



Iraq



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New Industrial Cities Law

The Iraqi Parliament has approved the No. 2/2019 Promulgating the Law on Industrial Cities, published in the Iraqi Official Gazette no. 4544 on 17 June 2019 (the "Industrial Cities Law").

The Industrial Cities Law is considered as an important piece of legislation that will greatly contribute in opening a gate for developers and investors for designing, setting up or developing existing Industrial Cities and related infrastructure and general services. Article 2 sets out the following objectives of the Industrial Cities Law:

- to contribute in achieving the general political and economic objectives of the State;
- to regulate industrial-served activities;
- to promote utilisation of Industrial Cities for steering the process of economic rehabilitation;
- to organise cities, and
- to encourage the contribution of local and foreign private sector in the investment in Industrial Cities, including establishing, developing and managing them.

Operation of the management of Industrial Cities is to be carried out by a commission (the Industrial Cities Commission) associated with the Ministry of Industry and Minerals. While article 15 of the Industrial Cities Law grants the following rights to developers and operators in an Industrial City:

- the right to lease and rent properties, or to adverse possession;
- the right to conclude contracts with third parties for the purpose of providing and developing services in the Industrial City, including infrastructure within the Industrial City for a period not exceeding 50 years, renewable once;
- the procurement of a services fee;
- the right to transfer funds in accordance with the instructions of the Central Bank of Iraq issued in this respect.

Article 17 of the Industrial Cities Law states that disputes arising from work in Industrial Cities will be governed by the Iraqi judiciary with the possibility of adopting local or international commercial arbitration as per the agreement with the developer.

Article 18 clarifies allowances granted, stating effectiveness of customs and taxes allowances stipulated under Law No. 13/2006 on Investment and Law No. 20/1998 on Industrial Investment concerning the private and mixed sectors.

The Industrial Cities Law requires the Ministry of Oil to supply the Industrial Cities with oil

products at the official common price (fixed by the government) and requires the Ministry of Electricity to supply Industrial Cities with electricity for supported prices for exclusive industrial use.

Tax Penalty Amnesty

The Iraqi Parliament has approved Law No. 9/2019, which grants an amnesty from tax penalties for taxpayers in violation of:

- Income Tax Law No. 113/1982;
- Real Estate Tax Law No. 162/1959; or
- Vacant Land Law No. 26/1962.

Taxpayers who have settled the levied taxes within a year of the date publishing Law No. 9/2019 in the Official Gazette (no. 4451 dated 19 August 2019) will be released from tax penalties, provided that the taxpayer has, in addition to paying an amount of 10% to be added to the levied taxes required to be paid by the taxpayer. Judiciary proceedings against taxpayers who have settled their taxes within the specified period will be stopped.

Holding Companies Law

The Iraqi parliament has approved amendments to Law No. 21/1997 Promulgating the Companies Law. The amendments were published in Official Gazette no. 4554 dated 9 September 2019.

The amendments allow the establishment of holding companies in Iraq. A holding company is defined as a joint stock company or limited company (a "Holding Company") which has the control over another joint stock company or limited company/companies ("Dependent Companies") where:

1. the Holding Company owns more than the half of the Dependent Company's share capital, including control of its management;
2. the Holding Company controls the Board of Directors of the Dependent Company.

The amendments require Holding Companies to include the word "(Holding)", in addition to the company type, in its name, which is to be mentioned in all documents, announcements and correspondence issued by the company.

Article 2 of the law states the role of Holding Companies in supporting the national economy and listed its rights as follows:

- the right to acquire movable and immovable monies related to the company activities;
- the right to establish Dependent Companies and to manage them, or to participate in

managing other companies contributing to Dependent Companies;

- the right to invest its monies with stocks, bonds, and securities;
- the right to provide loans, guarantees and finance for its Dependent Companies; and
- the right to own patents, trademarks and franchise rights and other moral rights and to use or lease the same to its Dependent Companies or others.

A Dependent Company is prohibited from owning shares in the Holding Company, and any transfer of ownership of the shares from a Dependent Company to a Holding Company is considered void. The Holding Company must appoint its representatives with the Board Directors of the Dependent Company in proportion to its shares in the Dependent

Company. The Holding Company does not have the right to take part in electing the other members of the Dependent Company's Board of Directors.

The amendments require the Holding Company to prepare, at the end of each fiscal year, a consolidated budget and the data of its profits and losses and all its Dependent Companies, supported with the clarifications and prescribed data in accordance with the requirements of the international accounting criteria.

However, pursuant to article 5 of the amendments, Holding Companies are subject to the provisions mentioned in Law No. 21/1997 Promulgating the Companies Law to the extent applicable to the type of the company adopted, unless otherwise stated herein.



Tunisia

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Tunis Court of Appeal Judgment No. 6886 of 27 March 2019 (Unpublished)

Seized as a court of annulment of an arbitration award, the Tunis Court of Appeal had to decide on a very controversial issue in arbitration, namely the international nature of arbitration and more precisely its criteria.

The issue was article 48 of the Code of Arbitration, which contains several criteria for an arbitration to be considered "international" and which in the opinion of the most authoritative doctrine seem to be unclear.

The Court of Appeal of Tunis, having to answer for a head of cancellation taken of the disqualification of the arbitration tribunal of the arbitration pitting the two parties to the dispute had to say its word as for the criteria for an arbitration to be considered international under article 48 of the Tunisian Code of Arbitration:

"... the philosophy of the Tunisian legislator is based on a distinction between the domestic arbitration—which is the default classification—and international arbitration, which is retained in limited cases. The Court of Appeal has added that if it is established that it is sufficient to prove a single criterion listed in article 48 of the Code of Arbitration in order to affirm the international character of

the latter, it is nonetheless true that when no criterion of "international" has been established, the arbitration cannot be described as international. It is therefore for the Court to hold a favourable response to the complaint of annulment raised by the plaintiff to the action."

It thus becomes clear that the criteria for the internationality of arbitration are alternative and that it is sufficient to prove one of the criteria in order for an arbitration to be considered international in nature. However, if none of the criteria are fulfilled, the arbitration remains domestic.

Judgment No. 24541 of 30 April 2019 issued by the Tunis Court of Appeal (Unpublished)

In its decision of 30 April 2019, the Tunis Court of Appeal, in its capacity as a tribunal for the annulment of arbitral awards, had to decide on the scope of the principle of the autonomy of the will which governs the arbitral proceedings. Thus, and recalling the provisions of article 13 of the Code of Arbitration, the Court affirmed the arbitral tribunal's freedom to set the rules of procedure until the parties have agreed otherwise and provided that they do not break the rules, fundamental principles of civil and