



Iraq

Prepared by Lex Mundi member firm,
Gide Loyrette Nouel A.A.R.P.I.

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Legal Guide to Doing Business in Iraq



Gide Loyrette Nouel

Legal Guide to Doing Business in Iraq

Mena Associates

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Krauss Amereller Henkenborg

Rechtsanwälte / Attorneys-At-Law



Gide Loyrette Nouel

Disclaimer

All the information in this Guide has been carefully investigated 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, and 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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Foreword

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 foreign business. The information contained in this guide has been carefully collected from a number of sources and was reviewed by our Iraqi team of lawyers as of **September 30, 2003**.

Though much of the euphoria of past months has disappeared and in view the latest tragic events in Iraq, the CPA has meanwhile, and it is expected that a new Iraqi administration will put primary focus on making Iraq an attractive target for investment that will facilitate business of foreign enterprises.

The country is currently governed by the Coalition Provisional Authority (“CPA”) under Security Council Resolution 1483. The CPA acts as occupying power until a new Iraqi government is formed. It has stated on several occasions that, “during this period, Iraqi laws apply” and that it “will be up to the Iraqi people to make any needed adjustments to Iraq law”.

The pre-war Iraqi legal system was restrictive in many aspects, not only from a foreigner's viewpoint. It did not provide a sufficient framework for foreign investment a western-style banking system, intellectual property protection and contained insufficient rules for today's more complex commercial transactions.

Accordingly, the CPA has recently enacted new quasi-legislation that focuses on foreign investment, banking, freedom of contract and trade and WTO requirements. However, any new Iraqi government and subsequent legislation will also need to consider Iraqi legal tradition, certain rules of Islamic law and the specific needs of the Iraqi economy.

A number of laws and regulations, including a Constitution, a new Commercial Code, a companies Law and new Investment Law, are currently being drafted or are under consideration in an effort to create a unified, modern, and comprehensive legal framework for business. This guide will therefore be continuously updated and distributed to friends and clients of Mena Associates/Krauss Amereller Henkenborg.

I. INTRODUCTION

Iraq is a country in transition and it is expected that its legal system will be one of the first targets for reform as a modern legal framework will be necessary to attract badly needed foreign investment. As a first step, the CPA has started to issue Regulations and Orders which “suspend or replace” parts of current Iraqi law.

In particular, the CPA has granted immunity to its personnel, contractors and their subcontractors by exempting them and their contracts from the application of Iraqi law. This means that these contractors and sub-contractors need not contract out of Iraqi law.

For understandable reasons, foreign businesses and investors are still hesitant to enter the Iraqi market. Whilst there was widespread euphoria in the first couple of months after the war, expectations have now been considerably lowered, particularly as the tendering activity of the CPA has been less than anticipated.

Despite growing scepticism as to the immediate potential of the Iraqi market, there is still good reason to believe in its future. Indeed, it is now generally accepted that the investment requirements will considerably exceed the income from oil exports, at least during the first few years. This gives greater importance to the private sector, which will, however, need stability and a modern legal framework to develop.

The private sector has already targeted the Iraqi Market. For example, Investment and Private Equity Funds for Iraq were established both in Kuwait and in the United Arab Emirates, one with a capital of USD 250 million. It is estimated that more than 150,000 passenger cars and commercial vehicles have entered Iraq since the end of May.

Iraq will almost certainly be a long-term project, both commercially and politically, and foreign businesses should be aware that – like most of the other Arab markets today – Iraq will be no “hit and run” business. It will require a systematic approach, strategic planning of market entry, market penetration and development with suitable partners and enforceable, tailor made structures and an understanding of the mentality of local counterparts.

1. UN Sanctions

After the 1990 Gulf war, the economic situation in Iraq was dominated by the UN sanctions regime (Resolution No. 661/1990 restricting all types of trade with Iraq). Most transactions with the Iraqi state and individuals resident in Iraq were subject to UN procedures and to the approval of the Sanctions Committee.

UN resolution No. 986/1995 adopted in 1995, established the so-called “Oil for Food” programme. Under this, and subsequent resolutions, Iraq was allowed to sell oil subject to the proceeds being deposited in a UN escrow account, for use in covering the costs of humanitarian supplies.

The UN sanctions were lifted by UN 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 unified command. European sanctions were lifted by Regulation of the Council of the European Union No. 1210/2003 cancelling Regulation No. 2465/1996

UN Resolution 1483 “calls 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”.

2. Current Legal Developments

It would be premature to predict whether the legal system will be either liberalized by a western-oriented government, or modified in keeping with a more protective Islamist system. However, the main body of current Iraqi law, such as for example the Civil Code, is expected to remain in force, with the principal exception of politically motivated regulations introduced by the former regime.

The CPA, the Ministry of Justice and other organizations and departments are currently developing a strategy and a timetable for the most important reforms, with short and long-term aims. This includes the lack of clear provisions governing modern business transactions, enforcement issues, a poorly drafted Companies Law, absence of Intellectual Property protection, inadequate legislation in the insurance and financial sectors, and introducing state of the art investment legislation.

In addition, Iraq is not a party to many of the most fundamental international treaties such as the New York Convention on the Enforcement of Foreign Arbitral Awards, the General Agreement on Tariffs and Trade (GATT), most 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.

Meanwhile, most of government authorities have resumed their activities. The Companies Registrar started working in mid July and is expected to issue executive regulations in relation to CPA Order No. 39 (Foreign Investment) by mid October.

II. CPA

The CPA was established on May 16, 2003, by Regulation No. 1 of its Administrator Paul Bremer, based on Security Council Resolution 1483. The CPA followed the U.S. Office of Reconstruction and Humanitarian Assistance (ORHA) which was initially headed by retired general Jay Garner, and was charged with overseeing all aspects of post-war administration.

The CPA has created 11 departments, each presided by a director. These departments comprise a number of former ministries and state institutions, under American supervision. The CPA’s website (www.cpa-iraq.org) provides an overview of this structure.

The legal instruments issued by the CPA are divided into regulations, orders, memoranda and public notices.

Regulations are instruments that define the institutions and authorities of the CPA. Orders are binding instructions or directives to the Iraqi people creating penal consequences or having a direct bearing on the way Iraqis are regulated, including changes in Iraqi law. Memoranda expand on Orders or Regulations by creating or adjusting procedures applicable to them. Finally, public notices communicate the intentions of the Administrator to the public and may either require adherence to security measures that have no penal consequence or reinforce aspects of existing law that the CPA intends to apply.

1. CPA Regulations

By September 30, 2003 the CPA had published a total of 6 Regulations the most important of which are:

a. CPA Regulation No. 1

Section 1 of Regulation No. 1, establishes the CPA's temporary powers of government in order to provide for the effective administration of Iraq during the period of transitional administration. It vests the CPA with the executive, legislative, and judicial powers necessary to achieve its objectives, to be exercised under the authority of relevant U.N. Security Council resolutions. Regulations and orders issued by the CPA are promulgated by the approval of the Administrator.

Section 2 of Regulation No. 1 provides that the Iraqi laws in existence on April 16, 2003, remain in force unless replaced or suspended by new Regulations and Orders issued by the CPA except insofar as they do not prevent the CPA from exercising its rights and fulfilling its obligations.

It should be noted that the Hague and the Geneva conventions set clear limits for the "legislative powers" of occupying forces. It is, therefore, difficult to assess how restrictively the Orders and Regulations of the CPA should be interpreted. In current circumstances this may not be of practical importance until a duly elected Iraqi government takes a closer look at some of the transactions concluded under CPA Orders.

b. CPA Regulation No. 2

CPA Regulation No. 2 sets out the rules applying to the administration, use, accounting and auditing of the Development Fund for Iraq (IDF). The IDF was created as a fund into which 95% of all proceeds of exports of petroleum, petroleum products, and natural gas from Iraq, as well as funds from other sources, will be paid until a recognized and representative government of Iraq is properly constituted. The Regulation further provides for the fund to be held in an account with the Central Bank of Iraq under the control of the Administrator of the CPA, who is solely entitled, with his delegate, to approve disbursements from the fund.

Disbursements from the fund may be made to meet the humanitarian needs of the Iraqi people, for economic reconstruction and repair, for the continued disarmament of Iraq, for the costs of Iraq's civilian administration and for other purposes the Administrator determines to be for the benefit of the Iraqi people.

c. CPA Regulation No. 6

By Regulation No. 6 of July 13, 2003, the CPA established the Governing Council which is, in Article 1, recognized as the principal body of the Iraqi interim administration, pending the establishment of an internationally recognized, representative government by the people of Iraq, consistent with Resolution 1483. The CPA and the Governing Council coordinate all matters involving the temporary governance of Iraq, including the competencies of the Governing Council.

2. Important CPA Orders and Notices

By September 30, 2003, the CPA had published a total of 42 Orders, the most important of which are:

a. CPA Order No. 4

Order No. 4 states that all property and assets of the Iraqi Baath Party, including property and assets transferred to or acquired by successor parties or institutions, are subject to seizure by the CPA, on behalf and for the benefit of the people of Iraq. According to Section 1 of this Order, "property and assets" includes all property and realizable assets, in whatever form maintained and wherever located, used, possessed, or controlled by the Baath Party, its officials and members and all residences occupied by Baath officials or members assigned to them by the Party that were not purchased by those officials or members for full value.

b. CPA Order No. 12

According to CPA Order No. 12, all tariffs, custom duties, import taxes, licensing fees and similar surcharges on goods entering or leaving Iraq, as well as all other trade restrictions concerning such goods, are suspended until December 31, 2003. However, certain goods, such as personal automobiles, are expected to become subject to import requirements and charges to be specified by the Ministry of Trade.

c. CPA Order No. 16

Order No. 16 deals with border control, including exit from and entry into Iraq. The order establishes requirements for entry into the country and for the issue and revocation of entry permits and passports. The Order also sets out the powers of officers and procedures for entry, identification and seizure of documents, searches and seizures of goods.

It remains to be seen how the necessary permits will be obtainable, in particular for foreigners outside Iraq applying through Iraqi Embassies and Consulates.

d. CPA Order No. 17

CPA Order No. 17 exempts 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, are 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 are exempt from licensing and registration requirements concerning employees, businesses and corporations and are immune from Iraqi legal procedures with respect to their contracts, and proceedings in Iraq relating to other matters may 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.

e. CPA Orders No. 37, 39 and 40

The very recently enacted CPA Orders No. 37, 39 and 40 will have a significant impact on foreign investment in Iraq. Order No. 37, 39 and 40 will be dealt with in detail in the sections on Foreign Investment, on Banking and on Tax Law.

Order No. 37 sets out the modified tax regime applicable to individuals and corporations, expressly repealing most previously existing tax legislation and suspending any existing Iraqi legislation which contravenes the Order.

Order No. 39 concerning foreign investment largely liberalises foreign investment in Iraq. In particular, it abolishes restrictions of foreign participation in companies, discriminatory treatment of foreign investors, and remittance of profits, dividends, interest and royalties.

Order No. 40 and its Annex A which contains a new banking law, lay the foundation for a revised, competitive banking system, suspending any conflicting Iraqi legislation. The main aim of the new law is to re-establish public confidence in the banking sector.

f. CPA Public Notice of June 9, 2003

In this Public Notice, the CPA endorses the law permitting Iraqi nationals to establish direct trading agencies with international trading companies. The CPA has now suspended the former Iraqi regime’s administrative procedures regarding the agency law, since the former regime applied them in a manner which discriminated against Iraqi businessmen who did not support the regime.

III. LEGAL SYSTEM

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 suffered from a vast number of regulations and administrative restrictions. In light of the political turmoil of the past decade, numerous legal provisions are no longer applied in practice or have now been suspended by the CPA “legislation”.

Although the Iraqi judicial system continued to operate relatively efficiently until 1990, the duration of legal proceedings had increased significantly, the enforcement of judgments was delayed, Iraqi courts were reputed not to enjoy independence from government, and business partners often experienced difficulties in finding reliable Iraqi arbitrators.

Iraqi law is mixture of certain Arab Laws, various Western laws and Islamic jurisprudence. According to Article 1 of the Civil Code, law takes precedence over custom, Islamic law (*Shari‘a*) and equity.

IV. CONSTITUTION

The “Council of Revolutionary Command” enacted a series of preliminary constitutions after the revolution of July 14, 1958. According to the latest Interim Constitution, Iraq was a part of the Arab Nation, its people consists of Arabs and Kurds and its basic objectives are the creation of one Arab State and the development of the socialist system.

The “Council of Revolutionary Command”, which was the supreme institution of the State, held all legislative power. The President of the Council was considered to be at the same time the President of the Republic and Commander and Chief of the Army.

Replacing the Interim Constitution is now a prime objective of the Governing Council. The Governing Council, which forms the basis of Iraqi self-administration, first convened on July 13, 2003. Its 25 members were nominated by the CPA and a number of the functions of a head of state and parliament were attributed to it. Its most important functions and tasks are:

- To draft a new constitution and to prepare for general elections;
- To nominate the Ministers of the provisional government and to appoint diplomats;
- To carry out the international representation of Iraq;
- To adopt the State budget;
- To review laws;
- To establish security and stability;
- To revive the economy.

The CPA reserves a right of veto, allowing it to invalidate all decisions of the Council.

On August 11, 2003 the Governing Council formed a 25-member technical committee entrusted with working out procedures for drafting a new Iraqi constitution. The committee announced that it expects to complete its work within one and a half months. The committee also announced that it will “hold consultations with broad segments of Iraqi society and meetings with influential figures, experts in

constitutional law, political parties and religious dignitaries" to formulate a mechanism and proposals for a constitutional assembly.

V. ISLAMIC LAW

Constitutionally, Islamic law (*Shari'a*) is an important source of legislation in most Arab countries and this is expected to be the case in any future constitution of Iraq. *Shari'a* is not codified and is mainly derived from the holy book of 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. In commercial matters the role of Islamic law was rather limited. The Iraqi Civil Code expressly provides that legal 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 it will increase its influence significantly. Shi'a legal doctrine is - at least in theory - more flexible than Sunni legal doctrine.

VI. CIVIL CODE

The Iraqi Civil Code Law No. 40/1951 ("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 dispersed over several legislative acts.

The ICC was mainly inspired by the Egyptian Civil Code, Islamic law as codified in the Ottoman "Civil Code", the *Majallat Al Ahkam al Adliyya*, based on the Hanafi School of law and 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, Kuwait and Qatar. 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-Sanhoury who endeavoured to combine in his draft principles of Islamic law and civil law, mainly the French Civil Code.

In its structure, the ICC mainly follows the Egyptian Civil Code. 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 part regulates the "Law of Obligations", and contains general provisions of the laws of contract, tort and some specific types of contract, such as sales, barter transactions, gifts, partnerships, loans, leases, 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. Generally, a contract between commercial parties binds them to the terms of the contract.

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 mutual obligations.

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

A binding contract is generally formed by an offer and an acceptance. An offer, which must be sufficiently detailed for it to be directly accepted or rejected, is binding on the offeror, and generally a contract is deemed to be concluded when the offer is unconditionally accepted. A qualified acceptance, which contains conditions, additions, restrictions or new terms, is considered to constitute a rejection containing a new offer, which then may be either accepted or rejected by the original offeror.

If a time limit is fixed for acceptance of an offer, the offeror must maintain the offer until the expiry of the time limit. If the offeree is present when the offer is made, the offeror is released if his offer is not accepted immediately. Purported acceptance modifying the offer that was made, is considered a refusal. Implied acceptance of an offer may be recognised if the offeror does not require express acceptance.

As a rule, oral contracts are binding, but they may be difficult to evidence, and a number of statutes include formal requirements. Some contracts, such as conveyances of real property and agreements on 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. Invalidity

A contract may be declared invalid for a number of reasons including 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 impels 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 fall into this category. Examples include contracts to commit illegal acts, contracts that interfere with the administration of justice, and some contracts dealing with restraint of trade. Contracts that are expressly or impliedly prohibited by statute may also be unenforceable, depending upon the actual circumstances of the breach of the statute.

5. 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 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 for 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 intents of the parties. However, when a contract has to be interpreted, i.e. when the words or articles are 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 favour of the debtor. In case law it has been held that this rule must be applied with particular force in standardised general conditions which do not derive from free discussion between the parties but from a set of conditions which are, to a certain extent, imposed on one party.

According to Article 150 ICC, a contract must be performed in accordance with its contents 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, as being a necessary sequel to the contract”.

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 in the 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 even to find implied bad faith in order to render those provisions ineffective.

Islamic law includes several rules of interpretation which are adopted by the Iraqi legal system. 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.

6. Adjustment of Contracts

The binding nature of contracts is derived from the general protection of good faith. However, under special circumstances a court may override the binding force of a contract to create an equitable solution between the parties. Depending on the facts and the parties to the contract, the courts may apply provisions of unforeseen events or the court may rule according to the intention of the parties, even in presence of a contract which is formally void.

A contract may be adjusted on equitable grounds. If a provision is unreasonable or its application would lead to an unreasonable result, it may be adjusted 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 on the adjustment of contracts are mandatory.

“*Contrats d’adhésion*”, usually related to monopolies, are dealt with by Article 167 ICC, which provides that the court has the right to amend ‘abusive clauses’ or to relieve an abused party from performance.

7. Third-Party Authorization

The law also provides that a third 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 that authority.

The ICC also contains provisions concerning:

- situations in which a representative acted against the instructions of the principal;
- revocation of authorizations;
- 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.

8. Contracts of Sale

Sale contracts are regulated in part by the ICC (Articles 506-600), and in part by the Commercial Code. Transfer of title becomes effective once the sale contract is concluded, if the object of sale is ascertained and movable. The ICC rules governing sale 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.

a. 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 Article 569 ICC, a warranty claim is prescribed within six months from the delivery of the object sold, unless this period is extended by the parties. According to Article 568 ICC 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.

b. UN International Sales Convention

Iraq is a signatory of the United Nations Convention on Contracts for the International Sale of Goods (CISG – UN Sales Convention). The Convention exclusively applies to agreements for international sales of goods, but not to consumer purchase contracts. Any sale agreement concluded between nationals of 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 choose a different law to govern the contract or expressly exclude the application of the convention.

c. Retention of Title

The parties to a contract may agree that ownership will not pass until the full purchase price is paid, even if the object purchased has been delivered, in accordance with Article 534 of the ICC. Article 534 also provides that if the price is payable by instalments, 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 instalments.

9. Interest

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

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

According to Article 174 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 ICC).

10. Damages

Where a party to a contract does not fulfil its contractual duties, the injured party may claim that the contract be either performed or cancelled with a right to compensation for damages. Generally contractual damages are assessed in accordance with the provisions of the contract, with the aim of restoring the injured party to the financial position it would have had if the contract had been honoured.

Unless otherwise agreed, a party in breach is liable to compensate the injured party for all damage (direct and indirect) suffered from the breach. The parties to a contract may, however, agree on limitations of liability in the event of a breach of contract, and the parties may thus exclude, for instance, indirect damage. The breaching party's liability is limited (i) by the principle of predictability (i.e., only foreseeable damage may give rise to liability for the damage incurred), and (ii) by adjustment on equitable grounds.

Damages may include the lost gain of the creditor, provided that it is a natural result of the non-performance or delay in performance of the obligation. However, damages may not exceed the loss suffered except in cases of fraud or gross negligence. 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.

11. Unforeseeable Events

Iraqi Civil Law recognises the doctrine of "unforeseeable events". This means that if, as a result of general emergencies (*cas fortuits*), the performance of contractual obligations becomes, if not impossible, excessively onerous 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 being null and void.

12. Force Majeure

Under Article 168 ICC payment of 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 its control. The same principle applies in cases of delay in performance.

13. Prescription

According to the Iraqi Civil Code, 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.

Article 434 of the Civil Code 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 statute-barred after 5 years.

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

According to Article 442, the parties to a contract must invoke the limitation period as the court is not obliged to consider it *ex officio*. 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 prescription 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 is assimilated to the filing a lawsuit.
- An application to the court interrupts the prescription period from the date of the registration of the lawsuit and payment of the court fees, even before a notification is sent to the respondent or the defendant.

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

According to Article 429 ICC, actions based on civil obligations are time-barred after 15 years, unless specifically provided otherwise. It should be noted that Article 431 ICC provides a special prescription period of 1 year for the rights of "engineers".

14. Construction Contracts

Construction contracts falls are governed by Article 864 of the ICC which lays down general rules governing contracts for works. Article 864 defines contracts for works as contracts in which one of the contracting parties undertakes to perform certain works and/or services for the consideration which the other contacting 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 concluded between the parties, (ii) delivery of the works on completion, and (iii) liability to guarantee the works upon delivery.

The Iraqi Civil Code provides for joint liability of the contractor and the architect for certain building defects (so-called 'decennial liability'). According to Article 870 ICC, the architect and the contractor are jointly and severally liable for a period of ten years, for the total or partial collapse of any building or other fixed works erected by them, even if the collapse is due to a defect in the land itself, or if the Employer knowingly consented to the construction of a defective building. Any exclusion or limitation of this liability is deemed null and void.

The decennial liability (“or guarantee”) imposes an obligation on the architect and the contractor towards the Employer (who may be either the owner of the building or the person or entity commissioning the works). The law provides that, under a construction contract providing for the construction of a fixed or permanent building, only the architect and the contractor are liable. However, liability is limited to the person(s) who contracted with the Employer. For instance, if the contractor was hired by the architect and not by the Employer, only the architect will be bound by the decennial liability.

If the Employer has contracted with both the contractor and the architect, their liability will be joint and several, even if the defect or collapse was caused by only one of them.

15. 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 a contract specifically provides for reasons for extrajudicial termination. Termination clauses should therefore be drafted and reviewed in detail by an Iraqi lawyer.

16. Assignment of Rights

Provisions governing the assignment of rights are contained in Articles 362-374 of the ICC. Rights may be assigned without any formalities, unless statutory regulations or contractual agreements provide otherwise. Further, assignments of rights must be compatible with the legal nature of the assigned rights. Assignments become enforceable against the debtor or a third party with the 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 all objections that existed at the time of assignment of rights against the assignee.

A bailiff or similar official must formally deliver the deed 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 and not the solvency of the debtor.

VII. 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. In its structure, the Code largely resembles other Arab commercial codifications, such as those of the United Arab Emirates and Egypt. Two main differences, however, are that the Iraqi Code does not contain provisions related to

bankruptcy, and it deals with sales transactions in detail, extensively addressing various forms of sale.

The Commercial Code is made up of four main sections. The first section defines commercial transactions and lays down the provisions governing the duties of traders. The law states that non-Iraqis may engage in commerce, provided they first obtain a special license from the relevant authorities. In particular, the law addresses the obligation of traders to keep commercial books, sets out the rules applying to trade names and the provisions governing the commercial register.

The second 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. This 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 Egyptian law, issuing a cheque not covered by sufficient funds, constitutes a criminal offence. The prescription period for actions against the issuer of an unfunded cheque is 6 months from the date of its issue.

The third 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 out the provisions governing commercial mortgages and charges which, as an exception to the provisions on rights *in rem* in the Civil Code, 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. The second chapter governs deposits of goods in public depots. 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 Section three of the Commercial Code deal with bank 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 fourth and final section of the Commercial Code deals with international sales. Parties are, however, free to select any other law to govern their sales transactions.

VIII. FOREIGN INVESTMENT

On September 20, 2003 the CPA promulgated Order No. 39 which replaced “all existing foreign investment law[s]”, intended to serve, probably for an interim period, as the basis for future foreign investment in Iraq. The Order is subject to revision by the Administrator, or to adoption or replacement by an internationally recognized representative government established by the people of Iraq. The Order specifically states that future orders or other guidance will be issued concerning various sectors of the economy.

Order No. 39 records that, in its preparation, the CPA worked closely with the Governing Council to ensure that economic change occurs in a manner acceptable to the people of Iraq, acknowledging the Governing Council's wish to bring about significant change to the Iraqi economic system. It also stresses the determination of both the CPA and the Governing Council to improve conditions of life, technical skills, and opportunities for all Iraqis and to fight unemployment with its associated detrimental effect on public security.

It remains to be seen whether Order No. 39 will operate in a manner consistent with the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolution 1483 (2003). However, it has been reported by many sources that there has been disagreement on various drafts of foreign investment laws which were discussed. There are also different opinions as to the permitted scope of foreign investment, as some parts of the Iraqi business community seem to favour a restrictive approach to foreign investment. Accordingly, also certain members of the Governing Council have raised massive criticism in relation to CPA Order No. 39.

Nevertheless, Order No 39 presents foreign investors with a unique “window of opportunity” due to its liberal and flexible approach towards investment activities in Iraq. It is expected that the Companies Registrar will issue the Regulations implementing the said Order within the first two weeks of October 2003.

1. Foreign Investment

Order No. 39 describes “Foreign investment” as any investment by a foreign investor in any kind of asset in Iraq, including tangible and intangible property, and related property rights, shares and other forms of participation in a business entity, and intellectual property rights and technical expertise, except as specifically limited by Order 39. The Order does not apply to banks and insurance companies.

In principle, foreign investment may take place in all parts of Iraq and with respect to all economic sectors in Iraq, except that foreign direct and indirect ownership of the natural resources sector involving primary extraction and initial processing remains prohibited. There are also certain limitations on retail business and rights to real property as described below.

2. Investors

The Order defines “Foreign investor” as:

- (a) a business entity constituted or organized under the law of a country other than Iraq; or
- (b) a natural person who is (i) a national of a country other than Iraq, (ii) a stateless person not residing permanently in Iraq, or (iii) a national of Iraq residing permanently outside Iraq; or
- (c) a business entity constituted or organized by any of the above under the law of Iraq making or having made an investment in Iraq.

3. Scope of Application

The order applies to all kinds of business entities including, as stated in Section 1 "any entity constituted or organized by law of any country, including, but not limited to, any corporation, partnership, joint venture, firm, enterprise, State-owned enterprise, organization, or other similar entity".

4. Treatment of Foreign Investors

Order 39 provides that a foreign investor shall be entitled to make foreign investments in Iraq on terms no less favourable than those applicable to an Iraqi investor and in any amount of foreign participation, unless otherwise specifically provided.

5. Representative Offices and Branches

A foreign investor may open trade representation offices and branches in Iraq; such offices and branches shall be registered with the Iraqi Registrar of Companies. It seems that Order No. 39 replaces in this regard the existing Iraqi legislation and the executive Regulations will certainly clarify this issue.

6. Retail Business

A foreign investor shall be prohibited from engaging in retail sales, unless it deposits \$100,000 in a non-interest-bearing account in a duly licensed Iraqi bank located in Iraq at least 30 days prior to engaging in such retail sales, pursuant to procedures to be promulgated by the Ministry of Trade. Once a deposit is made according to these procedures, the Ministry of Trade shall issue documentation to the foreign investor reflecting the authorization to engage in retail sales. The deposit must be maintained during the entire time that the foreign investor is engaged in retail sales; provided however, that it shall be returned upon the request of the foreign investor at the completion of the retail sales activity.

7. Form of Investment

Section 7 of Order 39 clearly specifies the forms of investment and states that a foreign investor may implement foreign investment using, among other things, freely convertible currencies or Iraqi legal tender, in the following forms:

- establishing a wholly foreign-owned business entity in Iraq, including as a subsidiary of a foreign investor;
- establishing a business entity jointly with an Iraqi investor;
- establishing a branch office, as set forth in Section 5 herein; and
- directly acquiring an investment.

8. Management, Transfer of Profits and Exit

The Order states, at a rather odd place in its Section 7, that a foreign investor shall be authorized to:

- possess, use, and dispose of its investments;
- manage or participate in managing a business entity;
- transfer its rights and obligations to other persons in accordance with the law; and
- transfer abroad without delay all funds associated with its foreign investment, including:
 - (i) shares or profits and dividends;
 - (ii) proceeds from the sale or other disposition of its foreign investment or a portion thereof;
 - (iii) interest, royalty payments, management fees, other fees and payments made under a contract; and
 - (iv) other transfers approved by the Ministry of Trade;
 - (v) exercise any other authority conferred upon it by law.

Section 11 of Order No. 39 provides that, on termination of operations and dissolution of the business entity with any level of foreign investment, any foreign investor shall have the right to transfer profits from the sale or liquidation to any foreign location, provided that all amounts owed by the business entity to the government of Iraq and all Iraqi creditors have been paid in advance of the transfer.

9. Use of Real Property

It should be noted that Order No. 39 provides that, unless otherwise permitted by law, a foreign investor or a business entity with any level of foreign investor participation may “not under any circumstances purchase the rights of disposal and usufruct of private real property”.

The duration of any license to use property shall be determined by the duration of operations related to the foreign investment. The initial term of a license shall not exceed 40 years, but may be renewed for further such periods. Licenses may be reviewed by the internationally recognized representative government established by the people of Iraq upon its assumption of the responsibilities of the CPA.

If a business entity that is owned or controlled by a foreign investor or foreign investors is dissolved before the expiration of the license or lease, then the license or lease shall be terminated at the time of such dissolution.

10. Dispute Resolution

According to Order No. 39, disputes between a foreign investor and an Iraqi investor pertaining to investment in Iraq, or between a foreign investor and an Iraqi legal or natural person, shall be resolved in accordance with the dispute resolution provisions contained in any applicable written agreement governing the relationship between the parties. The parties may, in any agreement, elect to utilize the arbitration mechanisms outlined in Iraqi law.

IX. COMMERCIAL AGENCY

Iraqi commercial agency law is more liberal than that of many other Arab states. For instance, there are no provisions requiring exclusivity or expressly prescribing compensation for termination of agencies or distributorships, and the provisions governing registration and de-registration are less strict than in some Gulf states. Following the enactment of Order No. 39, it remains to be seen whether the Agency Law will need to be interpreted in a restrictive manner.

1. Regulations and Definition

Commercial agency in Iraq is primarily governed by the Iraqi Commercial Agency Law (Law No. 51/2000, replacing Laws No. 26/1994 and No. 11/1983). This law deals with the appointment and registration of commercial agents, and contains provisions regulating information to be supplied by commercial agents to the competent authorities.

In addition, the Iraqi Civil Code (ICC) contains some general provisions on agency (Articles 927 to 949).

Neither of the above-mentioned laws distinguishes between contract agents, commission agents, brokers, distributors or other categories of commercial representatives, all of whom are subject to the same requirements.

2. Requirements for agents

According to current Iraqi law, foreign suppliers are not required to appoint commercial agents 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 current 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 foreign supplier may envisage supplying goods directly to customers and/or concluding arrangements for limited (trial) periods.

3. License and Registration

In order to be allowed to act as a commercial agent, an agent must register and obtain a license in the form of a certificate issued by the Commercial Registrar. However, in practice, registration was often not effected.

a. Applicants

According to an amendment introduced by law No. 51/2000, the requirements for obtaining an agency license are that the agent should be:

- an Iraqi national;
- resident in Iraq;
- at least 25 years of age;
- a member of one of Iraq's Chambers of Commerce

An Agent must also:

- fulfil certain civic duties;
- carry out the commercial agency within Iraq;
- not be an employee in the public sector.

A legal entity which is a commercial agent must be wholly owned by Iraqi nationals.

b. Procedure

The documents establishing compliance with the above requirements have to 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 the 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. Upon the granting of a license, commercial agents may apply for registration, on submission of a commercial agency contract.

Licenses require renewal two years after the date of issue, at latest within 60 days after expiry of that period. Failure to renew the licence within this period will result in a fine of 1,000 Dinars per day. Licenses will be revoked in default of renewal after a further 60 days. The grant of a license and its renewal are subject to payment of fees and charges.

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 Gulf States, amicable termination and de-registration of any former agency is not a prerequisite for the registration of a new agency.

c. Fees

The fee for the issue of a license amounts to 25,000 Dinar, and the registration fee is 15,000 Dinar. These fees are subject to modification by the Ministry of Trade.

4. Duties of Commercial Agents

The Commercial Agency Law prescribes requirements for the keeping of books and records. Commercial Agents are not permitted to make any changes in the prescribed books and records, the pages of which are numbered and stamped. These records which are inspected at the end of each year, record all commissions earned, broken down by currency, and the value of all contracts as well as the names and addresses of the contracting parties. Annual accounts indicating the profits earned by the agent are

required to be notarized within 60 days of the year end, and the financial transactions must be supported by bank statements.

Articles 16 and 17 of law No. 51/2000 are punitive. Public sector employees who work as commercial agents are guilty of an offence, and are subject to life imprisonment, and public sector employees infringing Art. 14 of the law (prohibiting government bodies from dealing with commercial agents) are subject to life or term imprisonment (Art.17).

Commercial agents are subject to fines ranging from 10,000 to 100,000 Dinars, for infringement of the provisions regarding bookkeeping. In cases of repeated offences, the offender is subject to short-term imprisonment (Art. 18).

5. Exclusivity and Commission

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

It is recommended 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 to limiting the scope of the agreement to specific products, at least for a trial period.

6. Termination

Article 946 of the ICC provides that an agency terminates when any 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 issue 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 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.

7. 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. The Commercial Agency Law does not contain any provisions regarding compensation.

Commercial agents have no right to compensation under Iraqi law in cases of refusal to renew fixed term contracts, on expiry. However, it would seem advisable for contracts to provide expressly that agents have no right to compensation in the event of non-renewal of their agreements.

8. Choice of Law

Art. 25 of the ICC provides that the applicable law is the law of the common domicile of the parties or, in the absence of a common domicile, the law of the place in which the contract was signed. However, the above rule does not apply if the parties agree on another governing law or if the circumstances indicate that another law shall be applied.

9. Foreign Jurisdiction

No express provision of Iraqi Commercial Law restricts the parties' rights to provide for non-Iraqi jurisdiction. However, Iraqi judges have traditionally been reluctant to enforce such provisions.

10. Arbitration Clauses

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. The Parties may agree on foreign arbitration.

X. SCIENTIFIC BUREAUX FOR MARKETING OF MEDICINES

Scientific Bureaux which are licensed under the provisions of the Resolution of the Council of Revolutionary Command No. 60 of 1998, are exempted from the application of the provisions of law No. 51/2000 on Commercial Agency (Art. 22.2 of that law).

1. Licensing

These Scientific Bureaux must obtain a license. Licenses are granted to pharmacists registered with the Pharmacists' Union after payment of the licence fee. The licensee and the director responsible for the Scientific Bureau must be Iraqi nationals and fulfil a number of requirements. The licence has to be renewed annually, and in case of delay, the renewal fee will be doubled.

2. Activities of Scientific Bureaux

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

The staff of the Bureaux must notify their supplying companies of the fact that they may not deal with supplying companies that do not have a Scientific Bureau. The

Bureaux shall be responsible for following up, with the competent department, on the activities of supplying companies, which have representations in Iraq.

In the past it was not permissible for representatives of supplying companies to have any relationship with these departments other than through a Scientific Bureau. A Bureau is obliged to provide the Pharmacists' Union with details of its activities including its expenses and revenues from its activities. It remains to be seen how these rules will be applied in the future.

XI. COMPANY LAW

Companies are governed by Law No. 21/1997 (Companies Law) and by Law No. 22/1997 (Public Companies Law) which repealed Law No. 36/1983 (Art. 220 of Law 21/1997).

Iraqi law recognises two categories of companies: (1) private companies, in which the socialist sector does not participate or its participation does not exceed 25% of the capital; and (2) joint companies, in which private persons together with persons of the socialist sector establish the company and the participation of the socialist sector in the capital exceeds 25%.

Joint companies may only take the form of a limited liability company or a joint stock company.

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

1. Foreign Participation

Participation in Iraqi companies is reserved to Iraqi nationals according to Article 12 of the Companies Law. Said article expressly provides that Arab nationals shall be treated as Iraqis as regards participation in Iraqi joint stock and limited liability companies and without prejudice to applicable laws in Iraq. Legal persons, whether public or private, participating in Iraqi companies must be Iraqi.

Until recently, it was frequent practice for foreigners to establish branch offices for the performance of specific contracts, as foreign majority shareholding in Iraqi companies was not allowed under the Companies law. However, the adoption of CPA Order No. 39 regarding foreign investment has both a direct and an indirect effect on the Companies Law, and on foreign ownership in particular.

Section 13 of Order No. 39 clearly states that "No legal text that impedes the operation of this Order shall hold and all investors, foreign and Iraqi, shall be treated equally under the law, except otherwise specifically provided in this Order." Therefore, it is expected that true implementation of Order No. 39 will remove all restrictions on foreign ownership, except in the oil, banking and insurance sectors.

2. Limited Liability Company

LLC's can either be privately owned or jointly owned with one or more person(s) of the socialist sector. Some of the important characteristics of the establishment of LLC's and their formation under the Companies Law are explained below.

a. Memorandum of Association

The memorandum of association of a LLC is its governing document and should contain the following:

- Name and form of the company, and its objects;
- Head office address in Iraq;
- Name, address, occupation and nationality of the founders; and
- 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.

b. Minimum Capital

The minimum capital of a LLC is ID 50,000. The nominal value of each share is one ID. 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 local Iraqi bank and are frozen in the account, until documents are presented to the bank, showing that the establishment formalities have been completed. Contributions in kind must be valued and certified by a committee appointed by the Clerk of the Commercial Register. The committee is presided by a judge.

c. Partners, Name

A LLC must have at least two, but not more than twenty-five, partners who may be either legal entities or individuals. LLC's owned by a single partner have not yet been introduced in Iraqi law, and a company will be automatically dissolved if the number of its partners falls below two.

The share capital of a LLC is divided into indivisible shares of a uniform nominal value. Transfers of shares are permitted, subject to a pre-emption right in favour of the other partners, as illustrated below.

d. Management

A LLC has a manager. There is no requirement for managers to be Iraqi nationals, unless they are also partners in the company.

The powers of the manager, as well as his salary and bonuses, 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, and subject to the decision of the

general assembly, the manager of a LLC has the same powers and is subject to the restrictions that apply to the Board of Directors of a joint stock company.

A manager of a LLC may be removed from his position by virtue of a decision of the authority which appointed him. The authority must give the manager a reason for such decision.

e. Transfer of Shares

Pursuant to Article 64 of the Companies Law, partners may not transfer title to their shares, prior to expiry of at least two years following the company's establishment, or its distribution of profits amounting to not less than 5% of the paid in capital, whichever occurs first.

Shares are transferred only by means of a special procedure in which a special committee is formed for the purpose. The committee is composed of the parties to the contract or their representatives and a representative of the company appointed by the manager. 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.

Shares must be offered first to the other partners through the manager at the offer price. If no partner expresses the intention of buying the offered shares within 30 days, the partner selling is free to sell to third parties. If more than one partner expresses willingness to purchase the shares, they are sold to them in proportion of their participation in the capital of the company.

f. Liability of Partners

The liability of LLC partners towards third parties is limited by law. They are only liable to the extent of their investment in the capital of the company.

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

3. Joint Stock Company

The establishment of joint stock companies does not generally require an authorisation from the Minister of Commerce. Instead, the clerk of the Commercial Register reviews the documents and the company's feasibility study and issues a decision inviting the founders to legalize the contracts at his department. If the registration application is rejected, reasons for the decision must be given. Joint stock companies may be either privately owned or owned jointly with one person or more persons of the socialist sector.

a. Articles of Association

The Companies Law does not provide for any model contract, but the articles of association of joint stock companies must include the following information:

- Name and form of the company, and its objects;
- Head office address in Iraq;
- Name, address, occupation 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;
- Number of the elected members of the board of directors.

b. Minimum Capital and Shareholders

Joint stock companies must have a minimum capital of ID 50,000. The clerk of the Commercial Register may order the founders to increase the capital to an amount sufficient for the objects. 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. Each shareholder is under an obligation to pay at least 25 % of the amount of the cash contribution at the time of the company's establishment.

Cash contributions must be paid into an account in an Iraqi bank, which is responsible for verifying the accuracy of the subscriptions. The funds are frozen in the account, until documents are presented to the bank, confirming that the establishment formalities have been completed.

c. Shares

In principle, all shares grant their owners equal rights. A joint stock company may have only nominal 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 for general subscription 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 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. The majority of the directors are elected by the general assembly, the remaining two members representing the workers in the company, are elected by the General Workers Union. The board of directors must elect a chairman and a vice chairman 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 at least the majority of its members, including the representatives of the workers, are present. The minutes of board meetings must be entered regularly after each meeting in a special register to be signed by the chairman. Members of the board of directors must own at least 2,000 shares in the company's stock.

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 three days prior to the meeting. A shareholders' meeting shall only be valid if attended by the majority of the shareholders.

f. Transfer of Shares

Unlike shareholders of LLC's, the 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 LLC's on the transfer of shares.

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

4. Other Forms of Companies

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

- General Partnership
- Single Enterprise
- Simple Company

a. General Partnerships

A general partnership is an association of two or more persons who are personally 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. No minimum capital is required under the Companies Law.

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 work. The establishment process of those companies is extremely simple. The statutes of simple companies 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 from the date of the filing of their statutes with the clerk of the Commercial Register.

5. Public Companies

Public companies are state owned companies with independent legal personalities. They are established through a decision of the Council of Ministers upon 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.

XII. LABOUR LAW

The essential provisions of Iraqi labour Law are embodied in Law No. 71/1987 and in Articles 900 to 926 ICC. The "Social Security Law" (Law No. 39/1971) contains further provisions.

1. Employment Contracts

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

In addition to the above rules of Article 10, Article 30 of Law No. 71/1987 requires that an employment contract contain a number of mandatory provisions. Accordingly, an employment contract must be in writing and specify the kind of work as well as the amount of the wages.

The term of an employment contract may either be fixed or indefinite, depending on the nature of the work. Law No. 71/1987 gives employers the right to hire employees on probation for a period of three months. This period, in which the employee is expected to establish his skills and conduct, should be provided for in the employment contract.

“Labour Courts” were introduced by Law No. 71/1987 (Articles 137 to 147) as a special mechanism for resolving labour disputes. Magistrates courts were established pursuant to Article 137 in each Governorate in the manner provided for in the Labour law.

Appeals from decisions of the Labour Courts are heard by a three-member body established in the Court of Cassation under the name The Labour Affairs Body.

2. Working Hours and Annual Leaves

As a general rule, employees should not work longer than 8 hours per day for 6 days per week. However, in exceptional cases, the working hours may be increased. 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 an 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 every five years of employment. According to article 71 of Law No. 71/1987 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 restrictive in Iraq.

Article 36 of Law No. 71/1987 includes a comprehensive list of the legal 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 75% of his capacity; (vi) decline in the establishment's business provided that the Labour Minister has been informed. The Labour Law also contains provisions concerning termination of illegal employment contracts.

Chapter 1 of Part VII of Law No. 71/1987 regulates labour disputes. According to article 131 of Law No. 71/1987, 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 Labour and Social Affairs and the President of the General Federation of the Employees' Unions, who assist the parties in their endeavours to reach a mutually acceptable solution.

If the endeavours fail, disputes between employers and employees will be submitted to the Labour Cases Board at the Court of Cassation. The Labour Cases Board must give its judgment in an open session within 15 days. Its decision is final.

4. Work Permits

The Labour law differentiates between Arab and foreign employees. Arab employees are treated as Iraqis and thus need no work permit. Employers need only inform the Labour office within 10 days of the commencement of the employment of Iraqi and Arab employees. Foreign employees require work permits and may not, according to Article 23 of Law No. 71/1987, be employed until they acquire a work permit.

Directive No. 18/1987 concerning the employment of foreigners in Iraq empowers the Minister of Labour and Social Affairs to issue work permits to foreigners in light of the market needs for foreign workers. Work permits are issued for one year and need to 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.

XIII. BANKING LAW

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 controls foreign exchange, currency and monetary policies. It also supervises the banking sector. In CPA Order No. 18, the Authority promulgated measures to ensure the independence of the Central Bank of Iraq, authorising it to determine and implement monetary and credit policies without the approval of the Ministry of Finance.

The Central Bank is also responsible for the administration of the Iraqi Development Fund (IDF), created by CPA Regulation 2.

1. Trade Bank of Iraq

CPA Order No. 20 established the Trade Bank of Iraq (TBI) in order to facilitate the import and export of goods and services, despite the current lack of financial institutions able to provide financial services for these activities. TBI is an independent government entity, authorized to provide financial and related services to facilitate importing and exporting for the benefit of Iraq. At present, the TBI is the principal financial institution in Iraq.

2. New Banking Law

On September 20, 2003, the CPA issued Order No. 40 which, for the first time during the existence of the CPA, promulgated a law, i.e. the 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.

It expressly states that the banking law attached to the Order in Annex A shall have the full force and effect of law. Any provision of Iraqi law that is inconsistent with this Order or Annex A is hereby suspended to the extent of such inconsistency.

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 helping to reduce financial crime, including fraud, money-laundering and terrorist financing.

b. Banking License

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

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 shall be clear from the context in which the word “bank” is used that it does not concern banking activities. Representative offices shall 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” shall be added.

c. Exceptions from License

The Law provides that the following persons do not fall under 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 issuance 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 certain 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 the existence of one of the cases expressly permitted under the Banking Law.

XIV. TAX LAW

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

In the past, complex rules apply to the calculation of taxable revenue. Business expenditure incurred abroad (i.e. outside Iraq) may usually not be deducted. According to the amendments enacted in Law No. 35 of November 8, 1999, delays in filing income tax returns after May 31st of the following year will be subject to fines of an increase of the tax rate by 10 %. However, this penalty may not exceed 50,000,000 Dinar, and may not be imposed if excusable reasons are presented.

XV. INTELLECTUAL PROPERTY PROTECTION

Iraq has enacted laws in almost all fields of intellectual property rights ("IPR") during the last decades. However, after the appearance of the World Trade Organization ("WTO") and the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS"), almost all Iraqi intellectual property laws have become outdated. Certain limited efforts to develop these laws were made in recent years, but they were not sufficient. Conforming IP laws in Iraq to the standards of TRIPS and the main IPR conventions to which TRIPS refers are among the urgent tasks of the Iraqi legislature, especially as such conformity is a condition for joining the WTO.

1. General

Iraq became a member of the Paris Convention for the Protection of Industrial Property on January 24, 1976, but has not yet joined either the Strasbourg Agreement concerning International Patent Classification, the Patent Cooperation Treaty (PCT) or the Patent Law Treaty (PLT). Iraq has been a member to the Convention establishing the World Intellectual Property Organization (WIPO) since April 21st, 1971.

Iraq is not a member of either the "Revised Bern Convention" in the Paris version, the "Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms" ("Geneva Phonogram Convention"), the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, WIPO Performances and Phonograms Treaty, or the WIPO Copyright Treaty.

Few trademarks and patents were registered or renewed during the embargo. The implications of omissions of registrations should be carefully studied and it may be expected that the legal status of certain trademark registrations will be decided on a case-by-case basis.

2. 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.

a. Patentability

According to Article 1(4) of the Patent Law, patents protect 'inventions', a term which covers both new products and new processes.

Discoveries, scientific theories, mathematical methods, the presentation of information, and schemes, rules and methods for performing mental acts, playing games or doing business cannot be patented. Inventions the exploitation of which contravenes public morals, order or interests (Article 3 of Patent Law) are also excluded.

Under Iraqi patent law, an invention or process must satisfy three criteria in order to be patentable:

- novelty - the invention must not form part of the state of the art;
- inventive step - the invention must not be a development of the state of the art obvious to an expert in that field; and
- industrial application - the invention must be capable of industrial application (for these purposes, 'industry' includes agriculture).

Generally, disclosure of an invention prior to the filing of a patent application will destroy the invention's 'novelty', thereby preventing it from being patentable. However, according to Article 5 of the Patent Law, prior disclosure will not prejudice a patent application if the applicant started, in good faith, to exploit the invention industrially or made the necessary preparation for such exploitation before submitting the application.

Since Iraq is not a member of the Patents Cooperation Treaty (PCT), a patentee may not seek protection simultaneously in a number of countries by filing an international patent application. This treaty allows for priority to be claimed, within the meaning of the Paris Convention, from an earlier patent application for up to 12 months after the filing of the earlier application.

b. Holder of Patents

According to Article 1(6) of the Patent Law, the patent belongs to the inventor or to his successors in title. Articles 9 to 11 of the Patent Law deal with employee inventions. In the case of inventions by employees working under an employment contract or in an employment relationship, the rights of the invention belong to the employer if the invention is envisaged as the subject-matter of the contract or the employment relationship and the employee is paid for that purpose, provided that the name of the employee is stated in the patent.

If the invention is not envisaged as the subject-matter of the contract but is nevertheless made in the execution of the employment contract or relationship, the rights of 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.

An invention is also considered to have been made during the execution of the employment contract or relationship if the inventor files an application within less

than one year after leaving a private company or public administration with activities in an area related to the invention.

In principle, a patent entitles the owner to make comprehensive use of the invention. However, according to Article 27 of the Patent Law, if the patent holder does not begin using the invention within three years, or ceases using the invention for two years after its commencement or if his exploitation of the patent was not useful for the country, the patent may be subject to a compulsory license to be granted by the registrar to any person requesting a license. The applicant for a compulsory license must be capable of seriously exploiting the patent, and the patent holder is entitled to claim fair compensation for the compulsory license. According to Article 30 of the Patent Law, a patent may also be subject to confiscation for public interest, in which case the patent holder is entitled to claim fair compensation.

c. Duration

Patents are protected for 20 years from the date of the filing. They may not be renewed or extended thereafter. As an exception, patents for medical and pharmaceutical processes are granted for a 10 year period, which may later be extended for two successive 5 year periods.

d. Registration

Applications must be submitted in Arabic and must contain a detailed description of the invention. The following documents must be submitted with applications:

- power of attorney
- a complete boycott question form (with regard to Israel) duly certified by an Iraqi consulate
- a description and explanation of the patent in English with Arabic translation in 8 copies
- 8 folded samples of the drawings, if any
- names, addresses, profession and citizenship of the applicant
- a certified copy of any existing foreign patent letter or a research report on existing inventions may also be required.

Each application will be examined for conformity with formal requirements and patentability according to the Patent Law, especially regarding its 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 stipulated by the Patent Authority.

e. Patent Rights

A patent gives its holder the right to prohibit third parties from exercising the following activities:

- manufacturing, stocking, advertising, using or importing the patented product;
- applying a patented process or offering a process for application, if the third party is aware that this is prohibited; and
- offering, advertising, using, importing or stocking a product obtained directly by means of a patented process.

The rights granted to a patentee do not extend to private and/or non-commercial acts, or to experimental acts relating to the subject matter of the patented invention.

f. 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 towards third parties upon publication in the Iraqi Official Gazette, and upon entry into the patent register.

g. Infringement Action

Patent Law affords patent holders a wide range of criminal 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 counterfeit, 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 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.

3. Trademarks

Pursuant to Article 1 of the Trademark Law No. 21/1957, 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.

Signs enjoying trademark protection include:

- a word or combination of words, including personal names and slogans;
- a letter or number;
- a diagram or picture;

- a combination of the individual signs listed above.

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

- Marks devoid of any distinctive character or 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 are indicative of their nature.
- Marks, expressions or designs which are against public morals or public order and marks which the Registrar considers as conflicting with the public interest.
- Marks which are identical with, or similar to the flags, coats of arms, decorations and medals of Iraq or of any foreign State, or of the United Nations or any Agency thereof.
- Marks which are identical with, or similar to, the insignia of the Red Cross, Red Crescent, Geneva Cross, or Red Star.
- The name, title, portrait, or armorial bearing of a person except with his written consent.
- Figures, letters and words which might deceive the public or mislead it with regard to false commercial statements attached to the goods.
- Marks which might deceive the public with regard to any false commercial statements related to the origin and qualities of the goods as well as marks containing a fictitious, imitated, or counterfeit business name.
- Statements in respect of titles of honour to which the applicant for registration cannot establish his entitlement, or which contain statements which might give rise to the belief that the proprietor enjoys sublime patronage without any supporting written evidence.
- Marks similar to a mark belonging to other persons for the same article, if calculated to deceive, or to cause confusion to the public.
- Geographical names the use of which is likely to cause confusion as to the source or origin of the goods; and
- Marks which the office of Israel boycott declares to be identical to or to resemble an Israeli mark, emblem or symbol.

a. Duration of Protection

Trademark protection by registration may be obtained for 15 years, commencing from the end of the month in which the application was filed. Protection may subsequently be renewed every 15 years. There is no requirement for proof of use on renewal, and in practice the trademark office frequently grants extension deadlines of 3 to 6 months.

b. Registration

In principle, the right to a trademark is acquired through its registration. However, according to Article 3 Law No. 21/1957, a person, able to prove 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. The following documents must be submitted with applications:

- power of attorney;
- a complete boycott questionnaire (with regard to Israel) duly certified by an Iraqi consulate;
- a description of the trademark classes and subclasses;
- trademarks for goods or services must be indicated in both Arabic and Latin letters;
- 8 folded samples of the drawings, if any;
- names, addresses, profession and citizenship of the applicant;

Use of trademarks is not a requirement for the filing of applications for registration. Application fees will be charged for each class. The Registrar has the competence to impose the limitations or modifications he may consider 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 mark already registered, or for any other reason he may consider appropriate.

In case of refusal or conditional acceptance, the Registrar shall notify the applicant, in writing, of the grounds for his decision and of the relevant facts. An applicant who does not, within thirty days, comply with any limitations imposed by Registrar shall be deemed to have abandoned the application. If the application is accepted, the trademark will be published in three subsequent issues of the Official Gazette.

c. 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 registration of a trademark until the applicants submit a duly certified document containing the waiver of rights or a final court decision in favour 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.

Objections to the registration of a trademark may be made in writing by any interested third party within 90 days from the last publication of the mark. The trademark officer must hear both parties. Objections to his decision may be brought before the court within 30 days from its notification.

d. Cancellation

Third parties may initiate cancellation proceedings before the Trademark Office on any of the following grounds:

- The application was not eligible for trademark protection on absolute grounds at the time of filing;
- The trademark registration is descriptive, generic or deceptive;
- The trademark was not used during the two years following its registration unless the non-use is justified;
- Upon request of the owner to surrender the registration in respect to some or all of the goods and/or services for which the trademark is registered;
- Upon request of any person who considers the trademark to be his own or sufficiently resembles his own, so as to confuse ordinary consumers, subject to

- applications for cancellation in these cases being submitted within 5 years from the date of registration; or
- Upon request of any person if the applicant was acting in bad faith when filing the application for registration.

e. 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 enterprise to the products of which the marks are attached. However, this rule will have to be changed when Iraq joins the WTO, in order to comply with the requirements of TRIPS that allow the transfer of a mark with or without the business to which it is attached. The transfer of the business includes the transfer of the mark, unless otherwise agreed.

f. Infringement Action

Iraqi law provides for both criminal and civil remedies to protect the rights of a trademark holder against infringement. The 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;
- damages;
- destruction of the goods bearing the infringing trademarks; and
- publication of the court decision.

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

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

4. Copyright

Law No. 3/1971 governs Iraqi copyright and related rights. It is expected that a new copyright law will soon be enacted to fulfil international requirements under the Berne and Rome Conventions, the TRIPS Agreement, the 1996 World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) and the WIPO Performance and Phonogram Treaty (WPPT).

a. Protected Works

Law No. 3/1971 protects all literary, scientific and artistic intellectual creations which are individual and original. Protection does not depend on quantitative, qualitative or aesthetic judgement (Article 1(1)). No registration is required to obtain protection - it is sufficient to fulfil the requirements of the Law.

According to the Law, protection extends to works expressed in writing, sound, drawing, painting or movement, and provides a list of examples of such works including: written works, works conveyed verbally such as lectures, lessons, speeches, sermons etc., works classified as arts of drawing and painting with lines and colours, engraving, sculpture and architecture, theatrical works and musical plays, works performed by artistic movements or steps and materially prepared for production, musical works, whether or not accompanied by words, photographic and cinematographic works, works prepared for broadcasting, charts, drawings and scientific three-dimensional figures and public recitals of the Koran.

Computer works and computer programs do not expressly fall within the scope of protection of Copyright Law No. 3/197. In light of the fact that Article 1(1) of Law No. 3/197 lays down a general rule, protecting “literary, artistic and scientific works, whatever their type, method of expression, importance and purpose”, it remains questionable whether courts will consider computer programs as protected works. This question is of particular relevance considering the international development of this field, which is increasingly becoming subject to protection under copyright law.

The Law provides that the titles of works are also protected, provided that they meet the requirement of originality. 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, shall enjoy protection. However, the copyright in a photographic work does not prevent others from taking new pictures of the photographed object, even if the new photograph is been from the same place or in the same conditions as the first photograph.

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.

b. Author

According to Article 1(2) of Law No. 3/1971, the author of the work is the owner of the copyright. A person who lawfully (i.e., with the express consent of the author) adapts, translates or arranges another author's works also enjoys copyright protection, if the requirements regarding the individual and original nature of the translated or adapted work are met.

There is no protection for works published under a pseudonym or anonymously. If the author or his heirs disclose the identity of the author, the period of protection commences on the date of the notification (Article 21 of Law No. 3/1971). The period of protection of works published after the death of the author commences on the day of his death.

c. Transfer and Licenses

The core of the economic rights of an author is the exclusive right to use the work and to grant licences for each act of exploitation of the work. The licence can only be granted by concluding a licensing agreement 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.

d. Scope of Protection

According to Article 8 of Law No. 3/1971, the rights of the author include:

- the right of publication, including the right to withdraw consent given thereto for justified reasons;
- the right to determine the method of termination and defence of infringements;
- the right to indicate the author's name in connection with his work; and
- the right to the integrity of the work.

The economic rights may be 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 in his will, and, if the author fixed a date for publication, the work may not be published before that date (Article 18, Law No. 3/1971).

e. Period of Protection

The author enjoys the copyright from the creation of the work until death, and for a further 25 years from the first day of the year following his death, provided that the entire period of protection shall not be less than 50 years from the date on which the work was published. The rights to photographs and moving pictures shown only on a screen expire 5 years after the date of publication of the work.

The period of protection of works of co-authors is calculated from the date of decease of the last surviving co-author. If the author is a private or public legal person, the copyright expires 30 years after the date of publication.

f. Infringement Action

Acts of infringement of authors' rights may be punished under Article 45 of Law No. 3/1971. Legal relief available to the copyright owner according to Articles 46 and 47 of Law No. 3/1971 includes the following:

- injunctions to order the cessation of the infringing act;
- confiscation of the original and copies as well as of materials exclusively made for manufacturing infringing copies;
- claim for damages and confiscation of proceeds from sales; and
- confiscation and destruction of the infringing products.

XVI. IMPORT

Imports and all directly related issues were governed by the Ministry of Trade, until a recent order of the Coalition Provisional Authority (CPA) (Order 12 of June 7, 2003), decreed the suspension until December 31, 2003 of tariffs, customs duties, import taxes, licensing fees and similar surcharges on goods entering or leaving Iraq. The suspension applies to all goods imported into Iraq with the exception of a limited number of goods listed in the decree, mainly consisting of basic foodstuffs, animals and manufactured goods such as vehicles and construction materials.

In application of the previous import legislation which foresees a single-column import tariff based on the Customs Cooperation Council Nomenclature, goods which do not fall under the recent suspension of tariffs are subject to a tax of 0,5 percent on imports of capital goods and 0,75 percent on imports of consumer goods. Further, all dutiable imports are subject to a surcharge. In assessing ad-valorem duties, which make up the majority of duties, the CFR value of the goods is used as a basis. If the CFR value cannot be precisely determined, the goods are assessed at the estimated value at the time of the transaction.

1. Reconstruction Levy

CPA Order No. 38 foresees 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. Starting January 1, 2004, the levy will be imposed at a rate of 5 percent of the taxable value of goods which consists of the goods’ total customs value assessed in accordance with international practice.

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

Further, the levy shall not apply to the CPA, the Coalition Forces, contractors and sub-contractors acting in coordination with Coalition Forces, etc., nor to imports under Oil for Food contracts.

2. Required Licenses and Documentation

Private sector imports generally require licenses, although there are limited exceptions. There is currently uncertainty as to the requirement and possibilities of obtaining import licenses under the new regime of the CPA.

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.

3. Free Trade Agreements

Iraq is party to a number of free trade agreements, mainly 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, foresees duty-free entry for some non-industrial products as well as a reduction in duties on certain industrial products imported from member states.

Despite their great importance in the field of foreign trade, the agreements to which Iraq is a party are currently not applied. It is, however, anticipated that the import regime will be liberalised by the end of 2003 and that the existing agreements will once again be applied.

XVII. PUBLIC TENDERS

Since the international recognition of the occupying forces by U.N. Security Council resolution 1483 of May 22, 2003, the organisation of the reconstruction is coordinated under the auspices of the CPA and the US government. The primary aim consists of restoring and modernising Iraqi infrastructure with the aid of coalition partners, international organisations (in particular the U.N.) and private sector entities.

Public tenders are set up by the following institutions, which also decide on the award of contracts:

- U.S. Agency for International Development (USAID);
- U.S. Department of Defence (DOD);
- DOD Army Corps of Engineers;
- U.S. Department of State;
- U.S. Department of Commerce;
- Federal Business Opportunities;
- Coalition Provisional Authority.

The U.S. government's Infrastructure Reconstruction Program for Iraq addresses four principal fields:

- engineering, reconstruction and construction of selected infrastructure facilities.
- building of institutional capacities for operation and maintenance of infrastructure;
- supply of materials and equipment related to infrastructure;
- provision of technical support, construction management and procurement services to relevant Iraq ministries.

Priorities in these fields will be determined jointly by the CPA and USAID, as well as their Iraqi counterparts, civilian and military authorities, international relief and development organizations, USAID implementing partners, the contractor and other US Government agencies.

The two main forms of procurement are currently the tender procedures of USAID and the CPA. The general principles of these procedures have been prepared, but at

the time of publication of this guide (September 2003) have not yet been issued in their final detailed version.

1. USAID Tender Procedures

USAID has prepared a draft Request for Proposal for private sector companies to provide engineering procurement and construction services, in support of an Iraq Infrastructure Reconstruction Program.

In particular, the request addresses the design, rehabilitation, reconstruction, and construction of infrastructure projects in support of an Iraq Infrastructure Reconstruction Program in the areas of electric power systems, municipal water and sanitation services, road networks and rail systems, selected public buildings, ports and waterways, and airports.

The contracts are set out as Cost-Plus-Fixed-Fee (CPFF) term contracts. Under the contract, the Contractor is to supply all labour, materials and equipment required for the project. The Contractor will also be responsible for providing the security necessary to complete the work under the contract.

2. CPA Tender Procedures

With Memorandum No. 4 of September 1, 2003, the CPA implemented Regulation No. 3 of June 18, 2003, concerning the Program Review Board (PRB). The PRB's task is mainly to recommend expenditure of resources from the Development Fund for Iraq. Among other assignments, it will establish a funding plan setting out and recommending allocations of the available funds. In the execution of the funding plans, the PRB will propose contracts with fair and transparent procurement standards based on international standards and rules applied by international financial institutions.

Memorandum No. 4 sets out a number of principles relating to procurement contracts regarding competition among bidders, awarding of contracts, monitoring the performance of contracts and grants available for certain initiatives. Contract procedures vary, depending on the value of the supply in question; contracts are classified either as Micro purchases (USD 5'000 or less), small purchases (USD 5'000.01 – 500'000) or large purchases (more than USD 500'000).

XVIII COURT STRUCTURE

The judiciary in Iraq is organized by Law No. 160/179. 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 matters of family and inheritance. 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 at 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 Appeals 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 competent to decide questions of law. It is located in Baghdad.

By the end of the war, the activity of the courts had almost come to a complete halt, but the judiciary is currently resuming work under the supervision of the CPA-controlled Ministry of Justice.

XIX. ENFORCEMENT OF JUDGMENTS AND ARBITRAL AWARDS

It has always been difficult to enforce foreign judgments and arbitral awards in Iraq, due to the small number of bilateral or international agreements of which Iraq is a signatory, strict legal requirements for enforcement and sometimes absence of rule of law.

In addition, Law No. 57/1990 was issued as a reaction to the UN-sanctions, regulating “the Protection of Iraqi Property, Interests, and Rights in and outside of Iraq”. According to Article 6 of this law, Iraqi courts should not consider any lawsuit filed against Iraqi persons in contradiction with “the provisions of the Law”. As this applied also to the recognition and enforcement of foreign judgments and arbitral awards, the enforcement of foreign judgments or arbitral awards in Iraq was in practice impossible during the period of the UN-sanctions.

Due to the current situation of the Iraqi judiciary, it cannot be expected to enforce foreign judgments in Iraq easily. Enforcement will depend on the success of the current efforts to build up an efficient court system, a well trained legal profession and on the changes in the legal framework.

1. Foreign Judgements

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

a. General

According to Article 11 of Law No. 30 of 1928, foreign judgments are only subject to this law if issued in countries maintaining a bilateral agreement with Iraq allowing for the enforcement of foreign judicial awards, or in countries named by Iraqi regulations; among the latter are Canada and the United Kingdom. In either case, the condition of reciprocity must be fulfilled.

If these requirements are met, the civil court of first instance at the defendant’s residence may issue an execution order. Such order will be issued if

- a notice to attend the hearing where the judgement had been issued has been served on the claimant;
- the judgement is final according to the legal provisions of the country of issue;
- the enforcement of the foreign judgement is not in 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 Riyadh 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 states that such recognition may be refused, if

- the judgement is contrary to the Shari'a or the public order of the signatory state in which enforcement is sought;
- if the judgement was by default and the losing party was not duly summoned or notified;
- if the rules on legal representation in the state in which enforcement is sought have not been respected;
- if the dispute had already been judged, and such judgement 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

The Iraqi Civil Procedure Code deals with Iraqi arbitration in general, but it does not contain provisions relating to foreign awards. As Law No. 30/1928 does not regulate the enforcement of foreign arbitral awards either, the only means enabling claimants to enforce foreign arbitral awards - apart from those falling under the Riyadh Convention - is to obtain an execution order by a domestic court and then go through the process of enforcing that order through Iraqi procedures for the enforcement of foreign judgments outlined above.

As regards international conventions, Iraq is not a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, but it has signed a number of bilateral agreements and Arab League conventions on the enforcement of arbitral awards, including the Riyadh Convention for Judicial Cooperation of 1983, and 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

- under the law of the state in which enforcement is sought, the dispute is not arbitrable;
- if the award was made on the basis of a void agreement to arbitrate;
- if the arbitrators were not competent;
- if the parties had not been duly summoned;
- 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 applies to commercial disputes between natural or legal persons, regardless of nationality, that is connected by means of commerce with any contracting government or one of its nationals. Its provisions recognize the right of 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, which limits the usefulness of the Arab Convention on Commercial Arbitration.

APPENDIX 1 - RESOLUTION 1483 (2003)

Adopted by the Security Council at its 4761st meeting, on 22 May 2003

The Security Council,

Recalling all its previous relevant resolutions,

Reaffirming the sovereignty and territorial integrity of Iraq,

Reaffirming also the importance of the disarmament of Iraqi weapons of mass destruction and of eventual confirmation of the disarmament of Iraq,

Stressing the right of the Iraqi people freely to determine their own political future and control their own natural resources, *welcoming* the commitment of all parties concerned to support the creation of an environment in which they may do so as soon as possible, and *expressing* resolve that the day when Iraqi govern themselves must come quickly,

Encouraging efforts by the people of Iraq to form a representative government based on the rule of law that affords equal rights and justice to all Iraqi citizens without regard to ethnicity, religion, or gender, and, in this connection, *recalls* resolution 1325 (2000) of 31 October 2000,

Welcoming the first steps of the Iraqi people in this regard, and *noting* in this connection the 15 April 2003 Nasiriyah statement and the 28 April 2003 Baghdad statement,

Resolved that the United Nations should play a vital role in humanitarian relief, the reconstruction of Iraq, and the restoration and establishment of national and local institutions for representative governance,

Noting the statement of 12 April 2003 by the Ministers of Finance and Central Bank Governors of the Group of Seven Industrialized Nations in which the members recognized the need for a multilateral effort to help rebuild and develop Iraq and for the need for assistance from the International Monetary Fund and the World Bank in these efforts,

Welcoming also the resumption of humanitarian assistance and the continuing efforts of the Secretary-General and the specialized agencies to provide food and medicine to the people of Iraq,

Welcoming the appointment by the Secretary-General of his Special Adviser on Iraq,

Affirming the need for accountability for crimes and atrocities committed by the previous Iraqi regime,

Stressing the need for respect for the archaeological, historical, cultural, and religious heritage of Iraq, and for the continued protection of archaeological, historical, cultural, and religious sites, museums, libraries, and monuments,

Noting the letter of 8 May 2003 from the Permanent Representatives of the United States of America and the United Kingdom of Great Britain and Northern Ireland to the President of the Security Council (S/2003/538) and recognizing the specific authorities, responsibilities,

and obligations under applicable international law of these states as occupying powers under unified command (the “Authority”),

Noting further that other States that are not occupying powers are working now or in the future may work under the Authority,

Welcoming further the willingness of Member States to contribute to stability and security in Iraq by contributing personnel, equipment, and other resources under the Authority,

Concerned that many Kuwaitis and Third-State Nationals still are not accounted for since 2 August 1990,

Determining that the situation in Iraq, although improved, continues to constitute a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Appeals* to Member States and concerned organizations to assist the people of Iraq in their efforts to reform their institutions and rebuild their country, and to contribute to conditions of stability and security in Iraq in accordance with this resolution;
2. *Calls upon* all Member States in a position to do so to respond immediately to the humanitarian appeals of the United Nations and other international organizations for Iraq and to help meet the humanitarian and other needs of the Iraqi people by providing food, medical supplies, and resources necessary for reconstruction and rehabilitation of Iraq’s economic infrastructure;
3. *Appeals* to Member States to deny safe haven to those members of the previous Iraqi regime who are alleged to be responsible for crimes and atrocities and to support actions to bring them to justice;
4. *Calls upon* the Authority, 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;
5. *Calls upon* all concerned to comply fully with their obligations under international law including in particular the Geneva Conventions of 1949 and the Hague Regulations of 1907;
6. *Calls upon* the Authority and relevant organizations and individuals to continue efforts to locate, identify, and repatriate all Kuwaiti and Third-State Nationals or the remains of those present in Iraq on or after 2 August 1990, as well as the Kuwaiti archives, that the previous Iraqi regime failed to undertake, and, in this regard, *directs* the High-Level Coordinator, in consultation with the International Committee of the Red Cross and the Tripartite Commission and with the appropriate support of the people of Iraq and in coordination with the Authority, to take steps to fulfil his mandate with respect to the fate of Kuwaiti and Third-State National missing persons and property;

7. *Decides* that all Member States shall take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of resolution 661 (1990) of 6 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed, and *calls upon* the United Nations Educational, Scientific, and Cultural Organization, Interpol, and other international organizations, as appropriate, to assist in the implementation of this paragraph;
8. *Requests* the Secretary-General to appoint a Special Representative for Iraq whose independent responsibilities shall involve reporting regularly to the Council on his activities under this resolution, coordinating activities of the United Nations in post-conflict processes in Iraq, coordinating among United Nations and international agencies engaged in humanitarian assistance and reconstruction activities in Iraq, and, in coordination with the Authority, assisting the people of Iraq through:
 - (a) coordinating humanitarian and reconstruction assistance by United Nations agencies and between United Nations agencies and non-governmental organizations;
 - (b) promoting the safe, orderly, and voluntary return of refugees and displaced persons;
 - (c) working intensively with the Authority, the people of Iraq, and others concerned to advance efforts to restore and establish national and local institutions for representative governance, including by working together to facilitate a process leading to an internationally recognized, representative government of Iraq;
 - (d) facilitating the reconstruction of key infrastructure, in cooperation with other international organizations;
 - (e) promoting economic reconstruction and the conditions for sustainable development, including through coordination with national and regional organizations, as appropriate, civil society, donors, and the international financial institutions;
 - (f) encouraging international efforts to contribute to basic civilian administration functions;
 - (g) promoting the protection of human rights;
 - (h) encouraging international efforts to rebuild the capacity of the Iraqi civilian police force; and
 - (i) encouraging international efforts to promote legal and judicial reform;
9. *Supports* the formation, by the people of Iraq with the help of the Authority and working with the Special Representative, of an Iraqi interim administration as a

transitional administration run by Iraqis, until an internationally recognized, representative government is established by the people of Iraq and assumes the responsibilities of the Authority;

10. *Decides* that, with the exception of prohibitions related to the sale or supply to Iraq of arms and related materiel other than those arms and related materiel required by the Authority to serve the purposes of this and other related resolutions, all prohibitions related to trade with Iraq and the provision of financial or economic resources to Iraq established by resolution 661 (1990) and subsequent relevant resolutions, including resolution 778 (1992) of 2 October 1992, shall no longer apply;
11. *Reaffirms* that Iraq must meet its disarmament obligations, *encourages* the United Kingdom of Great Britain and Northern Ireland and the United States of America to keep the Council informed of their activities in this regard, and *underlines* the intention of the Council to revisit the mandates of the United Nations Monitoring, Verification, and Inspection Commission and the International Atomic Energy Agency as set forth in resolutions 687 (1991) of 3 April 1991, 1284 (1999) of 17 December 1999, and 1441 (2002) of 8 November 2002;
12. *Notes* the establishment of a Development Fund for Iraq to be held by the Central Bank of Iraq and to be audited by independent public accountants approved by the International Advisory and Monitoring Board of the Development Fund for Iraq and looks forward to the early meeting of that International Advisory and Monitoring Board, whose members shall include duly qualified representatives of the Secretary-General, of the Managing Director of the International Monetary Fund, of the Director-General of the Arab Fund for Social and Economic Development, and of the President of the World Bank;
13. *Notes further* that the funds in the Development Fund for Iraq shall be disbursed at the direction of the Authority, in consultation with the Iraqi interim administration, for the purposes set out in paragraph 14 below;
14. *Underlines* that the Development Fund for Iraq shall be used in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq;
15. *Calls upon* the international financial institutions to assist the people of Iraq in the reconstruction and development of their economy and to facilitate assistance by the broader donor community, and *welcomes* the readiness of creditors, including those of the Paris Club, to seek a solution to Iraq's sovereign debt problems;
16. *Requests* also that the Secretary-General, in coordination with the Authority, continue the exercise of his responsibilities under Security Council resolution 1472 (2003) of 28 March 2003 and 1476 (2003) of 24 April 2003, for a period of six months following the adoption of this resolution, and terminate within this time period, in the most cost effective manner, the ongoing operations of the "Oil-for-Food" Programme (the "Programme"), both at headquarters level and in the field, transferring responsibility for the administration of any remaining activity under the Programme to the Authority, including by taking the following necessary measures:

- (a) to facilitate as soon as possible the shipment and authenticated delivery of priority civilian goods as identified by the Secretary-General and representatives designated by him, in coordination with the Authority and the Iraqi interim administration, under approved and funded contracts previously concluded by the previous Government of Iraq, for the humanitarian relief of the people of Iraq, including, as necessary, negotiating adjustments in the terms or conditions of these contracts and respective letters of credit as set forth in paragraph 4 (d) of resolution 1472 (2003);
- (b) to review, in light of changed circumstances, in coordination with the Authority and the Iraqi interim administration, the relative utility of each approved and funded contract with a view to determining whether such contracts contain items required to meet the needs of the people of Iraq both now and during reconstruction, and to postpone action on those contracts determined to be of questionable utility and the respective letters of credit until an internationally recognized, representative government of Iraq is in a position to make its own determination as to whether such contracts shall be fulfilled;
- (c) to provide the Security Council within 21 days following the adoption of this resolution, for the Security Council's review and consideration, an estimated operating budget based on funds already set aside in the account established pursuant to paragraph 8 (d) of resolution 986 (1995) of 14 April 1995, identifying:
 - (i) all known and projected costs to the United Nations required to ensure the continued functioning of the activities associated with implementation of the present resolution, including operating and administrative expenses associated with the relevant United Nations agencies and programmes responsible for the implementation of the Programme both at Headquarters and in the field;
 - (ii) all known and projected costs associated with termination of the Programme;
 - (iii) all known and projected costs associated with restoring Government of Iraq funds that were provided by Member States to the Secretary-General as requested in paragraph 1 of resolution 778 (1992); and
 - (iv) all known and projected costs associated with the Special Representative and the qualified representative of the Secretary-General identified to serve on the International Advisory and Monitoring Board, for the six month time period defined above, following which these costs shall be borne by the United Nations;
- (d) to consolidate into a single fund the accounts established pursuant to paragraphs 8 (a) and 8 (b) of resolution 986 (1995);
- (e) to fulfil all remaining obligations related to the termination of the Programme, including negotiating, in the most cost effective manner, any necessary settlement payments, which shall be made from the escrow accounts established pursuant to paragraphs 8 (a) and 8 (b) of resolution 986 (1995), with those parties that previously have entered into contractual obligations

with the Secretary-General under the Programme, and to determine, in coordination with the Authority and the Iraqi interim administration, the future status of contracts undertaken by the United Nations and related United Nations agencies under the accounts established pursuant to paragraphs 8 (b) and 8 (d) of resolution 986 (1995);

- (f) to provide the Security Council, 30 days prior to the termination of the Programme, with a comprehensive strategy developed in close coordination with the Authority and the Iraqi interim administration that would lead to the delivery of all relevant documentation and the transfer of all operational responsibility of the Programme to the Authority;
17. *Requests further* that the Secretary-General transfer as soon as possible to the Development Fund for Iraq 1 billion United States dollars from unencumbered funds in the accounts established pursuant to paragraphs 8 (a) and 8 (b) of resolution 986 (1995), restore Government of Iraq funds that were provided by Member States to the Secretary-General as requested in paragraph 1 of resolution 778 (1992), and *decides* that, after deducting all relevant United Nations expenses associated with the shipment of authorized contracts and costs to the Programme outlined in paragraph 16 (c) above, including residual obligations, all surplus funds in the escrow accounts established pursuant to paragraphs 8 (a), 8 (b), 8 (d), and 8 (f) of resolution 986 (1995) shall be transferred at the earliest possible time to the Development Fund for Iraq;
18. *Decides* to terminate effective on the adoption of this resolution the functions related to the observation and monitoring activities undertaken by the Secretary-General under the Programme, including the monitoring of the export of petroleum and petroleum products from Iraq;
19. *Decides* to terminate the Committee established pursuant to paragraph 6 of resolution 661 (1990) at the conclusion of the six month period called for in paragraph 16 above and *further decides* that the Committee shall identify individuals and entities referred to in paragraph 23 below;
20. *Decides* that all export sales of petroleum, petroleum products, and natural gas from Iraq following the date of the adoption of this resolution shall be made consistent with prevailing international market best practices, to be audited by independent public accountants reporting to the International Advisory and Monitoring Board referred to in paragraph 12 above in order to ensure transparency, and *decides further* that, except as provided in paragraph 21 below, all proceeds from such sales shall be deposited into the Development Fund for Iraq until such time as an internationally recognized, representative government of Iraq is properly constituted;
21. *Decides further* that 5 per cent of the proceeds referred to in paragraph 20 above shall be deposited into the Compensation Fund established in accordance with resolution 687 (1991) and subsequent relevant resolutions and that, unless an internationally recognized, representative government of Iraq and the Governing Council of the United Nations Compensation Commission, in the exercise of its authority over methods of ensuring that payments are made into the Compensation Fund, decide otherwise, this requirement shall be binding on a properly constituted, internationally recognized, representative government of Iraq and any successor thereto;

22. *Noting* the relevance of the establishment of an internationally recognized, representative government of Iraq and the desirability of prompt completion of the restructuring of Iraq's debt as referred to in paragraph 15 above, further *decides* that, until December 31, 2007, unless the Council decides otherwise, petroleum, petroleum products, and natural gas originating in Iraq shall be immune, until title passes to the initial purchaser from legal proceedings against them and not be subject to any form of attachment, garnishment, or execution, and that all States shall take any steps that may be necessary under their respective domestic legal systems to assure this protection, and that proceeds and obligations arising from sales thereof, as well as the Development Fund for Iraq, shall enjoy privileges and immunities equivalent to those enjoyed by the United Nations except that the abovementioned privileges and immunities will not apply with respect to any legal proceeding in which recourse to such proceeds or obligations is necessary to satisfy liability for damages assessed in connection with an ecological accident, including an oil spill, that occurs after the date of adoption of this resolution;
23. *Decides* that all Member States in which there are:
 - (a) funds or other financial assets or economic resources of the previous Government of Iraq or its state bodies, corporations, or agencies, located outside Iraq as of the date of this resolution, or
 - (b) funds or other financial assets or economic resources that have been removed from Iraq, or acquired, by Saddam Hussein or other senior officials of the former Iraqi regime and their immediate family members, including entities owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, shall freeze without delay those funds or other financial assets or economic resources and, unless these funds or other financial assets or economic resources are themselves the subject of a prior judicial, administrative, or arbitral lien or judgement, immediately shall cause their transfer to the Development Fund for Iraq, it being understood that, unless otherwise addressed, claims made by private individuals or non-government entities on those transferred funds or other financial assets may be presented to the internationally recognized, representative government of Iraq; and *decides further* that all such funds or other financial assets or economic resources shall enjoy the same privileges, immunities, and protections as provided under paragraph 22;
24. *Requests* the Secretary-General to report to the Council at regular intervals on the work of the Special Representative with respect to the implementation of this resolution and on the work of the International Advisory and Monitoring Board and *encourages* the United Kingdom of Great Britain and Northern Ireland and the United States of America to inform the Council at regular intervals of their efforts under this resolution;
25. *Decides* to review the implementation of this resolution within twelve months of adoption and to consider further steps that might be necessary;
26. *Calls upon* Member States and international and regional organizations to contribute to the implementation of this resolution;
27. *Decides* to remain seized of this matter.

APPENDIX 2 – CPA REGULATION NO. 1

Pursuant to my authority as head of the Coalition Provisional Authority (CPA), relevant U.N. Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war, I hereby promulgate the following:

Section 1

The Coalition Provisional Authority

- 1) The CPA shall exercise powers of government temporarily in order to provide for the effective administration of Iraq during the period of transitional administration, to restore conditions of security and stability, to create conditions in which the Iraqi people can freely determine their own political future, including by advancing efforts to restore and establish national and local institutions for representative governance and facilitating economic recovery and sustainable reconstruction and development.
- 2) The CPA is vested with all executive, legislative and judicial authority necessary to achieve its objectives, to be exercised under relevant U.N. Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war. This authority shall be exercised by the CPA Administrator.
- 3) As the Commander of Coalition Forces, the Commander of U.S. Central Command shall directly support the CPA by deterring hostilities; maintaining Iraq's territorial integrity and security; searching for, securing and destroying weapons of mass destruction; and assisting in carrying out Coalition policy generally.

Section 2

The Applicable Law

Unless suspended or replaced by the CPA or superseded by legislation issued by democratic institutions of Iraq, laws in force in Iraq as of April 16, 2003 shall continue to apply in Iraq insofar as the laws do not prevent the CPA from exercising its rights and fulfilling its obligations, or conflict with the present or any other Regulation or Order issued by the CPA.

Section 3

Regulations and Orders issued by the CPA

- 1) In carrying out the authority and responsibility vested in the CPA, the Administrator will, as necessary, issue Regulations and Orders. Regulations shall be those instruments that define the institutions and authorities of the CPA. Orders are binding instructions issued by the CPA. Regulations and Orders will remain in force until repealed by the Administrator or superseded by legislation issued by democratic institutions of Iraq. Regulations and Orders issued by the Administrator shall take precedence over all other laws and publications to the extent such other laws and publications are inconsistent. The Administrator may also from time to time issue Public Notices.
- 2) The promulgation of any CPA Regulation or Order requires the approval or signature of the Administrator. The Regulation or Order shall enter into force as specified therein, shall be promulgated in the relevant languages and shall be disseminated as widely as possible. In the case of divergence, the English text shall prevail.

- 3) CPA Regulations and Orders shall bear the symbols CPA/REG/Date Month 2003/_ and CPA/ORD/Date Month 2003/_. A register of the Regulations and Orders shall indicate the date of entry into force, the subject matter and amendments or changes thereto, or the repeal or suspension thereof.

Section 4 Memoranda

- 1) The Administrator may issue Memoranda in relation to the interpretation and application of any Regulation or Order.
- 2) CPA Memoranda shall bear the symbols CPA/MEM/Date Month 2003/_. The provisions of Section 3 shall also apply to the promulgation of CPA Memoranda.

Section 5 Entry into Force

This Regulation shall enter into force on the date of signature.

L. Paul Bremer, Administrator
Coalition Provisional Authority

APPENDIX 3 – CPA REGULATION NO. 6

GOVERNING COUNCIL OF IRAQ

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA), relevant U.N. Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war,

Recognizing that, as stated in paragraph 9 of Resolution 1483, the Security Council supports the formation of an Iraqi interim administration as a transitional administration run by Iraqis, until the people of Iraq establish an internationally recognized, representative government that assumes the responsibilities of the CPA,

Noting that on July 13,2003, the Governing Council met and announced its formation as the principal body of the Iraqi interim administration referred to in paragraph 9 of Resolution 1483,

Affirming that the CPA and the Special Representative of the UN Secretary General have worked together and will continue to work together in a cooperative and consultative process to support the formation and operation of the Governing Council and welcomed the formation of the Governing Council on July 13,2003,

Acknowledging that, consistent with Resolution 1483, the Governing Council has certain authorities and responsibilities as representatives of the Iraqi people, including ensuring that the Iraqi people's interests are represented in both the interim administration and in determining the means of establishing an internationally recognized, representative government,

Emphasizing that, consistent with Resolution 1483, the Governing Council and the CPA, each in coordination with the Special Representative of the UN Secretary General, undertake to work together in a cooperative and consultative process for the benefit of the Iraqi people,

I hereby promulgate the following:

Section 1

Recognition of Governing Council

The CPA recognizes the formation of the Governing Council as the principal body of the Iraqi interim administration, pending the establishment of an internationally recognized, representative government by the people of Iraq, consistent with Resolution 1483.

Section 2

Relationship between Governing Council and the CPA

- 1) In accordance with Resolution 1483, the Governing Council and the CPA shall consult and coordinate on all matters involving the temporary governance of Iraq, including the authorities of the Governing Council.
- 2) All officials of the CPA are hereby instructed promptly to respond to all requests for experts, technical assistance or other support requested by the Governing Council.

Section 3
Entry into Force

The Regulation shall enter into force on the date of signature.

L. Paul Bremer, Administrator
Coalition Provisional Authority

APPENDIX 4 – CPA ORDER NO. 16

TEMPORARY CONTROL OF IRAQI BORDERS, PORTS AND AIRPORTS

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA) and the laws and usages of war, and consistent with relevant U.N. Security Council Resolutions, including 1483 (2003),

Recognizing that it is desirable as soon as possible to restore the normal transit and movement of people to and from Iraq,

Acknowledging that the Iraqi laws on immigration, customs and quarantine should remain in place unless exceptions prove necessary for security reasons or otherwise to accomplish the obligations of the CPA under the laws and usages of war,

Noting that the current security situation in Iraq does not permit the unrestricted resumption of normal transit and movement,

I hereby promulgate the following:

Section 1 Definitions

- 1) "Authorized officer" means any Coalition personnel or Iraqi officials designated by the CPA to perform border control, customs or quarantine services.
- 2) "Coalition personnel" means all non-Iraqi military and civilian personnel under the authority of the Coalition Forces Commander, as well as all non-Iraqi military and civilian personnel assigned to, or under the direction or control of, the Administrator of the CPA.
- 3) "Goods" means any substance, organism, article, or thing, whether manufactured or natural, which may be moved across the borders of Iraq and which is not a human body, a cadaver or human remains.
- 4) "Member of a crew" means a person, including a master, who is employed on a vehicle to perform duties during a voyage or trip related to the operation of the vehicle or the provision of services to passengers.
- 5) "Terrorism" means the use or threatened use of unlawful violence against civilians, non-combatants, or other innocents, calculated to cause fear or to coerce or intimidate governments or societies, and motivated by political, religious, or ideological goals.
- 6) "Terrorist organization" means an organization whose objective is to support or commit acts of terrorism, directly or indirectly, physically or financially.
- 7) "Transportation company" is any corporation, enterprise or other entity transporting persons to Iraq.
- 8) "Travel documents" means documents required by the CPA for entry into and exit from Iraq and may include a valid Iraqi passport or an internationally recognized

document proving Iraqi citizenship, a valid entry or exit visa, and travel permits issued by an authorized travel permit issuing authority.

- 9) "Vehicle" means any conveyance that may be used for transportation by land, water or air.

Section 2

Preservation of Laws

- 1) All Iraqi laws regarding immigration, emigration, customs and quarantine shall remain in force unless specifically suspended by this Order.
- 2) Wherever a stipulation or provision of this Order or any other CPA Regulation, Order or Memorandum conflicts with a current provision of Iraqi immigration, emigration, customs and quarantine laws, the stipulation or provision contained in such Regulation, Order or Memorandum shall prevail.
- 3) The edict of the former President Saddam Hussein regarding the expiration of "N" series passports issued during the years 1996 to 2002, fixing their expiration in the year 2003, is hereby suspended. All "N" series passports will continue in effect for their statutory duration.
- 4) All Iraqi passports that have expired within the last four years will be deemed valid until December 31, 2003, for the exclusive purpose of direct return travel to Iraq, with such travel to be completed by December 31, 2003. Such a passport will not be considered valid for any other purpose.
- 5) All current Iraqi passports that have a four-year expiration period may be extended to eight years by any travel permit issuing authority. Any passport purporting to have been issued after March 19, 2003 that does not bear a CPA stamp is invalidated.

Section 3

Right to Exit

- 1) Subject to compliance with Iraqi law and with border control procedures established from time to time by the CPA, all persons may exit from Iraq, provided they are in possession of necessary travel documents and are not subject to any travel restrictions under applicable law including this Order.
- 2) The following persons shall require special clearance to exit Iraq and may be prevented from exiting at the discretion of the Senior Advisor of the Ministry of the Interior, in coordination with the Interim Minister of the Interior, when appointed [hereinafter Interim Minister of the Interior]:
 - a) Senior regime or military leadership and Senior Party Members or office holders of the Ba'ath Party, as described in CPA/ORD/16 May 2003/01;
 - b) Persons suspected of having committed serious crimes;

- c) Persons who are known or are suspected to have links to a terrorist organizations or who are suspected to have committed or to have provided financial, material, or technological support for acts of terrorism; and
- d) Persons suspected of being involved with the manufacture, development, research, or transfer of technology or material related to weapons of mass destruction; or having knowledge of the location of weapons of mass destruction, or the identity of persons with such knowledge.

Section 4

Examinations for Entry

- 1) Subject to the present Order, a person seeking entry to Iraq shall appear before an authorized officer of the CPA (hereinafter "officer") at a port of entry, border control station or at such other place as may be designated by the Senior Advisor of the Ministry of Interior, in coordination with the Interim Minister of the Interior, for examination to determine whether the person may be granted entry to Iraq.
- 2) A person appearing for examination shall answer truthfully all questions put to that person and shall produce such documentation as may be required for the purpose of establishing whether the person may be granted entry.

Section 5

Permits to Enter Iraq

- 1) Persons seeking entry to Iraq are to be classified as either persons who require permits granting entry into Iraq (hereinafter "permits") or persons who do not require such permits. Officers shall issue permits valid for up to 90 days, in accordance with this Order and with applicable law.
- 2) Persons not requiring permits to enter Iraq are all those persons not otherwise denied permits under this Order who are a) citizens of Iraq or persons who were born in Iraq, b) Coalition personnel, or c) United Nations officials or any official of any other UN organization. Persons requiring permits are all persons who are not listed in this Section 5.2.
- 3) Permits may be obtained and issued from any Iraqi embassies that have reopened, and from CPA offices established for this purpose within Iraq.

Section 6

Powers of an Officer

- 1) An officer who receives an application for a permit shall either approve or refuse the application, and shall notify the applicant of the decision. At any time after an application for a permit is approved, the officer may:
 - a) Alter or revoke any terms and conditions subject to which the person was granted entry;
 - b) Add terms and conditions as prescribed by the present Order and other CPA Regulations, Orders or Memoranda; and/or

- c) Extend the permit.
- 3) Subject to the present Order, a visitor seeking an extension of a permit shall appear before an officer at such place as may be designated by the CPA Senior Advisor of the Ministry of the Interior, in coordination with the Interim Minister of the Interior, for examination to determine whether the visitor may be granted an extension of a permit.
- 4) A visitor appearing for examination shall answer truthfully all questions put to that visitor and shall produce such documentation as may be required for the purpose of establishing whether the visitor may be granted an extension of a permit.

Section 7

Persons Who May be Denied Entry to Iraq

- 1) An officer who receives an application for a permit may refuse the application if the officer has reasonable grounds to believe that the applicant:
 - a) knowingly provided any false, misleading, or inaccurate information in the course of the application process;
 - b) is suffering from any serious communicable disease, or is suffering from any disorder, disability or other health impairment for which commercial health services are not readily available in Iraq;
 - c) will be unable or unwilling to support themselves, and those persons who are dependent on the applicant;
 - d) is or was a member of a criminal organisation;
 - e) will commit offences, or engage in criminal activity planned and organized by persons acting in concert with or in furtherance of the commission of any offence;
 - f) will engage in or has engaged in an act of terrorism, or is a member of a terrorist organization or an organization that there are reasonable grounds to believe will;
 - i) engage in acts which are offensive to the principles of democratic government, institutions or processes, in Iraq; or
 - ii) engage in or instigate the removal by force of any government:
 - g) will engage in acts of violence that may endanger the lives or safety of persons in Iraq, or who is a member of an organization that engages in such acts;
 - h) has committed acts or omissions that constituted a war crime or a crime against humanity; or
 - i) has previously been deported from, or denied entry to, Iraq by the CPA, or an international territory with border control formalities.

- 2) In exercising the discretion set out in this Order, an officer shall consider whether the entry of the person poses a substantial risk to the people or interests of Iraq or in the case of a person who has established that he or she is an Iraqi national, whether entry should be denied because of security or military necessity;
- 3) A person denied entry under this Order may appeal to the Senior Advisor of the Ministry of Interior and the Interim Minister of the Interior for a review of the case. The determination of the Senior Advisor of Ministry of the Interior, in coordination with the Interim Minister of the Interior, will be final.

Section 8

Notice to Depart

- 1) Where an officer, upon examination of a person, is of the opinion that it would be contrary to the present Order to grant entry to the person, or to extend the permit of a person, the officer may, as appropriate:
 - a) allow that person to leave Iraq immediately; and/or
 - b) serve that person with a Notice to Depart (hereinafter "Notice") within a specified period.
- 2) A Notice must specify:
 - a) that the person must depart Iraq within a specified period;
 - b) the reasons why the Notice is being served;
 - c) that the person may object in writing to the Senior Advisor of the Ministry of Interior and the Interim Minister of the Interior within a specified time to this Notice, or give reasons why the Notice should not remain in force; and
 - d) that timely compliance will not have adverse consequences for the return of a person who otherwise complies with entry requirements.
- 3) Where the Senior Advisor of the Ministry of Interior or the Interim Minister of the Interior receives written objections from a person under this Order, the Senior Advisor of the Ministry of the Interior shall, in coordination with the Interim Minister of the Interior:
 - a) consider these promptly;
 - b) promptly determine the fair and lawful resolution of the matter; and
 - c) advise the person in writing of the decision.

Section 9

Revocation of a Permit

- 1) An officer may revoke a person's permit if:

- a) the circumstances that formed the basis of the approval of the person's application for the permit no longer exist;
- b) the person breaches a prescribed term of the permit, or another person required to comply with a condition of the permit has not met that condition;
- c) the presence of the person in Iraq is, or would be, a risk to the health, safety or good order of the Iraqi community; or
- d) the permit should not have been granted because the application for the permit was in contravention of the present Order or other applicable law.

Section 10

Identification and Seizure of Documents

- 1) Persons shall comply with the instructions of an officer regarding their identification if they a) seek entry into Iraq, b) make an application for the renewal of a permit, c) after being arrested or having been reported to a police officer, or other CPA or Coalition Force security personnel, or d) are subject to deportation under this Order.
- 2) For the purpose of identification, an officer may:
 - a) search persons or vehicles whom the officer believes have not revealed their identity or who have hidden on or about their person documents that are relevant to a decision as to whether they may be granted permission to enter Iraq, and may search any vehicle that conveyed the persons to Iraq and their luggage and personal effects;
 - b) search persons whom the officer reasonably believes have committed, or who are in possession of documents that may be used in the commission of an offence, and search any vehicle that conveyed the person to Iraq and their luggage and personal effects;
 - c) examine at a port of entry or any other place in Iraq, for the purpose of this Order or relevant directives, any travel document or any other document or object purporting to be any of those documents or objects that is, or is about to be, imported into or exported from Iraq.
- 3) An officer may seize and hold at a port of entry or any other place in Iraq any object or document if the officer reasonably deems this necessary for the discharge of the functions of the officer under this Order.
- 4) An officer may seize and hold any object or document if the officer reasonably believes that it has been fraudulently or improperly obtained or used, or that such action is necessary to prevent its fraudulent or improper use.
- 5) An officer shall provide a written receipt to any individual from whom he seizes an object or document under this Order.

Section 11
Search of a Person

- 1) An officer may, without a warrant, search a person who seeks entry to Iraq.
- 2) The search of a person must be made by an officer pursuant to the present Order and must be made on reasonable grounds.
- 3) No person shall be searched by a person who is not of the same sex, and if there is no officer of the same sex at the place at which the search is to take place, an officer may authorize any suitable person of the same sex to perform the search.

Section 12
Search and Seizure of Goods

- 1) An officer may, without a warrant, search the vehicle, luggage or personal effects of any person who seeks entry into Iraq.
- 2) Persons crossing the borders of Iraq must make declarations or manifests of all goods being carried by the person available to an officer on request.
- 3) An officer may confiscate any goods that may pose a threat to the peace, security, health, environment, or good order of Iraq or any antiquities or cultural items suspected of being illegally exported.
- 4) Goods that are not declared may be confiscated by an officer. Persons may also be ordered to return such goods, at their expense, to the jurisdiction from which they came.
- 5) Any goods confiscated must be immediately handed over to the Senior Advisor of the Ministry of Interior and the Interim Minister of the Interior, or to delegate(s) selected and agreed upon by the Senior Advisor and the Interim Minister, and a receipt must be issued to the person from whom the goods are confiscated.

Section 13
Offences

- 1) The following shall constitute an offence under this Order:
 - a) failure to appear before an officer for examination as required by this Order;
 - b) failure to answer truthfully all questions put to that person by an officer during examination;
 - c) failure to produce documentation as may be required by the officer during examination;
 - d) failure to make a declaration or manifest of all goods being carried by the person on request by an officer;

- e) failure to cooperate with a search of the person or search of the person's vehicle, luggage or personal effects pursuant to this Order;
- f) knowingly making a false representation by reason of which a person is induced to seek entry to Iraq or is assisted in any attempt to seek entry or by reason of which that person's entry is procured;
- g) entering Iraq or remaining in Iraq without a permit, where a person requires a permit;
- h) entering Iraq or remaining in Iraq by use of a false or improperly obtained travel document or other document pertaining to the entry of that person or by reason of any fraudulent or improper means or misrepresentation of any material fact;
- i) breaching a prescribed term of a permit;
- j) escaping or attempting to escape from lawful custody or detention under the present Order and relevant directives; or
- k) organizing or facilitating the entry or proposed entry into Iraq of a person, knowing the person would, upon entering Iraq, be guilty of an offence under this Section.

Section 14

Penalties

A person who commits an offence described in this Order is liable to have any goods in their possession confiscated and may be deported from Iraq. The person may also be liable to a penalty prescribed in an applicable Iraqi law or CPA Order, Regulation or other directive.

Section 15

Liability for Removal Costs

- 1) A transportation company shall ensure a) that the persons it conveys to Iraq are in possession of all travel documents required by applicable law, b) that upon arrival of each one of its vehicles in Iraq, present each person to an officer for examination at such place as may be designated by an officer and c) that no other person leaves the vehicle:
 - a) at any place other than that designated by an officer; or
 - b) until permission has been granted by an officer.
- 2) Where a person has been allowed or required to leave Iraq pursuant to this Order, a transportation company that has conveyed the person to Iraq may be required by an officer to cause that person to be conveyed to the country from which that person came, or to such other country as the officer may approve at the request of the company.
- 3) Where a person has been required to leave Iraq because at the time of the arrival in Iraq the person was not in possession of a valid travel document required by applicable law, a transportation company that has conveyed the person to Iraq shall be liable to pay all costs of conveying that person to the country from which that person

came, or to such other country as an officer may approve at the request of the company.

- 4) Where a person has been granted entry to Iraq, or where that person, at the time of arrival in Iraq, was in possession of a valid travel document, and where that person is required to leave Iraq pursuant to the present Order, a transportation company that has conveyed the person to Iraq and that is required to cause that person to be conveyed from Iraq is entitled to be reimbursed by the Senior Advisor of the Ministry of the Interior, in coordination with the Interim Minister of the Interior, for the costs of conveying that person from Iraq. However a transportation company shall not be reimbursed for the costs of conveying from Iraq a person who enters Iraq as, or to become, a member of a crew.
- 5) Where a person enters Iraq as, or to become, a member of a crew of a vehicle and ceases to be a visitor, the transportation company that operates that vehicle may be required to cause that person to be conveyed to the country from which that person came, or to such other country as the Senior Advisor of the Ministry of the Interior, in coordination with the Interim Minister of the Interior, may approve at the request of the company. The transportation company shall be liable to pay all costs of conveying that person from Iraq.

Section 16

Other Offences

- 1) Where an officer has reasonable grounds to believe that a person who seeks entry to or exit from Iraq, or who seeks to remain in Iraq, is liable for an offence committed under applicable law in Iraq, other than an offence prescribed in this Order, the officer shall report the matter immediately to security forces, who may take such action as they deem appropriate.
- 2) Where the circumstances of the case require, an officer may arrest a person suspected of having committed an offence other than an offence prescribed in this Order. The arrest must be immediately reported to the Senior Advisor of the Ministry of Interior and the Interim Minister of the Interior, and the arrested person must, as soon as possible but no later than six hours after the arrest, be delivered into the custody of security forces.

Section 17

Review

A person against whom an adverse decision has been made by an officer under this Order may apply in writing to the Senior Advisor of the Ministry of the Interior and the Interim Minister of the Interior for a review of the decision.

Within seven days of receipt of the application, the Senior Advisor of the Ministry of the Interior, in coordination with the Interim Minister of the Interior, shall review the decision and notify the applicant of the determination.

Section 18
Entry into Force

This Order shall enter into force on the date of signature.

L. Paul Bremer, Administrator
Coalition Provisional Authority

APPENDIX 5 – CPA ORDER NO. 17

STATUS OF THE COALITION, FOREIGN LIAISON MISSIONS, THEIR PERSONNEL AND CONTRACTORS

Pursuant to my authority as head of the Coalition Provisional Authority (CPA), and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolution 1483 (2003),

Recalling that under international law occupying powers, including their forces, personnel, property and equipment, funds and assets, are not subject to the laws or jurisdiction of the occupied territory,

Conscious that states are contributing personnel, equipment and other resources to the Coalition in order to contribute to the security and stability that will enable the relief, recovery and development of Iraq,

Noting that states are sending Foreign Liaison Mission Personnel to Iraq,

Conscious of the need to establish and confirm the status of such Coalition and Foreign Liaison Mission Personnel in respect of the CPA and the local courts,

I hereby promulgate the following:

Section 1 Definitions

- 1) "Coalition Personnel" means all non-Iraqi military and civilian personnel assigned to or under the command of the Commander, Coalition Forces, or all forces employed by a Coalition State including attached civilians, as well as all non-Iraqi military and civilian personnel assigned to, or under the direction or control of the Administrator of the CPA.
- 2) "Foreign Liaison Mission Personnel" means those individuals who have been issued Foreign Liaison Mission personnel identification cards by the Iraqi Ministry of Foreign Affairs under the supervision of the CPA.
- 3) "Legal Process" means any arrest, detention or legal proceedings in the Iraqi courts or other Iraqi bodies, whether criminal, civil, administrative or other in nature.
- 4) "Parent State" means the state providing Coalition Personnel as part of the Coalition in Iraq or the state providing Foreign Liaison Mission Personnel.
- 5) "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 CP A under contractual arrangements.
- 6) "Coalition sub-contractors" means non-Iraqi business entities or individuals not normally resident in Iraq supplying goods and/or services to or on behalf of Coalition contractors and in respect of Coalition or CP A activities under contractual arrangements

Section 2

Coalition and Foreign Liaison Mission Personnel

- 1) CPA, Coalition Forces and Foreign Liaison Mission, their property, funds and assets of [...] shall be immune from Iraqi Legal Process.
- 2) All Coalition personnel and Foreign Liaison Mission personnel shall respect the Iraqi laws applicable to those Coalition personnel and Foreign Liaison Mission personnel in the territory of Iraq and the Regulations, Orders, Memoranda and Public Notices issued by the Administrator of the CPA.
- 3) Foreign Liaison Mission personnel shall be immune from Legal Process.
- 4) All Coalition personnel shall be subject to the exclusive jurisdiction of their Parent States and, they shall be immune from local criminal, civil, and administrative jurisdiction and from any form of arrest or detention other than by persons acting on behalf of their Parent States, except that nothing in this provision shall prevent Coalition Forces personnel from preventing acts of serious misconduct by Coalition personnel, or otherwise temporarily detaining Coalition personnel who pose a risk of injury to themselves or others, pending expeditious turnover to the appropriate authorities of the Parent State. In all such circumstances the national contingent commander of the detained person shall be notified immediately.
- 5) In respect of those Coalition personnel who commit an act or acts in Iraq for which there are no criminal sanctions in the Parent State, the CPA may request from the Parent State waiver of jurisdiction to try such act or acts under Iraqi law. In such cases, no Legal Process shall be commenced without the written permission of the Administrator of the CPA.

Section 3

Contractors

- 1) Coalition contractors and their sub-contractors as well as their employees not normally resident in Iraq, shall not be subject to Iraqi laws or regulations in matters relating to the terms and conditions of their contracts in relation to the Coalition Forces or the CPA.
Coalition contractors and sub-contractors other than contractors and sub-contractors normally resident in Iraq shall not be subject to Iraqi laws or regulations with respect to licensing and registration of employees, businesses and corporations in relation to such contracts.
- 2) Coalition contractors and their sub-contractors as well as their employees not normally resident in Iraq, shall be immune from Iraqi Legal Process with respect to acts performed by them within their official activities pursuant to the terms and conditions of a contract between a contractor and Coalition Forces or the CPA and any sub-contract thereto.
- 3) In respect of acts or omissions of Coalition contractors and sub-contractors as well as their employees not normally resident in Iraq, which are not performed by them in the course of their official activities pursuant to the terms and conditions of a contract

between them and the Coalition or the CPA, no Iraqi or CPA Legal Process shall be commenced without the written permission of the Administrator of the CPA.

Section 4

Duration of Immunity From Legal Process

The immunity from Legal Process provided by the present Order to Coalition personnel and Foreign Liaison Mission personnel as well as Coalition contractors, sub-contractors and their employees not normally resident in Iraq operates only in respect to acts or omissions by them during the period of authority of the CPA.

Section 5

Waiver of Legal Immunity and Jurisdiction

- 1) The immunity from Legal Process of Coalition personnel, Foreign Liaison Mission personnel, Coalition contractors and their sub-contractors as well as their employees not normally resident in Iraq is not for the benefit of the individuals concerned and may be waived by the Parent State.
- 2) Requests to waive jurisdiction over Coalition personnel or Foreign Liaison Mission personnel shall be referred to the respective Parent State.
- 3) Requests to waive the immunities with respect to Coalition contractors and subcontractors and their employees not normally resident in Iraq as set forth in Section 3 of this Order shall be referred to the respective Parent State with which the contractor has contracted.

Section 6

Claims

- 1) Third party claims including those for property loss or damage and for personal injury, illness or death or in respect of any other matter arising from or attributed to Coalition personnel or any persons employed by them, whether normally resident in Iraq or not and that do not arise in connection with military combat operations, shall be submitted and dealt with by the Parent State whose Coalition personnel, property, activities or other assets are alleged to have caused the claimed damage, in a manner consistent with the national laws of the Parent State.
- 2) Third party claims for property loss or damage and for personal injury, illness or death or in respect of any other matter arising from or attributed to Foreign Liaison Mission personnel shall be submitted and dealt with by the Parent State whose Foreign Liaison Mission personnel, property, activities or other assets are alleged to have caused the claimed damage, in a manner consistent with the national laws of the Parent State.

Section 7

Entry Into Force

This Order shall enter into force on the date of signature.

L. Paul Bremer, Administrator
Coalition Provisional Authority

APPENDIX 6 – LAW NO. 51/2000 REGULATING COMMERCIAL AGENCY

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 the development, 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. Issuance of licenses for practising commercial agency activities;
2. Registration of Commercial Agencies in a special register in accordance with the provisions of this law;
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. License: 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 license:
 - 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 criminal 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 license 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 license, 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 license for a commercial agency, an application must be filed at the Commercial Register, together with the necessary documentation evidencing the fulfilment 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 license is granted, the Registrar will issue the license, 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 authorised manager.

Article 6

1. A commercial agent must apply for the renewal of the license every two years, within 60 days after the date of expiry, whatever the date of granting or renewing the license.
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 1000 Dinars per day of delay for 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 license. 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 license after having paid the charges and fees imposed on him.
5. If the agent's license is terminated and he is not granted a new license 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

The Registrar shall revoke a license 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 license.

An agent may appeal against a decision of the Registrar to cancel the license 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 license, 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 thousand (10 000) Dinars and not exceeding one hundred thousand (100 000) Dinars 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;

- 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 license 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

The agent shall pay the following fees:

- (25000) twenty five thousand Dinars for the issue of the license;
- (15000) fifteen thousand Dinars for the registration of the commercial agency;
- (10000) ten thousand Dinars for the renewal of the license.

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 bureaux 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 bureaux 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.

Saddam Hussein
President of the Revolutionary Council

APPENDIX 7 - REGULATION NO. 5 OF 1989 ON BRANCHES

ARTICLE 1

- (1) A branch of a Foreign Company or Economic Establishment shall mean the branch to be licensed in accordance with this Regulation for foreign companies or establishments conducting a permanent activity in Iraq by virtue of a treaty, agreement or contract with the State, or which contracts for the execution of a certain project with State departments, Socialist Sector companies, mixed Sector companies, federations, cooperative societies or private joint stock companies having an issued capital of not less than one million Dinars, after obtaining the approval of the competent department for the sector.
- (2) An office of a foreign company or economic establishment shall mean the representative or liaison offices to be licensed in accordance with this Regulation for foreign companies or establishments whose purpose is to conduct market studies as well as work and production feasibility studies, or to display their products and services or to facilitate communication with their head offices. Such an entity shall be prohibited from engaging in any trading activities including the business of commercial agents and intermediaries.
- (3) A foreign company shall mean a legal person licensed in accordance with its local laws, in addition to individual projects.

ARTICLE 2

- (1) For the purpose of this Regulation, a foreign subcontractor contracting with the main contractor with the approval of the contracting department shall be deemed to have contracted with the State Departments and Socialist Sector.
- (2) The main contractor shall remain responsible for the execution of the entire contract.

ARTICLE 3

- (1) A foreign company or economic establishment conducting a permanent activity in Iraq or contracting for the execution of a specific project must submit a written notice to the Registrar of Companies as soon as the treaty, agreement or contract pertaining to its activity or its project is concluded. This shall not apply to companies and establishments concluding contracts for supplying commodities or materials, unless they have (either) an actual presence in Iraq or the supply contract or agreement included rendering of services of any kind.
- (2) The Registrar shall, in coordination with other concerned departments, determine the measures to decide, within two weeks from the date of receiving the notification, whether a foreign company or an economic establishment requires a license for its branch in Iraq.
- (3) The Minister of Trade may license the opening of a representative or liaison office for a foreign company or economic establishment, which is not covered by the provisions of paragraphs (1) and (2) of this Article, after obtaining the opinion of the competent authorities for the sector.

ARTICLE 4

The foreign company or economic establishment, subject to the requirement of a license for establishing a branch or an office, must prepare the following documents duly legalized by the competent authorities:

1. Two copies of the license application form.
2. Two copies of the memorandum and articles of association or any other equivalent document of the parent company or its subsidiary.
3. Two copies of the current registration certificate of the company or establishment issued in the country in which it was established.
4. A list with the names of the members of the board of directors of the company or establishment and their nationalities as well as the names of the persons authorized to sign on behalf of the company or the establishment.
5. Two copies of the power of attorney issued by the management of the company or establishment authorizing the branch manager actually residing in Iraq to manage the branch.
6. Two copies of the latest financial statements of the company or establishment accompanied by two copies of the report of the Board of Directors attached to these statements.
7. Two copies of the certificate of Israeli boycott, with regard to companies subject to a license for opening a branch only.
8. A confirmation letter from the State Department or the Socialist Sector with whom it contracts showing the nature of the contract, its commencement and expiry dates, its total value and the maintenance period, if any, with regard to companies subject to a license for opening a branch only.
9. Any other document requested by the Registrar of Companies.

ARTICLE 5

- (1) Without prejudice to the provisions of Article 3 of this Regulation, the application for the license of a branch shall be submitted to the Registrar of Companies within seventy five (75) days from the date of concluding the treaty, agreement or contract, accompanied by the documents provided for in Article 4 of this Regulation.
- (2) The Registrar of Companies may write to any department whose approval is required for licensing the branch or the office by law, regulation or instructions.
- (3) The Registrar shall issue its decision of acceptance or refusal of the license application within sixty days from the date of its submission. The Minister of Trade may, at the request of the Registrar, extend the above period for thirty days, if the procedures provided for in paragraph (2) of this Article so requires.
- (4) The Registrar shall publish the decision approving the license of the branch or the office of the foreign company or economic establishment in the companies gazette and in a daily newspaper, at least once, after collecting the fees prescribed by schedule No. 3 attached to the Companies Law No. 36 of 1983.
- (5) The Registrar shall issue the license for the branch or the office within 15 days from the date of last publication. The branch or the office shall acquire legal personality as from the date of the issue of the license.

ARTICLE 6

- (1) The branch or the office shall be managed by a manager, or whoever represents him in his absence, as authorized by the management of the foreign company or economic establishment, provided that he resides in Iraq; the responsibility of this person shall be the same as that of those managing Iraqi companies.
- (2) A notification must be sent to the Registrar within 60 days in case of replacement of the responsible manager.
- (3) Without prejudice to the provisions of Article 1 of this Regulation, a branch may not carry on any activity other than the one specified in the treaty, agreement or contract, without the approval of the contracting department.

ARTICLE 7

Each branch or office must type, in readable form in the Arabic language on all its papers and documents, the full name of the foreign company or economic establishment, as stated in the license, as well as its address and the address of the administrative headquarters of the branch in Iraq.

ARTICLE 8

The branch or the office must keep proper accounting records in Arabic for its entire activity related to its work in Iraq, according to the accounting system referred to in Article 201 of the companies Law No. 36 of 1983.

ARTICLE 9

- (1) The branch shall prepare an annual plan including a comprehensive report on its activity in Iraq for the following year.
- (2) The branch shall submit, at least once a year, periodic reports to its head office regarding the execution and follow up of the implementation of the annual plan.

ARTICLE 10

- (1) The Diwan of Financial Control shall audit the accounts and activities of the branch or the office.

The branch or the office must submit all statements, information and explanations which the Diwan of Financial Control deems necessary in order to facilitate its assignment of auditing the accounts of the branch or office and verifying its activity in accordance with the provisions of the Law of Diwan of Financial Control No. 194 of 1980 and other laws in force in Iraq and with international professional standards and custom.

- (2) The branch or the office shall submit annually to the Diwan of Financial Control its closing accounts and a report on its activities in Iraq, within a maximum of 3 months from the end of its financial year. In any event, the branch or office must submit its

audited closing accounts and its annual report to the Registrar within eight months following the end of such year.

- (3) The branch shall within eight months following the end of its financial year attach to the accounts and report referred to in paragraph (2) of this Article, the closing accounts and the Board of Directors report of the head office together with a list showing the names and nationalities of the members of the Board of Directors of the foreign company or economic establishment.
- (4) If there is any legal obstacle, which prevents the submission of the closing accounts, a document to be audited by a competent and independent party, showing the financial position of the foreign company or economic establishment shall be submitted.

ARTICLE 11

The branch or the office shall submit to the Registrar information concerning its employees, in accordance with the forms prepared by the Registrar.

ARTICLE 12

The Registrar may request any information, which it deems necessary for facilitating the implementation of the provisions of this Regulation.

ARTICLE 13

The Registrar may select one or more specialized inspectors to inspect the activities of the branch or the office, whenever necessary.

The branch or office must provide all necessary facilities for the performance of the duties of the inspector(s).

ARTICLE 14

- (1) The management of the branch must notify the Registrar of any suspension of the activities of the branch in Iraq, showing the reasons for the suspension, within 30 days from the date of the cessation of activity.

The management of the branch or office must notify the Registrar in case of bankruptcy, liquidation, merger or the amendment of the memorandum and articles of association of the foreign company or economic establishment.

- (2) The management of the branch or the office must publish, at least once, in the gazette, instances of bankruptcy, liquidation, or merger.

ARTICLE 15

- (1) The branch or the office must commence its liquidation procedures within 60 days from the date of the cessation of the reason for which the license was granted, by submitting a written application to the Registrar giving the reasons for liquidation accompanied by a statement showing the financial status of the branch or the office at that date.

- (2) The Registrar shall, within one week from the date of receiving the application, write to the concerned authorities in order to obtain their approval of the liquidation; these authorities must reply within 30 days from the date of receiving the communication of the Registrar.
- (3) The liquidation procedures, including the submission of liquidation accounts audited in the prescribed manner by the Diwan of Financial Control, should be completed within 6 months from the date of submitting the application. The Minister of Trade may extend the said period if any of the competent authorities submitted a justified request therefor.
- (4) If the Registrar finds that the liquidation has been made in accordance with the law, it shall issue its decision with the deletion of the name of the branch or the office from its records; this decision shall be published in the gazette and in a daily newspaper within 10 days from the date of its issue.

The legal personality of the branch or the office shall be considered lapsed on the date of the issue of the decision and the deletion of its name.

ARTICLE 16

The office shall commence the liquidation procedures within 30 days from the date of receiving the Registrar's letter approving the request for liquidation.

ARTICLE 17

All State and Socialist Sector Departments must notify the Registrar of Companies of the following:

1. A summary of contracts concluded with foreign companies and economic establishments, as soon as they are concluded.
2. Dates of completion of execution of these contracts 3 months before its expiry and also those of actual completion.

ARTICLE 18

By application of the provisions of paragraphs (1) and (2) of Article 205 of the Companies Law No. 36 of 1983, renewal of registration of the branch or office shall be effected after submitting the following documents and payment of the registration fees provided for in the said law:

1. A legalized certificate confirming that the treaty, agreement or contract which allows the branch to carry on its activity is still in force and the expected period until completion of the work, if the activity of the branch is not permanent, or a certificate confirming that the foreign company or economic establishment has contracted to execute another project.
2. A legalized certificate confirming that the foreign company or economic establishment is still registered in its country of origin.

3. A statement showing the name of the manager resident in Iraq in charge of the administration of the branch in Iraq and the address of the branch management office.

ARTICLE 19

- (1) Upon contracting with the State Departments and Socialist Sector to carry on a permanent activity in Iraq or to execute a certain project, a foreign company or economic establishment having a licensed office in Iraq, should within 60 days from the date of its contract commence transforming its office into a branch by submitting the documents specified in Article 18 of this Regulation.
- (2) At the request of the foreign company or economic establishment, the Minister of Trade may, during the liquidation period of the branch, approve the opening of an office for the company or the establishment, as from the completion of the liquidation procedures of the branch.
- (3) The foreign company or economic establishment may not at the same time have both an office and a branch in Iraq.

ARTICLE 20

In the event of the branch contracting to execute an additional project, while carrying out another project, it must notify the Registrar unless it has already commenced the procedures of liquidation, in which case the branch must be re-registered in accordance with Article 18 of this Regulation.

ARTICLE 21

The Minister of Trade may, at the request of the contracting State and Socialist Sector Departments, exempt contracts relating to State security from the application of the provisions of paragraph (1) of Article 17 of this Regulation.

ARTICLE 22

Penalties provided for in the companies Law No.36 of 1983 shall apply to the branch or office, in respect of any breach of the said Law or this Regulation.

ARTICLE 23

Regulation No. 17 of 1984 (Regulation for the branches of Foreign Companies and Economic Establishments) shall be repealed.

ARTICLE 24

This Regulation shall come into force from the date of its publication in the official gazette.

Made in Baghdad on this fourth day of Muharam 1410, corresponding to the fifth of August 1989.

Saddam Hussein
President of the Republic

APPENDIX 8 - USEFUL LINKS

Sources for U.S. Regulatory Information Regarding Iraq:

1. The U.S. Department of Commerce, Bureau of Industry and Security, Export Counselling Division
www.bis.doc.gov
2. The U.S. Department of Treasury, Office of Foreign Assets Control
www.treas.gov/offices/enforcement/ofac/
3. The Department of State, Bureau of International Organization Affairs, Office of Peacekeeping and Humanitarian Operations
www.state.gov/p/io
4. The Department of State, Defence Trade Controls
www.pmdtc.org

Selected Business/Commercial Contact Information:

1. U.S. department of Commerce
Iraq Reconstruction Task Force
www.export.gov/iraq
2. U.S. Agency for International Development
www.usaid.gov/iraq/
3. USAID
Seaport Administration
Stevedoring Services of America
www.ssofa.com
Email: webmail@ssofa.com
4. USAID
Primary and Secondary Education
Creative Associates International Inc.
www.caii.net
Email: faisels@caii-dc.net
5. USAID
Personnel Support
International Resources Group
www.irgltd.com
Email: info@irgltd.com

USAID

- Capital Construction
Bechtel
www.bechtel.com,
<http://supplier.bechtel.com/bni/usaaid>
- 6. USAID
Local Governance
Research Triangle Institute
www.rti.org
Email: listen@rti.org
- 7. USAID
Health Services
ABT Associates, Inc.
www.abtassoc.com
Email: subcontracts-iraq@abtassoc.com
- 8. USAID
International Police Program Recruiting
DynCorp
www.policemission.com
Email: cops.recruiting@dyncorp.com
- 9. Department of Defence
U.S. Army Corps of Engineers
www.hq.usace.army.mil/cepa/iraq/
- 10. U.S. Department of State
Office of Commercial and Business Affairs
www.state.gov/e/eb/cba/iraq
- 11. Coalition Provisional Authority
www.cpa-iraq.org
- 12. U.S. Central Command
www.centcom.mil/
- 13. United Nations
Office of the Iraq Oil-for-Food Program
www.un.org/Depts/oip

Iraqi oil contacts:

1. Minister of Petroleum Thamir Al Ghadban
Tel. 88-216-774480
Email address: Min_of_oi@orha.centcom.mil
2. State Oil Marketing Organization (SOMO)
Mohammad Al Jibouri
Director
941-360-5014 (U.S. tie line)
(Fax) 011-873.763.705.020 or 011-964.1.7742797
3. Baghdad Business Center
(ground floor, Baghdad Convention Center, next to Iraqi Assistance Center)
www.baghdadbusinesscenter.org
U.S. military point of contact: Capt. James Sosnicky
Tel. 1-914-360-3630; james.sosnicky@US.army.mil

This guide was prepared by:

Dr. Florian Amereller

Attorney at Law

LL.M.

Gide Loyrette Nouel and Krauss Amereller Henkenborg Offices in the Middle East and North Africa

GIDE LOYRETTE NOUEL

Morocco

52, boulevard Zerktouni - Espace Erreda
Casablanca - Morocco
Tel. +212 (0)22 27 46 28
Fax +212 (0)22 27 30 16
E-mail: gln.casablanca@gide.com

Saudi Arabia

P.O. Box 4615
Riyadh 11412
Saudi Arabia
Tel. +966 (1) 476 60 39
Fax +966 (1) 476 18 96
E-mail: gln.riyadh@gide.com

Tunisia

21, avenue Jugurtha
Le Belvédère
1002 Tunis - Tunisia
Tel. +216 71 891 993
Fax +216 71 893 492
E-mail: gln.tunis@gide.com

Turkey

Büyükdere Cad.
Yapi Kredi Plaza
C Blok Kat 3 - 34330 Levent
Istanbul - Turkey
Tel. +90 212 325 35 81
Fax +90 212 325 35 87
E-mail: gln.istanbul@gide.com

Main Office

26, cours Albert 1^{er}
75008 Paris - France
Tel. +33 (0)1 40 75 60 00
Fax +33 (0)1 43 59 37 79
E-mail: info@gide.com
www.gide.com

KRAUSS AMERELLER HENKENBORG

Egypt

159, 26th of July Street
Zamalek, Cairo - Egypt
Tel. +20 2 73 84 090
Fax +20 2 73 84 091
E-mail: cairo@menalaw.com

Iraq

Hai Al Mutanabbi
District/Street/House 607/55/4
Baghdad - Iraq
Tel. +964 (1) 543 90 58 (Sat. tel. +882 (1) 651 12 03 96)
Fax +964 (1) 542 01 58
E-mail: baghdad@menalaw.com

Syria

Al-Tayaran Building no. 1
Al-Thawra Street, 9th Floor
P.O. Box 347 42, Damascus - Syria
Tel. +963 11 231 62 56
Fax +963 11 231 62 57
E-mail: damascus@menalaw.com

United Arab Emirates

Al-Moosa Tower II, 17th Floor
Sheikh Zayed Road
Dubai - United Arab Emirates
Tel. +49 89 549 019 0
Fax +49 89 549 019 99
E-mail: dubai@menalaw.com

Main Office

Lenbachplatz 4
D - 80333 Munich - Germany
Tel. +49 89 549 019 0
Fax +49 89 549 019 99
E-mail: office@kalaw.de
www.kalaw.de



Gide Loyrette Nouel