



# Legal Guide to Doing Business in Iraq

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# Legal Guide to Doing Business in Iraq

5th Edition

By

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# Legal Guide to Doing Business in Iraq

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## **Disclaimer**

The information in this Guide has been carefully researched and compiled. However, it is by no means a fully comprehensive account of the laws of Iraq. The Guide is intended to serve as a reference only, not as a substitute for direct legal advice. The authors and editors refer the reader to the applicable Iraqi laws and regulations and the need to obtain legal advice.

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## TABLE OF ABBREVIATIONS

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CBI	Central Bank of Iraq
CISG	Convention on Contracts for the International Sale of Goods (UN Sales Convention)
CPA	Coalition Provisional Authority
DPUK	Democratic Patriotic Alliance of Kurdistan
DPSC	Development and Production Service Contract
GATT	General Agreement on Tariffs and Trade
ICC	Iraqi Civil Code
ICSID	International Convention on the Settlement of Investment Disputes
IQD	Iraqi Dinar (as of August 2010, 1US\$ = approximately IQD1,171)
IPPA	Investment Promotion and Protection (of the Arab League)
KDP	Kurdistan Democratic Party
KRG	Kurdistan Region Governorate
LLC	Limited Liability Company
PCO	Iraq Project and Contracting Office
PCT	Patent Cooperation Treaty
PLT	Patent Law Treaty
PSC	Production Sharing Contract
PUK	Patriotic Union of Kurdistan
TAL	Transitional Administrative Law
TBI	Trade Bank of Iraq
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TSC	Technical Service Contract
UIA	United Iraqi Alliance
USACE	U.S. Army Corps of Engineers
USAID	U.S. Agency for International Development
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	WIPO Performance and Phonogram Treaty
WTO	World Trade Organization



## FOREWORD TO THE 5<sup>TH</sup> EDITION

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Iraq is a country with a rich history. It is endowed with a wealth of natural resources and a human aptitude for development and progress. Slowly but steadily, Iraq is recovering from more than three decades of war, sanctions and economic decline. Notably, robust progress is being made towards establishing an efficient, transparent and equitable legal system.

The pre-war Iraqi legal system was restrictive in many respects, particularly from the viewpoint of foreign businesses. For example, there was no framework for foreign investment, no legal framework for an efficient banking system, little intellectual property protection and generally insufficient regulations for today's more complex commercial transactions. To address this problem, and to ensure the flow of much needed foreign investment in various parts of the economy, the post-war Iraqi governments have taken significant steps to modernize laws governing many areas of the financial system, public sector and broader economy.

For instance, a package of economic legislation has either been adopted or submitted to the parliament to allow for increased land ownership possibilities for foreigners. This could play a key role in convincing investors such as foreign banks to expand their presence in Iraq in the near future. In addition, in 2009, amendments to investment laws were approved to let foreigners own Iraqi land and property for housing projects.

Other economic laws pending in parliament would allow for billions of dollars in government and private sector investment in oil and gas and infrastructure and authorize the government to issue bonds to finance such expenditure. In addition, Iraqi politicians have long discussed amending the constitution drawn up after the U.S. invasion. At stake are issues relating to the separation of religious and state laws, and the balance of power between the central government and the regions.

The purpose of this Guide is to provide an overview of the most important provisions of the Iraqi legal system as well as the latest developments in Iraqi commercial laws to the extent that may be relevant to international investors wishing to conduct business in Iraq. The information contained in this guide has been prepared by our firm as of August, 2010 and will be continuously updated and distributed to clients and associates of Mena Associates/ Amereller Legal Consultants and Fulbright & Jaworski L.L.P.

## FOREWORD TO THE 1ST EDITION

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The purpose of this Guide is to give an overview of the most important provisions of the Iraqi legal system that may be relevant to a foreign business wishing to conduct business in Iraq. The information contained in this guide has been prepared by our firm as of March 8, 2004.

Iraq is currently governed by the Coalition Provisional Authority (the “CPA”) created under Security Council Resolution 1483 (2003) (“Resolution 1483”). The CPA acts as an occupying power until a new Iraqi government will take over the administration of the country, which is expected to take place on July 1st, 2004 as provided in the new Interim Constitution.

Over the last ten months, the CPA, together with the Iraqi Governing Council, has placed primary focus on commencing the process of transforming Iraq into an attractive target for foreign investment whilst at the same time facilitating the business of foreign enterprises.

The pre-war Iraqi legal system was restrictive in many aspects, particularly from the viewpoint of foreign businesses. For example, there was no framework for foreign investment, no legal framework for an efficient banking system, little intellectual property protection and generally insufficient regulations for today’s more complex commercial transactions.

Accordingly, the CPA has recently enacted new quasi-legislation that focuses on attracting foreign investment. The new enactments have, for example, focused on reforming the banking law, the Companies Law and enabling freedom of contract and trade. However, once an Iraqi government takes control, subsequent legislation will also need to consider Iraqi legal tradition, certain rules of Islamic law and the specific needs of the Iraqi economy.

To date, a number of laws, including an interim constitution (Transitional Law), the Commercial Code, the Companies Law and the Investment Law, were either amended or replaced by the CPA; others are under consideration in an effort to create a unified, modern, and comprehensive legal framework for business in Iraq. This guide will therefore be continuously updated and distributed to clients and associates of Mena Associates/Krauss Amereller Henkenborg.

Dr. Florian Amereller

# I. INTRODUCTION

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Iraq is a country in transition. Following the end of the second Gulf War in 2003, it was expected that Iraq's legal system would be one of the first targets for reform, as a modern legal framework was necessary to attract badly needed foreign investment. As a first step, the Coalition Provisional Authority ("CPA") issued Regulations and Orders which were intended to suspend or replace parts of Iraqi law in force. To date, parts of the CPA "legislation" are still being applied by the Permanent Government.

The process of securing, stabilizing, and rebuilding Iraq has been uneven, with corresponding repercussions on foreign investment in the Iraqi market. There was widespread euphoria in the months immediately following the second Gulf War, followed by a period of considerably reduced expectations as the security situation remained unstable. More recently, there appears to be growing confidence in the Permanent Government's ability to reduce sectarian violence and otherwise maintain stability, with concomitant increased interest in foreign investment.

Reconstructing Iraq, including delivery of essential services on an equitable basis, is one of the commitments first articulated by the Permanent Government in June 2006. It is generally accepted that investment requirements will exceed income from oil exports, at least during the near term. All of this means an enhanced role for the private sector and a need for privatization. Any such plans will require continued stability and further evolution toward a modern legal framework, if they are to succeed.

Indeed, Iraq continues to present challenges to foreign investors. Iraq ranks 153 in the World Bank 2010 Doing Business, having moved up 9 spots from 149 in 2009 to 138 in 2010 in the ranking for enforcing contracts. Unfortunately, however, Iraq still ranks near the bottom in the categories of starting a business, dealing with licenses, obtaining credit, trading across borders, and closing a business. This is despite the efforts of Iraq's legislators to create an improved investment climate. The overhaul of Iraq's economy is no doubt a long-term project, both commercially and politically, and foreign businesses should be aware that – like most of the other Arab markets today – Iraq is no "hit and run" affair. Business success will require a systematic approach, strategic planning and long-term cooperation with suitable local partners.

## II. LEGAL HISTORY OF THE NEW IRAQ

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For a better understanding of the current legal and political situation in Iraq, a short overview of some of the most important developments from the period of UN sanctions to the present is provided below.

### 1. UN Sanctions

Following the 1990 invasion of Kuwait and the subsequent Gulf War, the economic situation in Iraq was dominated by the UN sanctions regime. The UN sanctions, however, were lifted after the fall of the old regime by Resolution 1483 of May 22, 2003, which recognized the specific authorities, responsibilities, and obligations under applicable international law, of the United States of America and Great Britain as occupying powers under a unified command. European sanctions were lifted by Regulation of the Council of the European Union No. 1210/2003, canceling Regulation No. 2465/1996.

### 2. Coalition Provisional Authority (CPA)

The CPA was established on May 16, 2003, by CPA Regulation No. 1, on the basis of UN Resolution 1483. Resolution 1483 called “upon the Authority [the CPA], consistent with the Charter of the United Nations and other relevant international law, to promote the welfare of the Iraqi people through the effective administration of the territory, including, in particular, working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own political future.”

The CPA was administrated by an administrator (the “Administrator”), Paul Bremer. The CPA consisted of 11 departments: each presided over by a director. These departments were in turn comprised of a number of former ministries and state institutions, working under U.S. supervision. On June 28, 2004, all governmental authority in Iraq was transferred to the fully sovereign Iraqi Interim Government, and the CPA ceased to exist that same day.

The legal instruments issued by the CPA were divided into Regulations, Orders, Memoranda and Public Notices. While Regulations were instruments

defining the institutions and authorities of the CPA, Orders were binding instructions or directives to the Iraqi people creating penal consequences or having a direct bearing on the way Iraq was regulated, including changes in Iraqi law. Memoranda expanded on Orders or Regulations by creating or adjusting the procedures applicable to them. Finally, Public Notices communicated the intentions of the Administrator to the public and required, for example, adherence to security measures with penal consequences or reinforced aspects of existing law that the CPA intended to apply.

Following the adoption of the new Constitution of Iraq and the transfer of power to the new independent Iraqi government, the validity of these CPA legal instruments became questionable. The new Constitution does not expressly refer to these instruments. Article 130 of the permanent constitution continues the validity of existing laws, presumably including CPA Orders that were not rescinded by the Interim and Transitional Governments. This position is further supported by the fact that new laws being enacted expressly repeal certain conflicting legal instruments issued by the CPA, as is the case, for example, with the new Investment Law which repeals CPA Order No. 39. Such an express repeal would not be necessary if the whole of the CPA legislation had ceased to be in force.

### 3. The Iraqi Interim Government

On June 28, 2004, all government authority in Iraq was transferred to the fully sovereign Iraqi Interim Government, and the CPA ceased to exist that same day.

The Iraqi Interim Government consisted of a President, two Deputy Presidents, and a Prime Minister who led the Council of Ministers and oversaw the administration of the government. The President acted as the head of state. The actions of the Iraqi Interim Government were governed by the “Transitional Administrative Law (TAL)” and its Annex.

The Iraqi Interim Government had the authority to draft new laws and repeal laws put in place during the CPA period, provided that the new laws were in accordance with the TAL. Section 1 of the TAL Annex stated that the Iraqi Interim Government would “refrain from taking any actions affecting Iraq’s destiny beyond the limited interim period.”

The primary responsibility of the Iraqi Interim Government was to administer Iraq's affairs, in particular by providing for the welfare and security of the Iraqi people, promoting economic development, and preparing Iraq for its national elections. These elections took place on January 30, 2005.

#### **4. The Iraqi Transitional Government**

In these elections, the Shi'ite-led United Iraqi Alliance (UIA) and the Kurdish-led Democratic Patriotic Alliance of Kurdistan (DPAK) won most of the seats in the new Iraqi National Assembly; most Sunni Arab Iraqis boycotted the elections.

The UIA and the DPAK formed a coalition government, which was approved by the National Assembly on April 28, 2005. It ruled the country from May 3, 2005 until May 20, 2006, when it was replaced by the first permanent government.

The Iraqi Transitional Government consisted of the Presidency Council, headed by the President of the Republic, and the Council of Ministers, headed by the Prime Minister. It operated under the TAL, and its primary functions were to draft a permanent constitution and to rule the country for the transitional period.

A draft of the permanent constitution was prepared by the Iraqi Constitutional Committee and read to the National Assembly on August 28, 2005. The permanent Constitution was finally approved by a referendum that took place on October 15, 2005.

#### **5. The Permanent Government of Iraq**

The first national parliamentary election under the new Iraqi Constitution was held on December 15, 2005. In April 2006, Jalal Talabani, a Kurd who had held this office since April 2005, was re-elected as President of the Republic. On April 22, 2006, the President requested Nouri Al-Maliki, an Arab Shi'ite, to form the Council of Ministers. The Council of Ministers was approved by the Council of Representatives on May 20, 2006.

The second national parliamentary election took place on March 7, 2010. In this election, voters elected 325 members of Iraq's Council of Representatives. This election produced an inconclusive result. No party achieved a clear

majority and at the time of this writing (August, 2010), the parties continue negotiations that would lead to the formation of a government.

Key issues that continue to face the Iraqi government include the relationship with the occupying powers, containing the insurgency and communal violence, and implementing the Constitution, particularly as regards federalism. As might be expected, much of the legislation enacted by the Permanent Government has dealt with these and other essentially political or security-related matters, such as the October 2006 Federalism Law, the January 2008 Accountability and Justice Law (also known as the de-Baathification reforms) and the February 2008 General Amnesty Law. To date, the Permanent Government has not modified the existing legal system, as amended by CPA legislation, in a manner that could suggest an evolution towards a more protective Islamic system. The main body of current Iraqi business-related law, such as the Civil Code, remains in force. Recent legislative business law initiatives, such as the Investment Law, appear to herald a further opening of the Iraqi market.

#### **6. The Semi-Autonomous Kurdistan Region**

In March 1970, the Iraqi government and representatives of the Kurds in Iraq entered into the Iraqi-Kurdish Autonomy Agreement. This agreement was to be implemented within four years and provided for the creation of an Autonomous Region consisting of the three Kurdish governorates (Erbil, Sulaimaniya and Dohuk) and other adjacent districts that had been determined by census to have a Kurdish majority.

A Legislative Assembly was established in the city of Erbil with theoretical authority over the Autonomous Region. In practice, however, the assembly created in 1970 was under the control of Iraqi President Saddam Hussein until the 1991 uprising against his rule following the end of the Gulf War.

Following the end of the Gulf War, elections held in Kurdistan in June 1992 produced an inconclusive outcome, with the legislative assembly divided almost equally between the two main parties: the Kurdistan Democratic Party (KDP) and the Patriotic Union of Kurdistan (PUK). Tensions between these two parties ultimately led to the division in 1996 of the Kurdistan region into two parts: the governorate of Sulaimaniya governed by the PUK, and the governorates of Erbil and Dohuk governed by the KDP.

On January 21, 2006, the KDP and the PUK entered into the Kurdistan Regional Government Unification Agreement, aiming at the unification of these two parts of the Kurdistan region.

The Iraqi Interim Constitution that entered into force in 1970 provided that the Iraqi people consist of the Iraqi and the Kurdish nations, and that Kurdish is one of the two official languages of Iraq. In addition, the constitution acknowledged “the national rights of the Kurdish people,” without further specifying these rights. The Interim Constitution of 1990 contained the same provisions.

Articles 53 and 54 of the TAL were the legal basis for legislation by the Regional Government of Kurdistan. Article 53 provided that the Kurdistan Regional Government (KRG) was recognized as the official government of the governorates of Dohuk, Erbil, Sulaimaniya, Kirkuk, Diyala and Neneveh. Article 54 stated that the Kurdistan Regional Government had the right to continue to perform its “current functions,” except with regard to those questions which fall within the exclusive competence of the Iraqi federal government. Although there were a number of uncertainties as to the interpretation of this provision, it is arguable that the Kurdistan Regional Government had the right to issue legislation in the fields of commercial and company law, and the Kurdistan Regional Government indeed exercised this right. In addition, to a large extent the CPA legislation was not applied in the Kurdish region of Iraq.

The new Iraqi Constitution recognizes Kurdistan as a “federal region” and its right to exercise executive, legislative, and judicial powers in accordance with the Constitution, except for those powers stipulated as falling within the exclusive competence of the federal government. According to Article 141 of the Constitution, legislation enacted in the region of Kurdistan since 1992 will remain in force, and decisions issued by the Government of the region of Kurdistan—including court decisions and agreements—are considered valid unless they are amended or annulled pursuant to the laws of the region of Kurdistan by the competent authority in the region.

## **III. RECENT DEVELOPMENTS**

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### **1. MIGA Convention**

In October 2007, Iraq joined the Convention establishing the Multilateral Investment Guarantee Agency (MIGA), a member of the World Bank Group. Membership in MIGA will allow eligible foreign companies seeking to invest in Iraq the option of receiving political risk insurance (guarantees) for eligible investments.

### **2. Iraq Stock Exchange (ISX)**

In April 2009, the ISX switched to electronic trading. Currently, around 100 companies are listed on the ISX but only a few companies are available for electronic trading. It is expected that more companies will be added to the electronic trading system in the near future.

The ISX was incorporated and began operations in June 2004. It operates under the oversight of the Iraq Securities Commission, an independent commission modeled after the U.S. Securities and Exchange Commission. Turnover of shares in 2010 is approximately US\$1 million to US\$1.5 million per day.

### **3. New Securities Legislation**

A new securities bill is currently being considered by the Iraqi government and is expected to be introduced to the Council of Representatives for approval by the end of 2010.

It is expected that passing the legislation would result in the creation of such tools as custodian banks and mutual funds; would allow online trading and allow the exchange to handle initial public offerings.

## 4. International Law

Another area for further legislative development lies in Iraq's international legal treaties. For example, Iraq is not currently a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (although there are indications that the Iraqi government will sign the New York Convention in the near future) and has not signed many of the relevant international treaties and conventions for the protection of intellectual property and foreign investment, and it has no bilateral agreements for the avoidance of double taxation. Iraq became an observer at the World Trade Organization (WTO) on January 24, 2007 and is reportedly making steady progress in its efforts to become a full member in the near future. The Iraqi government is also considering signing the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention). This would allow international investment disputes against the Iraqi State to be determined by ICSID rules.

## IV. IRAQI LEGAL SYSTEM

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### 1. Overview

Compared to a number of other Arab states which established their legal systems within the past thirty years, Iraq has had an older and more developed legal system which was partly based on continental European models. Like most Arab countries, however, the Iraqi legal system was burdened by a vast array of regulations and administrative restrictions. As a result of the political turmoil of the past decade, numerous legal provisions are no longer applied in practice or were suspended by the CPA "legislation."

Iraqi law relies on various Arab (especially Egyptian) and Western laws and Islamic jurisprudence. According to Article 1 of the Civil Code, the law takes precedence over custom, Islamic law (shari'a) and equity.

Although the Iraqi judicial system continued to operate relatively efficiently until 1990, the duration of legal proceedings increased significantly, enforcement of judgments was delayed, Iraqi courts did not enjoy independence from the government, and business partners often experienced difficulties in finding reliable Iraqi arbitrators. To date, litigating in Iraq has still been quite difficult for foreigners, and it remains to be seen whether the situation will improve in the near future.

### 2. Sources of Law

#### a. The Constitution of Iraq

The Iraqi Revolutionary Command Council enacted a series of preliminary constitutions after the revolution of July 14, 1958; the most recent was the Interim Constitution of 1990.

The TAL, the Supreme Law of Iraq during the "transitional period," entered into force on March 8, 2004 and expired on the approval of the permanent Constitution by the Iraqi people in the referendum on October 15, 2005. The full text of the Iraqi Constitution is available on the website of the United Nations Assistance Mission for Iraq at "[http://www.uniraq.org/documents/iraqi\\_constitution.pdf](http://www.uniraq.org/documents/iraqi_constitution.pdf)."

The new permanent Constitution consists of 144 Articles, divided into six Chapters:

### 1) Chapter 1: Basic Principles

The first chapter lists a number of fundamental principles of the State of Iraq, including:

- Iraq is a federal State, its system of government is republican, representative, parliamentary and democratic;
- Islam is the official religion of the State and it is a fundamental source of legislation; the constitution guarantees the Islamic identity of the majority of the Iraqi people and the rights of all minorities such as Christians, Yazidis, and Mandi Sabeans to full freedom of religious belief and practice;
- no law that contradicts the established provisions of Islam, the principles of democracy or the rights and basic freedoms stipulated in the constitution may be issued;
- the law is sovereign, the people are the source of its authority and legitimacy; and
- the Arabic and Kurdish languages are the official languages of Iraq.

### 2) Chapter 2: Rights and Liberties

The second chapter contains basic civil and political rights, such as equality before the law, the right to enjoy life, security and liberty, the right to personal privacy and the sanctity of homes, and a number of liberties, such as the right to work, protection of property, freedom of movement, protection of the family, right to health care, freedom of expression, freedom of the press, printing, advertisement, media and publication, freedom of assembly, and freedom of thought, conscience and belief.

The practice of any rights or liberties stipulated in the constitution may not be restricted or limited, except by law or on the basis of law, and only insofar as that limitation or restriction does not violate the essence of the right or freedom.

### 3) Chapters 3 and 4: The Federal Authorities

The third and fourth chapters deal with the federal authorities of the State. According to Article 47 of the Constitution, the federal powers consist of the legislative, the executive and the judicial powers.

The legislative power resides in the Council of Representatives and the Federation Council. The Council of Representatives is elected by the Iraqi people in direct, secret and general ballots and is competent to enact federal laws, control the executive power pursuant to law, and elect the President of the Republic. The Federation Council will be established in accordance with a special law that is still pending and will include representatives from the regions and the governorates that are not part of an existing region (the only existing region today is Iraqi Kurdistan).

The federal executive power resides in the President of the Republic and the Council of Ministers. The President of the Republic is the head of State and represents the sovereignty of the country. The President safeguards the commitment to the Constitution and the preservation of Iraq's independence, sovereignty, unity, and the security of its territories.

The Prime Minister is the head of the Council of Ministers and is the direct executive authority responsible for the general policy of the State as well as the commander in chief of the armed forces.

The judicial authority is independent. Judges are independent and there is no authority over them except that of the law; no authority has the right to interfere with the judiciary or the affairs of justice. The Federal Judicial Authority is comprised of the Higher Juridical Council, the Supreme Federal Court, Federal Court of Cassation, Public Prosecution Department, Judiciary Oversight Commission and other federal courts that are regulated in accordance with the law.



Article 110 contains a comprehensive list of matters for which the federal government has exclusive authority. These include:

- foreign policy;
- national security policy;
- fiscal and customs policy;
- issues of citizenship, naturalization, residency and the right of asylum;
- telecommunications and mail policy; and
- policies relating to water sources from outside Iraq.

All matters not stipulated as within the exclusive authority of the federal government fall within the powers of Iraq's various regions and governorates.

#### 4) Chapter 5: Powers of the Regions

Article 117 of the Constitution acknowledges the region of Kurdistan and its existing regional and federal authorities. Other regions may be formed in accordance with the Constitution and the relevant laws to be enacted by the Council of Representatives.

Article 121 sets out the powers and authority of these regions. According to this provision, the regional authorities have the right:

- to exercise executive, legislative, and judicial authority in accordance with the Constitution, except for those powers stipulated as exclusive powers of the federal government;
- in case of a contradiction between regional and national legislation regarding a matter outside the exclusive powers of the federal government, to amend the application of the national legislation within that region;
- to an equitable share of the national revenues sufficient to discharge its responsibilities and duties; and
- to establish offices in the embassies and diplomatic missions of Iraq.

#### 5) Chapter 6: Final and Transitional Provisions

The last chapter contains provisions regarding the amendment of the Constitution and provides that existing laws remain in force unless annulled or amended in accordance with the provisions of the Constitution.

Finally, Article 143 of the Constitution annuls the TAL and its Annex, except for two provisions dealing with the recognition of the Kurdistan Regional Government and measures to remedy injustice caused by the previous regime's practices in altering the demographic character of certain regions.

##### b. Islamic Law

Constitutionally, Islamic law (*shari'a*) is an important source of legislation in most Arab countries; the same holds true for Iraq, since Article 2 of the new Constitution provides that Islam is a fundamental source of legislation.

*Shari'a* law is not codified and is mainly derived from the Qur'an and the *sunna*, the teachings of the prophet Mohammed. Like other jurisprudence, the *shari'a* developed different philosophical and legal schools during Islam's history. In Iraq, the Hanafi School is the most authoritative for the Sunni population.

The application of Islamic law in Iraq has been generally limited to family and inheritance law. The role of Islamic law is minimal in commercial matters. The Iraqi Civil Code expressly provides that statutes are the primary source of law, followed by custom and then by Islamic law.

While the Iraqi legal system has been dominated by Sunni legal doctrine, the Shi'a sect accounts for the majority of the Iraqi population and it is therefore anticipated that Shi'a influence will increase in the future. Mainly because of its methodology, Shi'a legal doctrine is considered—at least in theory—to be more flexible than Sunni legal doctrine.

### c. CPA Orders and Regulations

During its mandate period, which ended on June 28, 2004, the CPA published a total of 12 regulations and 100 Orders. The Regulations and Orders that are most important for the purposes of this publication are briefly described below.

#### 1) CPA Order No. 17

CPA Order No. 17 exempted the CPA and the Coalition Forces from Iraqi jurisdiction. Also, according to Section 3 of the Order, coalition contractors and their sub-contractors, as well as their employees not normally resident in Iraq, were not subject to Iraqi laws or regulations in matters relating to the terms and conditions of contracts with the CPA or the Coalition Forces.

Contractors and sub-contractors not normally resident in Iraq were exempt from licensing and registration requirements concerning employees, businesses and corporations and were granted immunity from Iraqi legal procedures with respect to their contracts. Additionally, proceedings in Iraq relating to other matters could only be initiated with the written consent of the administration of the CPA.

According to Section 1(5), the term “coalition contractors” means “non-Iraqi business entities or individuals not normally resident in Iraq supplying goods and/or services to or on behalf of the Coalition Forces or the CPA under contractual arrangement.”

CPA Order No. 17 seems to have been effectively superseded by the Iraqi government (mainly as a result of the 2008 US-Iraq Status of Forces Agreement under which contractors working for U.S. forces are subject to Iraqi criminal law) unless otherwise provided by a subsequent law enacted by the Iraqi parliament.

#### 2) CPA Orders No. 37, 49 and 84

CPA Order No. 37 set out the modified tax regime applicable to individuals and corporations, expressly repealing most previously

existing tax legislation and suspending any existing Iraqi legislation which was inconsistent with the Order. CPA Orders No. 49 and 84 set out the tax strategy for 2004, and established the applicable tax rates which are discussed further below.

#### 3) CPA Order No. 39

CPA Order No. 39 concerning foreign investment largely liberalized foreign investment in Iraq. In particular, it abolished restrictions on foreign participation in companies, discriminatory treatment of foreign investors, and remittance of profits, dividends, interests and royalties. CPA Order No. 39 has been repealed by the new Investment Law (Law No. 13/2006).

#### 4) CPA Order No. 64

CPA Order No. 64 amended large parts of the Iraqi Company Law (Law No. 21/1997), liberalizing and modernizing this law and opening participation in Iraqi companies to foreign investors.

#### 5) CPA Orders No. 80, 81 and 83

These Orders considerably amended the Iraqi Patent, Trademark and Copyright Laws.

#### 6) CPA Order No. 87

CPA Order No. 87 enacted a new law on public procurement in Iraq.

#### 7) CPA Order No. 94

CPA Order No. 94 and its Annex A, which sets out the new banking law, laid the foundation for a reformed and competitive banking system. CPA Order No. 94 repealed any conflicting Iraqi legislation. The main aim of the new law was to re-establish public confidence in the banking sector.

### 3. Court Structure

The judiciary in Iraq is organized by Law No. 160/1979. It consists of the Civil Courts, Courts of Personal Status, and Criminal Courts. Civil Courts have jurisdiction in civil and commercial matters, and matters concerning the personal status of non-Muslims. Courts of Personal Status have jurisdiction over matters of the personal status of Muslims, including family and inheritance matters. In addition to these courts, there are some non-commercial courts of specialized jurisdiction, including administrative courts.

In civil matters, the Iraqi court system is divided into a three-tier hierarchical system: Courts of First Instance, Courts of Appeal, and a Court of Cassation. Cases in the Courts of First Instance are presided over by a single judge and may be appealed to a Court of Appeal, subject to some exceptions. The Courts of Appeal are divided into seven districts and are composed of three judges. Appellate decisions may be appealed to the Court of Cassation. The Court of Cassation, as the highest court, is only competent to decide questions of law. It is located in Baghdad.

In addition to the above courts, a Supreme Federal Court has been established by the new Constitution, competent for overseeing the constitutionality of laws, interpreting the text of the Constitution, ruling in disputes between the federal government and the governments of the regions and other constitutional matters.

### 4. Specific Issues under Civil Code and Commercial Code

#### a. Civil Code

The Iraqi Civil Code, Law No. 40/1951 (the “ICC”) was published on September 8, 1951, and was enacted on September 8, 1953. The Code was the outcome of numerous attempts to unite in a single legal instrument all principles related to civil matters, which had been previously dispersed throughout several different legislative acts.

The ICC was mainly inspired by the Egyptian Civil Code, Islamic law as codified in the Ottoman Civil Code “majelle” (*almajallah al ahkam al adaliyya*), which is based on the Hanafi School of law and was applied in Iraq prior to the enactment of the Civil Code, and a number of old Ottoman laws based on European codes.

The ICC is one of a number of similar codes in the Arab world that were directly influenced by the Egyptian Civil Code, including that of Syria, Algeria, Libya, and Kuwait. It represents a synthesis of traditional Arab legal rules and an understanding of the needs of modern times. The chairman of the drafting committee of the ICC was the Egyptian legal scholar Abdel Razzak Al-Sanhouri who endeavored to combine in his draft: principles of Islamic law and civil law, principally the French Civil Code.

The ICC mainly follows the Egyptian Civil Code in its structure. It is divided into a short introduction and two main parts. The introduction deals with general issues, such as applicable legal sources, the distinction between individuals and legal entities, the rules of application of laws, and certain classifications. The first main part of the ICC regulates the law of obligations, and contains general provisions on the laws of contract, tort as well as specific types of contract, such as sales, barter transactions, gifts, partnerships, loans, lease, agency, and insurance. The second part deals with rights in rem, and addresses property rights and related issues such as the transfer of property, usufruct, charges on real property, etc.

#### 1) Freedom of Contract

The ICC adopts the principle of freedom of contract. According to this principle, parties may freely choose the terms of the contracts they conclude. However, freedom of contract is not without limits and is restricted by some mandatory provisions in statutes generally enacted in order to protect weaker parties.

#### 2) Conclusion of Contracts

A contract is basically an agreement between two or more parties. Three major elements are necessary in order to form a legally valid contract:

- offer and acceptance;
- defined subject matter of the contract; and
- cause for the mutuality obligation.

The exchange of wills, i.e. offer and acceptance, must be intentional (express or implied) and made by parties with full legal capacity. The object and the cause may not contravene public order and morals.

As a rule, oral contracts are binding, but as they may be difficult to prove, a number of statutes provide for formal requirements. Some contracts, such as conveyances of real property and agreements for arbitration, must be in writing.

### 3) Capacity

To enter into a contract, each party must be capable of freely consenting to the contractual terms. Although this is generally not a problem, certain categories of person have diminished capacity under the law (e.g., minors, persons with mental disabilities and intoxicated persons). Judicial persons such as corporations and other legal entities have the capacity to contract.

### 4) Choice of Law

Article 25 of the ICC provides that the parties to a contract may agree on the governing law. However, mandatory provisions of Iraqi law may not be avoided by such an agreement.

### 5) Invalidity

A contract may be declared invalid for a number of reasons such as duress, undue influence, misrepresentation, mistake and illegality. The doctrine of duress requires that a contract must not be induced by a physical or economic threat. Similarly, the doctrine of undue influence is based on whether there is a special relationship between the parties in which one party's dominating influence compels the other party's consent to a contract.

Some contracts are void and therefore unenforceable even if all required elements are present. Contracts that are contrary to public policy, for instance, contracts to commit illegal acts, fall

into this category. Contracts that are expressly or impliedly prohibited by statute may also be unenforceable, depending upon the actual circumstances of the breach of the statute.

### 6) Interpretation of Contracts

The ICC provides that contracts must be interpreted in accordance with their provisions and the written law, followed by Islamic law and commercial custom. It contains detailed rules relating to interpretation and good faith in executing and implementing contracts. According to Article 146 of the ICC, a contract "makes the law of the parties." It may be revoked or altered only by mutual consent of the parties or for reasons provided by law.

The Civil Code provides that if the wording of a contract is clear, it cannot be deviated from in order to ascertain, by means of interpretation, the intentions of the parties. However, when a contract has to be interpreted; i.e., when the language of the contract is ambiguous or inconsistent, it is necessary to ascertain the common intention of the parties and to go beyond the literal meaning of the words, taking into account the nature of the transaction as well as the good faith, loyalty and confidence that would exist between the parties in accordance with commercial custom.

Another principle of interpretation which may have a substantial impact on the interpretation of a contract is that, in case of doubt, the contract must be interpreted in favor of the debtor. Case law has held that this rule must be applied with particular force in relation to standardized general conditions which do not derive from free discussion between the parties but rather are, to a certain extent, imposed on one party.

According to ICC Article 150, a contract must be performed in accordance with its terms and in compliance with the requirements of good faith. A contract binds the contracting party not only as regards its express terms but also as regards everything which, according to law, custom and equity, is implied in view of the nature of the obligation.

Case law has made broad use of the principle of good faith in order to render ineffective some contractual provisions which, in the opinion of the court and given the particular context, are not executed in good faith. In some instances, when the court is of the opinion that contractual provisions lead to an inequitable solution, it will not hesitate to find implied bad faith in order to render those provisions ineffective.

In addition, the Iraqi legal system has adopted a number of rules of interpretation derived from Islamic jurisprudence. Under Islamic legal rules of interpretation, preference is given to the form of the parties' expressed will rather than the underlying intention of the parties. Therefore, so long as it is possible for a word to have a meaning, it must not be regarded as meaningless. If it is impossible to give effect to a word, it is simply considered ineffective.

#### 7) Variation of Contracts

The binding nature of contracts is derived from the general duty to act in good faith. However, under special circumstances, a court may override the binding force of a contract to create an equitable solution between the parties. For instance, depending on the facts and the relationship between the parties to a contract, the court may set aside the contract because of events that were not foreseen by the contracting parties when they entered into the contract. On the other hand, despite the failure to comply with the formal requirements for contracts of particular types, the court may rule that the parties did manifest an intention to be bound, though their contract is otherwise non-enforceable. A contract may be modified on the grounds of equity. If a provision is unreasonable or its application would lead to an unreasonable result, it may be varied or nullified. The unreasonableness of a provision shall be considered by taking into account the contract in its entirety, the status of the parties, the circumstances of the conclusion of the contract and any change in those circumstances, as well as other relevant factors. The statutory provisions concerning the modification of contracts are mandatory.

Contracts of adhesion are addressed in ICC Article 167. These are defined as contracts under which essential goods or services are provided, which are only offered by a limited number of suppliers. The article provides that the court has the power to amend "unconscionable clauses" or to relieve an abused party from performance.

#### 8) Assignment of Rights

Provisions governing assignments of rights are set out in Articles 362–374 of the ICC. Rights may be assigned without any formalities, unless statutory regulations or contractual agreements provide otherwise. Assignments of rights must be compatible with the legal nature of the rights assigned. Assignments become enforceable against the debtor (the party who owes the obligations) or a third party upon formal delivery of the deed evidencing the assignment to the debtor, or upon the debtor's acceptance of the assignment. The acceptance of an assignment must be dated. Assignment does not affect the debtor's right to raise against the assignee all objections that existed at the time of the assignment.

A bailiff or similar official must formally deliver the instrument of assignment to the place of residence or the business address of the debtor. The right is considered assigned in its state at the moment of assignment, along with all accessory rights (security interests), and the assignee is entitled to all proceeds of the assigned rights. Proceeds include interest from the date of the assignment as well as proceeds from recurrent claims and claims in arrears. Unless the parties agree otherwise, the assignor's liability towards the assignee is limited to guaranteeing the existence of the assigned rights, not the solvency of the debtor.

#### 9) Damages

Where a party to a contract does not fulfill his contractual duties, the injured party may sue for damages whether he rescinded the contract or not. Generally, contractual damages are assessed in accordance with the provisions of the contract, with the aim of

placing the injured party in the same financial position he would have been if the contract had been performed.

Unless otherwise agreed, the party in breach is liable to compensate the injured party for all damages (direct and indirect) suffered as a result of the breach. The parties to a contract may, however, agree on limitations of liability in the event of a breach of contract, by excluding, for instance, indirect damages. The term is sometimes used synonymously with remote damages such as loss of profits. In case of a contract, the breaching party's liability is limited by the principle of predictability (i.e., only foreseeable loss may give rise to liability). Any limitation of liability arising from negligence, willful misconduct, or tort is void.

Damages may include the lost profits of the creditor, provided that it is a natural result of the non-performance or delay in performance of the obligation. Liquidated damages fixed by agreement are not due if the debtor is able to establish that the creditor has suffered no loss, and a court may reduce the amount agreed upon if it is grossly excessive or if the principal obligation has been partly performed.

#### 10) Force Majeure

Under Article 168 ICC, damages for non-performance become payable if the debtor fails to perform its obligations, unless the debtor is able to establish that the impossibility of performance arose from a cause beyond his control. The same principle applies in cases of delay in performance.

#### 11) Interest

The statutory delay interest rate under Iraqi law is fixed at 5% for commercial matters and 4% for civil matters as provided in ICC Article 171. According to ICC Article 172, a higher interest rate of up to 7% may be agreed contractually.

According to Article 171 of the ICC, unless otherwise agreed between the parties, delay interest is payable only from the date of submission of a "judicial claim" for the amount due with interest.

According to Article 174 of the ICC, no compound interest may accrue otherwise than in accordance with commercial practice, and, in any event, the total interest claimed may not exceed the amount of the principal. The law does not specify commercial interest on current accounts and leaves the rates to be determined by commercial custom (Article 175 of the ICC).

#### 12) Third-Party Authorization (Agency)

The law also provides that a person holding a position under an employment or other contract is deemed to have the authority to contract on behalf of another if law or general custom implies the holder of that position to have such authority.

The ICC also contains provisions concerning:

- situations in which a representative acted against the instructions of the principal;
- revocation of agency;
- the authority of a representative where the principal is placed under guardianship or declared bankrupt; and
- third-party rights to damages from representatives exceeding their authority to act on behalf of their principals.

#### 13) Contracts of Sale

Contracts of sale are regulated in part by the ICC (Articles 506–600), and in part by the Commercial Code (further discussed below). If the object of sale is individually ascertained and movable, transfer of title becomes effective once a sales contract is concluded, provided the parties did not agree on the retention of title. The ICC rules governing sales contracts include a number of concepts which are found only in Islamic law and aim to ensure the full knowledge and equivalence of benefits between the parties to contracts of sale. Delivery of the object purchased and payment must take place at the same time, unless otherwise agreed by the parties.

Iraq is a signatory of the United Nations Convention on Contracts for the International Sale of Goods (CISG–UN Sales Convention). The Convention applies exclusively to agreements for international sales of goods, but not to consumer purchase contracts. Any sale agreement concluded between nationals of the signatory states (e.g., a contract for the sale of goods to be exported from Germany to Iraq) is automatically governed by the Convention, unless the parties expressly exclude its application or choose a different law to govern the contract.

#### 14) Retention of Title

The parties to a contract may agree, in accordance with ICC Article 534, that ownership will not pass until the full purchase price is paid, even if the object purchased has been delivered to the purchaser. Article 534 also provides that if the price is payable by installments, the parties may agree that the vendor may retain a part of the price as damages, should the sale be cancelled for non payment of all the installments.

#### 15) Warranty

Iraqi law contains provisions dealing with warranties both of title and of quality. The law provides for claims for damages (in case ownership did not pass), and for the reduction of the purchase price, or rescission of the sale, if the sold object has a material defect. According to ICC Article 570, a warranty claim must be made within six months from the delivery of the object sold, unless this period was extended by the parties. According to ICC Article 568, the contracting parties may, by agreement, increase, restrict or dispense with the warranty. Nevertheless, any clause dispensing with or restricting the warranty is void if the vendor intentionally and fraudulently conceals defects in the object sold. The purchaser must examine the object of a purchase and notify the seller of any defects within a ‘reasonable’ period.

#### 16) Frustration

Iraqi Civil Law recognizes the doctrine of frustration for “unforeseen accidents” (*cas fortuits*). This means that if, as a result of unforeseen events, the performance of contractual obligations becomes excessively onerous, if not impossible, so as to threaten the debtor with heavy losses, the judge may, depending on the circumstances and after balancing the interests of both parties, reduce the excessive obligation to a reasonable one. Any contrary agreement to exclude this doctrine is null and void.

#### 17) Limitation Period

According to the ICC, actions based on civil obligations are time-barred after 15 years, unless specifically provided otherwise. However, claims of merchants for deliveries made to individuals are time barred after one year. The same applies to claims arising from the services of certain professionals, for example lawyers and engineers.

ICC Article 430 provides that recurring claims arising under contracts for the performance of continuing obligations, such as the payment of rent, wages, pensions and interest on loans, become time-barred after five years.

The Iraqi courts have, in a number of cases, applied the 15-year limitation period to cases of recurring claims where the transaction was concluded in writing. Claims for unjust enrichment are time-barred after three years (ICC Article 244).

According to ICC Article 442, the parties to a contract must invoke the limitation period as the court is not obliged to consider it *ex officio*. ICC Article 442 implies that prescription is not a real cause for the termination of an obligation, but merely a means of barring a claim.

The filing of a lawsuit interrupts the limitation period, subject to the following:

- the application to the court must incorporate the claim arising from the right to which prescription applies;
- filing a lawsuit interrupts a prescription period, even if the court finds that it has no jurisdiction, provided that the claimant's reason for invoking the jurisdiction of the court is an excusable mistake. An application to an appropriate arbitration committee or tribunal has the same effect as filing a lawsuit;
- an application to the court interrupts the prescription period from the date of the filing of the lawsuit and payment of the court fees, even before a notification is sent to the respondent or the defendant.

According to ICC Article 438, the debtor's acknowledgement of a debt interrupts the prescription period. Interruption of a prescription period results in the commencement of a new period of equal length.

See also our comments on decennial liability in Chapter V, Section (2) and Chapter IV Section 4(15) on warranties, and Section 4(18).b in the same Chapter on negotiable instruments and bills of exchange.

## 18) Termination of Contracts

As a general rule, a party may terminate a contract by filing a claim for termination with the competent court. However, contracts may be terminated for good cause if the contract specifically provides for extrajudicial termination. The consent of the creditor is required for any transfer of obligation.

### b. Commercial Code

The Iraqi Commercial Code, Law No. 30 of 1984, sets out provisions governing traders, including requirements for commercial registration, company books and records, trade names, banking transactions, international sales, letters of credit, and bank guarantees (the "Commercial Code"). The Commercial Code does not contain provisions related to

bankruptcy. It deals with sales transactions in detail, extensively addressing various forms of sale. As for provisions related to bankruptcy, however, the Commercial Code refers to chapter 5 of the otherwise repealed old Commercial Code, Law No. 149 of 1970.

The Commercial Code is made up of six main sections. The first section outlines the purpose of the law and the scope of its application. The second section defines commercial transactions and lays down the provisions governing the duties of traders. The law states that any person may engage in commerce, provided he first obtains a special license from the relevant authorities. In particular, the law addresses the obligation of traders to maintain commercial books, sets out the rules applying to trade names and the provisions governing the commercial register.

The third section of the Commercial Code governs negotiable instruments, which form the core of Iraqi commercial law. The first two chapters address bills of exchange and promissory notes, which represent the majority of negotiable instruments. The first chapter contains provisions regarding form, transfer, consideration, acceptance, payment and recourse in connection with bills of exchange. Limitation periods reflect those contained in most other Arab commercial codes, namely three years from the date of maturity for actions against the acceptor, and one year from the date of protest for actions against the drawer or endorser. The third chapter deals with the law applicable to cheques. As under other Arab laws, issuing a cheque not covered by sufficient funds constitutes a penal offence. The prescription period for actions against the issuer of an unfunded cheque is six months from the date of its issue.

The fourth section of the Commercial Code is divided into two main parts, the first dealing with commercial contracts and the second with banking operations. The first chapter sets forth the provisions governing commercial mortgages and charges which apply to movables over which security is given for a commercial debt, i.e., a debt between two parties of whom at least one is a trader and, as an exception to the provisions on rights in rem in the Civil Code, do not require possession by the pledgee. The second chapter governs deposits of goods in public depositories. The third chapter addresses current accounts, which are



not limited to current accounts with banks. In a current account, in the sense of the Iraqi Commercial Code, the parties agree to settle debts arising between them with reciprocal and overlapping payments and to replace the settlement of each debt by a final settlement, resulting in the final balance of the accounts after they are closed. The remaining chapters in the third section of the Commercial Code deal with banking operations. These chapters concern money deposits with banks, rental of safe deposit boxes, banking transfers, bank loans, documentary credits, discounts and letters of guarantee.

The fifth section of the Commercial Code deals with international sales, defining standard incoterms such as FOB, CIF, C&F, FAS, EXW, FOB Airport, FOR and FOT, and Delivered Ex Ship. The sixth and final section contains concluding provisions.

## V. CONSTRUCTION

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Iraq needs significant reconstruction work. Baghdad alone, which some 29% of the population calls home, needs major restoration, rehabilitation, and development, both to provide for a modern capital for the country and to enable the stock of buildings used for government and commerce to operate in accordance with modern standards. Designers, planners, developers, and specialist engineers working with the national, provincial, and city governments will all be able to take advantage of the numerous opportunities to remake Baghdad into a modern and efficiently functioning city.

Those with knowledge of, and access to, new technologies in building and civil engineering will be able to contribute to the design and construction of the most modern developments of the kind to be found elsewhere in the Middle East. The opportunities for the private sector to participate are almost limitless and include city planning, all manner of transportation infrastructure, convention centres, hotels, municipal buildings, and cultural and recreation facilities. Shopping malls and retail service clusters are also needed.

### 1. Contracts for Works

Construction contracts in Iraq are governed by Articles 864-890 of the ICC. These provisions provide the framework for the main requirements for the “*muqawala*” (contract for works). Any construction or engineering contract governed by Iraqi law must therefore comply with these twenty-five articles, irrespective of what the parties agree in their contract. Article 864 defines contracts for works as contracts in which one of the contracting parties undertakes to perform certain works and/or services for a consideration that the other contracting party undertakes to provide.

A main contractor has three principal obligations arising from a construction contract under Iraqi law: (i) performance of the work assigned to him in accordance with the provisions of the construction contract between the parties, (ii) delivery of the works on completion, and (iii) liability to guarantee the works upon delivery.

## 2. Decennial Liability

One of the most important obligations of a designer and/or contractor under a *muqawala* contract is what is commonly known as ‘decennial liability.’ This is a joint liability imposed on the contractor and the designer for certain building defects. According to ICC Article 870, during a ten-year period from completion and delivery of the works, the designer and the contractor are jointly and severally liable for the total or partial collapse of any building or other fixed structure erected by them, even if the collapse is due to the condition of the site, or if the employer (who may be either the owner of the building or the person or entity commissioning the works) knowingly consented to the construction of a defective building. The liability includes damage resulting from inadequate ground conditions and damage resulting from inherently inadequate designs to which the employer has agreed. The parties to *muqawala* cannot agree to exclude or limit any obligations of decennial liability (Article 870).

If the designer’s role does not involve supervision and relates only to the preparation of drawings, he will only be liable for defects resulting from those drawings but not for defects as a result of the method used to implement the design (Article 871(1)).

If the employer has contracted with both the contractor and the designer, their liability will be joint and several, even if the defect or collapse was caused by only one of them (Article 871(2)). Neither the employer nor the contractor would be liable if it can be established that the defects resulted from causes that could not have been foreseen at the time of the construction (Articles 871 and 872).

## 3. Termination

A unilateral termination by the employer under the construction contract may also be permitted if so agreed by the parties. However, the employer must pay compensation to the contractor for all the expenses that the contractor has

incurred and for that part of the contract that has been performed, as well as for the contractor’s loss of profit in respect of the work which he will have been prevented from undertaking. The parties may also obtain a court order to terminate the contract. Iraqi courts normally order termination of a *muqawala* when the contractor is in breach of a contractual obligation and fails to remedy the breach (e.g., defective work) even after being served with notice under the contract. The court may also order that the contract be terminated if the contractor is in breach of contract by being in delay with no realistic prospect of completing the work by the contractual completion date.

## 4. Liquidated Damages

According to Article 170 of the Iraqi Civil Code, the parties may agree, either in the original contract or in a subsequent agreement, on liquidated damages for their respective contractual liability. The parties can agree the compensation to be paid by the parties for delay in performance and other breaches of contractual obligations. However, the parties cannot agree on limiting their liability for damages in tort, including those arising from gross negligence or fraud.

Article 170 differentiates between the debtor (the party who owes the obligation) and creditor (the party to whom the obligation is owed) in terms of their ability to increase or decrease the contractual compensation. If the loss exceeds the amount fixed under the contract, the creditor may not claim an increased sum, unless the creditor establishes that the debtor’s breach is due to the debtor’s fraudulent behavior or gross negligence. However, the same Article 170 allows the debtor under a contractual compensation obligation to request a court to reduce—and even excuse the debtor from—the obligation to pay a contractual compensation if the debtor establishes that the compensation stipulated by the contract “grossly exceeds” the loss sustained by the creditor or that the loss suffered by the creditor is not serious enough to justify the awarding of contractual compensation. In effect, liquidated damages provisions are always prone to be challenged by the debtor on the grounds that they exceed fair compensation.

## VI. FOREIGN INVESTMENT

On October 15, 2006, the Presidency Council issued a new Investment Law (Law No. 13/2006), expressly repealing CPA Order No. 39 and the Arab Investment Law No. 62/ 2002.

The Investment Law has been recently amended by Law No. 2/2010.

### 1. Aims of the New Investment Law

The new Investment Law's purposes are, according to its Article 2, the following:

- promotion of foreign and Iraqi investment in Iraq;
- transfer of modern technologies;
- diversification of Iraq's production and service base;
- enhancing Iraq's competitiveness in the local and foreign markets;
- development of human resources and provision of work opportunities for Iraqis;
- protection of the rights and properties of investors; and
- increase of exports and improvement of the balance of payments and the balance of trade of Iraq.

These aims should be achieved by granting benefits and guarantees to projects covered by the Law.

### 2. Investment Authority

According to Article 4 of the new Investment Law, the National Investment Commission will be responsible for the implementation of the Law. In particular, the Investment Authority will be responsible for:

- drawing up national investment policies and monitoring the implementation of these policies;
- building confidence in the investment environment, identifying investment opportunities, and promoting and stimulating investment;
- simplifying procedures for registration, issuing investment licenses, and following up on existing projects and giving them priority in processing with the official entities;

- establishing a "one-stop-shop" for issuing investment licenses and obtaining all required approvals of other authorities;
- providing advice, information, and data to investors;
- setting forth and implementing programs to promote investment in different areas of Iraq in order to attract investors;
- allocating the land required and renting properties out for establishing investment projects;
- establishing secure and free investment areas; and
- encouraging Iraqi investors by providing loans and financial facilities.

The regions and governorates not organized in a region may form investment authorities in their areas. These regional authorities may grant investment licenses, draw up investment plans, promote investment and open branches in their areas within the provisions of the Law and in consultation with the National Investment Commission.

### 3. Investment Projects

Contrary to many other investment laws in the region, the new Investment Law does not contain a list of activities eligible for its benefits and guarantees. In contrast, Article 29 of the Law provides that all investments except for those in oil and gas extraction and production and banks and insurance companies may be granted an investment license. The insurance industry is covered by a different law, the law regulating insurance issued by order No. 10/2005, which permits foreign participation.

In addition, Article 7 of the Investment Law provides that the Council of Ministers may issue regulations specifying minimum investment amounts.

### 4. Benefits and Guarantees

According to the Investment Law (as amended in 2010), an investment license will grant the investor the following benefits:

- equal treatment with Iraqi nationals;
- ability to acquire land, subject to the consent of and conditions imposed by the National Investment Commission, for the exclusive purpose of housing projects to house Iraqi nationals;
- repatriation of capital and profits;

- ability to hold shares and bonds of companies listed in the Iraqi Stock Exchange;
- ability to lease land for a period of up to 50 years;
- ability to insure the investment project with any foreign or national insurance company; and
- ability to open accounts in Iraqi or foreign currency or both at a bank inside or outside Iraq for the licensed project.

In addition, the licensed investment will enjoy the following guarantees:

- employment of foreign workers, provided that it is not possible to employ an Iraqi national with the required qualifications and capable of performing the same task;
- right of residency in Iraq;
- no seizure or nationalization of the investment project in whole or in part; and
- non-Iraqi technicians and administration employees working in any project may transfer their salaries and compensations outside Iraq.

Article 13 of the Law provides that any amendment to these provisions will not have retroactive effect.

According to Article 15 of the new Investment Law, the licensed investment project may benefit from an exemption from taxes and fees for a period of ten years as of the date of commencing commercial operations, subject to the relevant development plan approved by the Council of Ministers.

The National Investment Commission has the right to increase the duration of the exemption in proportion to the participation of an Iraqi investor in the project, to a maximum of 15 years if the Iraqi investor's share in the project exceeds 50%.

In addition, a licensed investment project is exempt from:

- import duties on any item imported for the purposes of the investment project for three years as of the date of the grant of the investment license;

- import duties on any item imported for the purposes of expanding, developing or modernizing the investment project for three years as of the date of the notification of the Investment Authority by the investor of the intended expansion; and
- import duties on all spare parts imported for the purposes of the project, if the value of these parts does not exceed 20% of the fixed assets value.

Hotels, tourist institutions, hospitals, health institutions, rehabilitation centers and educational and scientific organizations may be granted additional exemptions from duties and taxes on their imports of furniture, furnishings and requisites for renewing and updating purposes.

## 5. Investor's Obligations

Article 14 of the new Investment Law provides that the investor must:

- notify the National Investment Commission immediately after the installation and equipment of the fixed assets for the purposes of the project and the date of the beginning of commercial activity;
- keep proper records audited by a certified accountant in Iraq in accordance with the laws of Iraq;
- provide an economic and technical feasibility study for the project and any information, data or documents required by the National Investment Commission regarding the budget of the project and the progress made in its execution;
- keep records of the project's duty-free imported materials, specifying the depreciation periods of these materials;
- protect the safety of the environment, adhere to the valid quality control systems and comply with the laws related to security, health, public order and values of the Iraqi society;
- comply with the Iraqi laws in force regarding salaries, vacations, work hours and conditions;
- comply with the time schedule for the execution of the investment project as submitted to the National Investment Commission; and
- employ, on a priority basis, Iraqi workers, and train and rehabilitate Iraqi employees and increase their efficiency, skill and capabilities.

## 6. Procedures for Obtaining Investment Licenses

The application for an investment license must contain a request form prepared by the Investment Authority, a confirmation letter regarding the investor's financial situation by an accredited bank, a list of projects performed by the investor inside or outside Iraq, details of the investment project and its economic feasibility, and a timetable for completing the project.

The Investment Authority reviews the application and, in case of approval, requests all other concerned authorities to issue the required licenses and permits. These authorities must decide on the request within 15 days. In case of disagreement between the National Investment Commission and other concerned authorities, the dispute must be brought before the Prime Minister for settlement.

## 7. Dispute Resolution

The investment law contains a number of provisions on dispute resolution mechanisms and the applicable law, e.g., in case of disputes between the investor and the Investment Authority, between the investor and its employees, or different authorities involved in the licensing process. In many instances, the law expressly allows for Iraqi and international arbitration.

## 8. Investment Treaties

Iraq is not a contracting state of the International Convention on the Settlement of Investment Disputes (ICSID). Talks with a number of countries over a bilateral investment and trade agreement are still ongoing.

# VII. FOREIGN INVESTMENT IN KURDISTAN

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In July 2006, the President of the Kurdistan Region issued Law No. 4 of 2006 on Investment in the Kurdistan Region. In view of the entry into force of the Federal Investment Law No. 13/2006, which provides a legal framework for all regions of Iraq and further contemplates regional investment authorities, it remains to be seen how Law No. 4 of the Kurdistan Region will be applied.

The main features of this law are the following:

### 1. Administration

Investment under the Law is administered by the Investment Board in the Region, located in Erbil, which is responsible for approving investment projects. Supervision is vested with the Supreme Council for Investment, which consists of the Prime Minister and a number of Ministers of the Kurdistan Region and the Chairman of the Investment Board.

### 2. Areas of Investment

According to Article 2 of the Law, the provisions of the Law apply to projects in any of the following sectors:

- manufacturing industries, electric power and related services;
- agriculture, whether crop-growing farms or animal husbandry, forestry and related services;
- hotels, tourist and recreational projects, fun-fairs, and amusement parks;
- health and environment;
- science and technology research, and information technology;
- modern communication and transport;
- banks, insurance companies, and other financial institutions;
- infrastructure projects, including construction, reconstruction and housing projects, roads and bridges, railways, airports, irrigation and dams;
- free zones, modern commercial markets, and relevant advisory services;

- education at all levels, within the framework of the educational policy of the Region; and
- any project in any other industry which the Supreme Council of Investment deems to be subject to the Law.

### 3. Treatment of Foreign Investors

Article 3 of the Law provides that foreign investors and foreign capital must be treated in the same way as national investors and national capital. A foreign investor has the right to own all the capital of any project that he establishes in the Kurdistan Region under the Law.

### 4. Allocation of Land

Any project approved by the Investment Board may be allocated plots of land required for the project by way of lease or usufruct. In specific circumstances, in particular if the nature and importance of the project and the public interest so require, foreign investors may acquire ownership of plots of land that are allocated to strategic projects.

### 5. Incentives

Any project licensed under the Investment Law may benefit from the following:

- exemption from all taxes for 10 years;
- exemption from customs and taxes for equipment and machinery imported for the project within two years from the start of the project;
- exemption from customs and taxes for spare parts imported for the project, provided that their value does not exceed 15% of the price of equipment and machinery;
- exemption from taxes for equipment, machines and tools required to expand, develop or upgrade/modernize the project; and
- exemption from customs duties for raw materials imported for production.

Projects established in under-developed areas in Kurdistan, joint-ventures established by national and foreign investors, and specific projects such as hotels, hospitals, tourist resorts, universities and schools may be granted additional exemptions.

### 6. Guarantees

In addition, projects approved under the Investment Law benefit from certain guarantees, including guarantees that:

- the investor may employ local and foreign staff needed for the project;
- the foreign investor may transfer the profits and interests of his capital abroad;
- the project's non-Iraqi members of staff, and their agents outside the Kurdistan Region, may transfer their wages abroad;
- the foreign investor may repatriate his capital back abroad upon winding up or disposal of the project;
- the foreign investor may transfer his investment totally or partly to another foreign investor or to a national investor, or may assign the project to his partner with the approval of the Board; the new investor then replaces the previous investor with regard to rights and obligations arising from the project; and
- the foreign investor may open bank accounts in national currency, in foreign currency, or in both, with banks located inside or outside the Kurdistan Region.

### 7. Licensing Procedures

In order to obtain the benefits and guarantees provided by the Law, the investor must have a license issued by the Investment Board to set up the project. To obtain a license, the investor must file an application with the Investment Board and the Investment Board must decide whether to issue a license within thirty days from the date the technical, legal and economic conditions and of the Investment Law are fulfilled. As part of the approval process, the Investment Board must consult the competent authorities, and these authorities must provide their viewpoint within thirty days from the date of the Investment Board's referral of the application to them; failure to reply is deemed approval, and in the event of rejection, the decision will have to be justified.

When an application is rejected, the applicant may raise an objection to the president of the Supreme Council of Investment within fifteen days from the date of notification of the rejection decision. The President of the Supreme Council of Investment will have to determine whether the objection is valid within thirty days, and his decision on this matter shall be conclusive.

## 8. Dispute Settlement

According to Article 17 of the Law, investment disputes must be settled in accordance with the contract concluded between both parties, and if there is no clause in the contract in this regard, the disputes should be settled amicably between both parties. If they fail to reach an amicable settlement, they may refer the matter to arbitration in accordance with the laws applicable in the Kurdistan Region, or in accordance with the rules of dispute settlement mentioned in any of the mutual or international conventions of which Iraq is a member (see XVIII below for details).

## VIII. COMMERCIAL AGENCY

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Iraqi commercial agency law has always been more liberal than that of many other Arab states. For instance, there are no provisions requiring exclusivity or expressly requiring compensation for termination or non-renewal of agencies or distributorships, and the provisions governing registration and de-registration are less strict than in some Gulf States.

### 1. Background

The Commercial Agency Law (Law No. 51/2000, replacing Laws No. 26/1994 and No. 11/1983) is the principal law for the regulation of commercial agency and distribution in Iraq. Following the enactment of the Coalition Provisional Authority (“CPA”) Order No. 39 in 2003, and the subsequent Ministerial Instruction No. 149/2004 on the Registration of Branches and Representative Offices, there have been some uncertainties about the status of the Commercial Agency Law. Section 1(5) of the Ministerial Instruction provides that, by virtue of CPA Order No. 39, the Law No. 51 of 2000 on Commercial Agency is “nullified.” This is despite the fact that Order No. 39, which dealt with general issues concerning foreign direct investment in Iraq, expressly stated that it only replaced “all existing foreign investment law.” It did not contain any provision suggesting that the Commercial Agency Law no longer applies. However, with the repeal of CPA Order 39, it is now commonly accepted that Law No. 51/2000 is still in force and is applied in practice.

Iraqi law does not contain any provisions concerning the substantive law of commercial agency and distribution. The Iraqi Civil Code (ICC) contains only some general provisions on agency (Articles 927 to 949).

### 2. Requirements for Agents/Distributors

According to current Iraqi law, foreign suppliers are not required to appoint commercial agents or distributors when exporting to Iraq, either to the private or public sectors. Import activities are not restricted to registered agents.

According to Article 14 of the Commercial Agency Law, the Iraqi authorities and the public sector must avoid the use of commercial agents by contracting directly with foreign suppliers.

Since the appointment of commercial agents is not a requirement, a non-Iraqi concern may supply goods directly to its customers in Iraq.

### 3. Licensing and Registration

In order to be allowed to act as a commercial agent or distributor, an agent/distributor must register and obtain a license in the form of a certificate issued by the Commercial Registrar. In practice, however, registration is often not effected and currently the Iraqi authorities appear not to enforce this provision in strict accordance with the law.

#### a. Applicants

According to the Commercial Agency Law, the requirements for obtaining an agency license are that the agent/distributor should be:

- resident in Iraq;
- at least 25 years of age; and
- a member of one of Iraq's Chambers of Commerce.

An agent/distributor also must:

- fulfill certain requirements, such as not having been convicted of certain offences or crimes;
- carry out the commercial agency within Iraq; and
- not be an employee in the public sector.

CPA Order No. 39 allowed non-Iraqi nationals to act as agents. Moreover, it was not a requirement for legal entities operating as commercial agents to be wholly owned by Iraqi nationals. However, this is no longer the case. At present, only Iraqi nationals may act as commercial representatives. In addition, where a company is going to act as a commercial representative, it must have 100% Iraqi ownership.

#### b. Procedure

The documents establishing compliance with the above requirements must be submitted to the Commercial Registrar with the application for a license. The Commercial Registrar will inform the applicant of the decision within 30 days following receipt of the application, and the decision is subject to appeal to the Minister of Trade within 30 days. The decision of the Minister of Trade is final. Commercial agents may apply for registration, on the grant of a license, by submitting a commercial agency contract.

The Commercial Registrar will revoke a license if its requirements are no longer fulfilled, or in the event of a commercial agency contract not being submitted to the licensing Registrar within 90 days after issue of the license. The Minister of Trade may be called upon to review the decision. Unlike in other countries of the region, amicable termination and de-registration of a former agency is not a prerequisite for the registration of a new agency agreement.

### 4. Exclusivity and Commission

Neither the Commercial Agency Law nor the ICC contains any provisions concerning commission and exclusivity or non-exclusivity. Accordingly, these questions are left to the agreement of the parties.

It is advisable that all agency or distribution agreements be either non exclusive or exclusive only if stated sales targets are achieved and, where a foreign supplier has a range of products, consideration should be given to limiting the scope of the agreement to specific products, at least for a trial period.



## 5. Termination

Article 946 of the ICC provides that an agency terminates when one of the parties dies, when the work which is the subject of the agency agreement is completed or when the period of the agency has expired.

Apart from these legal reasons for the termination of the contract, the question of termination is also left to the agreement of the parties and should be regulated by the contract.

Whenever possible, contracts should fix sales targets to enable termination to take place on the basis of failure to perform. Contracts should also be for a fixed period, or subject to termination without cause at the end of a fixed notice period.

## 6. Compensation

Article 947 of the ICC grants agents the right to claim compensation if they suffer damage as a result of termination at an “inopportune moment” and “without just cause.” This provision, together with the general principle of good faith, sometimes serves as a basis for compensation awarded to agents and distributors on termination.

Commercial agents have no right to compensation under Iraqi law if the principal refuses to renew a fixed term contract on its expiry. However, as a matter of practice it is advisable for contracts to provide expressly that the agent does not have a right to compensation in the event of non renewal of the agreement.

# IX. SCIENTIFIC OFFICES FOR PHARMACEUTICALS

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Scientific offices (or “Scientific Drug Bureaus”, as they are commonly known in Iraq) which are licensed under the provisions of Revolutionary Command Council Resolution No. 60 of 1998 are exempted from the application of the provisions of law No. 51/2000 on Commercial Agency (Article 22.2 of that law).

## 1. Licensing

These scientific offices must obtain a license. Licenses are granted to pharmacists registered with the Pharmacists’ Union after payment of the license fee. The licensee and the director responsible for a scientific bureau must be Iraqi nationals and fulfill a number of requirements. The license is renewable annually, and the renewal fee will be doubled in case of delay.

## 2. Activities of Scientific Offices

Scientific offices market medical products of foreign companies. This activity includes providing medical centers, pharmacies and private hospitals with information concerning pharmaceutical preparations and distributing publications and scientific papers as well as participating in conferences on pharmaceutical and medical topics. Scientific offices must also register the manufacturing companies, the medicines, and the pharmaceutical preparations with the concerned Ministry. Subject to the applicable instructions and guidelines, the offices may also import and market medicines, medical appliances, and raw materials for the private sector.

Scientific offices are responsible for following up on the activities of manufacturing companies that have representation in Iraq with the relevant governmental department. It is not permissible for representatives of supply companies to have any relationship with government departments other than through a scientific office. An office is obliged to provide the Pharmacists’ Union with details of its activities, including its expenses and revenues from its activities.

## X. COMPANIES LAW

Companies are governed by Law No. 21/1997 (the “Companies Law”) and by Law No. 22/1997 (the “Public Companies Law”). CPA Order No. 64 amended extensive sections of Law No. 21/1997.

The Companies Law recognizes two types of companies: (1) private sector companies, in which the public sector does not participate or its participation does not exceed 25% of the capital; and (2) mixed companies, jointly established by private persons and public sector entities with the public sector entity holding at least 25% of the share capital.

Joint companies may only take the form of limited liability companies (“LLC”) or joint stock companies.

Private companies may take the form of an LLC, joint stock companies, general partnerships, individual enterprises or simple companies. The Companies Law is the principal body of legislation governing companies.

### 1. Foreign Participation

Article 12 of the Companies Law restricted participation in Iraqi companies to Iraqi nationals. CPA Order No. 64 repealed this provision, which was modified later by the Foreign Investment Law. Subject to limitations under special laws, foreign investors now have the right to establish or participate in Iraqi companies under the provisions of both the Foreign Investment Law and the Companies Law.

### 2. Limited Liability Company

LLCs may either be privately owned or jointly owned with one or more public sector entities. Some of the important requirements for the establishment of LLCs and their formation under the Companies Law are explained below.

#### a. Memorandum of Association

The memorandum of association of an LLC is its governing document and should set out the following:

- Name and form of the company, and its purpose;
- Head office address in Iraq;

- Name and nationality of the founder(s); and
- Share capital, amount of the contributions in cash and in kind, description of the contributions in kind as approved by the founders and names of the contributors.

#### b. Minimum Capital

The minimum capital of an LLC is IQD1,000,000. The nominal value of each share is one IQD. The Law prohibits the issue of shares with a higher or lower value. The share capital must be fully paid when the company is established. Cash contributions must be paid into an account with a bank authorized to operate in Iraq, and shall remain in deposit until documents showing that the establishment formalities have been completed are presented to the bank. Contributions in kind must be recorded in the memorandum of association, and the value must be approved by all founders.

Under the Companies Law, any public subscription of shares in an LLC is prohibited.

#### c. Shares and Shareholders

An LLC may not have more than twenty-five shareholders who may be either legal entities or individuals. An LLC may be established by a single shareholder.

The Companies Law does not allow for more than one class of shares. The share capital of an LLC is divided into indivisible shares of a uniform nominal value. Transfers of shares are permitted, subject to a pre-emption right in favor of the other shareholders (see below).

#### d. The Certificate of Establishment

If the Registrar of Companies is satisfied with an application for registration, it issues a Certificate of Establishment. A company comes into existence as a corporate body on the date that the Certificate of Establishment is issued.

**e. Management**

An LLC must have one manager. There is no requirement for managers to be Iraqi nationals or residents of Iraq. However, he must have the right to live and work in Iraq.

The manager is appointed by the general assembly and can only be removed by the general assembly.

The powers, salary and bonuses of the manager are determined by the general assembly. A manager's authority includes the power to conduct all transactions and business relating to the performance of the company's normal corporate activity. According to the Companies Law, the scope of the power of the manager of an LLC is the same as that of the Board of Directors of a joint stock company, subject to the decisions of the general assembly.

**f. General Assembly**

The shareholders meeting (general assembly) is the supreme body of the LLC. The general assembly may deal with any matter that is in the LLC's interest. Shareholders determine remuneration and authorities of the manager and approve the LLC's budget, final accounts and annual plan. The general assembly must meet at least every six months.

**g. Transfer of Shares**

In theory, shares have to be transferred before a special committee formed for this purpose. The committee is composed of the parties to the share purchase contract or their representatives and a representative of the company appointed by the manager.

For the share transfer to be valid, parties must sign a share purchase agreement whereby the purchaser undertakes to comply with the LLC's Memorandum of Association. At the time of signing of the agreement, the parties must be either physically present or represented by a power of attorney, which has to be legalized and authenticated if granted outside Iraq.

Corporate approvals of the seller and the purchaser are also necessary for the transfer of shares. In the case of foreign purchasers, these approvals must be legalized and authenticated.

When approved by the committee, the transfer agreement is registered in the share transfer register of the company which both parties and the representative of the company should sign. Unless this procedure is followed, the sale is void.

Once the transfer is registered, the Companies Registry issues certified copies of the amended constitutional documents indicating the new shareholder and the minutes of the general assembly of the LLC.

It must be noted that the Companies Law contains provisions regarding the pre-emption right of the shareholders. According to these provisions, shares must be offered first to the other shareholders through the manager at the price offered by a third party. If no shareholder expresses an intention to buy the offered shares within 30 days, the seller is free to sell to third parties. If more than one shareholder expresses willingness to purchase the shares, they are sold to them in proportion of their participation in the capital of the company.

**h. Liability of Partners**

The liability of LLC shareholders towards third parties is limited to the nominal value of their shareholding.

The contributor of an in-kind contribution is liable to third parties for deficiencies in the estimated value of the in-kind contribution and should repay the company in cash. The founders are jointly liable for the payment of the deficiencies.

**i. Protection of Minority Rights**

The Companies Law confers certain rights to minority shareholders to protect them from abuse at the hands of the controllers of the company. The following is a summary of those rights:

- shareholders holding more than 10% of the share capital may propose items to be included in the agenda of the general

assembly. An item thus proposed would have to be approved and passed by the requisite majority of shareholders present at the meeting;

- minority shareholders may ask the company's auditor or lawyer to conduct an inspection of the company on the condition that there are reasonable grounds to believe that there has been a violation of the Companies Law, the company's constitution or the resolutions of the general assembly;
- shareholders who hold at least 5% of the share capital have a right to object to a resolution of the general assembly by application to the Companies Registry within seven days of those resolutions being passed, if they have reason to believe that the resolution is contrary to the Companies Law or in violation of public policy in Iraq.

### 3. Joint Stock Company

A joint stock company (JSC) is a company whose capital is divided into shares and the liability of whose shareholders is limited to the par value of the shares respectively held by them. However, unlike LLCs, part of the shares of a JSC is offered to the public for subscription. In addition, the Certificate of Establishment is only issued after the public subscription is completed.

A company offering insurance services must be in the form of a JSC. This does not apply to banks, where it is only required that they are incorporated "as a juridical person."

#### a. Articles of Association

The Companies Law does not provide model articles of association, but these must include the following information:

- name and form of the company, and its purpose;
- head office address in Iraq;
- name and nationality of the founders;
- share capital, amount of the contributions in cash and in-kind, description of the contributions, the value of in-kind contributions as approved by the founders and names of the contributors; and
- number of the elected members of the board of directors.

#### b. Minimum Capital and Shareholders

Joint stock companies must have a minimum capital of IQD2,000,000. The clerk of the Commercial Register may order the founders to increase the capital to an amount sufficient for the corporate purpose. The capital of a joint stock company is divided into shares of equal value. A joint stock company must have at least five shareholders, whose liability is limited to the amount payable on their shares.

At least some part of the shares (currently in practice 40% of the shares) must be offered for public subscription.

Cash contributions must be paid into an account in a bank authorized to operate in Iraq, which is responsible for verifying the accuracy of the subscriptions. The funds are frozen in the account until documents evidencing completion of the establishment formalities are presented to the bank.

#### c. Shares

In principle, all shares grant their owners equal rights. A joint stock company may only issue nominative shares. Bearer shares and preferred shares are not recognized by the law.

When a joint stock company is established and has commenced its activities, it may issue new shares at a price exceeding the nominal value. The general assembly of the company, on the recommendation of the board of directors, fixes the premium payable for the new shares, based on the activities of the company and/or the value of its shares on the Baghdad Stock Exchange.

#### d. Management

Joint stock companies are governed by a board of directors composed of a minimum of five and a maximum of nine members elected by the general assembly. The board of directors must elect a chairman and a vice chairman from among its members. The board of directors also appoints a managing director who may not be the chairman and need not be a board member, and may be an expert in the company's field of business. The day-to-day business of a joint stock company is usually carried out by the managing director.

Resolutions of the board of directors are valid if a majority of its members are present. The minutes of board meetings must be entered in a special register after each meeting and signed by the chairman. Each member of the board of directors must own at least 1,000 shares in the company.

**e. Shareholders' Meetings**

Iraqi law does not distinguish between ordinary and extraordinary shareholders' meetings. A shareholders' meeting must be held at least once a year. Shareholders may exercise their voting rights in person or by proxy. A proxy may be issued to another shareholder or to a third party. The proxy must be deposited with the company three days prior to the meeting. A shareholders' meeting is valid only if attended by the majority of the shareholders.

**f. Transfer of Shares**

Unlike shareholders of LLCs, shareholders of joint stock companies do not have a right of first refusal, and thus the shareholders do not have to inform other shareholders before transferring their shares. Otherwise, joint stock companies follow the same procedures as LLCs on the transfer of shares.

Transfers of shares of joint stock companies listed on the Baghdad Stock Exchange are subject to special rules and regulations.

## 4. Other Forms of Companies

In addition to LLCs and joint stock companies, the Companies Law recognizes the following forms of companies:

- General Partnership
- Individual Enterprise
- Simple Company
- Public Companies

**a. General Partnerships**

A general partnership is an association of two or more persons who are jointly and severally liable for partnership debts. It is a separate legal entity and may transact business in its own name. Partners may not transfer partnership interests without the unanimous consent of the other partners. The minimum capital required amounts to IQD50,000.

**b. Individual Enterprises**

An individual enterprise consists, as its name suggests, of one natural person who owns the single share and is personally liable for the enterprise's debts to the full extent of his personal assets.

**c. Simple Companies**

A simple company is established between not less than two and not more than five partners. The partners may either contribute to the capital of the company or contribute through services. The establishment process of those companies is, as the name suggests, extremely simple. The statutes need only be certified at the Notary Public before being filed with the clerk of the Commercial Register. According to the Companies Law, simple companies have legal personality as of the date of the filing of their statutes with the clerk of the Commercial Register.

**d. Public Companies**

Public companies are state-owned companies with independent legal personalities. They are established by a decision of the Council of Ministers at the request of the competent Ministry. The law does not state the amount of capital required which is left to the Council of Ministers to decide. These companies are managed by a board of directors consisting of a general manager and eight members. The general manager is appointed by the Council of Ministers.

## 5. Establishment of Companies in Kurdistan

Until recently, the amendments of the Companies Law affected by CPA Order No. 64 were not applied in Kurdistan. As a result, foreign investors were not able to hold more than 49% of the shares in companies established in Kurdistan-Iraq.

However, the authorities in Kurdistan have abandoned this position, and now apply the Iraqi Companies Law as amended by CPA Order 64 of 2004, and Ministerial Instruction No. 196/2004. As a result, the establishment of companies in Kurdistan follows the same rules as the establishment of a company in other parts of Iraq.

According to the relevant application form, the application to establish a company in Kurdistan may be filed in Baghdad, Erbil or Sulaimaniya, and foreigners may own up to 100% of the share capital in any company.

## 6. Branches and Representative Offices of Foreign Companies

Under the previous regime, the establishment of branches and representative offices was governed by Regulation No. 5/1989. According to this regulation, a contract with specific entities—principally the government or state owned companies—was required for the establishment of a branch. Representative offices were not permitted to conduct any business activity.

This situation was changed for a time by CPA Order No. 39, which removed the requirement for a contract with a government entity. According to Section 5 of the Order, “a Foreign Investor may open trade representation offices and branches in Iraq.”

The position has, however, changed again and a branch may now only be established if the foreign company presents a contract with a public entity or a confirmation letter from a public entity that the foreign company is working on a contract with that public entity (e.g. as subcontractor).

### a. Permitted Activities

According to Section 1(2) of the Instruction, branch or trade representation offices of foreign entities may conduct business in Iraq. Section 2(2) states that “foreign entities may conduct any business permissible under the laws and regulations of Iraq, including CPA Orders, without being required to provide financial bonds, guarantees or similar surety (except for a foreign investor engaging in retail sales).”

### b. Application for Registration

A foreign business entity intending to register to do business in Iraq must complete an application and submit it to the Registrar of Companies. The application must include the information and documents outlined in Appendix 1.

### c. Procedure

Upon receiving an application, the Registrar of Companies will:

- review the application for completeness;
- request the applicant to obtain a security clearance from the municipality (note that the security clearance process can be very time consuming);
- if the application is incomplete, return it to the applicant without collecting any fee;
- if the application is complete, provide a signed checklist to the applicant showing receipt of the completed documentation;
- record the accepted application in the official record of the Registrar of Companies as of the date of its receipt; and
- assign a unique temporary identification number to the application.

The Registrar of Companies must approve or reject the application within ten business days from the date of its submission by the applicant company. The Registrar of Companies may only reject an application for failure to comply with Ministerial Instruction No. 149.

On approval of the application, the Registrar of Companies will promptly issue to the applicant a registration license bearing the corresponding business entity's name and the official seal of the Registrar of Companies, together with a unique permanent identification number. A registered entity is present in and subject to the jurisdiction of Iraq.

**d. Fees Payable**

According to Section 4 of the Ministerial Instruction No. 149, a single standard registration processing fee is payable, in the amount of IQD200,000; one half payable on submission and filing of the application, the remaining half payable upon issuance of the registration and permanent unique identification number by the Registrar of Companies.

**e. Appeal against Rejection of Application**

The Registrar of Companies must promptly notify the applicant in writing of the rejection of the application for the registration of a foreign business entity, giving reasons. The applicant has the right to contest a rejection by the Registrar of Companies before the Minister of Trade, within 30 days from the date of notification. The Minister of Trade shall review the rejection within 30 days from the date of submission of the company's appeal.

If the Minister of Trade also rejects the application, the applicant has the right to appeal the Minister's decision to a court of competent jurisdiction within 30 days following the date of the decision, the decision of the court being final.

**f. Existing Branches and Offices**

According to Section 1(4) of the Instruction, branches and representative offices formerly registered under Regulation No. 5/1989 are regarded as registered under Ministerial Instruction No. 149, and must provide updated information as required by that Instruction.

**g. Branches and Representative Offices in Kurdistan**

On August 2, 2004, the Regional Government of Kurdistan-Iraq issued Regulation No. 2/2004 concerning the "registration of branches and representative offices of foreign and Iraqi companies and establishments in Kurdistan-Iraq". According to Article 2 of Regulation No. 2/2004, foreign companies may not carry on any commercial activities in Kurdistan-Iraq, unless they have registered a branch for these activities in accordance with the Regulation. Such a registration was required even if the foreign company had a branch registered in Baghdad.

However, similar to the situation of the establishment of companies, the competent authorities in Kurdistan now apply the legal provisions based on the CPA order and Regulation No. 5/1989 outlined above and, as a result, the registration of branches in Kurdistan is now subject to nearly the same requirements as those for Iraq as a whole.

# XI. LABOR LAW

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Iraqi labor law does not impose an obligation on employers to employ a certain percentage of Iraqi nationals. An exception applies where an investment license is required for a project in which case, according to the Investment Law, at least 50% of the employees in the workforce of the project must be Iraqi nationals. Furthermore, in projects conducted under a foreign investment license, Iraqi nationals must be given priority over foreign workers, unless it can be shown that there are no Iraqi nationals whose skills and qualifications would match the relevant position. Foreign investment law also imposes an obligation on foreign investors to train their Iraqi employees and to enhance their skills.

The essential provisions of Iraqi labor law are embodied in Law No. 71/1987 and in ICC Articles 900 to 926. Some amendments were made by CPA Order No. 89. The Labor Law, however, is expected to undergo major changes in the near future. The Social Security Law (Law No. 39/1971) contains further provisions relevant to the employer-employee relationship.

## 1. Employment Contracts

As a general rule, Article 10 of Law No. 71/1987 provides that Arabic is the language recognized for the employer/employee relationship, contracts, registers and instruments of work. However, the use of Kurdish is also recognized for labor contracts and other business entered into in the autonomous area of Kurdistan.

In addition to the aforementioned provisions of Article 10, the Labor Law requires employment contracts to contain a number of mandatory provisions; they must be in writing, specify the kind of work and the amount of the wage. Salaries and wages must be paid in IQD.

The term of an employment contract may either be fixed or indefinite, depending on the nature of the work. The Labor Law gives employers the right to hire employees on a probationary basis for a period of up to three months. This period, in which the employee is expected to demonstrate his skills and conduct, should be specified in the employment contract.

## 2. Working Hours and Annual Leave

As a general rule, employees should not work longer than eight hours per day for six days per week. However, the working hours may be increased in exceptional cases. The increase is treated as overtime, for which the wage must be increased by 50% to 100%, depending on the type and nature of the work.

Employees are entitled to annual leave after a period of one full year of employment. The annual holiday is 20 days per year and is increased by two days for every five years of employment. According to Article 71 of the Labor Law any agreement to waive or abandon the annual holiday, in whole or in part, for compensation or other advantage, is null and void.

## 3. Termination

Termination of employment contracts is very difficult in Iraq.

The Labor Law includes a comprehensive list of the authorized grounds for termination. They are the following: (i) mutual written agreement; (ii) expiry of the term of the contract; (iii) the will of the employee, after following certain procedures; (iv) incapacity due to illness for more than six months; (v) incapacity of the employee amounting to at least 75%; and (vi) decline in the establishment's business provided that the Labor Minister has been informed. The Labor Law also contains provisions concerning termination of illegal employment contracts. In addition, it is possible to terminate an employment contract in accordance with the general principles of the Civil Code.

Chapter 1 of Part VIII of Law No. 71/1987 regulates labor disputes. According to Article 131 of that Law, if the differences between the employer and the employee have reached the stage of a dispute, both parties shall seek conciliation after informing the Minister of Labor and Social Affairs and the President of the General Federation of Employee Unions, who can then assist the parties in their efforts to reach a mutually acceptable solution.

If conciliation fails, disputes between employers and employees will be submitted to the Labor Cases Tribunal at the Court of Cassation. The Labor Cases Tribunal must give its judgment in open session within 15 days. Its decision is final.



## 4. Work Permits

The Labor Law distinguishes between Arab and foreign employees. Arab employees are treated as Iraqis and thus require no work permit. Employers need only inform the Labor office within 10 days before the commencement of the employment of an Iraqi employee and 30 days before the commencement of the employment of an Arab employee. Foreign employees require work permits and may not, according to Article 23 of Law No. 71/1987, be employed before they acquire a work permit; employees of branches of foreign companies in Iraq are exempted from this requirement.

Directive No. 18/1987 concerning the employment of foreigners in Iraq empowers the Minister of Labor and Social Affairs to issue work permits to foreigners in light of market needs for foreign workers. Work permits are issued for one year and must be renewed by the foreign employee at least one month before the expiry date. The Directive also sets out the conditions and procedures for obtaining a work permit whether from within or outside Iraq.

## 5. Labor Disputes

Labor courts were introduced by the Labor Law (Articles 137 to 147) as a mechanism for resolving labor disputes. Labor courts were established pursuant to Article 137 in each Governorate.

Appeals from decisions of the Labor Courts are heard by a three-member tribunal established in the Court of Cassation under the name “Labor Affairs Tribunal”.

# XII. BANKING AND FINANCE

Until recently, the Iraqi banking system was primarily composed of the Central Bank, the Rafidayan Bank, Rasheed Bank and certain other agricultural, industrial and real estate banks.

The Iraqi Central Bank (the “Central Bank” or the “CBI”) controls foreign exchange, currency and monetary policies and supervises the banking sector. In CPA Order No. 18, the CPA promulgated measures to ensure the independence of the Central Bank of Iraq, authorizing it to determine and implement monetary and credit policies without the approval of the Ministry of Finance. These provisions were superseded by CPA Order No. 56 and its annex which promulgated the new Central Bank Law.

The Central Bank is also responsible for the administration of the Development Fund of Iraq, created by CPA Regulation 2, as discussed above.

## 1. Trade Bank of Iraq

With respect to international trade, the Trade Bank of Iraq (“TBI”) is the country’s most important banking institution. It was established in July 2003 under CPA Order No. 20 in order to facilitate the import and export of goods and services, in view of the lack of financial institutions then able to provide financial services for such activities. The TBI is an independent government entity. The TBI was the principal financial institution in Iraq prior to the establishment of the new Central Bank and continues to play a key role in facilitating Iraq’s international trade.

Soon after its establishment, the TBI built relationships with an international network of 13 prime banks - the Consortium banks led by JP Morgan Chase & Co—covering 63 cities in 39 countries. This gave TBI a truly global reach, a competitive advantage and the ability to provide a diverse range of services. By the end of 2007 TBI was fully capitalized at over US\$100 million and had total assets of over US\$6.1 billion. The TBI has signed agreements with seventeen of the largest Export Credit Agencies around the world, including:

- Export Finance and Insurance Corporation (EFIC) – Australia;
- Oesterreichische Kontrollbank Aktiengesellschaft (OEKB) – Austria;
- Eksport Kredit Fonden (EKF) – Denmark;
- Euler Hermes Kreditversicherungs-AG (HERMES) – Germany;

- Nederlandsche Credietverzekering Maatschappij NV (NCM) – Holland;
- Servizi Assicurativi del Commercio Estero (SACE) – Italy;
- Nippon Export and Investment Insurance (NEXI) – Japan;
- Export Credits Guarantee Department (ECGD) – UK;
- Export-Import Bank (US EX-IM) – USA; and
- Overseas Private Investment Corporation (OPIC) – USA.

The TBI has also received lines of credit from major international financial institutions. These actions have led to an increase in confidence and trust in the country's banking sector.

The TBI provides a range of international financial services, including letters of credit, which is the safest way to conduct international trade in Iraq. The TBI's other financial services include:

- issuing guarantees to encourage imports;
- confirmation of export guarantees;
- issuing local guarantees;
- financing projects that are important in building the country's infrastructure; and
- insuring Letters of Credit through the support of Export Credit Agencies (ECAs).

Bureaucratic and procedural delays are often a common part of business dealings with the TBI.

## 2. The Central Bank Law

The Central Bank Law came into force on March 6, 2004. Article 2 of CPA Order No. 56 envisaged the establishment of a “safe, sound and independent Central Bank for the purposes of achieving and maintaining price stability, fostering and maintaining a stable and competitive market-based financial system, and promoting sustainable growth, employment and prosperity in Iraq.”

The full text of the Central Bank Law is contained in Annex A to CPA Order No. 56, which still has the full force of law.

The Central Bank plays a very small role in international trade dealings compared to the TBI.

### a. Objectives of the Central Bank

Article 3 of Annex A to CPA Order No. 56 (the “Central Bank Law”), reiterates the aims set out in Art. 2 of CPA Order No. 56.

The law sets out a number of functions of the Central Bank designed to achieve the aforementioned objectives. These functions include the formulation and implementation of monetary policy, management of all Iraqi foreign reserves, providing financial advice to the Government, providing liquidity services to licensed banks in Iraq, establishing and overseeing payment systems and the licensing and supervision of banks.

A further point of interest is that the Central Bank may take any action it deems necessary to combat money laundering and terrorist financing.

### b. Management of the Central Bank

The Board of Directors of the Central Bank is responsible for conducting the business of the Bank and for carrying out its responsibilities. The Board consists of nine members, including the Governor, two vice governors, three officers of the Bank and three external experts. To be eligible for nomination, all members must satisfy a certain number of requirements regarding their reputation, nationality and educational background.

### c. Relations of the Central Bank with the Government

The Governor and other representatives of the Central Bank regularly meet with the government to exchange information and opinions on the implementation of monetary and fiscal policies.

The Central Bank also functions as the Government's bank. The Central Bank keeps the Government's accounts, engages in and manages the Government's foreign borrowings, represents the Government in negotiations with foreign countries and international institutions on monetary and financial questions and performs financial operations on behalf of the Government.

Article 26 of the Central Bank Law provides that the Central Bank shall not grant any direct or indirect credit to the Government or any public agency or state owned entity. Exceptions apply to arms-length facilities granted to government-owned commercial banks that are subject to the supervision of the Central Bank.

#### d. Monetary Functions of the Central Bank

The monetary functions of the Central Bank are the following:

##### i. Open Market Operations

These open market functions include the purchasing of financial instruments, the purchasing or selling of foreign currency, discounting bills of exchange or promissory notes, making loans fully secured by pledges of collateral, and accepting interest-bearing deposits from banks.

##### ii. Reserve Requirements

Article 29 of the Central Bank Law requires the Central Bank to regulate the minimum reserves which banks are required to deposit with the Central Bank. Failure to maintain the required reserves will result in the Central Bank levying a penalty based on the amount of the shortfall until it is corrected.

##### iii. Lender of Last Resort

In exceptional cases, the Central Bank may grant licensed banks financial assistance for periods not to exceed three months. The requirements for this assistance are that the bank must, in the opinion of the Central Bank, be solvent and possess adequate collateral, and the request for assistance must be based on the need to improve liquidity. Another case where the Central Bank may act as a lender of last resort is where assistance is necessary to preserve the stability of the financial system and the Minister of Finance issues a guarantee in writing securing the loan on behalf of the government.

##### e. Currency

The national unit of currency in Iraq is the Iraqi Dinar. The Central Bank has the exclusive right to issue currency in Iraq.

Article 37 of Central Bank Law enshrines the principle of freedom of currency, according to which parties may denominate a payment obligation in any currency they agree upon. Foreign currency obligations may be enforced according to their terms. However, orders to enforce a payment in foreign currency shall require payment in the currency of Iraq (IQD) sufficient to purchase the amount of the obligation in foreign currency at a bank in Iraq.

##### f. Financial Services Tribunal

The Central Bank Law provides for the establishment of a Financial Services Tribunal having jurisdiction to review a number of the Central Bank's decisions taken in the application of the Central Bank Law. In particular, decisions regarding the rejection of applications for a banking license, and enforcement measures or administrative penalties are among the decisions envisaged by the Law as falling within the jurisdiction of the Financial Services Tribunal.

Decisions of the Tribunal may award expenses, damages and interest and are enforceable in the same manner as other court decisions. Final decisions of the Tribunal are subject to review in the Court of Appeal.

### 3. New Banking Law

On September 20, 2003, the CPA issued Order No. 40 (the "Banking Law"). CPA Order No. 40 and its annex were rescinded by CPA Order No. 94, which, in its annex, promulgated the amended Banking Law. The Order claims to "establish a safe, sound, competitive and accessible banking system for the purposes of providing a foundation for economic growth and the development of a stable Iraqi economy," and provides expressly that the banking law attached to the Order in Annex A shall have the full force and effect of law, and that any provision of Iraqi law that is inconsistent with the Order or Annex A is thereby suspended to the extent of such inconsistency. Despite the disestablishment of the CPA, this law is still in effect.

**a. Regulatory Objectives**

According to Article 2 of the Banking Law, its primary regulatory objective is to maintain confidence in the banking system. Other regulatory objectives include those of promoting public understanding of the banking system by providing appropriate information, maintaining an appropriate degree of protection for depositors, and assisting in reducing financial crime, including fraud, money laundering and terrorist financing.

**b. Banking License**

According to the Banking Law, no person in Iraq may engage in banking business without a banking license or permit issued by the CBI.

The Banking Law does not contain any specific provisions relating to its application to foreign financial institutions dealing with Iraqi customers from abroad. Here, the present practice assumes that the provisions of the Banking Law (and the licensing requirement contained therein) does not apply to foreign financial institutions which (i) do not have a physical presence in Iraq, (ii) do not actively approach Iraq-based customers and (iii) only deal with a limited number of Iraqi customers. This means that in many instances an international bank engaging in project or trade financing transactions in Iraq can regularly do so without a banking license. This practice, however, may be subject to change as more banks target the Iraqi market.

The law defines banking business as the business of receiving deposits of money or other repayable funds from the public for the purpose of making credits or investments for its own account.

The Banking Law provides that no one shall use the word “bank” or derivatives of the word “bank” in any language in respect of a business, product, or service without a banking license or permit issued by the CBI, unless such usage is established or recognized by law or international agreement, or unless it is clear from the context in which the word “bank” is used that it does not concern banking activities. Representative offices must not use the word “bank” in their name, except in

cases where the word “bank” forms an integral part of the name of the foreign bank to which they belong, provided that, in such cases, the words “representative office” must be added.

**c. Exceptions from Licensing Requirement**

The Law provides that the following persons do not fall within the scope of the Banking Law:

- persons who fund the credits they make exclusively from non-repayable capital subscriptions, proceeds of credits received from financial institutions or debt securities issued in the capital markets; or
- persons who, in exchange for the issue of corporate debentures or corporate bonds, receive repayable funds from the public and use such funds solely for the purpose of making investments for their own account; or
- persons who, by virtue of the cooperative nature and size of their operations, do not carry on banking business on a scale which requires a commercially organized business undertaking may be exempted by the CBI from the requirements of this Law, provided that exemptions so granted by the CBI may be conditional or limited in time, or may be partial and list the provisions of this Law that shall apply to such person.

**d. Control**

The CBI has the right to enter the offices and to examine the accounts, books, documents and other records of any person if the CBI determines that there are reasonable grounds to suspect that such person engages in activities that are incompatible with the Banking Law.

**e. Confidentiality**

A bank shall maintain confidentiality regarding all accounts, deposits, trusts, and safe deposit boxes of customers and it is prohibited to provide information on the aforesaid, directly or indirectly, without the written approval of the relevant customer or without the decision of a court of law or the public prosecutor in an existing judicial dispute or in one of the cases expressly permitted under the Banking Law.

## 4. Taking Security

The Civil Code provides for a set of personal securities and securities in rem that are available to secure payment obligations. The currently system of security rights, however, is relatively unsophisticated and can be problematic in connection with more complex secured lending transactions. Even where such security rights have been validly created, it can be difficult to enforce them in case of the debtor's default.

Among the personal securities used in export and project financing transactions are the following:

- guarantees, in particular of parent companies or shareholders, issued for the benefit of the creditor. If the guarantor has a domicile outside Iraq, the guarantee can provide for a choice of foreign law and venue abroad. To the extent that a guarantee is governed by the laws of Iraq, there is a risk that an Iraqi court will apply the rules on suretyship in the ICC (which provide, inter alia, that the payment obligation of the guarantor is not abstract, but tied to the secured obligation);
- letters of credit are widely used as a method of payment in export financing transactions. For a supplier doing business for the first time with a new Iraqi customer this is the easiest way of securing a payment obligation though at a certain cost.

As regards security in rem, the following possibilities exist:

- in a sales contract, the seller can retain title to the assets sold. However, reclaiming the sold assets may be difficult if the assets are subsequently fixed to a building or piece of land. This can cause issues in project financing transactions, where the equipment delivered is normally installed on the project site. For as long as the equipment is installed in a way that it can be removed without destruction, and it remains clearly identifiable after installation (e.g. is marked), it can be argued that the seller remains the legal titleholder of the equipment, even if installed on the project site;

- a pledge can be attached to moveable property. Under the rules of the ICC, such a pledge is restricted in two ways. First, the validity of the pledge requires that the secured creditor has possession of the pledged assets. This is impractical in many secured lending transactions, where the assets are to be put into commercial use (and not to be kept in the possession of the bank). Arguably, a trustee structure can be used in order to get around this problem. Second, no future assets can be pledged;
- a mortgage can be attached to real property. The mortgage contract must be registered in the land register to be valid. By operation of law, the mortgage will extend to moveables which are attached to the mortgaged land or which are brought onto the land by the owner "in order to serve the land." It is not permissible to mortgage government land;
- a pledge can be attached to shares. A share pledge must be registered with the Registrar of Companies;
- receivables can be assigned. It is questionable, however, whether and under what conditions such an assignment can also extend to future receivables;
- a pledge can be attached to a bank account. This, however, will have the effect that the account is "frozen". In addition, the pledge will not attach to any future payments on the bank account. As a result, an account pledge is hardly ever used.

In view of the above, in more complex transactions the security package normally would consist of a mix of local and offshore securities.

## XIII. TAX LAW

CPA Order No. 37 suspended Law No. 113/1982 regulating tax on the income of individuals and companies until the end of the year 2003. The Order lowered the highest individual and corporate tax rates for the year 2004 and subsequent years to 15 percent.

CPA Order No. 49 also revised the tax rates and tax exemptions of Law No. 113/1982 and the Real Estate Rent Tax Law No. 162/1959. The Order aimed to provide additional exemptions from tax, to suspend certain taxes and to provide rules for carrying forward losses. These new provisions have been applied from January 1, 2004 onwards. CPA Order No. 84 amended some of the provisions of Orders No. 37 and 49. These amendments of the tax laws by CPA orders are still in force although in practice there exists considerable uncertainty about the manner in which they should be applied.

### 1. Tax Allowances

CPA Order No. 49 modified the allowances for resident taxpayers. A single unmarried taxpayer has an allowance of IQD2,500,000, an additional IQD2,000,000 per annum for spouses and IQD200,000 for each of their children. Widows or divorcees have an allowance of IQD3,200,000. Taxpayers over the age of 63 years are granted an additional allowance of IQD300,000. According to Order No. 84, these allowances have been reduced by one third as of the financial year 2004.

### 2. Income Tax Rates

Order No. 49 modified income tax rates as follows for both resident and non resident individuals:

Income Tax Rate	Annual Taxable Income
3%	Amounts up to IQD250,000
5%	Amounts between IQD250,000 and IQD500,000
10%	Amounts between IQD500,000 and IQD1,000,000
15%	Amounts exceeding IQD1,000,000

Iraqi companies and foreign companies in Iraq each continue to pay a flat rate of 15% on their net income.

### 3. Exemptions

The only tax exemption rules that continue to be enforceable are those that apply to members of foreign diplomatic missions to Iraq.

Previously, tax exemptions used to apply to the armed forces of countries acting in coordination with Iraqi Forces. Other exemptions used to apply to certain foreign employees and government contractors and their sub contractors providing technical, financial, logistical, administrative or other assistance to Iraq. These exemptions are no longer in effect.

### 4. Carry Forward of Losses

CPA Order No. 49 provided expressly that no losses from the current year may be carried forward for the calculation of income in the following years. However, unused foreign tax credits may be carried forward.

## 5. Real Estate Rental Rates

CPA Order No. 49 limits the real estate tax to 10% of all annual revenue from real estate. This tax is collected in two semi-annual installments, one on January 1, the other on July 1.

## 6. Foreign Tax Credits

CPA Order No. 49 amended the relevant provision of Law 113/1982 to read “Income tax paid to a foreign country on income earned in that country may be credited against tax paid to Iraq. The amount of the credit may not exceed the amount of the tax assessed in Iraq on the income earned in the foreign country at the rate in effect in Iraq. If taxes paid to a foreign country exceed this limitation, then the excess taxes may be carried forward to credit in 5 consecutive years, subject to the limitation for those years. To be credited, the amount of foreign tax paid to the foreign country must be confirmed by either a copy of the receipt for tax paid or a confirmation of the amount of tax paid from the tax collection agency of the foreign country.”

## 7. Distinction between Doing Business “in” or “with” Iraq

According to Ministerial Instructions No. 2/2008, the taxability of a foreign entity that is party to supply and similar contracts would depend on two distinct factors, namely whether it is doing business in Iraq, in which case the entity would be subject to Iraqi tax law, or whether it is doing business with Iraq, in which case, Iraq tax law would not apply.

## 8. Tax Treaties

At present, there are no tax treaties in force in Iraq.

# XIV. INTELLECTUAL PROPERTY PROTECTION

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In recent decades, Iraq enacted laws in almost all fields of intellectual property rights. However, almost all Iraqi intellectual property laws became outdated upon the appearance of the World Trade Organization (“WTO”) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (“TRIPS”). CPA Orders No. 80, 81 and 83 amended the existing laws to a considerable degree in April 2004.

## 1. Patent Law

Patents are regulated in Iraq by Law No. 65/1970 on Patents and Industrial Designs (“Patent Law”), as amended by Law No. 28/1999 and CPA Order No. 81.

### a. International Agreements

Iraq is a member of the Convention establishing the World Intellectual Property Organization (“WIPO”) and the Paris Convention for the Protection of Industrial Property, but has not yet adhered to either the Strasbourg Agreement concerning International Patent Classification, the Patent Cooperation Treaty (the “PCT”) or the Patent Law Treaty (the “PLT”).

### b. Patentability

According to Article 2 of the Patent Law, patents protect inventions that are: applicable to industry, novel and involve an innovative step, either concerning new industrial products, new industrial methods, or new applications of known industrial methods.

Inventions that contravene public order are not patentable. The provision prohibiting the patentability of pharmaceuticals was repealed in 1999.

Since Iraq is not a member of the PCT, a patentee may not seek protection simultaneously in Iraq and other countries by filing an international patent application.

### c. Patent Holders

The inventor or his successor is the holder of the patent. The following persons may apply for patents:

- Iraqi nationals and citizens of Arab countries;
- foreigners residing in Iraq;
- foreigners belonging to a state having a reciprocal agreement with Iraq concerning patent registration;
- public departments;
- companies and establishments organized and existing in Iraq or in a state having a reciprocal agreement with Iraq concerning patent registration.

If an invention is made by an employee in the course of his employment contract or employment relationship, the rights to the invention belong to the employer if the invention is contemplated as the subject-matter of the contract or the employment relationship provided that the employee is paid for that purpose and that the name of the employee is stated in the patent. If the invention is not contemplated as the subject-matter of the contract but is nevertheless made in the execution of the employment contract or relationship, the rights in the invention will still belong to the employer, but the employee is entitled to equitable remuneration, to be defined according to the importance of the invention. In both cases, the inventor retains his right to be recognized as the inventor.

### d. Patent Rights

A patent grants its owner:

- where the subject of the patent is a product, the right to prevent any person who has not obtained the owner's authorization from making, exploiting, using, offering for sale, selling or importing that product.
- where the subject of the patent is an industrial process, the right to prevent any person who has not obtained the owner's authorization from using the process or a product directly made by the process, offering for sale, selling or importing the product.

According to Article 27 of the Patent Law, the patent may be subject to a compulsory license in certain circumstances, to be granted by the registrar to any person requesting a license.

### e. Duration

Patents are protected for 20 years from the date of the filing. They may not be renewed or extended.

### f. Registration

Applications must be submitted in Arabic, contain a detailed description of the invention, and be accompanied by a number of documents. Each application will be examined for conformity with formal requirements and patentability according to the Patent Law, especially regarding innovative content. The Patent Authority may request amendments in order to ensure conformity. The application will be refused in cases of non-compliance with the required amendments within a time fixed by the Patent Authority.

### g. Transfer of Patents

Patents may be assigned or licensed without any restrictions (other than those relating to competition rules). Transfer of patents must be in writing, and will become effective against third parties upon publication in the Iraqi Official Gazette, and upon entry into the patent register.

### h. Infringement Action

The Patent Law affords patent holders a wide range of penal and civil actions for the protection of rights to the patent. Civil actions are usually either actions for infringement or actions against patent owners for declarations of invalidity (declaratory judgments). Infringers may be manufacturers, retailers and users, in the case of a process or method.

The available civil remedies include:

- a search (description) order and seizure order;
- an injunction to prevent the continuation of the infringing activity;



- assignment of ownership of the goods seized;
- destruction of the infringing articles;
- damages; and
- publication of the decision.

Counterfeit-seizure is an efficient remedy available to patent holders that are victims of counterfeiting or other infringements. This procedure is useful as a temporary measure facilitating the collection of evidence with respect to the existence, size and scale of the counterfeiting, for use in later proceedings on the merits of the case.

An expert is appointed to describe the alleged infringement and the description is then filed at the relevant court office.

The plaintiff may request a preliminary injunction in summary proceedings and the judge may issue a provisional “cease and desist” order, prohibiting the production, use, exhibition and advertising of all infringing materials. Note that injunctions and injunctive-type relief are judicially recognized and available in Iraq.

#### i. Other Protected Items

In addition to the protection of inventions by patents, the Patent Law, as amended by CPA Order No. 81, grants protection for industrial designs, undisclosed information, integrated circuits and plant varieties.

## 2. Trademarks

Trademark protection is governed by the Trademark Law No. 21/1957, as amended by CPA Order No. 80.

#### a. International Conventions

Iraq is a member of the Paris Convention on the Protection of Industrial Property (Stockholm Act). However, it is not a party to the Madrid Agreement or Madrid Protocol for international registration of marks.

#### b. Protected Marks

Pursuant to Article 1 of the Trademark Law, any mark which can be graphically represented and is suitable for distinguishing goods and services from other goods and services may be protected by a trademark. The term mark includes trademarks, service marks, collective marks and certification marks.

According to Article 5 Law No. 21/1957, the following marks may not be registered:

- marks devoid of any distinctive character or which are used in trade to describe the kind, nature, quantity or place of production of the goods, or marks which in the ordinary language of Iraq indicate any of such matters. Where signs are not inherently capable of distinguishing the relevant goods or services, registration will depend on distinctiveness acquired through use;
- marks, expressions, or designs which are contrary to public order or morality;
- marks which are identical with, or similar to armorial bearings, flags or other State emblems of Iraq or other countries of the Paris Union or international intergovernmental organizations, official signs or hallmarks, indicating control and warranty adopted by them, and any imitation from a heraldic point of view;
- marks which are identical with, or similar to, the insignia of the Red Cross, Red Crescent, or Geneva Cross;
- the name, title, portrait, or armorial bearing of a person except with that person’s written consent;
- designations of honorary degrees to which the applicant is unable to establish a right;
- marks which are likely to mislead or confuse the public, or which contain false descriptions as to the origin of products, whether goods or services, or their other qualities, as well as the signs that contain an indication of a fictitious, imitated or forged trade name;

- marks which are identical or similar to a well-known mark, or marks that are identical or similar to a previously registered trademark if registration of that mark would result in confusing the consumer public as to the goods distinguished by the mark or other similar goods.

#### c. Duration of Protection

Trademark protection by registration may be obtained for 10 years, commencing from the end of the month in which the application was filed. Protection may subsequently be renewed every 10 years.

#### d. Registration

In principle, the right to a trademark is acquired through its registration at the Trade Mark Registry. However, according to Article 3 of the Trademark Law, a person able to establish his use of the mark prior to its registration may contest this right during the first five years after registration.

Applications must be submitted in Arabic, accompanied by a number of documents. Use of trademarks is not a requirement for the filing of applications for registration. Application fees will be charged for each class. The Registrar may impose the limitations or modifications he considers necessary in respect of the form, mode or place of use of the mark in order to prevent confusion between the mark and a similar registered mark, or for any other reason he may consider appropriate.

Few trademarks and patents were registered or renewed during the time of the embargo. The implications of omissions in the trademark register should be carefully studied.

#### e. Trademark Collision

In cases where two or more persons apply for registration at the same time, the trademark officer may suspend all applications for the regis-

tration of a trademark until the applicants submit a duly certified document containing the waiver of rights or a final court decision in favor of one of the parties. The same applies to applications for registration of an identical or similar trademark for goods belonging to the same category.

#### f. Cancellation

Third parties may initiate cancellation proceedings if the registered mark:

- becomes the generic name of the goods or services for which it is registered, or a portion thereof;
- is functional;
- was obtained fraudulently or contrary to the requirements for registration;
- has remained unused for an uninterrupted period of three years, unless the absence of use is established as being due to uncontrollable cause or lawful excuse; or
- is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.

#### g. Transfer of Trademarks

The ownership of a trademark is transferable and it may be pledged or seized together with the business dealing in the goods bearing that mark. According to current Iraqi law, trademarks may only be sold together with the products of the enterprise to which the marks are attached. However, this rule will need to be modified when Iraq joins the WTO, in order to comply with the requirements of TRIPS allowing the transfer of a mark with or without the business to which it is attached. Additionally, under Iraqi law the transfer of a business includes the transfer of the mark, unless otherwise agreed.

## h. Infringement Action

Iraqi law provides both penal and civil remedies to protect the rights of a trademark holder against infringement. Acts which are considered to constitute infringements of trademarks are the application, registration or use of an identical or similar trademark for identical or similar goods and services. Legal relief available to the owner of the prior trademark rights includes the following:

- preliminary and permanent injunctions (although, in practice, injunctions are difficult to obtain and enforce);
- damages;
- destruction of the goods bearing the infringing trademarks; and
- publication of the court decision.

Prior to instituting a civil action, it is a recommended common practice to send a 'cease and desist' warning letter to the infringer, in order to ensure that the infringer is put on notice of the alleged claim.

Upon becoming aware of trademark infringement, a trademark owner may apply to the competent court for a preliminary injunction. When a preliminary injunction has been obtained, it must be served upon the defendant.

Infringement of a registered trade mark is a criminal offence punishable by imprisonment for a term between one to five years or a fine between IQD50,000,000 to 100,000,000.

## 3. Copyright

Law No. 3/1971, as amended by CPA Order No. 83, governs Iraqi copyright and related rights. A new copyright law is expected to be enacted in the near future, to fulfill international requirements under the Berne and Rome Conventions, the TRIPS Agreement, the 1996 WIPO Copyright Treaty (WCT) and the WIPO Performance and Phonogram Treaty (WPPT).

### a. International Agreements

Iraq is not a member of either the "Revised Berne Convention" (Paris text), the "Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms" (the "Geneva

Phonogram Convention"), the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, WPPT, or the WCT.

### b. Protected Works

Law No. 3/1971 protects the authors of original literary, artistic and scientific works, whatever their type, method of expression, importance and purpose. No registration is required to obtain protection—it is sufficient to fulfill the requirements of the Law.

The protection includes works expressed by writing, sound, drawing, painting or movement, and in particular the following:

- written works of all types;
- computer programs, whether in source or object code, which are protected as literary works;
- works conveyed orally such as lectures, lessons, speeches and sermons;
- works conveyed by drawing and painting with lines and colors, engraving, sculpture and architecture;
- dramatic works and musical plays;
- works performed by artistic movement or steps and that are materially prepared for production;
- musical works, whether or not accompanied by words;
- photographic and cinematographic works;
- works prepared for radio and television;
- charts, drawings and scientific three-dimensional figures;
- public recitals of the Qur'an;
- sound recordings; and
- compilations of data.

Protection also extends to the title of the work, if it is characterized by originality and not indicative of the work's subject matter. The protection also extends to derivative works, on condition that the rights of the original author are preserved. Accordingly, any person who translates a work into Arabic or any other language, reviews it, changes it from one type of literature, art or science to another, summarizes, adapts or modifies it, comments on it or makes an index to it, in such a manner as to render it in a new form, enjoys copyright protection.

The Law provides protection to performers, without prejudicing the rights of the original author. Thus, any person who executes or transmits to the public a work of art created by another, whether such performance consists of singing, playing music, delivery, painting, drawing, movement, steps or of any other method, shall be considered as a performer and enjoy protection as such.

**c. Author**

In the absence of contrary evidence, the person in whose name the work is published, whether by mention of his name on the work or by any other means, is considered the author. This provision also applies to pseudonyms, provided there is no doubt as to the identity of the author.

It must be noted that legal protection is limited to works published in Iraq and works of Iraqi authors published abroad. Works of foreigners published outside Iraq are only protected only if reciprocity is granted by the country of the author.

**d. Transfer and Licenses**

The exclusive right to use the work and to grant licenses for each act of exploitation of the work is the core of the author's economic rights. A license may only be granted by means of a licensing agreement concluded with the user. Copyright licensing agreements oblige users (licensees) to pay a fee for use of the works which, unless otherwise agreed by the parties, is in due proportion to the revenues generated through the use of the work.

**e. Scope of Protection**

According to Article 8 of Law No. 3/1971, no person shall do any of the following without the written consent of the author or his/her successors:

- reproduce a work in any manner or form, whether transitory or permanent, including onto photographic (including cinematographic) film or onto a digital or electronic storage media;
- translate, adapt, musically arrange or otherwise transform a pre-existing work;

- authorize commercial rental to the public of the original and copies of the work;
- distribute original and copies of a work through sale or other transfer of ownership;
- import any copies of a work (including copies prepared with the consent of the copyright owner);
- transmit or otherwise communicate a work to the public by means of a recital, speech, lecture, display, acting performance, radio or television broadcast, cinema or any other wire or wireless means, including making available a work to the public in a manner giving members of the public access to the work from a place and at a time individually chosen by them.

These economic rights may be assigned, devised or inherited. No other person may exercise this right without prior permission of the author or of the party to whom the right is transferred (Article 7, Law No. 3/1971).

The heirs of an author shall have the exclusive right to decide on publication of works not published during the lifetime of the author, unless he dictates otherwise by testamentary disposition, and, if the author fixed a date for publication, the work may not be published before that date (Article 18, Law No. 3/1971).

**f. Period of Protection**

The author's economic rights are protected throughout the lifetime of the author and for 50 years from the date of his death.

The economic rights in works of joint authorship are protected throughout the lives of all co-authors and for 50 years from the death of the last survivor.

The economic rights relating to a work published for the first time after the death of the author expire 50 years after the date on which the work was first published or made available to the public, whichever is earlier.

The economic rights in a work published anonymously or under a pseudonym are protected for a period of 50 years, from the date on which the work was first published or made available to the public, whichever is earlier.

The economic rights of the author of a work of applied art expire 50 years from the date on which the work was first published or made available to the public, whichever is earlier.

**g. Infringement Action**

Acts of infringement of authors' rights may be penalized under Article 45 of Law No. 3/1971. Legal relief available to the copyright owner under these provisions includes the following:

- injunctions to order the cessation of the infringing act;
- confiscation of the original and copies, and of materials used for manufacturing infringing copies; and
- claims for damages and confiscation of proceeds of sale.

## **XV. IMPORT**

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Iraq has passed a Customs law which generally provides for a 5% tariff on imports. Certain items, such as automobiles, are subject to special rules. There are many exceptions in the law. The situation is somewhat fluid insofar as implementing legislation has not been passed. In practice, imposition of tariffs is up to the individual examiner where there is not a regional rule.

### **1. Reconstruction Levy**

CPA Order No. 38 established a so-called "Reconstruction Levy," the revenues of which are to be used to assist the Iraqi people and to support the reconstruction of Iraq. The levy is imposed at a rate of 5 percent of the taxable value of goods assessed as being the total customs value established in accordance with international practice.

Certain categories of goods, such as food, medicines, clothing, books and goods imported for humanitarian assistance are exempt from the Reconstruction Levy.

### **2. Required Licenses and Documentation**

The Iraqi authorities require importers to be registered. Registration requires submission of certain documents and information. In the case of legal entities, the entity must obtain a trading license, and be registered with both the customs authorities and the Chamber of Commerce.

In order to import goods, the following documents must be submitted to the customs authorities:

- a commercial invoice (including a description of the product, indication of the country of origin and the details of the manufacturer);
- a certificate of origin (although generally not required, the statement of origin should appear on the invoice);
- two copies of the packing list;
- three copies of the bill of lading; and
- a completed customs declaration form.

### 3. Free Trade Agreements

Iraq is party to a number of free trade agreements, mostly with other Arab countries.

Arab Common Market members, including Iraq, have removed, with a few exceptions, tariffs on manufactured products. The Inter-Arab Trade and Transit Agreement, of which Iraq is a signatory, provides for duty free entry for some non industrial products as well as a reduction of duties on certain industrial products imported from member states.

The free trade agreements to which Iraq is a party are currently not applied. It is, however, anticipated that the import regime will be liberalized in the future and that the existing agreements will again become applicable.

## XVI. PUBLIC TENDERS

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### 1. Legal Background

Contracting with public sector entities for reconstruction projects in Iraq continues to be an extremely important business opportunity for foreign construction companies.

Currently, the Public Tenders Law ('PTL') governs all Iraqi public contracts. The government's public contract policy is coordinated by the Office of Government Public Contract Policy, which issues implementing regulations and administrative instructions based on recognized and accepted international standards and best practices. Government procurement is not handled by a centralized government entity. Each individual ministry, department or agency is responsible for its own procurement and is required to establish internal committees, such as a Tender Opening Committee (as outlined in Article 6 of Instruction No. 1/2008) or a Tender Evaluation Committee (Article 7 of Instruction No. 1/2008). Bidder registration is not required.

Prior to PTL, public tenders were regulated by the Tenders Instructions (Outfitting and Buying) for State Agencies and the Socialist Sector, and the Instructions for the Implementation and Follow-up of Projects and Works under the National Development Plan, issued by the Council of Ministers in 1988 and 2001, respectively. The PTL expressly repealed both instruments.

Section 1 of PTL states that it applies to all procurement of goods and services and construction activities by the state of Iraq acting through ministries or other federal agencies, government units including regions and governorates and all other state subdivisions.

Section 1 of PTL further states that its provisions apply to procurement contracts pertinent to goods, services and reconstruction services. PTL, therefore, does not apply to oil service contracts arguably because oil service contracts are more complicated and larger in size than the types of contracts covered by PTL.

Section 1 also provides that public funds are to be committed in accordance with the principles of full, fair and open competitive public bidding procedures, international standards of transparency, predictability, fairness and equality of treatment, procurement process integrity, minimum ethical standards and non-conflict of interest. It also recognizes the rights of tenderers to file tender protests and related appeals, and provides for tender dispute resolution mechanisms to ensure the timely resolution of disputes.

PTL contains a set of guidelines that must be read in line with current Iraqi legislation. The purpose of the latter is to clarify the general principles to be adopted in implementing governmental contracts between Iraqi public entities and Iraqi and non-Iraqi private entities in areas such as public works, procurement of various goods and services and consultancy contracts (Article 1 of Instruction No. 1/2008).

Instruction No. 1/2008 does not apply to public projects and contracts funded by regional and international organizations that are implemented pursuant to special agreements and arrangements with Iraqi public entities.

A 2006 report by the World Bank found that Iraq's procurement procedures and practices were not in line with generally accepted public procurement practices, such as effective bid protest mechanisms and transparency on final contract awards. This situation has hardly changed since the coming into force of Article 1 of the Instruction No. 1/2008, largely because of the complexity of Iraq's contracting regulations combined with the inexperience of some of the Iraqi officials.

Furthermore, government procurement is not handled by a centralized government but by individual ministries, departments or agencies. Each entity is responsible for its own procurement and shall establish internal committees, such as Tender Opening Committee (Article 6 of the Instruction No. 1/2008) or a Tender Evaluation Committee (Article 7 of the Instruction No. 1/2008). Instruction No. 1/2008 does not require bidder registration.

According to Article 3(3)(a) of the Instruction No. 1/2008, announcements of tenders shall be published in at least three daily "widespread" Iraqi newspapers, one of which shall be the Gazette issued by the Ministry of Finance.

## 2. Tender Procedures

Under Section 4 of the PTL, public contracts must be awarded on a competitive basis. Public contracts may be awarded using procedures other than full and open competitive public contracting when, inter alia, the goods or services to be purchased may only be manufactured or supplied by a particular entity, or are otherwise only available from a limited number of entities. Other cases in which alternative procedures may be used are when the public interest does not allow an award on a fully competitive basis, or when international agreements or treaties to which the state of Iraq is a party require the use of other than full and open competitive public contracting procedures. A streamlined procedure may be used where the anticipated value of the public contract is below certain monetary thresholds (as determined by regulations to be issued in accordance with the PTL).

The prequalification of tenderers, including the deposits or bonds required for bids, must be implemented in a manner that does not unreasonably restrict competition. If a deposit is required as a condition for participating in a competitive tender, it must be reasonable in amount, based upon the value of the contract, and returned to unsuccessful tenderers. The use of bonds, as opposed to deposits, is encouraged.

A tender notice must provide potential tenderers with sufficient information (e.g., standard terms and conditions, a statement of work and a delivery schedule) reasonably required to respond to the tender. In this regard, all tenders shall indicate the criteria according to which offers will be evaluated. The government's failure to evaluate an offer against the evaluation factors stated in the notice will be a valid basis for the filing of a tender protest. The notice must further provide potential tenderers a period of time reasonably sufficient to respond, and must give potential tenderers the opportunity to request clarifications concerning the tender. Extensions of time to respond to the tender must be granted if necessary.

Although competitive bidding is, in general, preferable, competitive negotiated contracts are permissible and should be used whenever the interests of the concerned government unit or agency will be best served by awarding the contract on a basis other than the lowest price. In this case the notice must state the criteria, other than the price, to be taken into consideration, as well as the relative importance of each of these criteria. The government may enter into

direct negotiations with tenderers once their written response to the tender has been received.

Fixed-priced contracts are generally preferred over cost contracts, especially in cases in which the government is able to set a reasonable price and where the contract anticipates specific works.

### 3. Dispute Resolution

Section 12 of the PTL foresees a right for an interested party to file a tender protest if it believes that (i) it has not received fair treatment in the award of a government or public contract, or (ii) the provisions of a tender unfairly restrict full and open competition in a manner which inappropriately hinders the concerned party from participating. A contractor has a right to make a claim to the authority awarding the public contract, stating that a condition of the tender has not been followed or that the contractor has otherwise been treated unfairly. Section 12 further sets out in detail the conditions and procedures for these actions.

With the disestablishment of the CPA, disputes over U.S. Government contracts are within the jurisdiction of the Board of Contract Appeals in Washington, D.C.

### 4. Implementing Regulations and Instructions

CPA Memorandum No. 4 initially served as the implementing regulation the PTL, until the issuance of the Implementing Regulations for Government Contracts, No. (1)/2007 by the Office of Government Public Contract Policy. The 2007 Implementing Regulations were superseded by the issuance of Instruction No. (1)/2008, which consists of 26 Articles intended to clarify the general principles to be followed in the public contracting domain. The Instruction addresses the types of tenders which may be conducted by public entities and contemplates the formation of committees by such public entities to manage the tender process. Dispute resolution, both prior to and following the execution of the agreements, is also addressed. In particular, the Instruction provides that the contracting parties may agree to international arbitration for the resolution of disputes so long as their agreement expressly provides for international arbitration, one of the contracting parties is non-Iraqi and the arbitral body selected is “well known.”

## XVII. OIL AND GAS

### 1. Sector Overview

The dissolution of the Iraqi National Oil Company in 1987 resulted in 16 State-owned oil companies operating directly under the Ministry of Oil.

Upstream	
	North Oil Company
	South Oil Company
	Iraqi Drilling Company
	Oil Exploration Company
	Missan Oil Company

Downstream	
	Midland Refineries Company
	North Gas Company
	North Refineries Company
	South Gas Company
	South Refineries Company

Transportation/ Distribution/Marketing	
	Gas Filling Company
	Oil Marketing Company
	Oil Project Company
	Oil Pipelines Company
	Oil Products Distribution Company
	Oil Tanker Company



The Petroleum Contracts and Licensing Directorate of the Ministry of Oil is in charge of conducting and monitoring bidding and tendering processes. It also delivers services for licensing administration to oil and gas companies operating in Iraq.

## 2. Proposed Hydrocarbons Law

Iraqi leaders continue to debate a package of legislation that would define the terms of the management and development of Iraq's oil and natural gas resources. The package includes the so-called framework or federal hydrocarbons law regarding exploration and production, and three supporting laws that would address: (i) how revenue generated from oil and gas production will be shared between various stakeholders, (ii) the restructuring of Iraq's Ministry of Oil and (iii) the creation of an Iraqi National Oil Company. Enactment of this legislation has been stalled by conflicting views relating to who should own, who should control and who should benefit from oil and gas production. There are continuing debates on the role and powers of the federal and regional authorities in regulating oil and gas development, the terms and extent of foreign participation in this sector and the sharing of oil and gas revenues.

The draft federal hydrocarbons law (the "Hydrocarbons Law") is the centerpiece of this legislative package and reaching agreement on this has been problematic. A form of the draft law was agreed upon in principle in February of 2007, was approved by the Council of Ministers and was to be submitted to the Council of Representatives for approval. Following criticism from certain commentators and interest groups in Iraq that the draft did not sufficiently preserve the Iraqi sovereignty over its resources because foreign and private sector participation in exploration and production was contemplated, a revised draft was circulated in April 2007. The revised draft contained many provisions deemed unfavorable to Kurdish interests and, as the Kurdish Regional Government allegedly had not been consulted on the revised draft, discussions concerning finalization of the law broke down.

The key features of the proposed Hydrocarbons Law are summarized below:

- the new oil law is a package of interconnected measures and several other companion laws and legal texts (e.g., revenue-sharing and taxation) designed to restructure and rehabilitate Iraq's oil and gas sector;

- while the draft law calls for a nationalized oil system, it opens the way towards privatizing the oil and gas sector;
- the new law purports to revive the INOC probably as a holding company that would absorb the current regional companies;
- the new law would create the Federal Oil and Gas Council ("FOGC") which would be the most powerful body in Iraq's oil sector with the power to review all contracts and to set the country's oil and gas policy in collaboration with the Council of the Ministers. The FOGC would comprise the ministers of oil, treasury, planning, and cooperative development; the director of the Central Bank; a minister representing each region; a representative from each governorate not belonging to a region; executive managers from related petroleum companies, including the Iraqi National Oil Company and the Oil Marketing Company; and no more than three experts specializing in petroleum, finance, and economics appointed to five-year terms. The creation of the FOGC would introduce further reforms in the Ministry of Oil in terms of its strategic policy and planning functions;
- the draft law states that Iraq's oil wealth belongs to all of its citizens, as reflected in the Iraqi constitution. However, it does not contain specific guidelines or mechanisms for revenue sharing;
- the draft law has four annexes, which together constitute a draft list of the categories of Iraq's oil fields and exploration blocks. The list divides the status of 78 known fields into three categories: "producing," "close to production contract," and "far from production contract." The three-category classification used in the draft law and its annexes has no parallel in the constitution itself. In the absence of effective constitutional courts, the loose wording and lack of clear definitions in the text open wide avenues for differing interpretations.

Current and future oil revenues would be collected by the Federal government and redistributed to the regions based on population. The draft envisages two funds for oil revenues: the first, an "Oil Revenue Fund," and the second, a "Future Fund" to hold an unspecified percentage of oil revenue for long-term development goals. Both funds would be regulated and administered according to terms specified in separate federal revenue legislation.

### 3. Contracts under the Draft Hydrocarbons Law

The draft Hydrocarbons Law does not mandate the use of any particular form of contract to govern exploration and production activities. The approach taken is to allow those forms of contract that the FOGC determines meet certain objectives and criteria, including: national control, national ownership of resources, optimum economic return to the country and an appropriate return on investment to the investor. The draft Hydrocarbons Law refers (without further definition) to the following types of contract as being permitted forms: “Service Contracts,” “Field Development and Production Contracts” and “Risk Exploration Contracts.” Accordingly, it seems that production-sharing contracts could be employed, as well as the service contracts used in the recent petroleum licensing rounds. This is a well thought-out approach, as it gives Iraq the flexibility to change models to align the investor’s risk and reward on different types of fields.

Article 13 of the draft law states that the holder of an exploration and production contract is given the exclusive right to conduct petroleum exploration and production within the contract area. It also sets forth the limits on contract duration, differentiating between the exploration phase and the production phase. The initial exploration term is set at four years, extendable by two additional periods of two years each. A third extension of two years (4 years in case of non-associated natural gas discovery) is possible if the extension is justified by the quality and substance of the work program. Post-discovery development is set at 20 years, with the possibility of five-year extension on negotiated terms. Thus, contract duration can be up to 35 years. This is not dissimilar to the approach taken in many other oil-producing countries around the world.

Other features of the contracts under the draft law are as follows:

- Contract holders must pay a royalty on petroleum produced from the development and production area, at the rate of 12.5% of gross production measured at the entry flange to the main pipeline.
- The draft law specifies that contractors are obliged to provide sufficient volumes of crude oil to meet local consumption needs and priority should be given to local partners.
- The draft law imposes a local content obligation on the contractors. This is presumably a requirement that will need to be imposed in the contract between the Contractor and the government. However, the

draft law sets no minimum requirement on foreign entities to hire Iraqis, partner with or purchase from Iraqi companies, transfer new technologies to Iraq, or reinvest any of the considerable profits in Iraq.

- There is no statutory provision which affects the freedom of the parties to agree upon appropriate termination provisions.
- Under the proposed terms, 100% of all profits can be repatriated.

### 4. Kurdistan Oil and Gas Law

When no agreement on national law seemed possible, the KRG finalized its own regional oil and gas law in August 2007. The KRG Oil and Gas Law envisages a production-sharing basis for foreign investment, the terms of which are mostly consistent with standard production sharing agreements elsewhere. The KRG has signed PSCs, under its own Oil and Gas Law with several international companies, including Turkish, Chinese, Norwegian and Canadian IOCs and NOCs.

The federal government disputes the legality of those PSC’s as they were signed without its approval and thus “unconstitutional.” The KRG defends the deals as being constitutionally valid mainly on the basis of the provision in Article 112 of the Constitution, which, as already stated, gives only a qualified right to the Federal Government to manage oil and gas extracted from present fields. The KRG further argues that, contrary to the view held by the federal government, the enactment of an oil and gas law is not a condition precedent to the management of oil and gas, whether extracted from “present” fields or otherwise. Finally, the KRG argues that PSCs are valid because they were concluded under the KRG’s own Oil and Gas Law, which, the KRG argues, was duly enacted under powers given to the Regions pursuant to Article 121 of the Constitution, as well as Article 115, which states that regional laws have priority over national laws. The KRG Oil and Gas Law only allows for joint management of the present fields on the basis of prior agreement between the KRG and the central government, with the former granting the license to participate in upstream operations. As previously stated, the Constitution is arguably unclear as to the authority of the federal government over the new fields. The federal government maintains that the Constitution does not allow the KRG to adopt unilateral and permanent measures over the management of the oil fields and, as such, any contract signed after the draft Hydrocarbons Law was agreed in February 2007 is “illegal” until reviewed and approved by the Iraqi Ministry of Oil.

As indicated above, a factor that further complicates the implementation of the PSCs for the KRG is that, in order to export the oil and gas produced in Kurdistan, the KRG has to use state-owned pipelines running to Turkey. This, in turn, gives Baghdad a stranglehold on the transport of oil produced in Kurdistan.

## 5. Licensing Rounds

In an attempt to redevelop its domestic oil and gas industry following years of war and sanctions, Iraq opened two licensing rounds in 2008. The first licensing round was launched in June 2008 in respect of producing fields and the results were announced in June 2009. The second licensing round was launched in December 2008 in respect of discovered but not yet developed fields and the results were announced in December 2009. The Rumaila oil field, Iraq's second largest, was the only deal signed following the first licensing round, although deals relating to several fields offered in that round were later signed following further bilateral negotiations. The second licensing round was a success and, in all, ten deals have been signed.

The contracts awarded in the first bidding round are 20-year technical service contracts ("TSCs"), which are based on the Contractor agreeing to meet enhanced production targets and accepting a fixed fee per barrel of oil produced (rather than a proportionate share of production, as would be the case with a PSC). The contracts awarded in the second bidding round are 20-year development and production service contracts ("DPSCs"), which are based on the Contractor agreeing to develop existing discoveries to meet certain production targets. Again, the Contractor must accept a fixed fee per barrel of oil produced instead of a share of production. Both types of contract require that the Contractor bear the costs of operations until it meets certain production targets, after which time certain costs may be recovered. The costs of the State Partner are carried by the other Contractor parties and the fixed fee per barrel means that Contractor does not benefit from any upside in the oil price.

## 6. Iraqi Model TSC and DPSC

### a. Stabilization Clause

The Iraqi Model TSCs and DPSCs provide the Contractor protection against its "financial interests" being "adversely and substantially af-

ected by a change to the Law that was in force on the Effective Date, or by revocation, modification, or non-renewal of any approvals, consents or exemptions granted to Contractor." This stabilization or pre-emptive regulatory capture clause purports to freeze the terms of the contract so that successive economic and political conditions cannot be used as a way for the State to justify reducing the Contractor's economic benefits from the contracts. Some analysts argue that the stabilization clause in its current format could have an adverse financial impact on Iraqi interests. They argue that any government decision or legal instrument over the term of the contracts (20 years or possibly longer) could affect the financial interest of the Contractor. We note, however, that similar stabilization clauses are employed in many other oil and gas contracts utilized by developing countries and this concern may have been exaggerated.

### b. Key Financial Provisions

As indicated above, the TSC model has been employed in respect of producing fields and the DPSC has been employed in respect of discovered but undeveloped fields. The Contractor's risk profile and remuneration structure, however, is similar in each case. The Contractor bears the risk and costs of enhancing production at the field (in the case of the TSC) or reaching First Commercial Production (in the case of the DPSC). If these targets are not met, the Contractor is not able to recover its costs, nor receive the Remuneration Fee.

The Remuneration Fee in each case is a fixed fee per barrel. This means that the Contractor should be insulated from oil price volatility and will not benefit from increases in the oil price. The fixed fee is reduced by an 'R' factor, which, in general terms, is calculated by dividing the Contractor's aggregate receipts from the contract by its aggregate expenditures on petroleum operations. In other words, as the Contractor's returns on investment increase, the remuneration fee decreases.

# XVIII. ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS

It has always been difficult to enforce foreign judgments and arbitral awards in Iraq. This is due to the small number of bilateral or international agreements to which Iraq is a party, the strict Iraqi legal requirements for enforcement, and uneven application of the law by the judiciary.

No express provision of Iraqi Commercial Law restricts the parties' rights to provide for non Iraqi jurisdiction over disputes arising from their contract. However, Iraqi judges have traditionally been reluctant to enforce such provisions and tend to take the view that the rules relating to jurisdiction are a matter of public policy and thus not at the disposition of the parties.

## 1. Foreign Judgments

The enforcement of foreign judicial awards in Iraq is regulated by Law No. 45/1980. According to Article 3 of the Law, such awards are enforceable pursuant to Law No. 30/1928.

### a. General

Pursuant to Article 11 of Law No. 30/1928, foreign judgments are only enforceable in Iraq if issued in countries maintaining bilateral agreements with Iraq allowing enforcement of foreign judicial awards, or in countries named by Iraqi regulations. For example, Regulation No 29 of 1932 provides for the enforcement of judicial awards issued in Canada, Hong Kong, New Zealand, Malta, and Cyprus. In either case, automatic enforcement of foreign judgments in Iraq is very unlikely and the condition of reciprocity must be fulfilled.

If these requirements are met, the civil court of first instance having jurisdiction over the defendant may issue an execution order. Such order will be issued if:

- notice of the proceeding resulting in the judgment was properly served on the defendant;

- the judgment is final according to the law of the country of issue; or
- enforcement of the foreign judgment does not conflict with Iraqi public order.

### b. Riyadh Convention

Iraq is a signatory state of the 1983 Riyadh Convention for Judicial Cooperation. According to Article 31 of the Convention, judgments rendered in a member state are enforceable in another member state if they are recognized in that state. Article 30 of the Convention provides that such recognition may be refused, if:

- the judgment is contrary to the shari'a or the public order of the signatory state in which enforcement is sought;
- the judgment was by default and the unsuccessful party was not duly summoned or notified;
- the rules on legal representation in the state in which enforcement is sought have not been complied with;
- the dispute had already been determined, and the judgment is res judicata in the state in which enforcement is sought; or if
- the dispute is subject to legal proceedings in the state in which enforcement is sought.

## 2. Foreign Arbitral Awards

Arbitration is regulated by Articles 251-276 of the Iraqi Code of Civil Procedure, according to which any matter capable of amicable settlement may be subjected to arbitration. However, the Iraqi Civil Procedure Code does not contain provisions relating to foreign arbitral awards. Because Law No. 30/1928 does not regulate the enforcement of foreign arbitral awards either, the only means enabling claimants to enforce foreign arbitral awards, other than those falling under the Riyadh Convention, is to obtain an execution order from a domestic court and then proceed to enforce that order pursuant to the Iraqi procedures for the enforcement of foreign judgments outlined above.

Iraq is not a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. In addition to the Riyadh Convention for Judicial Cooperation of 1983, Iraq is a member of the Arab Convention on Commercial Arbitration of 1992.

a. **Riyadh Convention**

Article 37 of the Riyadh Convention requires member states to recognize and enforce arbitral awards issued in other member states in the same manner as judgments of the courts of a member state; the requirements for such recognition have been outlined above. According to this Article 37 of the Riyadh Convention, the enforcement of arbitral awards made in a member state may only be refused, if:

- the dispute cannot be resolved by arbitration under the law of the state in which enforcement is sought;
- the award was made on the basis of a void arbitration agreement;
- the arbitrators had no jurisdiction;
- the parties were not duly summoned; or if
- the award is contrary to the *shari'a* or the public order of the state where enforcement is sought.

b. **Arab Convention on Commercial Arbitration**

According to its Article 2, the Arab Convention on Commercial Arbitration applies to commercial disputes between natural or legal persons, regardless of nationality, that are connected by means of commerce with any contracting government or one of its nationals. Its provisions recognize the right of the parties to a contract to agree on commercial arbitration by the Arab Centre for Commercial Arbitration, either in the contract or in a separate agreement concluded after the dispute has arisen. According to Article 35 of the Arab Convention on Commercial Arbitration, the supreme court of each signatory state must give leave to enforce awards of the arbitral tribunal of the Arab Centre for Commercial Arbitration. The Arab Centre for Commercial Arbitration, however, has not yet been established, so the utility of the Arab Convention on Commercial Arbitration is extremely limited.

## APPENDIX 1 – ESTABLISHMENT REQUIREMENTS

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### 1. Establishing a Company (LLC)

- a. a power of Attorney to local counsel, legalized by the Iraqi consulate in the country of the shareholders;
- b. a copy of the company's charter or equivalent, authenticated by the competent authority in the home country of origin;
- c. certificate of registration, as issued and authenticated by the competent authority in the home country of origin;
- d. a copy of the Articles of Association of the parent company. If the company does not have Articles of Association, a copy of its certificate of formation (or its incorporation) and its shareholders certificate, legalized by the Iraqi consulate, must be provided;
- e. a completed application form containing information related to the company to be established including:
  - the name and address of both the parent company and the new company in Iraq;
  - the name and nationality of the manager of the new company;
  - the names and nationalities of the board of directors of the parent company;
  - a business plan for the operations of the company in the forthcoming year; and
  - information about the employees of the new company to be established in Iraq;
  - trade name;
  - type of business activity;
  - business address of its offices in Iraq;
  - telephone, facsimile and electronic mail in Iraq, where available;

- name, address and telephone number of: (1) the principal management official in Iraq; (2) the agent for service of process in Iraq; and (3) the authorized representative for filings with the Registrar of Companies (all of three must reside in Iraq);
  - a completed questionnaire inquiring whether the proposed entity in Iraq will be involved in: (1) land ownership; or (2) extraction or initial processing of natural resources; or (3) retail sales;
  - name, business address, telephone, facsimile and electronic mail of its agent for service of process and chief executive officer (or equivalent) in its home country of establishment or incorporation;
  - to the extent applicable: (1) the amount of its charter or authorized capital (specifying the currency); (2) net worth at the close of the most recent financial period (indicating the date and currency); and (3) the names and addresses of any owners holding ten percent (10%) or more of its equity; and
  - a statement under oath by the foreign entity affirming that the facts contained in the application are true.
- f. lease contract for the business premises of the new company in Iraq;
- g. documentation relating to appointment of local auditor and legal counsel;
- h. a copy of the passport (for a foreign citizen) or civilian identification card (for an Iraqi citizen) of the authorized representative for filings with the Registrar of Companies (who will be the person submitting the Application);
- i. the financial statements of the company for the last fiscal year;
- j. a letter on the stationery of the applicant company, signed by an officer or director of the company, authorizing the registration of the business entity in Iraq, consenting to service of process in Iraq, and identifying the chief management official in Iraq, the authorized agent for service of process in Iraq, and the representative for filings with the Registrar of Companies in Iraq (each of whom must reside in Iraq);

- k. if the proposed entity is planning to operate in retail sales in Iraq, a bank statement showing that the sum of one hundred thousand United States dollars (\$100,000) has been deposited in a non-interest bearing account (this can be supplied to the Registrar of Companies at a later date, see below);
- l. Failure to supply the bank statement with the application will not constitute grounds for rejection but, in that case, the bank statement must be supplied before actual sales activity may commence in accordance with the Ministerial Instruction on retail trade; and
- m. Memorandum of Association of the new company and other relevant establishment documentation.

The person who submits the application should be able to produce the original of his or her passport (for a foreign citizen) or civilian identification card (for an Iraqi citizen) at the time of the application, and in all future interactions with the Registrar of Companies.

## 2. Branch or Representative Office

Similar documents should be submitted to the Registrar of Companies for registering a branch or representative office of a foreign company in Iraq. An application should be made to the Registrar of Companies, accompanied by audited financial statements of the branch and the parent company; establishment documents of the parent company, business plan for the forthcoming year, lease contract for the premises of the branch or representative office and documents concerning the appointment of the local auditor and legal counsel. Also, a copy of the passport of the manager of the branch or representative office must be provided.

# APPENDIX 2 – LAW NO. 51/2000 REGULATING COMMERCIAL AGENCY

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## Article 1

This law aims to regulate commercial agency activities practiced in Iraq by an agent in the name and for the account of a natural or legal person outside Iraq, as well as to regulate the relationship between government offices, public, mixed and private sectors, unions and natural and legal Arab and foreign persons in a manner so as to achieve the aims of development, to prevent exploitation and to ensure the national economic interests.

## Article 2

The following means shall be used to achieve the aims of this law :

1. Issue of licenses for practicing commercial agency activities;
2. Registration of Commercial Agencies in a special register in accordance with the provisions of this law; and
3. Supervision of the activities of the commercial agents.

## Article 3

For the purposes of the application of the provisions of this Law, the following terms shall have the meanings set out below:

1. Commercial Agency: Any commercial activity conducted within Iraq by a person in his capacity as a representative of a natural or legal person outside Iraq, regardless of whether it is a commercial agency, commission agency, or any other commercial agency referred to in the trade law, company law or transport law.

2. Commercial Agent: A natural or legal person carrying out any commercial agency activities listed in clause 1 of this Article.
3. Register: Company Register
4. Licence: The certificate issued by the Registrar for the commercial agent.

## Article 4

1. The following conditions must be met for a commercial agent to obtain the licence:
  - a. He must be an Iraqi national residing in Iraq.
  - b. He must enjoy full legal capacity and be at least 25 years of age.
  - c. He must not have been previously convicted of a penal offence.
  - d. He must have a commercial office in Iraq to conduct his activities.
  - e. He must be a member of one of the Chambers of Commerce in Iraq and have a commercial name.
  - f. He must be loyal to the country.
  - g. He cannot be a civil servant or employed in public service.
2. The Minister of Trade may temporarily make an exception for the applicant requesting the licence with regard to clauses 1.d and 1.e of this Article, provided that such conditions are to be met within a period to be determined by the Minister.
3. If a company is applying for the licence, in addition to clauses 1.d and 1.e of this Article, the company must be Iraqi and its entire capital must be owned by Iraqi nationals.
4. A natural or legal person may not register more than three agencies; any excess agencies shall be removed from the register at the request of the commercial agent.

## Article 5

1. In order to obtain a licence for a commercial agency, an application must be filed at the Commercial Register, together with the necessary documentation evidencing the fulfillment of the requirements set out under Article 4.
2. The Commercial Register shall notify the applicant of its decision within 30 days following the date of the application. In case of refusal, the applicant may appeal to the Minister within 30 days after being notified. The decision of the Minister is final and binding.
3. If the licence is granted, the Registrar will issue the licence, which shall contain a serial number, date of issue, name of commercial agent, his address and photograph or, for legal persons, a photograph of the authorized manager.

## Article 6

1. A commercial agent must apply for the renewal of the licence every two years, within 60 days after the date of expiry, whatever the date of granting or renewing the licence.
2. If an application for renewal has not been submitted within the period prescribed in clause 6.1, the Registrar shall impose a fine of IQD1,000 per day for delay of a period not exceeding 60 days.
3. If the agent does not apply for renewal within the period prescribed in clause 6.2., the Registrar shall cancel the licence. The commercial agent may appeal to the Minister within 30 days from the day following the date of notification. The decision of the Minister is final and binding.

4. The agent may only receive the licence after having paid the charges and fees imposed on him.
5. If the agent's licence is terminated and he is not granted a new licence within 180 days from the date of its termination, then all the agencies held by the agent shall be deemed terminated by law, without affecting the obligations of the agent existing prior to the date of the termination.

## Article 7

1. The Registrar shall revoke a licence in the following two events:
  - a. if one of the conditions provided under Article 4 of this law is no longer satisfied;
  - b. in case of failure to submit a certified copy of the commercial agency contract as required by the law within 90 days from the date of the licence.
2. An agent may appeal against a decision of the Registrar to cancel the licence to the Minister within 30 days of the date of notification of the cancellation. The decision of the Minister is final and binding.

## Article 8

Based on legal evidence the Registrar may consider any commercial activity exercised by a natural or legal person in Iraq as a commercial agency subject to the provisions of this law. Any related person is entitled to appeal to the Minister against the Registrar's decision, within 30 days of the date of notification of the decision. The decision of the Minister shall be final and binding.

## Article 9

The agent must submit an application to the Registrar, to register all his commercial agencies for natural persons, companies, Arab and foreign entities with copies of the agency agreements certified in accordance with this law.



## Article 10

1. The agent must maintain a special book, without changes, omissions or additions which are required by the principles of commercial accounting. The numbers of the pages must be pre-recorded, provided that it is submitted to the Registrar or its delegate to have each page duly stamped and approved at the end of the year.
2. The agent must record all commissions earned and the amount of the foreign currency transferred to Iraq under the contract and its percentage of the total dealings and commercial transactions concluded for the account of the principal. The names of the parties to the contract and their addresses must be listed.
3. The commercial agent must, within 60 days from the beginning of each year, submit to the Registrar two copies of an annual account, setting out the commercial transactions which have been conducted throughout the previous year, and including the total amounts earned from the activities of the commercial agency in detail, the amounts received, stating the entities which have transferred these amounts, accompanied by documents and bank certificates supporting these amounts. The Registrar may accept the account during 90 days after the date of expiry of said period, if the delay was for a legitimate cause.
4. The agent may use all or part of the commissions earned for imports and for repatriating the remaining amounts to Iraq.

## Article 11

The agent may deal in all kinds of goods in accordance with the instructions issued in this respect, without limitation as regards the types of goods.

## Article 12

The Registrar has the authority to supervise and control the activities of the agent, and may send a representative to inspect the agent's office and books.

## Article 13

1. Arab and foreign companies wishing to appoint commercial agents in Iraq may submit a request to this effect to the Registrar;
2. The Registrar shall provide Arab or foreign companies with names of licensed commercial agents in Iraq so that they may select an agent.

## Article 14

1. State entities and the public sector may not deal with commercial agents, regardless of the forms and names they may take irrespective of whether they are natural or legal persons, and must deal directly with Arab and foreign companies.
2. If State entities or the public sector are unable to deal directly with Arab or foreign companies, they must request the related government authority for permission to deal with licensed commercial agents.

## Article 15

Any person who performs the activity of commercial agency without a licence, or fails to register all his agencies or acts in breach of Article 14 of this Law shall be sentenced to short-term imprisonment. Similar punishment shall be imposed on the legal representative of a legal person, in accordance with Article 80 of the Penal Law No. 111 of 1969.

## Article 16

Any public servant who intentionally carries out commercial agency activities in order to conclude a contract with State entities or the public sector shall be sentenced to life imprisonment.

## Article 17

Any civil servant employed by a State entity or the public sector who acts in violation of Article 14 of this Law shall be sentenced to life or term imprisonment.

## Article 18

1. A fine not less than IQD10,000 (ten thousand) and not exceeding IQD100,000 (one hundred thousand) shall be imposed on any agent who:
  - a. fails to keep books indicating the amount of commissions received in accordance with Article 10 Para. 2 of this Law;
  - b. fails to submit a statement within the time provided for in Article 10 Para. 2 of this Law; or
  - c. fails to submit adequate information concerning imports effected using commissions earned in accordance with Article 10 Para. 3.
2. The penalty shall be imprisonment in the event of repetition of the acts provided for in the first paragraph of this Article.

## Article 19

Any agent licensed prior to the enforcement of this Law shall make the necessary adjustments in accordance with the provisions of the new Law within a year of the entry into force of this Law. If he fails to do so, the agent's licence shall be revoked.

## Article 20

The Minister of Trade may exempt from the provisions of this Law any State entity or the public sector for dealings with a commercial agent, by means of a statement published in the Companies Registration Gazette.

## Article 21

1. The agent shall pay the following fees:
  - IQD25,000 (twenty five thousand) for the issue of the licence;
  - IQD15,000 (fifteen thousand) for the registration of the commercial agency; and
  - IQD10,000 (ten thousand) for the renewal of the licence.

2. The Council of Ministers, or any person authorized by the Council, may amend the fees and fines provided for in this Law whenever the need arises for such an amendment.

## Article 22

1. The Law regulating Commercial Agency Law No. 26 for the year 1994 shall be repealed.
2. Scientific bureaus for pharmaceutical advertising, which are licensed under the provisions of the Revolutionary Command Council No. 60 for the year 1998, shall be exempted from the application of the provisions of this Law.

## Article 23

1. The Organization created by Commercial Agency Law No. 26 for the year 1994 shall be abolished.
2. Scientific bureaus for pharmaceutical advertising licensed under the provisions of Revolutionary Command Council No. 60 for the year 1998 shall be exempted from the application of the provisions of this Law.

## Article 24

The Minister of Trade may issue instructions to facilitate the execution of the provisions of this Law.

## Article 25

This Law shall come into effect on the date of its publication in the Official Gazette.

# APPENDIX 3 – MINISTERIAL INSTRUCTION NO. 149

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## Registration of Branches and Trade Representation Offices by Foreign Companies

### Section I

#### Introduction:

#### Registration of Branches and Trade Representation Offices by Foreign Companies

1. Coalition Provisional Authority (“CPA”) Order No. 39 on “Foreign Investment,” dated 19 September 2003, as amended by CPA Order No. 46, dated 20 December 2003, establishes that Foreign Investors may do business in Iraq by, among other things, establishing branches or trade representation offices.
2. Pursuant to CPA Order No. 39, a branch or trade representation office may do business in the name of and for the account of a business entity organized under the laws of a foreign country. In no case shall the branch or trade representation office’s foreign character disqualify it from registering to conduct business in Iraq, whether the business is in the nature of a commercial agency, distributorship, trading company or otherwise.
3. The present Ministry of Trade Ministerial Instruction implements CPA Order No. 39, and in particular Section 5 thereof, as to branches and trade representation offices of entities organized under the laws of foreign countries.
4. By virtue of CPA Order No. 39, Regulation No. 5 of 1989 on “Branches and Offices of Foreign Companies and Economic Establishments” and any instructions thereunder contrary to this Instruction are nullified. Branches and offices currently registered under that Regulation are regarded as registered under this Instruction and shall provide updated information as of the time this Instruction requires.

5. By virtue of CPA Order 39, Law No. 51 of 2000 on “Commercial Agency” and any instructions thereunder are nullified. Commercial agents on behalf of natural or juridical persons outside Iraq shall henceforth be regarded as subject to the same legislation as agents performing similar services on behalf of natural or juridical persons inside Iraq. Any other instruction, regulation or legislation conflicting with CPA Order No. 39 as implemented in this Instruction shall also be regarded as null and void.

### Section II

#### Business Entities Subject to this Instruction

1. Foreign business entities wishing to establish themselves to conduct business in Iraq are subject to registration by the Registrar of Companies, Ministry of Trade, in accordance with this Ministerial Instruction. Unless otherwise exempt under the laws and regulations of Iraq, including CPA Orders, foreign companies working under contract in Iraq are also subject to registration under this Ministerial Instruction.
2. Such foreign entities may conduct any business permissible under the laws and regulations of Iraq, including CPA Orders, without being required to post any advance financial bonds, guarantees or similar surety (except for a Foreign Investor engaging in retail sales).

### Section III

#### Application and Procedures for Registration

1. A foreign business entity wishing to register to do business in Iraq shall complete and file with the Registrar of Companies an Application in the form attached as Annex I to this Ministerial Instruction. Two (2) copies of the completed form should be brought to the Registrar of Companies at the time of application (the Registrar of Companies will keep one and the other will be returned with a signed checklist to the applicant).

2. Each Application shall include the following information concerning the foreign business entity proposed to be registered by the Registrar of Companies:

- a. legal name;
- b. trade name;
- c. type of business activity;
- d. business address of its offices in Iraq;
- e. telephone, facsimile and electronic mail in Iraq, where available;
- f. name, address and telephone number of: (1) the chief management official in Iraq; (2) the agent for service of legal process in Iraq; and (3) the authorized representative for filings with the Registrar of Companies (all of three must reside in Iraq);
- g. a yes/no questionnaire asking if the proposed entity in Iraq will be involved in: (1) land ownership; or (2) natural resource extraction or initial processing; or (3) retail sales;
- h. name, business address, telephone, facsimile and electronic mail of its agent for service of legal process and chief executive officer (or equivalent) in its home country of establishment or incorporation;
- i. to the extent applicable: (1) the amount of its charter or authorized capital (specifying currency); (2) net worth at close of most recent financial period (indicating date and specifying currency); and (3) the names and addresses of any owners holding ten percent (10%) or more of its equity; and
- j. a statement under oath to be signed on behalf of the foreign business entity proposed to be registered by the Registrar of Companies.

3. The following documentation shall be submitted with each Application concerning the foreign business entity proposed to be registered by the Registrar of Companies:

- a. certificate of registration, as issued and authenticated by the competent authority in the home country of origin,
- b. a copy of the company's charter or equivalent, authenticated by

the competent authority in the home country of origin;

- c. a letter on the stationery of the applicant company, signed by an officer or director of the company, authorizing the registration of the business entity in Iraq, consenting to service of process in Iraq, and identifying the chief management official in Iraq, the authorized agent for service of legal process in Iraq, and the representative for filings with the Registrar of Companies in Iraq (all three must reside in Iraq);
- d. the financial statements of the company for the last fiscal year;
- e. if the proposed entity is planning to operate in retail sales in Iraq, a bank statement showing that the sum of one hundred thousand United States dollars (\$100,000) has been deposited in a non-interest bearing account (this can be furnished to the Registrar of Companies at a later date and the non-submission of it shall not be grounds for rejection of the Application; however, the bank statement will have to be furnished before actual sales activity may begin) in accordance with the Ministerial Instruction on retail trade;
- f. a copy of the passport (for a foreign citizen) or civilian identification card (for an Iraqi citizen) of the authorized representative for filings with the Registrar of Companies, as prescribed in the letter referred to in Item (c) in paragraph 3. above and as in Item (f) in paragraph 2. above (this is the person who is to actually submit the Application and he or she should also bring at the time of application, and in all future interactions with the Registrar of Companies, the original of his or her passport (for a foreign citizen) or civilian identification card (for an Iraqi citizen)).

4. An Application for the registration of a foreign business entity to do business in Iraq (including all required information and documents) may be filed in either the Arabic or English language. Translations of home country documents not in the English or Arabic language shall be provided.

5. Upon receiving an Application, the Registrar of Companies shall:

- a. review the Application for completeness;
- b. if the Application is incomplete, return it to the applicant company without collecting any fee;

- c. if the Application is complete, provide a signed checklist to the applicant company showing that all the required documentation has been received;
  - d. log the accepted Application in the Registrar of Companies' official record as of the date of its receipt; and
  - e. assign a temporary unique identification number to the Application.
6. The Registrar of Companies must approve or disapprove each Application within ten (10) business days from the day of its submission by the applicant company. The Registrar of Companies may only disapprove an Application for failure to comply with this Ministerial Instruction.
  7. Upon approval of each Application, the Registrar of Companies shall promptly issue to the applicant company a registration licence bearing the corresponding business entity's name and the Registrar of Companies' official seal, together with a permanent unique identification number.
  8. The registered business entity shall acquire legal recognition as from the date of issue of its registration licence and permanent unique identification number by the Registrar of Companies. A registered entity is present and subject to the jurisdiction of Iraq.
  9. Upon issue, the Registrar of Companies shall publish each registration in the "Companies Bulletin" and in at least one (1) daily newspaper of wide circulation in Iraq.
  10. The Registrar of Companies shall forward copies of each Application as approved, together with its respective permanent unique identification number as issued, to the Ministry of Finance (Tax Department), Ministry of Planning, Ministry of Labor and Social Affairs, and such other Iraqi Government departments and agencies as reasonably necessary.
  11. The Registrar of Companies shall enter basic summary information on registered companies into a Ministry of Trade electronic database accessible to the public, including over the Internet. Implementation of this function shall not, however, be grounds for delay of registration.

#### **Section IV** Fees Payable

1. A single standard registration processing fee shall be due and payable, in the amount of two hundred thousand (IQD200,000), or equivalent, for each Application payable as follows:
  - a. one-half (1/2) of the fee shall be paid upon submission and filing of the Application;
  - b. the remaining one-half (1/2) of the fee shall be paid upon issue of the registration and permanent unique identification number by the Registrar of Companies; and
  - c. provided, however, that in the event of disapproval of an Application, the remaining one-half (1/2) of the fee referred to in Item (ii) above shall not be due or payable, and the one-half (1/2) of the fee referred to in Item (i) above shall be forfeited by the Registrar of Companies.
2. The Registrar of Companies shall collect said fees and issue the proper receipt evidencing payment directly to the Applicant or its representative.
3. The Registrar of Companies shall keep regular and accurate records and accounts to account for all registration fees collected.

#### **Section V** Appeal for Disapproval of Application

In the event the Registrar of Companies disapproves the Application for the registration of a foreign business entity, the Registrar of Companies must promptly notify the applicant company in writing stating the reasons for its disapproval. The applicant company has the right to contest the disapproval of the Registrar of Companies before the Minister of Trade within thirty (30) days from the date of notification. The Minister of Trade shall review the disapproval within thirty (30) days from the date of submission of the applicant company's appeal. If the Minister of Trade also disapproves the Application, the applicant company has

the right to appeal the Minister's decision before the competent court of law within thirty (30) days of the date of the decision, which court shall have final disposition of the matter.

#### **Section VI**

##### **Update of Information at the Registrar of Companies**

Information filed in connection with each registration must be correct as of the time of filing. Subsequent changes may be filed as they occur but at least by December 31 of each year, and address changes for the company's principal office in Iraq or its agent for service of legal process within seven (7) days of their occurrence. Companies will be held responsible for notifications and correspondence delivered to the address in the Registrar of Companies' files.

#### **Section VII**

##### **Entry into Force of this Instruction**

1. This Ministerial Instruction shall enter into full force and effect upon its publication in the Companies Bulletin, as of the date of its signature.
2. The Registrar of Companies shall ensure that the section of the Companies Bulletin publishing this Ministerial Instruction is published in at least five (5) newspapers chosen to accomplish the broadest possible circulation in all regions of Iraq.

Signed: Dr. Ali Allawi

Name: Dr. Ali Allawi

Title: Minister of Trade, Republic of Iraq

## **APPENDIX 4 – INVESTMENT LAW NO. 13/2006**

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In the name of the people  
The Presidency Council

Pursuant to what was approved by the Council of Representatives and endorsed by the Presidency Council and based on the provisions of paragraph (First) of Article (61) and paragraph (Third) of Article (73) of the Constitution, the following law is promulgated:

#### **No 13 of 2006 The Investment Law**

### **Chapter One: Definitions**

#### **Article 1**

The following terms, wherever mentioned in this Law, shall have the following specific meanings unless the context indicates otherwise:

1. The Council: The Council of Ministers
2. National Commission for Investment: The Commission established in accordance with this law responsible for drawing up the national policy and laying out its guidelines and monitoring the implementation of these guidelines and instructions in investment. It shall specialize in investment projects of a federal nature exclusively.
3. Region's Commission: The investment commission of the region responsible for granting investment licenses in the region.
4. Governorate Commission: The investment commission of the governorate not organized in a region responsible for investment planning and granting investment licenses in the governorate.
5. The Commission: The National Commission for Investment or the Region's Commission or the Governorate Commission as the case.

6. Chairman of the Commission: The Chairman of the National Commission for Investment
7. The Project: The economic activity subject to the provisions of this law.
8. The Assets: The tools, apparatuses, equipments, machineries, requirements, gear, transportation means and office furniture specified for exclusive use in the project, and the furniture, furnishings and the requirements of the hotels, tourist cities, hospitals, schools and colleges
9. The Foreign Investor: Is the investor who does not hold the Iraqi nationality in the case of a real person, and is registered in a foreign country in the case of a juridical or legal person
10. The Iraqi Investor: Is the investor who holds Iraqi Nationality in case of a real person and is registered in Iraq in the case of a juridical or legal person.
11. Taxes and Fees: All types of taxes and fees levied in accordance with the applicable laws.
12. The designed production capacity: Is the production capacity designed within a specific unit of time (hour, unit, day ... etc) in accordance to what is fixed in the documents incoming with the machines of the supplier.
13. Investment Portfolio: A collection of investments in shares and bonds.
14. Investment: Is the investment of capital in any economic or service activity or project that results in a legitimate benefit for the country.

## Goals and Means

### Article 2

This law aims at the following:

1. To promote investment and transfer modern technologies in order to contribute to the process of developing and enhancing Iraq, and expanding and diversifying its production and service base.

2. To encourage the Iraqi and foreign private sector to invest in Iraq by providing the required facilities for establishing investment projects and enhancing its competitive capacities in the local and foreign markets for projects included in this law.
3. To develop human resources based on market demands and provide work opportunities for the Iraqis.
4. To protect the rights and properties of investors.
5. To expand exports and improve the balance of payments and the balance of trade of Iraq.

### Article 3

The following means shall be adopted to realize the objectives of this law:

1. To grant projects covered by the provisions of this law the necessary privileges and guarantees for its continuation and development by providing support in a way that enhances the competitive capacities of these projects in the local and foreign markets.
2. To grant projects that obtained an investment license from the Commission, additional facilities and exemptions from taxes and fees in accordance with the stipulations of this law.

## Chapter Two: The National Commission for Investment and the Investment Commissions in the Regions and Governorates

### Article 4

1. A Commission shall be established and called the "The National Commission for Investment". It shall enjoy a juridical personality and shall be represented by the Chairman of the Commission or the person authorized by him. It shall be responsible for drawing up the national policies for investment and drawing up its plans, regulations and guidelines as well as monitoring the implementation of these guidelines and instructions in investment. It shall specialize in strategic investment projects of a federal nature exclusively.

2. The National Commission for Investment” shall be managed by a Board of Directors comprised of nine members who must be competent and specialized, and hold a college degree that suits the specialty of the Commission. They must not have been sentenced for a felony or misdemeanor of moral turpitude, or have declared their bankruptcy
3.
  - a. Upon a request by the Prime Minister, the Council of Ministers shall nominate a Chairman of the Commission at a grade of Minister and a Deputy Chairman at a grade of Deputy-Minister for a period of five years and present them to the Council of Representative for approval.
  - b. The Prime Minister shall appoint four members for a period of five years at a grade of Director General.
  - c. The Prime Minister shall select three members from the private sector for five years after their nomination by Chairman of the Commission and specifying their compensations according to the bylaws.
  - d. At the conclusion of the membership of any member of the Commission referred to in Paragraph a and b of this Article in cases not involving dismissal and resignation, the Prime Minister shall assign them to any governmental entity at the same grade. Those mentioned in Paragraph a of this article shall be retired on pension when not assigned to a government position equivalent to their grade.
  - e. The Council of Representatives may directly dismiss the Chairman of the National Commission for Investment and his Deputy, or upon a request by the Prime Minister for compelling reasons.
  - f. The Council of Ministers may dismiss or replace any member of the Commission or replace him with others in the event he does not adhere to the standards and regulations of the Commission.
  - g. The Board of Directors of the National Commission for Investment shall meet at the invitation of its Chairman. A bylaw issued by the Commission shall specify the quorum, decision taking, making recommendations and the course of work of the Commission and any other issue.

- h. The National Commission for Investment shall be connected to the Prime Minister.
  - i. The salary scale and entitlements of the Commission’s employees shall be determined by a decision of the Prime Minister based on a proposal from the Chairman of the National Commission for Investment.
4. The Commission’s headquarters shall be in Baghdad and it may appoint representatives in the regions and governorates.
  5. The National Commission for Investment shall draw up an overall national strategic policy for investment identifying the more important of the sectors and shall prepare a map of investment projects in Iraq in the light of the information it receives from the regions and governorates. It shall also prepare lists of investment opportunities in strategic and federal investment projects with initial information about these projects and making it available to those wishing to invest.

#### Article 5

1. The regions and governorates not organized in a region may form investment commissions in their areas. The latter shall enjoy the powers of granting the investment licenses, investment planning, promoting investment and opening branches in their areas within the provisions of this law in consultation with National Commission for Investment to guarantee the availability of the legal conditions.
2. The Investment Commissions of the regions and governorates shall be composed of at least seven members including the chairman and the vice chairman of at least seven years of experience and competence and with a university degree appropriate to the specialization of the commission, and not convicted in a felony or a misdemeanour involving turpitude, or has declared bankruptcy.
3. The regions and governorates not organized in a region shall establish a mechanism of forming the investment commission of the region and the governorate and removing the Commission’s members in case he/she does not adhere to the standards and charters of the Commission in a way which is not in conflict with the provisions of this law.



4. The Investment Commissions of the regions and governorate shall coordinate their work with the National Commission for Investment, and shall coordinate and consult with local governments regarding investment plans and facilities.
5. The regions and governorates commissions shall draw up their investment plan in a way that does not contradict the federal investment policy and shall prepare a list of the investment opportunities in the areas that are subject thereto, with initial data about these projects and offer it to those wishing to invest.
6. The region's Commission shall be connected to the Prime Minister of the region and is subject to the scrutiny of the region's Council. The governorate commission shall be connected to the Governor and is subject to the scrutiny of the governorate council in a way that does not contradict the provisions of this law.
7. Regions and governorates commissions board of directors shall convene upon an invitation from their chairman. The quorum of convening and adopting resolutions and recommendations shall be determined by absolute majority. The conduct of work shall be organized by by-laws issued by the Commission.

#### **Article 6**

In addition to ordinary correspondence, the Commission may adopt electronic mail with the official entities connected with the work and activity of the Commission through local networks or the Internet according to guidelines set by the Commission.

#### **Article 7**

1. The Commission shall accept investment license requests for projects whose capital is not less than the minimum amount determined by the Council of Ministers or the Council of Ministers of the region as the case may be by a regulation issued based on a proposal by the Commission.
2. The Commission must obtain the approval of the Council of Ministers before granting the license if the value of the investment project is more than two hundred and fifty million dollars.

3. The Commission shall make its final decision concerning the requests of investment license within a period not exceeding (45) forty five days from the date of filing a request.
4. The decisions of the Commission regarding the approved investments projects shall be obligatory for the purposes of this law.

#### **Article 8**

The Commission shall have an independent annual budget whose revenues shall be made up of its allocated amounts in the State General Budget.

#### **Article 9**

The Commission shall promote investment by working on the following:

1. Building confidence in the investment environment, identifying investment opportunities, and promoting and stimulating investment in them.
2. Simplifying the procedures for registration, issuing of investment projects licenses, and following up on existing projects and giving them priority in processing with the official entities. Completing the procedures of answering investor requests and obtaining the required approvals for the investor and the project.
3. Establishing one window at the National Commission for Investment and the Regions and Governorates Commissions, which includes authorized representatives from the ministries, and members nominated by the Councils of the regions and governorates as the case and the concerned authorities to undertake issuing licenses and obtain the approvals of other authorities in accordance with the law.
4. Providing advice, information, and data to investors and issuing special manuals in this regard.
5. Setting forth and implementing programs to promote investment in different areas of Iraq in order to attract investors.

6. Facilitating the allocation of the needed lands and renting them out for establishing projects for a sum to be determined by the Commission in coordination with the concerned authorities.
7. Establishing secure and free investment areas with the agreement of the Council of Ministers.
8. Encouraging Iraqi investors (residing in Iraq) through providing them with easy loans and financial facilities in coordination with the Ministry of Finance and with the assistance of Banking Institutions, provided that the investor obtaining the loan shall employ a number of unemployed Iraqis proportional with the volume of the loan.
9. Any other tasks related to its work and assigned by the Council of Ministers.

### Chapter Three: Privileges and Guarantees

#### Article 10

The Investor irrespective of his/her nationality shall enjoy all privileges, facilitations and guarantees and shall be subject to the obligations stated in this law. The Iraqi and foreign investor shall have the right for, the purposes of housing projects, the use of the land for a sum to be determined between him and the land owner without land speculation according to conditions set forth by the National Commission for Investment and the approval of the Council of Ministers. The Commission shall facilitate the allocation of the required lands for the housing projects. The housing units shall be allocated for ownership by the Iraqis after the completion of the project.

#### Article 11

The investor shall enjoy the following benefits:

1. The investor shall have the right to take out the capital he brought into Iraq and its proceeds in accordance with the provisions of this law and pursuant to the instructions of the Central Bank of Iraq in an exchangeable currency after paying all his taxes and debts to the Iraqi Government and all other authorities.

2. The foreign investor shall have the right to:
  - a. Exchange shares and bonds listed in the Iraqi Stock Exchange.
  - b. Form investment portfolios in shares and bonds.
3. Renting or leasing lands needed for the project for the term of the investment project, provided that it does not exceed 50 years renewable with the agreement of the Commission, and provided that the nature of the project and its benefit for the national economy is taken into consideration when determining the period.
4. Insuring the investment project with any foreign or national insurance company it deems suitable.
5. Opening accounts in Iraqi or foreign currency or both at a bank inside or outside Iraq for the licensed project.

#### Article 12

This law shall guarantee the following for the investor:

1. Priority in recruitment and employment shall be given to Iraqi workers. The right to employ and use non-Iraqi workers in case it is not possible to employ an Iraqi with the required qualifications and capable of performing the same task in accordance with guidelines issued by the Commission.
2. Granting the foreign investor and non-Iraqis working in the investment projects the right of residency in Iraq and facilitating his/her entry and exit to and from Iraq.
3. Non-seizure or nationalization of the investment project covered by the provisions of this law in whole or in part, except for projects on which a final judicial judgment was issued.
4. Non-Iraqi technicians and administration employees working in any project shall have the right to transfer their salaries and compensations outside Iraq in accordance with the law after paying their dues and debts to the Iraqi government and all other entities.

### Article 13

Any amendment to this Law shall not have any retroactive effect regarding the guarantees, exemptions, and rights recognized by this Law.

## Chapter Four: Investor Obligations

### Article 14

The investor shall observe the following:

1. To notify the National Commission for Investment, the Region or Governorate Commission in writing immediately after the installation and equipping of the fixed assets for the purposes of the project and the date of the beginning of commercial activity.
2. To keep proper records audited by a certified accountant in Iraq in accordance with the law.
3. To provide an economic and technical feasibility study for the project and any information, data or documents required by the Commission or other competent authorities regarding the budget of the project and the progress made in its execution.
4. To keep records of the project's duty-free imported materials in accordance with the provisions of this Law and specifying the depreciation periods of these materials.
5. To protect the safety of the environment and to adhere to the valid quality control systems in Iraq and international regulations accredited in this field, also the laws related to security, health, public order and values of the Iraqi society.
6. To adhere to the valid Iraqi laws regarding salaries, vacations, work hours and conditions and others as a minimum.
7. Commitment to the correspondence of the work progress schedule submitted by the investor with reality provided that the time difference shall not exceed six months, and that the National Commission for Investment shall set forth punitive conditions in case of exceeding the six-month period and that the Commission shall have the right to withdraw the license.

8. To train and rehabilitate its Iraqi employees as well as raising their efficiency, skill and capabilities. Priority in employment and recruitment shall be given to the Iraqis.

## Chapter Five: Exemptions

### Article 15

1. The project that has obtained an investment license from the Commission shall enjoy exemption from taxes and fees for a period of (10) ten years as of the date of commencing commercial operations in accordance with the areas of development defined by the Council of Ministers at the suggestion of the National Commission for Investment based on the degree of economic development and the nature of the investment project.
2. The Council of Ministers shall have the right to propose draft laws to extend or grant exemptions in addition to the exemptions stipulated in paragraph (First) of this Article, or provide incentives, guarantees or other benefits to any project or sector or region and for the years and percentages it deems appropriate in accordance with the nature of the activity, its geographical location and its contribution to manpower employment and its effect on driving the economic development, and for considerations of national interest.
3. The National Commission for Investment has the right to increase the years of tax and fees exemption in a way directly proportional to the increase in the Iraqi Investor share in the project to reach fifteen years if the Iraqi Investor share in the project was more than 50%.

### Article 16

If the project is moved during the granted period of the exemption from a development area to another, the project shall receive, for the purposes of the exemption mentioned in paragraph (First) of Article (15) during the remaining term, the treatment of the projects in the development areas it is moving to, provided that the Commission is informed of such move.

## Article 17

The project that obtains an investment license shall also enjoy the following:

1. Assets imported for the purposes of the investment project shall be exempted from fees, provided that their entry to Iraq is made within (3) three years from the date of granting the investment license.
2. The imported assets required for the expansion, development or modernization of the project shall be exempted from fees in case they led to an increase in the designed capacity, provided they are brought in within three years from the date of notifying the Commission of the expansion or development. Expansion, for the purposes of this law, shall mean adding fixed capital assets aimed at increasing the designed capacity of the project in commodities or services or materials by a percentage exceeding (15%) fifteen percent. Development, for the purposes of this law, shall mean replacing project machines with more developed ones, totally or partially or making a development on the standing devices and equipments of the project by adding new machines and devices or parts thereof with the aim of raising the productive efficiency or improving and developing the quality of the products and services.
3. Spare parts imported for the purposes of the project shall be exempted from fees if the value of these parts does not exceed (20%) twenty percent of the fixed assets value, provided that they are not be used for any other purpose.
4. Hotels, tourist institutions, hospitals, health institutions, rehabilitation centers and educational and scientific organizations projects shall be granted additional exemptions from duties and taxes on their imports of furniture, furnishings and requisites for renewing and updating purposes at least once every four years, provided that these items are brought into Iraq or used in the project within (3) three years from the date of the approval decision of the Commission on the import lists and their quantities, and provided that these items are not used for purposes other than the imported purposes.

## Article 18

If it is found that the fixed assets exempted, in whole or in part, from taxes or fees were sold in violation of the provisions of this law or were used in anything other than the project or for purposes other than the authorized purposes, the investor must pay the taxes, fees, and fines incurred pursuant to the law.

## Chapter Six: Procedures for Granting Investment and Project Establishment License

### Article 19

1. The investor shall obtain the license in addition to obtaining the rest of the licenses for the purpose of enjoying the privileges and exemptions provided by the Commission.
2. The Commission shall grant the license for investment or project formation based on a request submitted by the investor according to conditions facilitated and prepared by the Commission. The request submitted by the investor shall include the following:
  - a. Filling a request form prepared by the Commission
  - b. Financial competency from an accredited bank
  - c. Projects performed by the investor inside or outside Iraq
  - d. Details of the project intended to invest in and its economic feasibility.
  - e. A timetable for completing the project.

### Article 20

1. The Commission must issue the establishing license through establishing one window in the region or the governorate not organized in a region that includes authorized representatives of the ministries and relevant bodies. The Commission shall grant project formation license and obtain approvals from the entities in accordance with the law.

2. The Commission must help the investor to obtain licenses by approaching the competent authorities and exploring the opinions of the entities concerning the issuance of the formation license. These entities must issue the decision to reject, approve or request amendment within 15 days from the date of being notified. The failure to reply from the entity from which the opinion is solicited shall be deemed as an approval and in case of a rejection there must be cause for it.
3. In case of disagreement between the National Commission for Investment decision and the other relevant entity regarding the granting of the license other than the Region's Commissions, the dispute shall be brought before the Prime Minister for settlement.
4. In case the request for registration is rejected, the requestor may file a complaint to the Chairman of the region or the governorate Commission concerned within 15 days after receiving notification of the rejection decision. The Chairman of the Commission concerned shall take a decision concerning the complaint in question within a period of seven days. The petitioner may appeal the decision of the Chairman of the Commission concerned rejecting his complaint to the authority to which the Commission concerned is connected to within 15 days from the date the complaint's rejection and its decision is deemed final.

## Chapter Seven: General Provisions

### Article 21

The project capital subject to the provisions of this law shall be made up of the following:

1. Cash transferred to Iraq through financial banks and companies or any other legal means with the aim of investing it for the purposes of this law.
2. The in-kind assets and incorporeal rights imported to Iraq or purchased from the local markets by the cash transferred into Iraq:
  - a. In-kind assets related to the project.

- b. The machinery, tools, equipment, buildings, constructions, transportation means, furniture and offices appliances required for establishing the project.
  - c. The incorporeal rights that include patents, registered trade marks, technical know-how, engineering services, administrative and marketing services and the similar.
3. Profits, proceeds and reserves resulting from the capital invested in Iraq in the project if the capital of such a project was increased or was invested in another project covered by the provisions of this law.

### Article 22

The foreign investor shall enjoy additional privileges in accordance with international agreements signed between Iraq and his country or multilateral international agreements which Iraq has joined.

### Article 23

If the project ownership is transferred during the granted period of the exemption, it shall continue to enjoy granted exemption, facilities and guarantees until the end of that period, provided that the new investor continue to work on the project in the same specialization or in another, with the approval of the Commission. The new investor must take the place of the former investor in the rights and obligations consequent to the provisions of this law.

### Article 24

1. The investor, with the approval of the Commission, may sell exempted fixed assets or relinquish it to another investor benefiting from the provisions of this law, provided that he uses them in his project.
2. The investor, after informing the Commission, may sell the exempted fixed assets to any person or other project not subject to the provisions of this law after paying the outstanding fees and taxes.
3. The investor, with the approval of the committee, may re-export the exempted fixed assets.

### Article 25

In the event two or more companies or enterprises merge, the new company or entity resulting from the merger must set up separate accounts for each project before the merger in order to register and apply exemptions and facilitations stipulated in this law during the remaining period of the exemption.

### Article 26

Any project approved in accordance with the provisions of the previous applicable laws shall continue to benefit from all exemptions granted to it pursuant to that law and until the expiration of the exemption period and under the same terms.

### Article 27

Disputes arising between parties who are subject to the provisions of this law shall be subject to the Iraqi law unless otherwise agreed, contrary to the cases that are subject to the provisions of the Iraqi law exclusively or the jurisdiction of Iraqi courts.

1. Disputes arising from the work contract shall exclusively be subject to the provisions of the Iraqi law and the jurisdiction of Iraqi courts. Non-Iraqi laborer shall be exempted if the work contract stipulated otherwise.
2. If parties to a dispute are non-Iraqis and in disputes not arising from a crime, the opponents may agree on the law to be applied, the competent court or any other agreement to resolve their dispute.
3. If a dispute between the partners or between the owner of the project and others in a project subject to the provisions of this law resulted in the stoppage of work for a period exceeding three months, the Investment Commission may withdraw the license and ask the owners of the project to settle the dispute within a period not to exceed three months. If such period elapsed without settling the dispute between the partners or between the owner of the project and others, the commission may take legal measures to liquidate the project and notify the owner of the project or one of the partners of such action. The liquidation money shall be deposited in one of the banks after paying the dues of the State or any other dues after final judgment of their entitlement is rendered.

4. If one of the parties to a dispute is subject to the provisions of this law, they may, at the time of signing the agreement, agree on a mechanism to resolve disputes including arbitration pursuant to the Iraqi law or any other internationally recognized entity.
5. Disputes arising between the Commission or any governmental entity and any of those subject to the provisions of this law on matters not related to violations of one of the provisions of this law shall be subject to Iraqi law and courts on civil matters. As for commercial disputes, parties may resort to arbitration provided that such an arrangement is stipulated in the contract organizing the relationship between parties.

### Article 28

In case the investor violates any of the provisions of this law, the Commission shall have the right to warn the investor in writing to remove the violation within a specific period. In case the investor does not remove the violation within the specified period, the Commission shall summon the investor or who represents him to state his position and grant him other respite to settle the issue. Upon repeating or not removing the violation, the Commission shall have the right to withdraw the investor's license it issued and order stoppage of work on the project and retain the State's right to deny the investor the granted exemptions and privileges from the date of the violation and allow others to retain their rights to demand compensation for the damage caused by this violation, without breaching any punishments or other compensations stipulated in the applicable laws.

### Article 29

All areas of investments shall be subject to the provisions of this law except:  
First: Investment in Oil and Gas extraction and production.  
Second: Investment in banks and insurance companies sectors.

### Article 30

The Council of Ministers shall have the right to:

1. Issue regulations to facilitate the implementation of the provisions of this law.

2. Issue bylaws defining the Commission's formations, divisions, tasks, process of its work, its authorities, financial affairs, employee affairs and any others matters.

#### **Article 31**

The Committee may issue instructions to facilitate the implementation of regulations issued by the Council of Ministers pursuant to the provisions of this law.

#### **Article 32**

The Provisions of this law shall be applied to the existing and operating projects of the mixed and private sectors which have commenced before the issuance of this law and upon a request from its management and the approval of the Commission with no retroactive effect.

#### **Article 33**

No text shall be valid which contradicts the provisions of this law.

#### **Article 34**

The (dissolved) CPA Order No. 39 of 2003 shall be revoked.

#### **Article 35**

The Arab Investment Law no (62) of 2002 issued by the dissolved Revolution Command Council shall be annulled.

#### **Article 36**

This Law shall enter into force from the date of its publication in the Official Gazette.

#### **Justifying Reasons**

For the purpose of driving the process of economic and social development and bringing technical and scientific experience and developing human resources, and for creating work opportunities for the Iraqis by encouraging investments and supporting the process of establishing investment projects in Iraq and their expansion and development at various economic levels and by granting privileges and exemptions for these projects, this law is legislated.

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