

Doing Business in Iraq

Reform Memorandum

May 2011

Doing Business in Iraq: Reform memorandum

Good regulation is important for growth, job creation and poverty reduction. The Doing Business Report measures regulations that encourage or constrain business activity across 9 core areas or “indicators” (Starting a business, Dealing with construction permits, Registering property, Getting credit, Protecting investors, Paying taxes, Trading across borders, Enforcing contracts and Closing a business) in 183 economies.¹ A higher ranking on the Report’s overall ease of doing business index corresponds to a more business-friendly regulatory environment.

In *Doing Business 2011*, Iraq ranks 166 out of 183 economies—the same as the previous year. Iraq ranks last amongst the 18 economies in the Middle East and North Africa region (MENA), significantly behind regional best performers at the global level, such as Saudi Arabia (11), Bahrain (28), and United Arab Emirates (40). However, Iraq’s performance is uneven. While it ranks favorably on some topics, with its highest ranking on the Paying taxes (54) and Registering property (96) indicators, it lags behind most countries on several others, such as Closing a business (183), Trading across borders (179) and Starting a business (174). Table 1 lists details of Iraq’s standing across all Doing Business indicators.

This reform memorandum describes short and medium to long-term reforms in nine areas covered by Doing Business that would make it easier to start and operate a business in Iraq. Table 2 provides a summary of the reform recommendations. All recommendations are preliminary and may be refined and adjusted during conference calls and further interactions with the government.

It is important to note that improvements in the Doing Business rankings are difficult to predict for Iraq and other economies. Rather than aiming at specific advancements in the rankings, emphasis should be placed on implementing key reforms to improve the ease of doing business. A rigorous reform effort will certainly be reflected in the Doing Business indicators and—more importantly—provide a better business environment that is more conducive to economic growth and private sector development.

Governments that succeed in sustaining reform programs, as measured by Doing Business, tend to have common features. They take a comprehensive approach and implement reforms covering most of the areas measured by Doing Business. As measured by *Doing Business 2011*, the 10 economies that made the largest strides in making their regulatory environment more favorable to business over 5 years are Georgia, Rwanda, Belarus, Burkina Faso, Saudi Arabia, Mali, the Kyrgyz Republic, Ghana, Croatia and Kazakhstan. All implemented more than a dozen *Doing Business* reforms over the 5 years. Several—including Rwanda, Belarus, Burkina Faso, the Kyrgyz Republic, Croatia and Kazakhstan—have also been recognized as top 10 *Doing Business* reformers in previous years.

¹ The Doing Business methodology has its limitations. Other areas important to a business such as a country’s proximity to large markets, the quality of its infrastructure services (other than those related to trading across borders), the security of property from theft and looting, the transparency of government procurement, macroeconomics conditions or the underlying strength of institutions—are not measured directly by Doing Business.

Consistent reformers are also inclusive. They involve all relevant public agencies and private sector representatives and institutionalize reform at the highest level. Successful reformers also stay focused through a long-term vision supported by specific goals. Saudi Arabia set a goal of improving its rank to 10 in 2010. This year Saudi Arabia ranked 11 out of 183 countries, only 1 spot shy of this ambitious goal. Setting long-term goals and keeping a steady course of reform might help economies recover from shocks, including the current global financial and economic slowdown.

Any reforms that Iraq undertakes should be monitored and communicated. Monitoring the impact of reform will highlight both areas of success as well as areas where further effort is needed. At the same time, communicating reforms effectively to implementing agencies, the business and legal communities, and the general public will ensure that changes are accepted and put in practice. Effective communication will show that the Government of Iraq is taking affirmative steps to increase the country's competitiveness.

Table 1. Iraq's performance on the Doing Business indicators

Indicator	2011	2010	Change in rank from last year	Global Best Practice (2011)	Regional Best Practice (20110)
Starting a Business					
<i>Rank</i>	174	174	No change	New Zealand	Saudi Arabia (13)
Procedures (number)	11	11			
Time (days)	77	77			
Cost (% of income per capita)	107.8	75.9			
Min. capital (% of income per capita)	43.6	30.3			
Dealing with Construction Permits					
<i>Rank</i>	102	95	-7	Hong Kong (China)	Saudi Arabia (14)
Procedures (number)	14	14			
Time (days)	215	215			
Cost (% of income per capita)	506.8	397.9			
Registering Property					
<i>Rank</i>	96	104	+8	Saudi Arabia	Saudi Arabia (1)
Procedures (number)	5	5			
Time (days)	51	51			
Cost (% of property value)	6.4	7.7			
Getting Credit					
<i>Rank</i>	168	167	-1	Malaysia	Saudi Arabia (46)
Legal Rights Index	3	3			
Credit Information Index	0	0			
Public registry coverage (% adults)	0	0			
Private bureau coverage (% adults)	0	0			
Protecting Investors					
<i>Rank</i>	120	119	-1	New Zealand	Saudi Arabia (16)
Disclosure Index	4	4			
Director Liability Index	5	5			
Shareholder Suits Index	4	4			
Investor Protection Index	4.3	4.3			
Paying Taxes					
<i>Rank</i>	54	52	-2	Maldives	Qatar (2)
Payments (number)	13	13			
Time (hours)	312	312			
Total tax rate (% profit)	28.4	28.4			
Trading Across Borders					
<i>Rank</i>	179	180	+1	Singapore	United Arab Emirates (3)
Documents for export (number)	10	10			
Time for export (days)	80	102			
Cost to export (US\$ per container)	3,550	3,900			
Documents for import (number)	10	10			
Time for import (days)	83	101			
Cost to import (US\$ per container)	3,650	3,900			
Enforcing Contracts					
<i>Rank</i>	141	138	-4	Luxembourg	Yemen, Rep. (34)
Procedures (number)	51	51			
Time (days)	520	520			
Cost (% of debt)	28.1	27.3			
Closing a Business					
<i>Rank</i>	183	183	No change	Japan	Bahrain (26)
Time (years)	No practice	No practice			
Cost (% of estate)	No practice	No practice			
Recovery rate (cents on the dollar)	0	0			
Overall ease of doing business	166			Singapore	Saudi Arabia (11)

Source: *Doing Business* database, www.doingbusiness.org. The overall rankings published in *Doing Business 2011* are not comparable to those published in *Doing Business 2010* because the methodology for the Employing Workers indicator is under revision and is no longer included in the ranking.

Table 2. Suggested reforms to improve Iraq’s ease of doing business

SUGGESTED REFORMS	SHORT-TERM	MEDIUM -TERM
Starting a business	<p>Reduce number of procedures, cost and time to register a company by:</p> <ul style="list-style-type: none"> ▪ Eliminating the minimum capital requirement; ▪ Introducing standard articles of association and making lawyers’ involvement in signing incorporation documents optional; ▪ Replacing the publication of incorporation in a local newspaper with electronic publication on the Ministry of Trade website; ▪ Eliminating the requirement for a company seal; ▪ Eliminating the requirement to obtain and legalize special company books. 	<p>Further reduce procedures, time and cost to register a company by:</p> <ul style="list-style-type: none"> ▪ Implementing an integrated system for checking the uniqueness of the company name; ▪ Eliminating the requirement to obtain a business license from the municipality for companies not operating in the sectors related to public health or safety; ▪ Consolidating government approvals and payment of fees at one access point; ▪ Making online registration possible.
Dealing with construction permits	<p>Reduce number of procedures, cost and time to obtain a construction permit by:</p> <ul style="list-style-type: none"> ▪ Improving process guidelines that are available online and at the Baghdad Municipality; ▪ Establishing risk-based guidelines for obtaining a location clearance from the regional authority; ▪ Eliminating the requirement to obtain an approval from the Ministry of Communications on certain construction projects; ▪ Streamlining the process for obtaining a clearance on completed construction approval from the National Center of Construction Laboratory. 	<p>Further reduce procedures, cost and time to obtain a construction permit by:</p> <ul style="list-style-type: none"> ▪ Adopting a unified construction code; ▪ Consolidating location clearances by updating zoning regulations and digitizing city zoning maps; ▪ Establishing a one-stop shop for building permit clearances; ▪ Developing an online system for processing construction permits;
Registering property	<p>Reduce procedures, cost and time to transfer property by:</p> <ul style="list-style-type: none"> ▪ Introducing “fast-track” procedures in property registration process; ▪ Mapping internal processes at the property registry in order to identify bottlenecks; ▪ Unifying the valuation of properties completed by the Real Property Registry Office and the Tax authority and establishing standardized ways of valuing properties. 	<p>Further reduce procedures, cost and time to transfer property by:</p> <ul style="list-style-type: none"> ▪ Computerizing municipal property records; ▪ Investigating options to lower the fees to register properties or introducing a flat fee for property registration; ▪ Creating a single-access point for property transactions.
Getting credit	---	<p>Strengthen the rights of borrowers and lenders by amending the securities laws to allow more flexibility in secured transactions law by:</p> <ul style="list-style-type: none"> ▪ Introducing the possibility of a non-possessory security pledges in a single category of revolving movable assets;

SUGGESTED REFORMS	SHORT-TERM	MEDIUM -TERM
		<ul style="list-style-type: none"> ▪ Ensuring that non-possessory security pledges allow a general description of the collateral without requiring a specific description of the collateral; ▪ Allowing that a security right extend to future or after-acquired assets, and extend automatically to the products, proceeds or replacements of the original assets; ▪ Allowing for general description of debts and obligations in collateral agreements and in registration documents so that all types of obligations and debts can be secured by stating a maximum rather than a specific amount between the parties; ▪ Establishing a collateral registry that is computerized, unified geographically, and that is indexed by the name of the grantor of a security right; ▪ Developing a predictable priority system that would grant as high of a priority to secured creditors both outside bankruptcy proceedings as possible; ▪ Authorizing parties to agree on out of court enforcement of debt obligations. <p>Facilitate access to credit information by introducing a public credit registry at the Central Bank of Iraq that:</p> <ul style="list-style-type: none"> ▪ Includes both firms and individuals, ▪ Collects and distributes positive and negative information, ▪ Covers at least 0.1% of the adult population, ▪ Includes historical information for more than 2 years, ▪ Distributes data on all loans (or at least loans below 1% of income per capita and coverage of above 1% of adult population), ▪ Collects credit information from retailers, trade creditors, utility companies and financial institutions, ▪ Guarantees that borrowers can inspect their data. <p>Further improve score on the Credit information index by:</p> <ul style="list-style-type: none"> ▪ Transferring the task of credit information sharing to a private credit bureau.
Protecting investors	<p>Increase investor protections by:</p> <ul style="list-style-type: none"> ▪ Requiring shareholders approval of large related-party 	<p>Make it easier for investors to enforce their rights through the courts by:</p> <ul style="list-style-type: none"> ▪ Allowing plaintiffs to request categories of documents from the

SUGGESTED REFORMS	SHORT-TERM	MEDIUM -TERM
	<p>transactions;</p> <ul style="list-style-type: none"> ▪ Mandating disclosure of personal conflicts of interest by company directors and officers; ▪ Increasing disclosure obligations in the annual reports in case of related-party transactions; ▪ Requesting an independent assessment of large related-party transactions before approval; ▪ Providing shareholders with rights to hold the directors and the approving body liable for damages resulting from a related-party transaction; ▪ Stating clearly in the law the directors' duties to act appropriately when operating the company. ▪ Allowing shareholders to have access to any documents of the company; ▪ Granting shareholders the right to request for the appointment of a government inspector; 	<p>defendant without identifying specific ones;</p> <ul style="list-style-type: none"> ▪ Allowing parties to a trial to directly question (orally or in writing) the opposing party and witnesses during trial; ▪ Offering shareholders owning 10% or less of shares inspect transaction documents before filing suit.
Paying taxes	<p>Reduce the number of payments and time to pay taxes by:</p> <ul style="list-style-type: none"> ▪ Improving accessibility of tax rules and regulations. 	<p>Further reduce the number of payments and time to pay taxes by:</p> <ul style="list-style-type: none"> ▪ Making it optional to pay social security on a quarterly (rather than monthly) basis for those firms that would so prefer; ▪ Introducing electronic filing and payment of taxes.
Trading across borders	<p>Reduce the number of documents and time to trade by:</p> <ul style="list-style-type: none"> ▪ Streamlining the document requirements for trading. 	<p>Further reduce the number of documents and time to trade by:</p> <ul style="list-style-type: none"> ▪ Introducing risk-based inspections to reduce number of physical inspections of the goods ▪ Allowing for electronic submission of documentation ▪ Creating a single window for trade transactions.
Enforcing contracts	<p>Reduce the time to enforce a contract by:</p> <ul style="list-style-type: none"> ▪ Setting limits on the number and duration of adjournments, and allowing for active case management by the judge; ▪ Collecting statistics on the performance of the judiciary; ▪ Mapping processes at the courts to identify points of delay. 	<p>Further reduce the time to enforce a contract by:</p> <ul style="list-style-type: none"> ▪ Establishing a specialized commercial chamber or court; ▪ Introducing simplified rules for undisputed and small claims.
Closing a business	<p>Improve insolvency procedures by:</p> <ul style="list-style-type: none"> ▪ Undertaking a review of the insolvency system in order to understand the reason of the limited number of insolvency proceedings in Iraq. 	<p>Further improve insolvency procedures by:</p> <ul style="list-style-type: none"> ▪ Developing a proper legal framework giving companies the option to be sold as a going concern; ▪ Adopting guidelines that facilitate out-of-courts workouts;

**SUGGESTED
REFORMS**

SHORT-TERM

MEDIUM -TERM

- Improving efficiency of the judicial system.
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Reform memo: Iraq

Starting a business

Indicator	Iraq	Region	OECD
Procedures (number)	11	8.1	5.6
Time (days)	77	20.0	13.8
Cost (% of income per capita)	107.8	38.0	5.3
Paid-in Min. Capital (% of income per capita)	43.6	104.0	15.3

Doing Business measures the procedures, cost and time necessary for a domestic entrepreneur to register and formally operate a new (limited liability) company. *Doing Business 2011* reported that entrepreneurs in Baghdad must go through 11 procedures, taking 77 days and costing 107.8% of Iraq's per capita income to start a business. Globally, Iraq ranked 174 in *Doing Business 2011* on the ease of starting a business. Compared to the rest of the MENA region, registering a company is more difficult only in Djibouti.

Such a low ranking underscores the urgency of reforms that should be undertaken in this area. But beyond the ranking, making business entry easier helps decrease informalities and creates job opportunities. A recent study found that higher entry costs are associated with a larger informal sector and a smaller number of legally registered firms.¹ Furthermore, higher compliance costs cut into firm profits and discourage entrepreneurs, which in turn reduces job creation in the economy.²

Short-term reform recommendations:

1. Eliminate the paid- in minimum capital requirement.

According to Article 28 of Law No. 21 of 1997 (as amended in 2004) and Ministry of Trade Instruction No. 196 from March 15 2004, entrepreneurs in Iraq must deposit 1,000,000 dinars (US\$ 963) in a bank account as initial capital for establishing a domestically owned limited liability company.³ The confirmation receipt from this deposit must be included in the application for company registration submitted to the Registrar of Companies. The capital can be withdrawn immediately after the incorporation certificate is issued.

¹ Barseghyan, Levon, and Riccardo DiCecio. 2009. "Entry Costs, Industry Structure and Cross-Country Income and TFP Differences." Working Paper 2009-005C, Federal Reserve Bank of St. Louis.

² Fonseca, Raquel, Paloma Lopez-Garcia and Christopher Pissarides. 2001. "Entrepreneurship, Start-Up Costs and Employment." *European Economic Review* 45 (4-6): 692-705.

³ Pursuant to Coalition Provisional Authority (CPA) Order 64, dated March 3, 2004, certain amendments have been effected to Company Law No. 21 of 1997. Instruction No. 196 implements these changes pursuant to Article 208 of that Law.

Minimum capital requirements are justified by some countries on the grounds of providing protection to creditors, as well as protecting the company against insolvency. However, in practice they serve as a barrier to entry since lenders base their decisions on commercial risks and not on government imposed minimum capital requirements. Furthermore, recovery rates in bankruptcy are no higher in countries with minimum capital requirements than in those without.⁵ Instead of adding barriers to business entry, a focus could be shifted towards developing bankruptcy laws that protect creditors.

The requirement to deposit 1,000,000 dinars in Iraq is an additional administrative hassle that wastes 2 days of an entrepreneur's time and provides no guarantees to creditors or investors. Today most countries in the world—including the United Kingdom and France, who originally introduced it—do not require a minimum capital for limited liability companies any longer. Thirty-nine economies have reduced or eliminated their minimum capital requirement since 2004.

Countries in the MENA region have been particularly active in reducing and eliminating the minimum capital requirement. As a result of these reforms, the average paid-in minimum capital requirement in the region dropped from a record 847% of income per capita in 2005 to 104% in 2010. This group has also seen some of the biggest spikes in new company registrations. In the year after Jordan reduced its requirement from JOD 30,000 to 1,000, the number of newly registered companies in the country increased by 18%. Morocco is now considering abolishing the requirement altogether. In many of the economies that did so, such as Egypt and Yemen, companies are more likely to declare their actual capital.

Iraq should follow suit. Abolishing the minimum capital requirement would eliminate the administrative hassle of making the payment and presenting the proof of it to the Registrar of Companies. The law could be amended so that it leaves the opportunity for businesses to declare the initial capital on an optional basis in case they need to do so for other purposes.

2. Introduce standard articles of association and make lawyers' involvement in signing incorporation documents optional.

While company founders can prepare articles of association on their own, a lawyer must sign them prior to submission to the Registrar of Companies. This requirement adds 1 day and costs approximately 900,000 dinars (US\$ 866).⁶ Standardizing incorporation documents can especially benefit small businesses, because it frees them from the need to consult a lawyer. Simpler documents mean fewer errors and omissions—saving hassle for registries and entrepreneurs alike. Many countries rely on standardized documents to speed up the incorporation process. In Mauritius, the use of standardized documents means that only about 8% of applications are rejected and companies can be incorporated in a matter of hours.

⁵ Djankov, Simeon, Oliver Hart, Caralee McLiesh, and Andrei Shleifer, 2006, "Debt enforcement around the world," NBER Working Paper No 12807, Cambridge, Massachusetts.

⁶ The cost depends on the complexity of documents and nature of the company.

Eliminating the requirement to have incorporation documents signed by a lawyer would represent a significant cost saving for small businesses, while larger companies, with more complex structures, could still resort to professional consultation. In 2008/09 Syria made the involvement of lawyers optional when it adopted a new commercial code.

3. Replace the publication of incorporation in a local newspaper with electronic publication on the Ministry of Trade website.

Once the registration has been approved, the Registrar of Companies issues a letter about the request, which must then be published in the “Companies Bulletin” and in at least one daily newspaper of wide circulation in Iraq. The registration agent (lawyer) must then submit a copy of each publication to the registry. This process takes 3 days on average and costs approximately 72,711 dinars (US\$ 70). This requirement is laid out in Article 21 of Law No. 21 of 1997 (as amended in 2004) and in Article 10 of Ministry of Trade Instruction No. 196.

One solution would be to have the Registrar of Companies upload the notice of incorporation directly onto its website or the website of the Ministry of Trade. A number of countries offer such a service, including Portugal, Serbia and Ukraine.

4. Eliminate the requirement for a company seal.

Article 202 of Law No. 21 of 1997 (as amended in 2004) requires that every company have a special seal with which to stamp its, “businesses, correspondence, documents, certificates, and any other statements it issues.” In Baghdad, obtaining a company seal takes an average of 2 days and costs 20,000 dinars (US\$ 19).

Approximately 70 countries still require a company seal. Developed in the Middle Ages, the seal is intended to avoid fraudulent use of company documents. But it can easily be forged. Most modern economies have abolished the requirement for a seal. Many allow electronic signatures instead. Yemen removed the mandatory requirement to obtain a company seal in 2007/08 and Belarus did the same in 2008/09.

Doing Business recognizes that some businesses might still want to have a company seal to conduct certain transactions and authenticate documents. Iraq could consider rewording the law to ensure the company seal is not a pre-registration requirement that slows down the process of incorporation, but that it is a procedure that can take place at anytime after the business is up and running.

5. Eliminate the requirement to obtain and legalize special company books.

The Tax Authority requires that the company controller and auditors legalize all corporate and financial records. This procedure takes an average of 2 days and costs approximately 155,810 dinars (US\$ 150). Such stringent compliance requirements may

be excessive, especially for SMEs, and in practice many limited liability companies forgo this procedure. Lebanon carried out a similar reform in 2008/09 when it eliminated the requirement to have company books stamped at the Commercial Registry.

In Iraq, the focus could be shifted from a 100% ex-ante signing off of company books as a must for starting a business towards a solution by businesses on how they ensure robust financial management in their companies. In most countries a number of financial management software programs are available for use by businesses and adapted to current legislation. Additionally, these countries check compliance through the risk-based inspections.

Medium-term reform recommendations:

1. Implement an integrated system for checking the uniqueness of the company name.

In Baghdad, a special department at the Chamber of Commerce starts by searching the suggested name through their system to see if the name is already taken or reserved by another company. Once a name is agreed upon and available, the name is reserved upon payment of a nominal fee. The Federation of the Chambers of Commerce is informed in order to ensure that the chosen name is not taken through other Iraqi chambers of commerce. This procedure likely requires more than one visit to both chambers and client coordination, ending with filing the name with the Registrar.

The forms to check the uniqueness of a company name are currently available online at: http://www.iraqitic.com/iraqiTIC_instruction_en.php. However, there is no system in place to check the availability of the name online. An integrated, online system would allow entrepreneurs to immediately know whether their chosen company name was available, thus allowing for speedier registration.

2. Eliminate the requirement to obtain a trade license from the municipality for companies not operating in the sectors related to public health or safety.

Currently, every newly established company must obtain a trade license to be able to legally operate. Generally, the purpose of licenses should be to protect public health, safety and environment. By requiring the trade license indiscriminately for all businesses the government is not meeting this objective. While businesses dealing with public safety or posing environmental concerns like hospitals, restaurants and taxi cab companies must go through this screening, requiring licenses from all firms imposes a burden on entrepreneurs with no overriding public benefit. Most countries in the region, including Egypt, Lebanon, Saudi Arabia and Syria, do not require municipal business licenses for limited liability companies of the type studied by *Doing Business*.

Consideration should be given to moving away from licensing all business activities to a 'negative list', wherein only a few activities are licensed, while other companies not involved in sectors related to public health and safety can operate without a license.

Alternatively, trade licenses can be replaced with a system of self-compliance: after a business begins operation, government bodies can check on a random basis if the business is in compliance with regulations. In this case, the company registry forwards the information to the respective agencies for that type of business. Based on their evaluation, the agencies have the option to conduct inspections during the operations of the company. To avoid abuse of discretion, clear guidelines and requirements for these inspections are made publicly available.

3. Consolidate government approvals and payment of fees at one access point.

Currently entrepreneurs must interact with five different government agencies when registering their businesses, including the Registrar of Companies, Tax Authority (Ministry of Finance), Chamber of Commerce, Social Security Authority (Ministry of Labor and Social Affairs) and Trade Agency. The Chamber of Commerce is involved at the start of the process in checking the uniqueness of the company name. The Registrar of Companies is the main agency responsible for incorporating companies. Article 19 of Law No. 21 of 1997 (as amended in 2004) establishes a statutory time limit of 10 days to approve incorporation applications. Practitioners in Baghdad, however, report that the process usually takes an average of 14 days.

Once the Registrar of Companies issues the registration certificate, the company must report to the Tax Authority to get a tax registration number (2 days, 450,000 dinars, US\$ 433) and the Social Security Authority to register employees for social security (3 days, 20,000 dinars, US\$ 19). In addition, the company must obtain a trade license which takes anywhere from 30 to 60 days and costs 200,000 dinars (US\$ 193). Creating a one-stop service area for new company registration would speed up the process and make it easier for entrepreneurs to meet each agency's requirements post-incorporation.

To form a one-stop shop, representatives from all of the agencies involved would be placed at a single site where they would receive and process applications. The applications should consist of one consolidated form that fulfills the requirements of all agencies involved. There should also be a single window, which would serve as a contact point with all the agencies. This would allow an entrepreneur to complete company formation in one trip and would significantly reduce the hassle and time involved. An even better solution is to identify one key agency that can accept and process the application on behalf of other agencies. The Registrar of Companies could be a good place to start in the case of Baghdad. Other agencies could be then given access to the registration database for the type of information they need. In addition, all fees need to be consolidated in a single fee, which will then be split accordingly between the agencies involved behind the counter.

The key to successful reforms is giving officials at the one-stop shop decision-making power for their respective agencies. Without it, delays will continue as the documents travel to agency headquarters and back. They could even increase. In addition, parallel processes at the other agencies must be shut down. Countries that fail to do this see their one-stop shop becomes "one more stop" in the company registration process.

If Iraq pursues this reform recommendation, it will be in good company. 72 countries operate a one-stop shop for business registration, 50 of which were introduced or improved on over the last 7 years. These one-stop shops not only facilitate business registration, they can also provide other services related to post-registration procedures. In fact, *Doing Business 2011* found that in the 72 economies that have one-stop shops offering at least one service besides business registration, start-up is more than twice as fast as in those without such services such requirements.

Beyond incorporation, one-stop shops can provide other services that help local firms save money in addition to time. For example, the public service center in Tbilisi, Georgia provides additional support and services to investors on sector-specific issues and privatization. A 2009 survey found that as a result, the Georgian businesses that were served by the center had direct or indirect savings of approximately US\$ 72 million.¹⁰

4. Make online registration possible.

Making registration electronic is one of the most effective ways to speed business start-up. More than 20 economies have introduced electronic registration in the past 5 years. The first step toward electronic company registration should be allowing applicants to check and reserve a proposed company name online. Setting up a single portal that would allow entrepreneurs to complete the registration process without visiting a government office should be an ultimate goal.

To draw from experience of other countries, Mauritius provides an example of a successful reform in this area. Since October 2006 all new businesses, including companies and individuals in Mauritius are registered through a Companies & Business Registration Integrated System. The application for incorporation and registration are done online. The Commercial Registry grants access to information on new company registrations to tax, social security and local authorities through a Central Business Registration Database. At the time of registration, the Company Registry electronically informs the tax and local authorities of newly registered companies. Tax registration then takes place automatically. Once informed by the registry, local authorities will contact the companies and inform them of fees to be paid or any other requirements based on the activity of the company. As a result of this integrated computerized system, total registration time fell by 80%

Allowing businesses to register online also has important consequences for women entrepreneurs. Although data in Iraq is lacking, studies from developing countries and other post-conflict countries show that women suffer greatly from burdensome regulations that involve waiting in long lines and paying bribes. Allowing women to incorporate formally from the comfort of their offices is one way to encourage more women to own and operate businesses in Iraq.

¹⁰ International Finance Corporation, “IFC Helps Simplify Procedures for Georgian Businesses to Save Time and Resources,” accessed September 20, 2010, [http:// www.ifc.org/](http://www.ifc.org/).

Dealing with construction permits

Indicator	Iraq	Region	OECD
Procedures (number)	14	19	16
Duration (days)	215	151.9	166.3
Cost (% of income per capita)	506.8	409.7	62.1

Doing Business records all procedures, time and cost required to build a warehouse and connect to utilities. *Doing Business 2011* reported that on average, it takes 14 procedures, 215 days, and costs 11,633,800 dinars (US\$ 11,100), equivalent to 506.8% of per capita income to build a warehouse and obtain utility connections in Baghdad following all the official requirements. Iraq ranked 102nd globally on the ease of dealing with construction permits, and 10th in the MENA region this year.

Iraq's low ranking on this indicator is partly due to the absence of reform or improvements. Meanwhile, other countries in the region have been actively reforming, completing 12 reforms in 6 years. Reforms that make regulation of construction more efficient and transparent can help reduce corruption and informality in the sector. By encouraging construction companies to go through formal channels, governments can reap the returns on investments made in reforming the sector. Good regulations ensure safety standards that protect the public while making the permitting process efficient, transparent and affordable for both building authorities and the private professionals who use it.

Dr. Sabir al-Issawi from the Baghdad Municipality recently announced plans to accelerate the processing of construction permit applications and real estate transactions and to reduce corruption in this area.⁴ Additionally the International Finance Corporation's Middle East and North Africa Investment Climate Team is currently planning for the Iraq Construction Permitting Reform Project to start before year-end.⁵ The below recommendations, could help inform these reform projects.

Short-term reform recommendations:

1. Improve the process guidelines that are available online and at the Baghdad Municipality.

Fee schedules and administrative guidelines for the services rendered by the Baghdad Municipality are published on the website. However, the instructions are unclear and could be made more user-friendly. The local authorities and utility service providers should consider publishing a list of required process and a fee schedule for the administrative services they provide. A developers guide complete with procedural

⁴ Statement published on the Baghdad Municipality website:
<http://www.amanatbaghdad.gov.iq/ArticleShow.aspx?ID=591>

⁵ The Middle East and North Africa Investment Climate Team is planning for a fact-finding mission in October 2011 to start dialogue with the Ministry of Housing and related parties.

steps, documentation requirements, fee schedules, and relevant legislation would contribute to improving the administration of development permission applications. It would also ensure that developers know their rights and enable them to counter potential corruption or payment of bribes.

2. Establish risk-based guidelines for obtaining a location clearance from the regional authority

Builders in Bagdad require several location clearances before they can even apply for a construction permit. In the medium term, one option to streamline this process is to have more updated and digitized zoning maps (see recommendation below). In the short-term, however, Iraq could consider changing the requirements for which type of projects require so many levels of location clearance.

International good practice is moving increasingly towards “risk-based” regulations. These are regulations that differentiate projects based on the risk they pose on public health and safety. The Government of Iraq could consider introducing a risk-based approval system for projects that require location clearances from the regional authority. That way, simpler residential or commercial projects that are in the appropriate zone would not require multiple levels of location clearance.

3. Eliminate the approval from the Ministry of Communications to obtain a phone connection for simple projects.

Before obtaining a construction permit, builders must apply for a separate approval from each of the three authorities responsible for connecting the proposed building to electricity, water and telecommunications. According to *Doing Business* it takes 30 days on average to obtain the approval from the Ministry of Communications for a simple warehouse project. While the rationale for obtaining a clearance on the plans to connect a new building to the electricity and water networks is clear, it is less understandable why there is a similar requirement for telecommunications.

Few countries in the world require simple construction projects to obtain a separate approval on their plans to install telephone lines (i.e. before the construction permit is granted). Iraq should consider joining other good practice countries and eliminate this procedure for simple construction projects.

4. Streamline the process for obtaining a clearance on completed construction approval from the National Center of Construction Laboratory and the Baghdad Municipality.

Once a building is completed, builders must receive a final inspection (14 days) and a completion certificate (30 days) from the National Center of Construction Laboratory. In addition, the Municipality also conducts a final inspection on the completed

construction (1 day). These procedures are important because they ensure that buildings conform to the guidelines and standards set out in the construction permit and the construction code. However, international best practice shows that this process can be done much faster. In good practice countries, inspections are usually carried out within 48 hours from the builder's notification of the completion of a particular component of the building.

Some good practice countries streamline final inspections so that all the authorities that must approve the completed construction projects inspect at one time. The Baghdad Municipality could consider coordinating with the National Center of Construction Laboratory to issue a consolidated final approval on newly constructed buildings.

Medium-term reform recommendations

1. Adopt a unified construction code.

There are no comprehensive and integrated regulations for the administration of development permissions in Iraq. Efforts began in 2007 to adopt a unified construction code. The Ministry of Construction and Housing has been working on the code in coordination with the Central Organization for Standards & Quality Control (COSQC) in the Ministry of Planning. Based on the latest COSQC report, Iraq appears to be moving towards a building code that would resemble the 35-volume Jordanian building code, which includes excessively prescriptive requirements for each building element and system, rather than a framework code like the International Building Code.⁶ According to the latest information received, progress has slowed down significantly since 2007.

Having a unified construction code that clearly sets forth the basic standards for construction and the process for obtaining construction-related licenses and permits would greatly benefit private sector developers and construction companies. Given the uncertainty resulting from the lack of adequate technical guidance, small and medium sized construction companies have a harder time keeping costs under control and complying with the current regulations.

Smart regulation ensures that standards are met while making compliance easy and accessible to all. Coherent and transparent rules, efficient processes and adequate allocation of resources are especially important in the construction sector where safety is at stake. There are several examples in the region of countries that have recently worked to improve their construction regulations. In 2008 Algeria introduced a new building code aimed at strengthening enforcement mechanisms and addressing illegal construction. Comprehensive changes to the construction law in Egypt in 2008 streamlined procedures for obtaining construction permits, while also shortening the statutory time limits for processing construction permits.

⁶ The International Building Code contains objective-based technical requirements in a series of chapters in a single volume, and references various consensus standards, such as the National Electric Code

Therefore, we recommend that the Government of Iraq accelerate the process of modernizing the code. If writing a new code proves too challenging, Iraq could adopt and adapt an existing best practice building code like Yemen did in 2008 when it adopted the Arab League Building code. The process was the outcome of a dialogue between enforcement agencies and private sector building professionals. Regardless of which path Iraq chooses, it is important to involve all stakeholders in the process of implementing a new construction code. The experience in Yemen points to the need of consulting with private building professionals and their associations to reach the highest level of consensus on important issues such as the choice of technical standards, the methods of verification, the role of building practitioners and others.

2. Consolidate location clearances by updating zoning regulations and digitizing city zoning maps.

It is important to note that builders in Baghdad must complete at least 3 procedures just to obtain a location clearance or planning permission. First, builders must obtain a location clearance from the Baghdad municipality (taking 28 days, and costing 207,746 dinars or US\$ 200), then they must obtain another clearance from the regional authority (14 days, and 103,873 dinars or US\$ 100), and finally a lot plan that contains the site map from the Baghdad municipality (14 days, 519,366 dinars or US\$ 500). Generally, these types of approvals are needed to ensure that the land that is to be developed is correctly zoned for commercial construction and that no previous construction or other constraining factors exist on the specific plot of land.

Clear zoning rules make it easier for investors to determine which activity is allowed and where. These are also important to preserve the public goods of buildings, residential or commercial developments in appropriate locations, and avoid random and inconsistent developments within the city. One way of streamlining these procedures is to make one agency responsible for all issues related to location clearance and to incorporate the checks on zoning requirements in the building permit application itself. Rwanda did this in 2009 by allowing builders to apply for a location clearance in the same form as the building permit application. Another way to ensure a more streamlined and speedier review of planning permissions or location approvals is to have updated and digitized zoning maps. In Honduras digitization of zoning maps and the introduction of risk-based mechanisms in the zoning regulations cut the time to obtain a location permit from 2 weeks to just 2 days.

3. Establish a one-stop shop for building permit clearances.

Currently, a construction company must obtain documents and approvals from several different agencies in order to obtain a building permit. Builders must complete 8 procedures before construction can begin. These procedures include:

- paying the inspection fees at the municipality;

- obtaining a location clearance and construction guidelines from the Municipality;
- obtaining a location clearance and planning permission from the regional authority;
- obtaining a lot plan from the municipality;
- obtaining project clearances from the Ministry of Communications, the Baghdad Electrical Company, and the Water and Sewage Directorate;
- obtaining a construction permit from the municipality.

A one-stop shop would centralize all of these clearances in one location and make the technical approvals an in-house process at the Municipality. The effectiveness of the one-stop shop will depend on having representatives from the different technical departments—with the authority to clear projects—at the Municipality. The increased efficiency would eliminate several procedures and possibly reduce overall time, once implemented.

Last year Jordan centralized approvals in a one-stop shop. The one-stop shop at the Greater Amman Municipality began accepting building permit applications for mid-size and smaller commercial construction projects, cutting 3 procedures and 20 days from the total time to obtain a construction permit. Elsewhere in the region, Bahrain Morocco, Qatar and Saudi Arabia all introduced one-stop shops for building permits over the last 6 years.

In addition to cutting the time and number of procedures, introducing one-stop shops can help increase the number of building permits issued and ultimately cut down on illegal construction. Two years after a one-stop shop was set up in Ouagadougou, Burkina Faso, the number of permits issued rose from 209 (in 2008) to 611 (in 2010).

4. Develop online system for permit processing.

Economies in the MENA region that made dealing with construction permits easier focused on introducing online services and electronic platforms. This trend was initiated in the early 1990s by some Gulf Cooperation Council countries (Bahrain, Qatar, Saudi Arabia and the United Arab Emirates). In Bahrain, where complying with building formalities takes the least time in the region, applicants can download forms, submit applications and building plans, track the status of their applications and pay bills—all online. The changes in the region reduced the average permitting time by 41 days, making the Middle East and North Africa the fastest globally.

Registering property

Indicator	Iraq	Region	OECD
Procedures (number)	5	6	4.8
Duration (days)	51	32.5	32.7
Cost (% of property value)	6.4	5.7	4.4

Doing Business records the procedures, time and cost necessary for a business to transfer title of a land and a building to another business. *Doing Business 2011* reported that it takes 5 procedures, 51 days (on average) and costs 6.4% of the property value for a business to legally transfer land and building title to another business in Baghdad. Globally, Iraq ranks 96th on the ease of registering property and 12th in the MENA region this year.

Short-term reform recommendation:

1. Introduce “fast-track” procedures in the property registration process.

Currently, the process to register a property transfer in Baghdad takes 51 days, including 7 days to obtain a new form for the property title and a cadastral map at the Real Property Registry, 21 days required for the Municipality to approve the transfer, and 10 days (each) for valuations by Real Estate Registry and Tax Authorities.

While a longer-term internal reorganization of processes at these agencies will help to reduce the time required for these procedures, in the short term expedited procedures can offer efficient solutions for entrepreneurs. Expedited or fast-track procedures can be offered to entrepreneurs willing to pay a slightly higher fee in return for faster processing time. Such a system would help government agencies prioritize cases in a transparent manner and give entrepreneurs a way to complete the transaction quickly if they are in a rush to invest. To build public confidence in the services of the registry, a money-back guarantee could be offered—if the office fails to meet its promised deadline, the client is reimbursed for the expedited fee.

Sixteen economies worldwide offer expedited (express) registration procedures at a premium of 2 to 5 times the basic fee. Seven economies have introduced expedited procedures since 2005, including Armenia Azerbaijan, Bulgaria, Jamaica, Latvia, Peru and Romania. Time-savings for entrepreneurs range from 1 to 32 days, while cost-savings from expedited procedures range from US\$ 14 to US\$ 450.

Iraq could consider introducing fast-track procedures for each of the procedures mentioned above. Under this fast-track system, the procedure to obtain a property title (procedure 1) and the municipal approval of the transfer (procedure 2) could be done simultaneously, further speeding up the process of transferring property.

2. Map internal processes at the property registry in order to identify bottlenecks.

The registry could reduce the time necessary for the property registration process by: (a) offering additional training for the registry offices’ staff to improve efficiency; (b) introducing performance tracking systems for staff; and, (c) posting a sign at the registry offices displaying the average wait time to complete registration.

A comprehensive mapping should first be conducted to identify bottlenecks in the title transfer process and design solutions to remove them. Ghana's Ministry of Lands, Forestry and Mine introduced a National Land Policy in 1999, and launched a program to implement the policy in 2003. The implementation of the program outlined that duplicate efforts and lack of coordination among the agencies were making it difficult and time-consuming to complete property transactions. The government called on various institutions to pursue the objectives of the project, which reduced the time to plot a document at the Lands Commission by 135 days, eliminated the queues at the Lands Commission and led to the completion of a property transaction within 34 days.

The World Bank Group could directly conduct this analysis of the processes to identify the bottlenecks and solutions, or hire a consultant to do this study under its supervision.

3. Unify the valuation of properties completed by the Real Property Registry Office and the tax authority and establish standardized ways of valuing properties.

Upon receipt of the New Cadastral Certificate from the Municipality, a competent team is formed by the cadastre (Real Property Registry Office) consisting of a representative of the Real Property Registry Office, a representative of the Province Main Real Property Registry Office and a Representative of the State Commission of Income Tax. This inspection team will first inspect the property and then write up a report that will be used for the evaluation of the property. All documents are then sent to the Tax Authority by mail. The inspection report is used as the basis for calculating the amount of taxes to be paid. The Tax Authority might or might not object to the evaluation of the Property Registry Office. If they decide to evaluate the property with a higher price, the seller cannot object and the tax calculation will depend on the new evaluation or whichever is higher. Payment is then made by certified check from a Government Bank for the full amount of the tax decided by the Tax Authority. The final tax-cleared Cadastral Certificate is then resent to the Property Registry Office by mail.

Combined, this two-step valuation process take 20 days (10 days each at the Real Property Registry Office and the Tax Authority). Typically, governments introduce inspections to counter underreporting of property values. But in most countries such valuations become a source of delays and create opportunity for property owners to bribe inspectors so that they lower assessed property values.

A much simpler and more transparent method of property valuation is to develop a standardized schedule of property values that is used by both the Real Property Registry Office and the Tax Authority. In 2005 the Land Registry in Lagos, Nigeria introduced a schedule of property values and now all assessments are conducted at the desks of valuation officers, without the need for physical inspection. If Iraq were to adopt such a system, each area of the Baghdad would be assigned a fixed rate per square meter, which would then be multiplied by the size of the building and the plot. The assessment of property value could be done on the spot at the Real Property Registry Office. The schedules of rates should be publicly available, so that entrepreneurs can anticipate how

much tax they would be expected to pay.

Medium-term reform recommendation:

1. Computerize municipal property records.

Currently, the Municipality Office must approve each property transfer, in order to confirm that the transfer complies with the zoning restrictions. This procedure is the most consuming step in the process of property registration in Baghdad. It also requires a physical inspection of the investigation team to confirm the property status has been unchanged. The property record, including information on value, renovations, and borders, could be computerized and kept up-to-date, thereby eliminating the need for a separate inspection every time the property is transferred. The Real Property Registry and the Municipality could electronically link their respective records so that the latter will be directly informed about the current owner of any property in the city. Examples of countries that have implemented similar reforms with much success include: Belarus, Portugal and Zambia.

2. Investigate the option to lower the fees to register properties or introduce a flat fee for property registration.

Businesses wanting to transfer property in Baghdad must pay a tax of 3.3% of the property value. Rather than setting the registration fee as a percentage of the value of the asset, the government could consider setting a fixed amount for property transfers. Several economies measured by *Doing Business* charge fixed fees for registering property, independent of the property value. Such countries include Bhutan, Egypt, Rwanda and Saudi Arabia. In the past 6 years four economies switched to fixed registration fees: Egypt and Poland in 2006, Rwanda in 2008 and Cape Verde in 2009. Rwanda made a radical change, reducing fees from 6% of the property value to \$33.

According to *Doing Business 2011*, the most popular feature of property registration reform in the last 6 years, implemented in 52 economies, was lowering transfer taxes and government fees. This reduced the cost by 3.1% of the property value on average. Sub-Saharan Africa was the most active, with 22 economies lowering costs. Two gradually reduced high transfer costs, Burundi by 10% of the property value and Burkina Faso by 7%. Two others made big cuts all at once, Rwanda by 8.8% of the property value and Mozambique by 7.5%.

Governments' administrative cost for registration is independent of the property value, so registration fees can be fixed and low. Combined with low transfer taxes, this may encourage formal registration and prevent underreporting of property values. That, in turn, supports the collection of property and capital gains taxes. Many countries have already experienced such benefits. After India cut its stamp duties from 10% to 5%, revenue jumped 20%. In Egypt, after registration fees were cut from 3% of property value to a fixed fee of about \$350, fee revenue grew by 40% in the next six months.

And after Lagos, Nigeria, cut the governor consent fee from 10 to 8% of property value in 2005, the Land Bureau’s revenue rose 27% the following year.⁷

3. Create a single-access point for property transactions.

Parties wishing to buy and sell property in Baghdad now have to deal with several agencies—Real Property Registry, Municipality, and Income Tax Authority—to complete property registration. Iraq could improve the efficiency of property registration by strengthening the coordination of these entities and creating a unified database of information related to the property—including legal ownership records, tax value and payment history, as well as maps. A single interface for citizens would help streamline procedures and reduce the time as well as provide greater security to title certificates.

Getting credit

Indicator	Iraq	Region	OECD
Legal Rights Index	3	3.3	6.8
Credit Information Index	0	3.3	4.9
Public registry coverage (% adults)	0	5.0	8.8
Private bureau coverage (% adults)	0	10.9	59.6

Iraq ranks 168th in the world and 15th in the MENA region on the getting credit indicator according to *Doing Business 2011*. The indicator has two major components: the protection of creditor and debtor rights in collateral and bankruptcy laws assessed by the legal rights index, and the availability of credit information, captured by the credit information index. On the legal rights index, it scored 3 (out of 10), indicating that debtors and creditors experience very weak legal guarantees to borrowing and lending. On the credit information index Iraq scores 0 (out of 6).

A. Legal Rights of Borrowers and Lenders

The weak legal framework for collateral plays a significant role in the inability of businesses to access credit. Iraq currently scores a 3 on the Legal Rights Index. The main legislation that related to security interest on movable property is the Law of Commerce No. 30 of 1984 and the Iraqi Civil Code of 1951.

In Iraq movable assets are generally only taken as secondary collateral, with personal guarantees or mortgage on immovable assets such as land (in those places where land is indexed in a land registry) serving as primary collateral. As such, businesses in Iraq are generally unable to use their moveable assets as collateral; and these assets, for the purposes of gaining access to credit, are considered as “dead capital”. This is a serious

⁷ We note that any change to the fees charged should be preceded by a fiscal analysis to understand the possible impact on government revenues.

impediment to growth, given that in many developing countries, many small and medium-sized entities do not have access to personal assets or land to use as collateral, but they do have moveable assets (such as machinery, inventory, accounts receivables, equipment, etc.), which they could use as collateral, should the legal framework allow it.

Should the law facilitate the use of this otherwise dead capital as collateral, access to credit for small and medium sized businesses and farmers would improve, leading to further growth. Furthermore, institutions and regulations such as credit bureaus and laws on movable collateral support the types of businesses that women typically run—small firms in low-capital-intensive industries in both the formal and the informal sector.

Medium-term reform recommendations:

1. Introduce the possibility of a non-possessory security pledges in a single category of revolving movable assets (such as accounts receivable or inventory), or substantially all the assets of the business

In Iraq it is not possible to grant a non-possessory security interest. This means that when using moveable assets as collateral, debtors have to give up possession of the asset to the creditor. Having to give up the possession of the asset to a creditor disables the debtor from using the asset and, depending on the asset, could hamper the business's productivity and ability to function. This is particularly troubling if the machinery is an essential component of the debtor's business (such as production machinery, equipment).

Global good practice in secured transactions law allows any business to use movable assets as collateral while keeping possession of the assets, and allows any financial institution to accept such assets as collateral. As such, it is important to develop a legal system that would allow businesses to use all their moveable assets as collateral to secure loans without having to give up possession of those assets. Women entrepreneurs can benefit from laws facilitating the use of movable assets such as equipment or accounts receivable as security for loans because they are more likely to have movable assets (as opposed to legal title on buildings or land).

2. Ensure that non-possessory security pledges allow a general description of the collateral without requiring a specific description of the collateral.

When using revolving assets, such as inventory as collateral, having to describe the assets in the security agreement increases transactions costs as every time that inventory is purchased or sold, the security agreement needs to be updated and, perhaps, even re-registered. This would make the use of revolving types of assets, such as inventory or accounts receivable practically impossible. Allowing a general description of assets in the security agreement (such as allowing the use of "all inventory" as collateral, without

the need to describe each element of inventory) would allow businesses to practically use these assets as collateral to secure loans.

3. Allow that a security right extend to future or after-acquired assets, and extend automatically to the products, proceeds or replacements of the original assets.

This provision could allow especially seasonal enterprises (such as those operating in the agriculture sector) to have more access to credit to grow their businesses. For example, if future assets are allowed to be used as collateral, before the harvest season arrives, farmers would be able to use their forthcoming agricultural products as collateral to secure loans, and to pay the loan off once the harvest happens. It is also important for the security interest to extend to the replacements, products and proceeds of the original asset. This would allow a business to work with its revolving assets (for example, sell the inventory it has on stock) while the creditor will have the security that its right is protected, as, for example in the case of inventory, the security interest will extend to the proceeds, replacements or products of the sale of the inventory over which the creditor had an interest. This will facilitate the use of revolving assets (such as inventory and accounts receivables) as collateral.

4. Allow for general description of debts and obligations in collateral agreements and in registration documents so that all types of obligations and debts can be secured by stating a maximum rather than a specific amount between the parties.

As established through Islamic finance (gharar), debts have to be described specifically and with specific amounts. Allowing for general description of debts and obligations will mean that every time a debtor wishes to borrow from the creditor, a new security agreement need not be created, thereby reducing transaction costs and lowering the cost of financing by debtors. Allowing a maximum ceiling of the loan being secured in the agreement would mean that the debtor can float within that range, using the loan when needed and paying it off when less credit is required, without having to create a new security agreement each time.

5. Establish a collateral registry that is computerized, unified geographically, and that is indexed by the name of the grantor of a security right.

There is no collateral registry for movable property in Iraq. Currently movable collateral is registered in accordance with the relative kind. For example, cars are registered with the traffic police registry and company assets are registered with the registrar of companies. A centralized collateral registry is essential to an effective secured lending framework because it allows creditors to record their security interests and to see whether other creditors precede them in priority. The recording of security interests in a registry prevents unscrupulous borrowers from granting security interests in the same assets (conversely, when conflicts do arise, the registry's records can help resolve them). The existence of a collateral registry makes outcomes more predictable. This in

turn encourages lending and tends to reduce costs to borrowers as lenders are better able to price risk.

An effective collateral registry covers all kinds of moveable assets (with certain exceptions such as vehicles, ships and aircraft), is unified nationally, and contains a database that is searchable by the borrower's name. If a registry were not unified nationally, a potential lender in one city would not be able to know if another creditor in another city or jurisdiction has already recorded a security interest over the asset in another registry. Multiple registry searches would increase transactions costs. If, however, there were a single registry with a centralized national database, a creditor could conduct a nationwide search from any location by searching the debtor's name.

6. Develop a predictable priority system that would grant as high of a priority to secured creditors both outside bankruptcy proceedings as possible.

Predictability is a cornerstone of a fully developed secured lending framework; if secured creditors can predict their ranking in relation to other types of creditors, they will make more credit available at a lower price. But when other types of creditors, such as state income taxes and labor claims, have priority over secured creditors—especially if they came into existence after the registration of the security interest—secured creditors will be less able to predict their level of risk. Therefore, in order to expand access to credit, secured creditors' claims should have the highest priority reasonable over all subsequent unsecured claims (though a tax or labor claim registered before a secured creditor would always have priority). Providing secured creditors with the highest level of priority possible based on the "first to register, first in priority" principle would help make more credit available at lower rates. Of course, this recommendation must be balanced with appropriate public policy considerations.

7. Authorize parties to agree on out of court enforcement for debt obligations.

There is uncertainty regarding out of court enforcement. The Civil Code allows for out-of-court enforcement procedures, but the 1984 Law of Commerce provides that a court order needs to be sought before a secured party can enforce its security agreement. More consistency between these two provisions is recommended.

International good practice allows parties to agree in a collateral agreement that the lender may enforce its security right out of court in the case of debtor's default. This will reduce dependence on the courts, and will free up the court's resources for other purposes. It will also bring confidence to creditors because in the event of a default they would not need to rely on long, costly and burdensome court proceedings to enforce their rights. This increased confidence will translate in lower cost of financing for businesses. Of course, the necessary legal protections need to be put in place to protect the rights of all stakeholders, including the debtor and other creditors, when a system of out-of-court enforcement is introduced into the law.

B. Credit Information

A credit information system is an integral part of a well-functioning credit market, allowing lenders to assess borrowers' creditworthiness and decide on the interest rate to charge. In addition, they free entrepreneurs from having to rely on personal connections alone when trying to obtain credit. About three-fourths of the region's economies have reformed their credit information systems since 2005. Indeed, the MENA region ranks second in the number of such reforms, with 22. In 2005 only 3 economies in the region had private credit bureaus; today 7 do. Among the best performers are Egypt, Lebanon, Morocco, Saudi Arabia, Tunisia and the United Arab Emirates.

Medium-term reform recommendations:

1. Establish a credit information registry at the Central Bank of Iraq.

At the moment, there is no credit information sharing mechanism operational in Iraq. Doing Business identifies 6 features of a well-developed credit information system. If Iraq were to make a Public Credit Registry operational and adopt all of the below conditions, its score on the Credit Information Index would rise from 0 to the maximum, 6 points:

- **Collect and distribute data on both individuals and businesses.**

While the information available on individuals' standing in the financial system is useful, it is important for data on businesses to also be collected and distributed. Most well-developed credit information systems include the information on both individuals and firms.

- **Collect and distributes both negative (defaults and arrears) and positive data (borrowers' overall exposure in the financial system).**

A credit information system that reports only negative information—although penalizes borrowers who default on payments—fails to reward diligent borrowers who pay on time. Sharing information on reliable repayments allows customers to establish a positive credit history, useful information for financial institutions seeking proven good customers.

- **Distribute more than 2 years of historical data and do not erase negative information such as defaults or arrears once the loans are repaid.**

In order to support lenders in their decisions, any credit registry that is introduced in Iraq must make sure that information remains on a borrower's file for more than 2 years, even if the loan has been repaid.

- **Collect and distribute data on loans above 1% of income per capita.**

High thresholds for the loans reported hurt groups that could benefit most from credit information systems—such as small and medium-size enterprises and female entrepreneurs, whose loans are typically smaller. Where smaller loans are reported to credit registries, more borrowers can establish credit histories.

- **Collect and distribute data from a broad range of sources.**

To expand the scope information available, a credit registry should not only collect information from banks and other financial institutions, but also from other data sources, such as retailers, trade creditors or utility companies (electricity, telephone, etc.) This increases the range of information available to lenders and expands registry's coverage to include borrowers who may not have obtained a bank loan before, but who may have had lending history with other types of creditors. In 2008/09 Egypt expanded the scope of information included in its private credit bureau to include retailers.

Evidence from other countries suggests that expanding the sources of information provided can have significant benefits to both businesses and utility companies. A recent study in Italy found that more than 83% of water customers who previously lacked a credit history now have a positive one thanks to paying their utility bills on time.¹³ This makes it easier for these customers to obtain credit to grow their businesses. Meanwhile, a recent survey of 70 American utility companies found that there were benefits to utility companies of being included in the credit information system. Half of all customers indicated that they would be more likely to pay their bills on time if those payments were fully reported to credit bureaus and could affect their credit score.

In addition, including data from non-banking financial institutions such as microfinance institutions will help women entrepreneurs to build their credit histories and grow their businesses, as most clients of microfinance institutions tend to be women.

- **Guarantee by law that borrowers have the right to access their data.**

Allowing borrowers to inspect their own data has two benefits. Firstly, it is an important tool to enhance quality of the data. Secondly, it ensures that borrowers can protect their credit status. Many economies have recognized the benefits of guaranteeing borrowers access to their credit information. In Tunisia, for example, a new law allows individuals and firms to inspect their credit data in all central bank offices.

2. Consider transferring the task of credit information sharing to a private credit bureau.

In the longer-term, the role of credit information collection and sharing should be delegated to the private sector. While public registries exist mostly to aid bank supervision by monitoring risk in the financial services sector, private bureaus exist to perform the service of providing information to clients who are lenders. Credit bureaus run by the private sector tend to serve lenders better because in addition to the

¹³ Preliminary findings of ongoing internal study at CRIF SpA, Italy (credit information services firm)

information collection and sharing they are performing other services. For example, only 14% of public registries report offering such services as credit scoring, borrower monitoring or debt collection to clients—compared with 90% of private bureaus.

Private bureaus usually also have a wider coverage of borrowers. For example, the public registry in Jordan has records on just 1.5% of adult citizens, while the private bureaus in Kuwait and Israel cover respectively 30% and 88% of those countries’ adult populations. Several countries, including Saudi Arabia and Singapore, have recently transferred the task of collecting and distributing credit information sharing to private bureaus with the active cooperation and encouragement of their central banks.

Protecting investors

Indicator	Iraq	Region	OECD
Disclosure Index	4	6.3	6
Director Liability Index	5	4.6	5.2
Shareholder Suits Index	4	3.4	6.8
Investor Protection Index	4.3	4.8	6

Doing Business measures the strength of minority shareholder protections against directors’ misuse of corporate assets for personal gain. On an index range of 0-10, Iraq scores 4.3, a little below the regional average. This overall index of investor protections is an average of three sub indices, including disclosure index (score of 4), director liability index (score of 5) and shareholder suits indexes (scores of 4). Iraq ranks 120th globally on the strength of investor protection and 12th in the MENA region.

Although Iraq’s performance on this indicator is average for the region, more can be done to bring investor protections in line with international best practices. In order to do so, the following amendments to the Company Law and the Civil Procedures Rules are recommended. If implemented, these changes would substantially improve protection of minority shareholders. Disclosure would be more extensive and minority investors could more easily hold company insiders accountable for unfair acts towards the company. Several economies offer almost all of these protections to its minority shareholders, including Hong Kong (China), New Zealand and Singapore.

Short-term reform recommendations:

1. Require shareholders approval of large related-party transactions.

Currently, the Company Law (hereinafter “the Law”) requires the board of directors’ approval in case of related-party transactions and interested parties are allowed to vote. One change that could help better protect minority investors is to make large related-party transactions (those that are above 5% of the assets of the company) be approved by the shareholders meeting. In any case, interested directors should be banned from voting in the approval process.

2. Mandate disclosure of personal conflicts of interest by company directors and officers.

Directors and officers with personal interests in business considered by the company (including transactions) should be obliged to notify the board of directors, the public, the regulator and the shareholders about the conflict of interest. This disclosure should include all the important facts regarding that conflict of interest, including its nature, scope and the extent of potential personal gain for the director.

3. Increase disclosure obligations in the annual reports in case of related-party transactions.

Currently, the Law requires a general disclosure obligation in the annual company report in case of related-party transactions. However, the annual reports should include detailed information on related-party transactions in order to provide additional means of information and protection for shareholders. The reviewed law—other than requiring a general disclosure of the transaction—could also require disclosure of the nature of the interest and the extent to which the parties stand to gain personally from company actions.

4. Request an independent assessment of the transaction before approval.

Currently, the Law does not require the review of the terms of the transaction by an external party. The Law should be amended to require that an external body, for example an independent auditor, review the transaction before it takes place. The auditor's report should evaluate the main terms of the transaction and present an opinion on whether the transaction is being concluded at market terms.

5. Provide shareholders with rights to hold the directors and the approving body liable for damages resulting from a related-party transaction.

The Law should state clearly directors' duties to act appropriately when operating the company. The Law should require that directors exercise appropriate diligence and make informed decisions when running the company. The directors should also be liable not only for fraudulent or negligent actions, but also if the transaction was unfair, oppressive or prejudicial to minority shareholders.

6. State clearly in the law the directors' duties to act appropriately when operating the company.

The Law should require that directors exercise appropriate diligence, care and loyalty, and make decisions that are informed when running the company. They should also avoid conflicts of interest and always put the interest of the corporation before those of individual directors or other individuals. In case of prejudicial related-party

transactions, directors should pay the damages caused to the company and disgorge the profit made in violation of their duties to the corporation.

7. Allow shareholders to have access to any documents of the company.

Currently, the Law does not allow access to all internal corporate documents. However, regulations should give shareholders the right to inspect all the documents of the company if they suspect misdoings by directors. The law can grant this right with some exceptions, for example the protection of corporate secrets. This would maintain the balance between the needs of managers to operate without overly burdensome intrusion by shareholders, and the needs of shareholders to monitor management actions.

8. Grant shareholders the right to request for the appointment of a government inspector.

Currently, the Law does not allow the appointment of a government inspector to inspect the activities and documents of the company. The law could offer this right in case that management fails to provide the shareholders with adequate information about the company.

Medium-term reform recommendations:

1. Allow plaintiffs to request categories of documents from the defendant without identifying specific ones.

Currently, the Civil Procedure Code requires specific identification of the evidence during the trial (*i.e.* identify date, title, file number of the document, etc). For an easier access to corporate documentation during the trial, the civil procedure rules could allow parties to request categories of documents without identifying specific ones. (*i.e.* “all purchase agreements”).

2. Allow parties to a trial to directly question (orally or in writing) the opposing party and witnesses during trial.

Currently, the Civil Procedure Code allows the plaintiff to directly question the opposing party during trial only with prior submission of the questions. In order to facilitate access to evidence, parties to a trial could be allowed to question each other during the trial, without having to submit the questions beforehand.

3. Offer shareholders owning 10% or less of shares inspect transaction documents before filing suit.

The law should give minority shareholders the right to inspect the documents of the company if they suspect misdeeds by managers. The law can grant this right with some exceptions, for example the protection of corporate secrets. This would maintain the

balance between the needs of managers to operate without overly burdensome intrusion by shareholders, and the needs of shareholders to monitor management actions.

Paying taxes

Indicator	Iraq	Region	OECD
Payments (number)	13	21.6	14.3
Time (hours)	312	194.6	199.3
Total tax rate (% profit)	28.4	32.8	43

Doing Business records the taxes and mandatory contributions that a medium-size company must pay in a given year, as well as the time it takes to meet these obligations. On average, in Iraq it takes 13 payments and 312 hours to comply with tax regulations each year. The total tax rate is 16.8% of the profit. Iraq ranked 54th worldwide and 10th in the MENA region on the ease of paying taxes in *Doing Business 2011*. This is Iraq's strongest performance, relative to the other *Doing Business* indicators.

Short-term reform recommendations:

1. Improve accessibility of tax rules and regulations.

The Iraqi tax laws and amendments are available at website of the Federal Tax Commission, and are considered as relatively clear by the taxpayers. However, the rules and regulations, which may change every year, are very difficult to obtain (the print run is very limited or not available). In order to alleviate this issue, the rules and regulations in place should also be published and systematically updated on the website of the Federal Tax Commission.

In addition to making taxpayer rules and regulations available on-line, tax payer rights should also be provided on-line, at the Tax Authority and with chambers of commerce to increase taxpayer awareness. We also recommend developing a charter of taxpayer rights and a code of conduct for tax officials. If these documents already exist, they should be disseminated through the website.

Medium-term reform recommendations:

1. Make it optional to pay social security on a quarterly (rather than monthly) basis for those firms that would so prefer.

Currently, filing preparation and payments of social security contributions is very time-consuming, taking on average 288 hours.⁸ Reduced frequency of filing and payments of social security contributions would decrease the time and bureaucratic hassle for businesses seeking to comply with tax regulations. The government would also lower its own costs of processing, reviewing and confirming the additional payments. It is important to note that this would have cash-flow implications, for both government and taxpayers (the firms). Thus, such an exercise must be preceded with an analysis of how the reduced number of payments can be synchronized with the projected cash-flow needs. The reduction in the number of payments could be voluntary for those companies that prefer it—others may still choose to pay taxes more frequently to avoid cash flow problems. We would also recommend a schedule of staggering quarterly payments to ensure a continuous revenue stream for the authorities.

2. Streamline filing and audit procedures to reduce administrative burden for the taxpayer as well as tax administrators.

In the case of small businesses, the costs of complying with filing and auditing requirements can be greater than the tax itself. In order to encourage participation in the tax system, it is important streamline and simplify procedures. Risk-based audits can reduce the administrative burden for the tax authority and facilitates monitoring to reduce fraud. This will limit the interaction between tax official and taxpayer, thereby reducing the cost of compliance.

A recent example of a country that implemented a similar reform is Yemen. In December 2010 the Tax Authority merged the filing processes for VAT and Corporate Income Tax and designed a unified form in order to reduce the number of visits required by the taxpayer.⁹ Streamlining the filing process also included reducing the number of steps required by the tax authority to administer the process and taxpayers to comply with the process, thereby reducing overall compliance costs.¹⁰

3. Introduce electronic filing and payment of taxes.

⁸ This is an estimate for firms as described in the *Doing Business* methodology. For more information please refer to the *Doing Business* website: <http://www.doingbusiness.org/methodology/paying-taxes>.

⁹ This reform is being piloted in the Tax Authority's Large Taxpayer Unit.

¹⁰ It is difficult to assess the reduction in time that resulted from this reform due to the recent political instability in Sana'a.

Electronic filing and payment of taxes eliminates excessive paperwork and interactions with tax officers. This option—now offered by 61 economies globally—can reduce the time businesses spend in complying with tax laws, increase tax compliance and reduce the cost of revenue administration. Introducing electronic filing and payments will have a positive impact not only on the total tax compliance time but also on the number of tax payments and filings.¹¹ In Tunisia, thanks to a now fully implemented electronic filing and payment system, businesses spend 37% less time complying with corporate income tax and value added tax.

Trading Across Borders

Indicator	Iraq	MENA Region (average)	OECD (average)
Documents for export (number)	10	6.4	4.3
Time for export (days)	80	22.5	10.5
Cost to export (US\$ per container)	3,550	1,035	1,090
Documents for import (number)	10	7.4	4.9
Time for import (days)	83	25.9	11.0
Cost to import (US\$ per container)	3,650	1,222	1,146

Doing Business measures the time, cost and the number of documents required to export and import a standardized cargo by ocean transportation. It looks at the entire process for import or export, from the contractual agreement, to getting the letter of credit, to departure of the goods from the port of exit. Iraq ranks 179th globally and 18th (last) in the Middle East and North Africa region on this indicator.

Short-term reform recommendations:

1. Streamline the document requirements for trading.

One of the main obstacles faced by Iraqi traders is the number and complexity of documents needed to import and export. Currently traders must fill out and submit 10 documents to export or import. Preparation of the necessary documentation takes about 50 days. The government should explore ways to streamline these requirements. Several countries complete the same process with four documents: bill of lading, commercial invoice, customs declaration and packing list. In France, only 2 documents are sufficient for clearing goods. For a limited number of products, a health or technical standard certificate may be required to safeguard public health and safety. Other documents, such as the certificate of origin, should be requested only when required.

¹¹ Please note that according to *Doing Business* methodology electronic payment of one type of tax a multiple number of times is counted as one payment.

In Sub-Saharan Africa, Senegal cut its document requirements by half in 2007/08. A mapping exercise of import and export processes will be helpful to determine the need of certain documents or how best to integrate the required information. Fewer documents reduce the hassle and delay for traders. Furthermore, linking banks, licensing agencies and trade clearance agencies in a coordinated manner will also reduce document assembly time.

Medium-term reform recommendations:

1. Introduce risk-based inspections to reduce number of physical inspections of the goods.

Another good practice at the border is to implement a risk-based cargo inspection system. Instead of physically inspecting all or randomly selected containers that passes through the border, selecting cargo based on their risk profile will increase the efficiency of the inspection process. Globally, one example of an advanced risk-based inspection system is SAS, the business analytics software used by the Korea Customs Service (KCS). The use of this software has allowed KCS to improve significantly the effective inspection of goods. The system resulted in a higher detection rate of illegal cargo even while the number of inspections for normal cargo decreased significantly.

The current security and political environment has a direct influence on the amount of inspections and the long delays they cause. It is understandable that implementing a risk-based system for inspections is difficult under current conditions. However, when the situation improves, it will be an important reform to implement.

2. Allow for electronic submission of documentation.

A crucial element of any trade reform project is to transition Iraq's trade clearance process into a paperless customs clearance system. This should speed up document processing and clearing as well as reducing the need to make informal payments since it reduces the need for face-to-face contact. In the region, United Arab Emirates already has such a system in place, and several other MENA countries (Djibouti, Egypt, and Lebanon) have embarked on such initiatives. However, for this to succeed, traders, customs brokers, freight forwarders and the like should have sufficient access to computer facilities and the necessary training. In addition, for this reform to be successful, electronic commerce and signature laws are required. The recent approval of the draft law on electronic signatures in March 2011 by the Council of Ministers is a positive step towards implementing an online system for electronic submission of documents and speeding up the issuance of export certificates.¹²

3. Create a single window for trade transactions.

¹² The law has been forwarded to the House of Representatives to be approved and implemented.

A longer-term goal would be to implement a single window for trade transactions. This will be a third step in the trade facilitation agenda, behind the electronic processing of documents, and legislative changes to make e-signatures valid. Because a single window brings together several parties, some of which may have to cede some control, it requires strong political support to succeed.

Today, Korea has one of the most advanced electronic single-window system for trade, which connects not only government offices, but also private sector participants, such as banks, customs brokers, insurance companies and trade forwarders. Many other countries have followed suit. Senegal’s Ministry of Trade introduced a single window system in 2004. This system transformed customs clearance, stream-lining the process through transparent, electronic transactions initiated by a single request from a trader. Traders can now collect and process necessary documents and authorizations prior to customs declaration in about half a day. With its real time data, government agencies could better monitor and control transactions.

Enforcing contracts

Indicator	Iraq	Region	OECD
Procedures (number)	51	44	31
Duration (days)	520	664.1	517.5
Cost (% of claim)	28.1	23.6	19.2

Doing Business measures the efficiency (number of procedures, time and cost) of the judicial system in resolving a simple commercial dispute. On average, it costs 28.1% of the claim value and takes 51 procedures and 520 days to resolve a commercial dispute in Iraq, ranking it 141st globally and 15th in the MENA region on the ease of enforcing contracts.

Short-term reform recommendations:

1. Set limits on the number and duration of adjournments, and allow for active case management by the judge.

Adjournments requested by either party and granted by the judge commonly occur at all stages of the proceedings, thereby delaying the judicial process. We understand that there are proposed amendments to the civil procedural rules to address this problem, and we encourage their adoption and implementation. To ensure that these rules are observed in practice, courts can require that judges systematically put cases on timetables. Judges should set and monitor trial schedules as soon as they can estimate the complexity of a case. Requests for adjournment should be scrutinized to limit their occurrence to the inevitable. By assuming a more active role, judges can ensure that cases move through the courts more expeditiously.

2. Collect statistics on the performance of the judiciary.

The judiciary could collect and process data on judges' individual performance, allowing a more even distribution of the caseload, as well as stimulating the judiciary to increase productivity. Detailed statistical analysis could allow administrators to measure individual courts' workload, reallocate resources and evaluate judges' performance. Among the statistics produced, the number of cases filed in courts, clearance rate, time it takes to process them and the duration of the various procedural stages would be the most helpful. Comparing certain chambers against others could help identify best practices, and prompt slower benches to speed their services.

Performance evaluations can help have a disciplinary effect on judges, while also improving court efficiency. Malaysia introduced a performance index for judges in 2009. The index, fixed by the judges themselves, is aimed at allowing them to assess and monitor their performance. As a result, case disposal rates in Malaysian courts are already improving. However, any measurement on efficiency for judges should be nuanced to reflect the differences between courts and the variations in the quality of the services they provide. Evaluation systems that create incentives and rewards for effective services can help improve the performance of judicial staff. A comprehensive training scheme would be needed to adequately prepare judicial staff to manage new technologies, apply new procedural rules and deliver better quality services.

3. Map processes at the courts to identify points of delay.

In order to identify bottlenecks, we recommend that Iraq map and identify bottlenecks in the time and procedures involved in resolving a commercial dispute in court. Sometimes the source of delays is found not in the courtroom but in the clerk's office. In Macedonia, for instance, plaintiffs experience their greatest delays (45 days) between the filing of a complaint and serving notice on the defendant. Previous reforms had focused on cutting adjournments in trial and speeding enforcement of judgments, but no one had looked at the administrative processes affecting the beginning of each case.

Mapping exercises for court processes can help address this. When mapping, a team follows the steps necessary to take a commercial case through the courts and records the time associated with each step. This investigation follows the *Doing Business* questionnaire and data. Mapping is a way to identify points of delay in commercial cases and strategize ways to remove them. A mapping exercise for the courts in Iraq can be conducted upon the government's request.

Medium-term reform recommendations:

1. Establish a specialized commercial chamber or court.

At present, Baghdad's First Instance Court resolves commercial disputes and civil cases in Baghdad. In order to ensure that important commercial disputes are settled quickly and efficiently, a specialized commercial chamber or separate commercial court should

be established. Instituting a specialized commercial court would allow judges from those courts to acquire more knowledge on specific commercial issues, thereby increasing the quality and the quantity of their output. As a result, the time to dispose of simple commercial cases could be reduced. *Doing Business* research shows that countries with specialized courts resolve disputes 30% faster than those without them.

Other countries in the region that have a specialized commercial court include Kuwait, Saudi Arabia, United Arab Emirates and Yemen. Most recently, Egypt and Jordan joined this group. Egypt established a separate commercial court to deal with all commercial matters. In 2008 Jordan set up commercial divisions within the courts of first instance, assigning judges to hear solely commercial cases.

2. Introduce simplified rules for undisputed and small claims.

One way to ease court delays is to take all undisputed claims out of court and bring them before enforcement courts or bailiffs. There is no need for a judge to intervene when claims are uncontested or supported by indisputable evidence. Similarly, a “fast track” procedure could be introduced for cases with low financial value, such as a standard form for the complaint and simpler evidence rules. Applying these measures would decongest the normal track, speeding up the time to enforce both smaller and greater claims. Also, this could lower the average attorney fees.

Closing a business

Indicator	Iraq	Region	OECD
Time (years)	No practice	3.4	1.7
Cost (% of estate)	No practice	13.6	9.1
Recovery rate (cents on the dollar)	0.0	29.4	69.1

The Closing a business indicator measures the time, cost and outcome of formal insolvency and debt enforcement proceedings involving domestic entities, based on a specific case study. *Doing Business* assumes that creditors want to recover as much as possible, while debtors will defend themselves and may end up using dilatory tactics.

In *Doing Business 2011* Iraq placed at the bottom of the ranking, as well as 25 other economies classified as “no practice” in the area of Closing a business.¹⁴ This means that creditors are unlikely to recover debt through the legal process (in or out of court). In the region, Bahrain, Qatar and Tunisia benefit from the most efficient regimes, allowing creditors to recover 64.2 (Bahrain), 53 (Qatar) and 51.7 (Tunisia) cents on the dollar respectively.

¹⁴ *Doing Business* classifies an economy as “no practice” if there have been fewer than 5 cases a year over the past 5 years involving a judicial reorganization, judicial liquidation or debt enforcement procedure.

A well-balanced insolvency system functions as a filter, separating companies that are financially distressed but economically viable from inefficient companies that should be liquidated. By giving efficient companies a chance at a fresh start, bankruptcy law helps maintain a higher overall level of entrepreneurship in an economy. And by letting inefficient companies go, it fosters an efficient reallocation of resources.

Short-term reform recommendations:

1. Undertake a review of the insolvency system in order to understand the reason of the limited number of insolvency proceedings in Iraq.

In any vibrant market economy, businesses fail and need a mechanism for orderly exit. If a review of the insolvency system illustrates that the system in place does not respond to the needs of debtors or creditors on the ground, it is important to identify what alternative methods of exiting the market are preferred, and why. In the case of Iraq, the lack of an insolvency law is a significant obstacle to achieve efficient restructurings. Therefore, the review should highlight what tools are currently used for companies in financial distress and what problems they face. Until such problems are clearly identified, it is difficult to design reforms that will clearly affect practice on the ground. It is therefore recommended that a review is undertaken in order to determine: (i) what alternatives are contemplated in the commercial laws and are being used in the practice in place of the insolvency system by both debtors and creditors; and (ii) what mechanisms can be implemented to address these problems.

Medium term reform recommendations:

1. Develop a proper legal framework giving companies the option to be sold as a going concern.

Strong insolvency legislation is important because it helps provide the tools that can maximize the value of a distressed company and its assets and can provide important economic benefits. First, the existence of a functional and predictable insolvency system can give creditors the confidence that they have some certainty of recouping a reasonable amount of their investment if a company fails. Second, insolvency legislation promotes the continuation of viable companies by providing them with a survival outlet in times of economic difficulty, thereby preserving jobs and economic activity.

Both the legal and judicial systems should promote a solution where the insolvent company emerges successfully from the applied procedure and continues operating as a going concern. Provisions favoring reorganization of businesses in those cases where the firm is deemed viable are relevant and should be adopted in order to obtain efficient outcomes. For a more detailed discussion of what the law should achieve with respect to

insolvency proceedings, please see the World Bank *Principles on Effective Insolvency and Creditor Rights Systems*.¹⁵

2. Adopt guidelines that facilitate out-of-court workouts.

In light of the previous recommendation, out-of-court guidelines have been introduced in many countries, including the United Kingdom, Romania and Latvia. These guidelines enable debtors and creditors to undertake the informal restructuring process by negotiating restructuring options that can later be approved in court. This helps in easing the burden on courts, while increasing the likelihood that companies will restructure their debt if there is still a chance of rescuing the business.

3. Improve efficiency of the judicial system.

Introducing an insolvency law, while important, does not guarantee an immediate improvement in the Closing a Business indicator. Indeed, the indicator measures improvements in cost, time and/or outcome of insolvency cases that are held in Baghdad's courts, provided there are at least 5 cases of reorganizations, liquidations or debt enforcements per year. Therefore, improvements in the incentives for the parties to resort to these type of proceedings and improvements in the courts will also be necessary. For suggestions to improve the judicial system, please see the above recommendations under Enforcing contracts. Additionally, training judges, receivers and liquidators in modern restructuring techniques through formal courses would help develop the insolvency system.

¹⁵ Found at:

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/LAWANDJUSTICE/GILD/0,,contentMDK:20774193~pagePK:64065425~piPK:162156~theSitePK:215006,00.html>

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