INTRODUCTION

Ever since companies came into existence laws have been made to regulate them. Hammurabi’s code in Babylon contained forty-four articles dealing with the subject of companies.\(^1\) Greek and Roman legislations also dealt with companies; Roman law considered a company to be a contract of agreement that produced obligations between the parties to the contract but without creating corporate persons independent of the persons of the partners.\(^2\) Islam found that dealings in the form of companies already existed among Arabs. Owing to peoples’ needs for companies in their reciprocal dealings and to the nature of commercial life, dealings in the form of companies were approved, and general provisions, without details, were made for regulating them. However, jurisprudence particularised provisions and differentiated between kinds of companies. As Islam spread peoples’ interests became multifarious, and Muslims settled;\(^3\) companies accordingly were divided into companies of consent, proprietorships, contract companies, capital companies, and partnerships.

The Church played a prominent role in the emergence of partnerships in the twelfth century in Northern Italian cities, since its teachings forbade lending with interest. This gave rise to companies in which an owner of capital financed a merchant on a profit-sharing basis, without being liable for losses beyond the limits of that capital. Such dealings were approved by the Church because of the risks to the capital owner.\(^4\) Thus the rules were laid for founding certain types of partnerships, such as the aggregate corporation and the limited partnership. The independent personality of such companies\(^5\) was recognised. Certain publicity on the formation of the company was also known, which was reflected in the registering of the names of the company’s director and partners with the merchants’ consulate. The company thus acquired a title composed of the name(s) of partner(s) in charge of trading and meeting the company’s debts, as guaranteed by all funds of the partners, namely the joint partners in commandite companies. However, limited partners were liable only within the limits of their contributions to the capital of the partnership.\(^6\)

Stock corporations emerged in the sixteenth and seventeenth centuries as a means of pooling capital through the issue of negotiable shares, followed by the need to

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\(^{1}\) Dr Akram Yamalki, *The Concise in Explaining Iraqi Commercial Law* (Baghdad, 1972) p. 9.


\(^{3}\) Dr Abdel Aziz Al Khayat, *Companies in Islamic Legislation and Positive Law*, (Amman, 1971) p. 28.


\(^{6}\) Dr Sarwat Abdel-Rahim, *Explanation of the Kuwaiti Commercial Law* (Kuwait, 1975) p. 208-9.
regulate them legislatively in order to facilitate their business while protecting
the interests of their shareholders and creditors. This appeared officially with
the enactment of the French commercial laws in 1807, which laid down a legal
organisation of two kinds of stock corporations: joint stock companies (SAE),
and \textit{commandite} companies with shares. Legislation regulating and reorganising
companies started to appear in 1825\textsuperscript{7} in England and in 1904 in the Ottoman
state, where the Share Law and Justice Regulations and Rulings Magazine was
issued codifying Islamic jurisprudence, and reorganising the provisions on companies
in Book 10. Further, in Germany there was issued the Law of the Empire in 1896,
of which Book 2 contained Legislation on Companies. The private limited liability
company was created by German legislation issued on 20 April 1892, without any
historical precedent in German or European law. Such legislation subsequently
spread from Germany to other countries and was adopted by the French legislature
in 1925.\textsuperscript{8}

In Arab countries the existence of companies generally was grounded in the civil
and commercial laws of those countries and was based on certain laws enacted for
reorganising companies.\textsuperscript{9}

In Kuwait, the company as an entity initially existed within a limited scope and
in a form commensurate with the country's economic life; this was based on diving,
an activity in which all share the product in different percentages. Another feature
of Kuwait's economic life was the limited partnership, also known as the \textit{maphalees}
company.\textsuperscript{10}

While under Ottoman rule, Kuwait began to apply the provisions of the Justice
Magazine on trade and company dealings in addition to the customs and traditions.
Then, with the discovery of oil in the early 1930s, the incorporation of major capital
firms for oil exploitation were established.\textsuperscript{11} The advent of oil revenues brought about
new features in the Kuwaiti economy. Stock companies began to be incorporated as
Kuwaiti joint stock companies, e.g., Kuwait National Bank (1952), Kuwait National

\textsuperscript{8} H. Wurdinger, \textit{German Company Law} (London, 1975) p. 183. Thus, it could be said that this type of
company is of German origin, and then moved to France through Alsace-Lorraine regions. Those regions
were subject to German domination, and thus they became subject to the law issued in Germany on 20 April
1982. When those regions were restored to French domination in 1918, and the officials discovered that there
was a real interest not only in maintaining that type of company in those regions, but also in spreading them
for adoption in all other areas of France, they enacted the law issued on 7 March 1925. Refer to:
— Prouvost, \textit{"Essai de Solutions des Questions Controversées, Concernant le Régime Juridique Actuel de la
Société à Responsabilité Limitée}, Thèse Lille, 1946.
— Hemard, \textit{Le Rapprochement Entre le Régime des Sociétés à Responsabilité Limitée et Celui des Sociétés par
Actions dans la Legislation Française Contemporaine}, Mélanges Angelo Sraffa, Padou, 1962, t-1, pp. 333
et 5.
\textsuperscript{9} For instance: Arts. 505–537 of Egyptian Civil Code, and Arts. 473–705 of Syrian Civil Law,
Arts. 494–536 of Libyan Civil Law, Arts. 823–949 of the Lebanese Obligations and Contracts Law,
Arts. 19 to 65 of the Egyptian Commercial Law, Arts. 55 to 337 of the Syrian Law of Commerce, 1949,
Arts. 9–25 of the Jordanian Commercial Law 1966, Law No. 26, of 1954, on Stock Corporations, in Egypt,
and the Jordanian Companies Law No. 12, of 1964.
\textsuperscript{10} Dr Abou Zeid Radwan, \textit{Commercial Companies in Kuwait Comparative Law} (1978) pp. 10–11.
\textsuperscript{11} The Kuwaiti 091 Company Limited was formed in 1934, incorporated by the US Gulfoil Corporation,
and the Anglo Iranian Oil Company.