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## Legal Framework in Support of Entrepreneurship

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### Abstract

The legal aspect of any phenomenon defines the general framework within which it can be controlled in accordance with the specificity of each state and even with the regulation of relations at the state level. This explains the constant updating of many legislation and laws, which in turn are affected by a range of factors and variables. Entrepreneurship as a modern scientific phenomenon, although with its real roots in the beginnings of human activity, has recently shown great interest in considering that its role in revitalizing the economy at all levels and in controlling and regulating this phenomenon has increased the interest of decision makers and legislators in it. Through this research, which is part of the descriptive research as an attempt to analyse the phenomenon considered, we have found that the legal framework plays a number of roles in controlling and supporting the entrepreneurship, given that the latter is linked to creativity, innovation and property rights, and that the creation and operation of entrepreneurship requires laws and legislation regulating them, as well as laws governing the authority or authority supporting their activities.

**Keywords:** Law, legislation, creativity & innovation, entrepreneurship, entrepreneurship pathways.

### INTRODUCTION

Activities and relationships in the world of economics and business are varied. At each stage, a new term and phenomenon emerge within them. Pioneering work is a phenomenon that is of great interest in various areas, especially in recent times. entrepreneurship today is considered to be the driving force of the economy and society. Although the interest of researchers in the various scientific fields is to try to understand the phenomenon and its dimensions and to try to direct it to the benefit of the individual and society. The problem with the research was therefore is:

#### **What are the entry points for supporting the legal framework for entrepreneurship?**

To answer this question we were elaborated into two sub-questions:

- What is the economic and administrative framework for entrepreneurship?
- What are the legal aspects of pilot work?

To respond to this problem, we have adopted the descriptive approach as an attempt to analyze and study the phenomenon of entrepreneurship: The economic, administrative and legal aspects, in order to clarify the general conceptual framework of the phenomenon, including the legal framework in which we have focused on the laws and legislation of the state of Iraq.

The importance of research comes from the importance of entrepreneurship, as we have already pointed out, is the driving force of the economy and society by creating independent enterprises, providing jobs, providing added value, contributing to the revitalization and development of the economy. It is also a good source of economic diversification, income and national output, apart from creating unique values and contributing to the opening of new markets and sectors. It is the objective that we have sought through this research, namely, to refer to Iraqi laws and legislation in order to determine the availability of the appropriate legal environment to encourage entrepreneurship action.

## **I. ECONOMIC AND ADMINISTRATIVE FRAMEWORK FOR ENTREPRENEURSHIP:**

Our choice of economic and administrative components is based on the logical chain of entrepreneurship pathways, which proceeds from the existence of an idea or opportunity that stems from creativity and appears in the form of the innovation on which entrepreneurship is based to be evaluated and processed, and from which it is transformed into a project, within which a network of complementary and supportive relationships is created, including those that may impede its activity.

### **FIRST: CREATIVITY AND INNOVATION:**

The thinkers know a wide debate in defining the concepts of creativity and innovation, but in this research we will be limited to simple and specific concepts that serve research. Creativity is: "A form of mental activity whereby a person moves towards new forms of thought or art based on specific experiences and elements, that is to say, creativity in simpler terms is the ability to think in an open format and to reshape the elements of expertise in new forms of literary or scientific art"<sup>1</sup>. So it's an intellectual state based on mental activity that leads to imagination by offering different ideas or outcomes than usual, which can be used. Innovation: "a distinct organized activity in order to reach a whole new (radical innovation or penetration) or partial (progressive innovation or improvement)".<sup>2</sup> So, innovation is a process with both physical and moral dimensions that leads to the introduction of what is new, whether in the form of total changes or partial improvements. Innovation is associated with discovering and developing an unprecedented new idea. And it is linked to putting creative output into practice. Creativity is a purely intellectual and mental state, and innovation is a unique implementation in unique ways.<sup>3</sup>

The importance of innovation - and creativity - lies in the role it plays in revitalizing the national economy by creating a new service or product that clients need to satisfy their needs, promoting market mobility and capital flows, strengthening management behavior and performance by stimulating innovation and finding new and effective solutions, providing training mechanisms for new solutions and addressing the various challenges and constraints facing the enterprise.<sup>4</sup>

In addition, they are increasingly important for entrepreneurship that proceeds from the idea or opportunity that is the starting point for pilot projects, and innovation and innovation and the breadth of their fields provide an environment conducive to the support and activity of entrepreneurship. Temporary protection of a new, acceptable and distinctive idea of societal utility and applicability, which gives the inventor the legal power to prevent any person from using the invention without the authorization or license of the inventor<sup>1</sup>. Intellectual property rights extend to intellectual production in all its forms and are not limited to technological inventions.

### **SECOND: ENTREPRENEURSHIP PATHWAYS AND THEIR RELATIONSHIPS:**

Innovation is seen as distinguishing the opportunity in the market and mobilizing the resources to hold it.<sup>2</sup> Therefore, innovation brings the innovator closer to entrepreneur who is able to recognize the opportunity and is able to quickly mobilize the talent to hold the opportunity and turn it into business.<sup>3</sup> Thus, entrepreneurship will have the following stages:

#### **Moving from idea to opportunity:**

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<sup>1</sup> Abdul Sattar Ibrahim, *Creativity: Its Issues and Applications*, Anglo-Egyptian Library, Egypt, 2002, p. 391

<sup>2</sup>Najm Aboud Najm, *Innovation Management: Concepts, Characteristics and Modern Experiences*, 2nd Edition, Dar Wael, Jordan, 2015, p. 16

<sup>3</sup>Yahya Al-Sayed Omar, *Entrepreneurship between talent and practice*, Dar Al-Asala, Turkey, 2021, p. 111 Same reference, p. 129

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<sup>2</sup>-William Bygrave & Andrew Zacharakis, *Entrepreneurship*, 2<sup>nd</sup> ed, ed Wiley, USA, 2010, p49

<sup>3</sup>-Najm Abboud Najm, previous reference, p. 20...

<sup>4</sup>-Lafkir Hamza and Usrir Munawwar, *The Centrality of Opportunity within the Entrepreneurial Process*, Maarif Magazine, Refereed Scientific Journal, University of Bouira, No. 12, December 2017, p. 58.

The search for the idea and sensing of market needs, as well as the ability to identify optimal sources of resources, can lead to the discovery or creation of an opportunity, and this requires creative and creative behavior of leadership. 4 The foundation of this phase is creativity and innovation, but at the same time it requires the ability to shape the idea and value it to choose the right idea to be a good opportunity to invest and create a pilot project.

### **Preparation:**

Once the opportunity has been valued, there is a need to go deeper into the ways in which the study shows itself and the qualitative and qualitative analysis that brings the lead closer to reality, so the preparatory phase involves the necessary information-gathering and analysis to chart the course to be followed, because the preparation aspect focuses on technical economic studies-

### **Launch:**

The previous phases are all part of the planning for the completion of the project, and at this stage the implementation that cannot succeed without the efficiency and validity of the previous phases, although the so-called start-up phase, does, in fact, contain some of the parts or infrastructure that could be included in the previous phase because the entrepreneurship was not actually established .

### **Support and strengthening:**

The launch of the entrepreneurship in production, including marketing, may show many new developments that require revision, enhancement or preservation depending on the nature of the situation. In order to ensure continuity, continued support and strengthening is required. At each stage of the entrepreneurship pathways, a network of relationships to be provided is demonstrated, given the entrepreneurship's need for a variety of inputs, it requires sources of information at each stage, as well as partners, a working group and a network of other relationships, the most important of which are: Suppliers, clients, authority support.

## **THIRD: ENTREPRENEURSHIP SUPPORT (PRIVILEGES AND SUPPORT DEVICES):**

Entrepreneurship supports varies from country to country and takes different forms. It may be by providing the appropriate climate that emerges in the enactment of laws and legislation that promote pilot work at all stages of its operation, by providing material or moral concessions, whether in terms of taxes, fees, discounts or even exemption from certain obligations or the adoption of various support programmes. Provide the necessary training and training to entrepreneur or those who wish to establish entrepreneurs, provide advice and advice or facilitate various transactions. Institution incubators or nurseries are accelerators or even support agencies or in the form of loan guarantee funds for raiders who have difficulty accessing financial resources.

## **II. LEGAL FRAMEWORK OF ENTREPRENEURSHIP:**

The existence of legal norms has been linked to the need to regulate the life of human societies in all their affairs and the requirements for their durability and development in a consistent manner that ensures the protection of rights and the implementation of obligations regardless of their sources, in pursuit of the purpose of their legislation.

Economic activity has a great deal of space in the legal regulation of the lives of societies because of the urgent daily need for rules commensurate with the rapid development of needs and in the provision of all new goods and services in the business environment. The role of legislators is highlighted here in pursuing this accelerated development and in enacting legal rules that guarantee the proper practices of the parties to these leading economic relations in a fair and equitable manner, enabling enterprises and businesses to develop and expand under legitimate competition.

The absence of legal regulation of entrepreneurship in Iraq is one of the reasons why Iraq is ranked 172<sup>nd</sup> in the world in terms of its practice compared to other countries in the Middle East and North Africa region, according to the World Bank's 2020 report.

Through this aspect, we will try to clarify the legal framework governing pilot work in Iraq through the relevant laws and legislation:

### **FIRST: TRADE ACT NO. 30 OF 1984:**

The purpose of this Act is to regulate the economic activity of the public, mixed and private sectors in accordance with article 1 (I) of the Act. The specific rules governing business and merchant are set out in articles 5 and 6 of the Act.

Article 7 of the Act stipulates that any of the above-mentioned businesses in their own name and professional self-employed are considered to be merchants and therefore subject to the duties set forth in article 9 of the Act, such as registration in the commercial register of the Chamber of Commerce, taking a trade name and keeping trade books, as well as refraining from unlawful competition by agreement or by law.

If a leading act is one of business, it is subject to the so-called legal regime of business, which is a set of special legal rules concerning (acquisition of trader status by a professional, jurisdiction, benefits, bankruptcy, accelerated enforcement, urgency, direct execution).

Here we have two observations:

- If commercial entrepreneurship is exercised as a small craft with little cost by limiting itself to the physical activity of the pilot or by using machines with small driving power, the pilot does not acquire the status of trader as provided for in Article (11) of the Trade Act and is therefore not bound by the duties of the trader.

- If a entrepreneurship act takes the form of a project or is exercised through a company established by the pilot alone as either an individual enterprise company or a limited liability company, it acquires the status of a trader and is bound by the duties of the trader.

### **SECOND: COMPANIES LAW NO. 21 OF 1997:**

If the entrepreneur wants to operate alone in the form of an individual enterprise company or a limited liability company, the procedures for incorporation provided for in the applicable companies law must be followed, starting with the seizure of its business name and the preparation of the statement of incorporation. (article 14) Submitted with the required capital deposit certificate to the Registrar of companies of the ministry of commerce after the completion of the procedures for incorporation and approval by the Registrar, the certificate of incorporation shall be issued and the company shall acquire the moral personality from the date of issuance of the certificate

The lead company then exercises its business, its management and the appointment of an auditor for the purpose of monitoring and auditing its accounts, and the rest of its affairs are exercised in accordance with the provisions of the companies Act in force.

### **THIRD: INCOME TAX LAW NO. 113 OF 1982:**

The Iraqi legislator subjected natural and legal persons to income tax if they have sources of income mentioned in article II of the income tax act in force, such as business profits or businesses, trades and professions, including obligations and obligations. The legislator has established legal rules for the imposition and assessment of tax according to a relative measure of both natural and legal persons. The tax on the company's income is achieved before paying any of it to shareholders. (Article XIV) The legislator also requires any registered or unregistered person with taxable income to submit an income report to the financial authority before the first day of June of the estimated year if he or she is not required to submit it by written notification or a publication method (art. The pilot must therefore observe these provisions as long as he has a taxable source of income.

### **FOURTH: LABOR LAW NO. 37 OF 2015:**

This act aims to regulate labor relations between workers, employers and their organizations with a view to protecting their respective rights, achieving sustainable development based on social justice and equality, and ensuring decent work for all without any discrimination to build the national economy...(artical 2) A worker is defined as any natural person, whether male or female, who works under the direction and supervision of and under the management of an employer, whether working on a written or oral contract, express or implicit, or as a traineeship or test, or performing intellectual or physical work for any kind of remuneration under this Law (p.1/vi). The project was defined as every work site managed by a natural or legal person employing one or more workers according to an employment contract (M1/XXIV).

The Iraqi legislator defines the employer as any natural or legal person who employs one or more workers for wages of any kind (article 1/VIII) of the labor code in force, and has set the minimum age for employment in the Republic of Iraq at 15 years (article 7)

The Iraqi legislator defined the obligations of the employer and the rights and obligations of the worker.

### **FIFTH: COPYRIGHT PROTECTION LAW NO. 3 OF 1980 AMENDING:**

The aim of the Law is to protect the rights of authors to their innovative works in different sciences, arts and literature, such as computer programs, written works, maps, drawings and figurines. ( article 2 of the Law), dealing with piracy of items and penalties for such acts the provisions of this Law shall apply to the collections of Iraqi and foreign authors published, represented or first presented in the Republic of Iraq as well as to those of Iraqi and foreign authors published, represented or first presented in a foreign country. The protection of copyright and neighboring rights under this law includes aliens, whether natural or moral, on a basis not less than is appropriate to be granted to Iraqi citizens in respect of the protection and enjoyment of other intellectual property rights and any of these rights.( article 49)

### **SIXTH: PATENTS, INDUSTRIAL MODELS, UNDISCLOSED INFORMATION, INTEGRATED CIRCUITS AND PLANT VARIETIES LAW NO. 65 OF 1970, AMENDED:**

The reasons for the law provided that, in view of the economic, industrial and social development of the country, with which the Patent Law No. 61 of 1935, as amended, failed to keep pace with this development, and to ensure the preservation of industrial property rights, the encouragement of inventors and the expansion and development of relations with industrialized countries, the Law was enacted.

The legislator defined invention as any creative idea reached by the inventor in any of the technical areas concerning a product or method of manufacture that in practice would solve a particular problem in any of the areas. And the inventor - who came up with the invention. The owner of the patent is the holder of the patent - the natural or moral person to whom the patent was granted. The Iraqi legislator defined the industrial model as any new arrangement of colored or colorless lines and shapes used in industrial production. (Article 1 of the Law).

Article 7 identifies the persons entitled to apply for patents:

- 1- Iraqis and Arab citizens
- 2- Aliens residing in Iraq with a place of real employment.
- 3- States parties to a relevant international convention to which Iraq is a party
- 4- Public interests.
- 5- Companies, associations and enterprises in Iraq or in countries that are members of a relevant international convention to which Iraq is a member, with moral personality, industrialists, producers, traders and workers, provided that the patent is registered starting with the name of the inventor, unless the invention has already been registered outside Iraq, in which case the invention may be registered in the name of the company, association or institution that owns it.

Article 12 provides that the patent shall grant its owner the following rights:  
- Prevention of third parties if they have not obtained the consent of the patent owner of the manufacture, exploitation, use, sale, sale or import of the product that is the subject of the invention, if the subject of the patent is a product.

- Prevention of third parties if they do not obtain the consent of the patent owner from the manufacture, exploitation, use, sale, sale or import of the product that is the subject of the invention, if the subject of the patent is the method of manufacture.

The law regulated the patenting mechanism and the industrial model of the patent recorder and the industrial models of the central evaluation and quality control system. The duration of a patent shall not expire before the expiration of the period of 20 years of registration under the provisions of this Law, from the date of filing of the application for registration under the provisions of this Act (article 13 of the Law).

Under the following conditions, the rights of innocence shall be excluded:  
The period of protection shall expire in accordance with article XIII of this Law.

2. A final judgment of invalidity of the acquittal.
3. Non-payment of fees due in due time without an acceptable excuse.
- 4- Annulations of the patent in accordance with the provisions of this Act. (Article 31 of the Law).

The legislator has ruled that the design or industrial model should not be considered innovative - if it was presented or described and its use described to the public prior to the filing of the application for registration. However, an industrial design or model may be considered innovative if it is presented or described after an application for registration in a State that treats Iraq on the basis of reciprocity, or has been displayed at national or international fairs or the industrial design or model has been presented to the public at a conference or scientific newspaper no later than six months before the date of the application for registration in Iraq.

-If it contains differences that are not essential to an earlier industrial design or model or are allocated to a product of another kind different from the product for which an industrial design or model has already been registered (article 36/2 bis of the Law). It should be noted that the protection of the industrial model is 10 years from the date of issuance of the certificate, provided that the annual renovation fee is paid. (Article 41 of the Law).

## **CONCLUSION:**

The phenomenon of entrepreneurship is very complex and multifaceted, and with this research we have focused on the economic and administrative aspects of its study through our choice of specific elements based on the logical chain of entrepreneurship, which proceeds from the existence of an idea or opportunity that stems from creativity and emerges in the form of the innovation on which entrepreneur is based to be evaluated and entrepreneurship pathways, and from which to turn it into a entrepreneurship.

Due to the differences between the economies of states in structural terms or the very nature of the economy and its level of development, there has been a difference in the laws and legislation governing different economic relations, including those governing the phenomenon of entrepreneurship. Most States are trying to enact laws and legislation that are appropriate for their specific use in the field of entrepreneurship:

– Creativity and innovation are essential for the creation, activity and expansion of business. – Knowledge of entrepreneurship pathways is easy to identify, and the parties that define the dimensions of the entrepreneurship thus provide the necessary information for legislators to control and regulate the phenomenon.

– Entrepreneurship require their own specific legislation and laws, as well as supporting and encouraging bodies, given the many risks and constraints they face

– There is no special legislation on entrepreneurship in Iraq that would serve as a structured legal framework for these productive humanitarian activities.

– There is no government authority that provides administrative and regulatory reference for entrepreneurship.

– The practice of entrepreneurship is regulated by a series of general laws and legislation that do not concern themselves with entrepreneurship alone

Results obtained: general theory or that of the entrepreneurship in Iraq provides us with a set of recommendations, the most important of which are:

– To enact a entrepreneurship act to ensure the organization, sponsorship, rights and protection of enterprises and their owners.

– Develop or identify a governmental authority to provide support, organization, control, protection and development of pilot projects.

– Encourage creativity and innovation and protect these activities through property rights laws as the basis for entrepreneurship.

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