqi law.
- Sub-section Two: Granting a commercial agency license to the juridical commercial agent according to Egyptian law.

Sub-section One: Granting a Commercial Agency License to the Juridical Commercial Agent According to Iraqi Law

A company is the most prominent example of a juridical person, as it is capable of engaging in commercial activity and acquiring rights and assuming obligations independently of the rights and obligations of its partners. (Al-Suwailim, 2013)

Regarding the conditions for company registration, the Iraqi legislator has established several requirements. The law states “If the applicant for the license is a company, in addition to meeting the conditions applicable to a natural commercial agent, such as having a commercial office, being affiliated with a chamber of commerce, owning a trade name, and holding at least one duly certified commercial agency, the company must be Iraqi, with 100% of its capital owned by Iraqis. Furthermore, its authorized manager must meet the conditions applicable to a natural person: being Iraqi, not convicted of a felony or a misdemeanor, and not an employee or assigned to public service.” (Article (4/Second) of the Iraqi Commercial Agency Law No. 79 of 2017 (in force).

Since there are some shared conditions between natural and juridical persons, we will focus here on the conditions specific to companies as follows: Regarding the trade name requirement for companies (If the company is a capital company, it must operate under a trade name that primarily reflects its business activity, and it must indicate that it is a joint-stock company. The name cannot resemble that of another company engaged in the same commercial activity. (Ibrahim et al. 2023). The name of a joint-stock company cannot include the names of its shareholders, due to the limited liability of shareholders and the absence of personal responsibility, which renders this type of company anonymously identified. (Hamdoun, 2023).

In contrast, partnership companies may include the name of a partner, reflecting the personal nature of liability. (Karim, 2018). Ownership of a trade name is established for the first party to use it, provided the usage is publicly visible, although this is a relative right limited to the type of trade the company conducts. (Duwaidar, 2008)

Regarding the nationality requirement, the company must be Iraqi. A company is considered Iraqi when it is established in Iraq. (Article (23) of the Iraqi Companies Law No. 21 of 1997)

Nationality refers to the legal relationship between the company and a specific state, whereby the company is integrated into the national economy, subject to its sovereignty, and entitled to its protection. (Shiaan, 2008). Nationality is generally determined by the place of incorporation, i.e., the state that granted the approvals and documentation necessary for its formation, and is regarded as the company's "birth state." (Al-Aboudi, 2015). The nationality of the company and its shareholders can be verified by examining the certificate of incorporation held at the Companies Registration Department. Limiting commercial agency business to companies wholly owned by Iraqi citizens has a positive impact on the national economy, ensuring that profits generated remain within the country. (Ibrahim, 2023)

The legislator also requires that the company's capital be entirely owned by Iraqis, enabling it to fulfill its purpose and conduct its commercial business. (Jassim, 2021). The capital may be monetary, which the shareholder must pay either upon signing the company's incorporation contract or at an agreed-upon date. (Hussein, 2023). Alternatively, the capital may be in-kind, consisting of assets that qualify as property and are transferable or usable in trade, such as movables or real estate. (Al-Saadi, 2017).

Since the capital must be Iraqi-owned, if the applicant company is a subsidiary, it must be fully owned by a holding company that is entirely Iraqi-owned, because the holding company exercises control over the management of its subsidiaries. Otherwise, foreign capital could intermingle with national capital, making it difficult to claim that the company is fully Iraqi-owned. (Amin, 2021).

A company acquires holding status under two specific conditions: (Hadi, 2022).

First Condition: A company acquires holding status if it owns more than half (51%) of the capital of a subsidiary and exercises control over its management. Second Condition: A company also attains holding status if it controls the board of directors of joint-stock companies, even when the number of shareholders is large and their individual shares are relatively small, while the holding company's participation may reach up to 30% of the company's capital. Regarding the authorized manager (Managing Director) of the company, the Iraqi legislator has imposed the same conditions applicable to a natural commercial agent: the manager must be Iraqi, not convicted of a felony or misdemeanor involving moral turpitude, and not an employee or assigned to public service. (Article (4/Second) of the Iraqi Commercial Agency Law No. 79 of 2017 (in force). Since the personal conditions were discussed previously, we will focus here on the competent authority for appointment, the manager's duties, and the effects of his acts "The competent authority to appoint the manager is the board of directors. The manager cannot act independently to facilitate company affairs but must follow the board's guidance. The board may dismiss the manager through a reasoned decision, provided it is not arbitrary, and the company must compensate the manager if required. (Wasmi, 2020)

Among his duties is to facilitate the company's operations within the scope of his authority. His acts are binding on the company as long as they are within the company's purpose. He is also responsible for representing the company in dealings with third parties, signing on its behalf, and representing it before courts and public authorities. (Jassim, 2018). (Hussein, 2020). (Salem, n.d.)

Sub-section Two: Granting a Commercial Agency License to the Juridical Commercial Agent According to Egyptian Law

The conditions for company registration under Egyptian law are as follows: (Article (3/Second) of the Egyptian Law on Regulating Commercial Agency and some Mediation Business No. 120 of 1982 (in force)

1. The head office of the company must be located in Egypt.
2. The company's purpose must include engaging in commercial agency or mediation business, as specified in its articles of association or incorporation contract.
3. The company's capital must be entirely owned by Egyptian partners. In the case of naturalized Egyptians, at least ten years must have elapsed since acquiring citizenship. If a partner is a juridical person, it must be Egyptian-owned, with the majority of its capital held by original Egyptians, or at least ten years since naturalization.
4. All general partners, managers, or members of the board of directors in joint-stock companies must meet the personal conditions applicable to natural persons, as previously discussed.
5. The capital of partnership companies must not be less than 20,000 Egyptian pounds, which must be verified either through the latest financial statement submitted to the Tax Authority for the previous fiscal year or by providing a certificate proving deposit of this amount in an approved bank.

Companies in the public sector are exempt from conditions 3 and 4 if their import activities are related to their business, and limited liability companies are treated as partnership companies for the purpose of applying this law. The research will examine the conditions sequentially as detailed "Regarding the first condition, any company established in Egypt with its head office located there is considered an Egyptian company and may therefore be registered in the Commercial Register. Consequently, it can also be entered in the register of commercial agents. (Hamid, 2017).

Requiring the company to be incorporated and headquartered in Egypt serves as a logical link between the nationality of the juridical person and its actual administrative center, ensuring that the law of the host state applies to the company while also recognizing the law of its country of origin. (Al-Kaswani, 2010). According to the second condition, the Egyptian legislator has specified that the company's purpose must be to engage in commercial agency business. The

company's purpose defines the scope of its legal capacity according to general rules. (Hamid, 2017). Thus, the company possesses legal capacity within the limits of its established purpose, including the right to litigate and acquire assets through sale or lease. (Salim, n.d.).

Based on this established legal capacity, the company is responsible for all of its actions, and it is subject to civil liability for acts attributable to it. Additionally, it may be vicariously liable for harmful acts committed by its employees. (Duwaidar, 1997)

If the company's incorporation contract includes a main purpose and subsidiary purposes, there must be a coherence and connection between them to ensure proper exercise of its legal capacity. (Mahmoud, 2022)

Regarding the third condition, the company's capital must be owned by Egyptian partners. When a partner is a juridical person, it must be Egyptian, but the law does not define the criteria for requiring Egyptian nationality for a juridical person. The legislator did not establish a standard in commercial law for how a company acquires Egyptian nationality. Instead, it addressed the issue of applicable law in cases where the company's administrative center does not coincide with its place of actual activity, requiring the application of Egyptian law to companies whose main activity is conducted in Egypt. (Al-Qalioubi, 2011)

Regarding the ownership of the majority of the company's capital by original Egyptian partners, the law does not specify the exact percentage required. Accordingly, it is reasonable to consider only the minimum majority, which, according to general rules, is an absolute majority representing 51% of the juridical person's capital. (Al-Qalioubi, 2011). Under the fourth condition, the Egyptian legislator requires that all general partners, managers, or members of the board of directors of joint-stock companies meet the personal conditions outlined in Article 3, first clause, of Law No. 120 of 1982, which apply to natural persons. This distinction separates companies with general partners from other types of companies, such as joint-stock companies and limited liability companies, in terms of the nationality requirement for their partners. (Al-Qalioubi, 2011)

Regarding the fifth condition, which concerns the minimum capital for partnership companies, it appears to relate primarily to the cash portion of the capital, but this does not prevent the capital from including in-kind contributions. (Al-Qalioubi, 2011) To avoid overestimating the in-kind contributions by their owners, which could disadvantage holders of cash shares, it is necessary to rely on the opinion of an expert to properly assess their value. (Duwaidar, 1997)

After reviewing the positions of Iraqi and Egyptian law, it is important to highlight the differences between them and offer some proposals for the Iraqi legislator as follows:

1-The Iraqi law does not require the company's purpose to be limited to commercial agency business, unlike the Egyptian law, which originally required this limitation before its amendment by Law No. 21 of 2022, restricting it to real estate mediation business. The Egyptian approach was more appropriate at the time, as limiting the company's purpose ensures that its business is confined and prevents the license from being used for other purposes. In Iraq, the absence of such a limitation could lead to the emergence of "fictitious agencies", weakening supervision over commercial agents. Therefore, it is recommended to amend Article 4 of Iraqi Commercial Agency Law No. 79 of 2017 by adding a clause that requires the juridical commercial agent to specify its purpose and restrict it to commercial agency business, thereby fulfilling the law's objective.

2-The Iraqi legislator requires that a company wishing to engage in commercial agency business must hold Iraqi nationality, unlike the Egyptian legislator, who only requires that the company's head office be located in Egypt. In this respect, the Iraqi approach is preferable, as a company is considered Iraqi if it is incorporated within Iraq. This ensures that all its documents, from capital, shareholder names, to the incorporation contract, are under the supervision and responsibility of the Companies Registrar, who is the competent authority for incorporation and oversight of companies. Thus, the Commercial Agency Law complements the Companies Law, granting the Companies Registrar authority to supervise the very companies he establishes, which facilitates monitoring and oversight by centralizing authority. Furthermore, this approach is an important step to support and encourage national companies and limit competition from foreign companies.

CONCLUSION

In conclusion, the study has come up with several findings and recommended corresponding amendments as follows:

First: Findings

1. Since the Iraqi Commercial Agency Law No. 79 of 2017 did not specify a minimum age for a commercial agent, it is concluded that the agent's legal capacity is governed by the general rules in the Iraqi Civil Code No. 40 of 1951, Article 106, which requires reaching the age of eighteen.
2. The law does not require the commercial agent to reside in Iraq, which implies that he may conduct his commercial business, such as selling and distributing the company's products, even if he resides abroad.

3. The law does not require the company's purpose to include commercial agency business. Accordingly, it can be inferred that the company may engage in such activities even if it is not included in its incorporation contract.

Second: Recommendations

1. It is recommended to the Iraqi legislator to raise the minimum age for a commercial agent in line with the nature of their responsibilities and the impact of their work on a wide segment of society, considering that the activity requires sufficient maturity and experience.
2. It recommends amending Article 4 (First – D) of Law No. 79 of 2017 to require the commercial agent to reside in Iraq, in harmony with the condition of owning a commercial office, because without this requirement, the office condition will become ineffective if the agent frequently resides outside the country.
3. It is recommended to require companies to restrict their purpose to commercial agency business. So, limiting their ability to change their purpose without the approval of the Companies Registrar, thereby ensuring subsequent oversight of commercial agents' business.

REFERENCES

- Abd Al-Sadiq, M. M. (2015). Legal system for the trader in light of Arab legislation. Dar Al-Fikr wal-Qanun.
- Al-Aboudi, A. (2015). Explanation of Iraqi nationality law. Maktabat Al-Sanhouri.
- Al-Asadi, A. R. A. (2022). Private international law. Maktabat Al-Sanhouri.
- Al-Eisawi, M. M. (2016). Disclosure compliance in commercial contracts. National Center for Legal Publications.
- Ali, A. I. (2024). Protection of the trade name under Iraqi commercial law. University of Iraq Journal, Faculty of Law and Political Science, 66(2).
- Al-Ibrahimi, M. M. K. (2019). Legal status of the commercial agent. Risalat Al-Huquq Journal, 2.
- Al-Kaswani, A. M. (2010). Al-Qanun Al-Duwali Al-Khas [Private international law]. Dar Al-Thaqafa.
- Al-Qalioubi, S. (2007). Al-Waseet fi Sharh Qanun Al-Tijara Al-Masri (Vol. 2, 5th ed.) [Intermediary in explanation of Egyptian commercial law]. Dar Al-Nahda Al-Arabiya.
- Al-Qalioubi, S. (2011). Commercial companies. Dar Al-Nahda Al-Arabiya.
- Al-Qalioubi, S. (2015). Legal foundations of commercial agency contracts. Dar Al-Nahda Al-Arabiya.
- Al-Saadi, A. Z., & Hassan, N. I. (2016). Transfer of partners' shares in a partnership company. Al-Bayan University Journal for Legal Studies and Research, 4(1).
- Al-Sayyid, A. M. (2012). Regulations on nationality. Maktabat Al-Wafa'.
- Al-Suwailim, M. A. (2013). Commercial companies in comparative Arab systems. Dar Al-Matbou'at Al-Jami'iya.
- Al-Tai, H. A. (n.d.). Nationality rules for natural and juridical persons. Maktabat Al-Sanhouri.
- Amin, R. H. (2021). Remarks on the registrar's supervision over licensing commercial agency in Iraqi legislation. Al-Qadisiyah Journal of Law and Political Science, 12(2).
- Duwaidar, H. (1997). Principles of commercial law. Al-Mu'assasa Al-Jami'iya.
- Duwaidar, H. (2008). Commercial law. Al-Halabi Legal Publications.
- Egyptian Commercial Agency and Mediation Businesses Law No. 120 of 1982 (in force).
- Egyptian Commercial Law No. 17 of 1999 (in force).
- Hamdoun, R. H., & Arman, D. T. (2023). Supervision of procedures for establishing commercial companies. University of Kirkuk Journal, Faculty of Law and Political Science, 12(46).
- Hamid, M. T. (2017). Commercial mediation contracts. Dar Al-Jamia Al-Jadida.
- Hussein, D. A. (2023). Closed subscription of joint-stock company shares. Imam Al-Kadhim Journal, 7(3).
- Hussein, D. F. (2022). Extent of company liability for actions of the authorized manager toward third parties. Basra Studies Journal, 38.
- Ibrahim, N. N., As'ad, H. M., & Ismail, S. A. (2023). Registration of commercial distributor agency under Iraqi law. Al-Rafidain Law Journal, 24(1).
- Iraqi Chambers of Commerce Union Law No. 43 of 1989 (in force).
- Iraqi Civil Code No. 40 of 1951 (in force).
- Iraqi Commercial Agency Law No. 79 of 2017 (in force).
- Iraqi Commercial Law No. 30 of 1984 (in force).
- Iraqi National ID Law No. 3 of 2016 (in force).
- Iraqi State and Public Sector Employees Discipline Law No. 14 of 1991 (in force).
- Jabbouri, I. A. (2022). Legislative regulation of naturalization: A comparative study. University of Babylon Journal of Humanities, 30(9).
- Jassim, A. F. (2021). Legal regulation of holding companies in Iraqi law in light of amendment No. 17 of 2019. University of Babylon Journal of Humanities, 29(7).
- Jassim, F. I. (2018). Summary of commercial companies. Al-Maktaba Al-Qanuniya.
- Karim, M. M. (2018). Issues in protection of trade names under Iraqi law. University of Thi-Qar Journal, 13(3).
- Komani, L. J. (2018). Commercial law. Dar Al-Sanhouri.

- Lutfi, A. S. (2024). Legal status of a public service appointee. *University of Kirkuk Journal, Faculty of Law and Political Science*, 13(51).
- Mahmoud, H. S. (2022). Legal capacity issues during negotiation phase. *Al-Mohaqqiq Al-Hilli Journal of Legal and Political Studies*, 1.
- Mousa, A. F. (2023). Commercial rehabilitation of the bankrupt. *University of Iraq Journal, Faculty of Law and Political Science*, 22.
- Murad, B. S. (n.d.). Legal organization of capacity provisions. *University of Abou Bakr Belkaid, Faculty of Law and Political Science*.
- Omar, O. F. (2008). Commercial law intermediary. *Dar Al-Nahda Al-Arabiya*.
- Osman, M. M. (2019). Effect of trader bankruptcy on ownership of the trademark. *Academic Journal of Legal and Political Research*, 3(2).
- Qasim, A. S. (2017). *Principles of commercial law*. Al-Halabi Legal Publications.
- Radwan, F. N. (2003). *Commercial law*. Dar Al-Nahda Al-Arabiya.
- Saleh, B. M. (1987). *Commercial law*. Dar Al-Hikma.
- Salem, N. M. (n.d.). *Concise guide to commercial law*. Dar Al-Nahda Al-Arabiya.
- Shadid, M. K. (2024). Evolution of chambers of commerce. *Gulf Arab Journal*, 52(2).
- Sharif, A. J. (2024). Registration of a franchise agency in Iraqi law. *University of Anbar Journal of Legal and Political Sciences*, 14(2).
- Shi'an, F. K. (2008). Nationality of companies. *University of Babylon Journal*, 15(1).
- Taha, M. K. (2006). *Fundamentals of commercial law: Commercial activities, Traders, Commercial enterprise, Industrial property*. Al-Halabi Legal Publications.
- Ubaida, J. I., & Mohsen, A. N. (2022). Legal rules for selecting a trade name. *University of Kirkuk Journal, Faculty of Law and Political Science*, 11(43).
- Wasmi, A. H. (n.d.). Civil liability of management of a joint-stock company causing company bankruptcy. *Misan Journal of Comparative Legal Studies*, 1(6).
- Zain Al-Din, S. (2005). *Explanation of industrial and commercial legislation*. Dar Al-Thaqafa.