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THE USAID-TIJARA PROVINCIAL ECONOMIC GROWTH PROGRAM

INVESTOR GUIDE OF BASRAH



This guide was prepared in cooperation between Basrah Investment Commission and “*Tijara*” Provincial Economic Growth Program.

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The USAID-*TIJARA* PROVINCIAL ECONOMIC GROWTH PROGRAM

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This guide provides information of the procedures required on how to establish a project or any other investment project in Basrah province. It includes guidance on obtaining licenses and permits as well as other information useful to investors.

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DISCLAIMER

The author's views expressed in this publication do not necessarily reflect the views of the U.S. Agency for International Development (USAID) or the United States Government.

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ACRONYMS

CBI	Central Bank of Iraq
CPA	Coalition Provisional Authority
CPI	Commission of Public Integrity
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
FZ	Free Zone
FZL	Free Zone Authority Law
GATT	General Agreement on Tariffs and Trade
GCIC	General Commission of Iraq Customs
GDID	General Directorate of Industrial Development
GDP	Gross Domestic Product
GDRER	General Directorate for Real Estate Registration
Gol	Government of Iraq
GTC	General Taxation Commission
ICI	International Compact with Iraq
IDA	Industrial Development Authority (same as GDID above)
IFC	International Finance Corporation
IG	Inspector General
ILO	International Labor Organization
IMF	International Monetary Fund
INIC	Iraq National Investment Commission
IP	Investment Promotion
IQD	Iraqi Dinar
IPPA	Investment Promotion and Protection Agency

IPR	Intellectual property rights
ISC	Iraq Securities Commission
ISO	International Organization for Standardization
ISX	Iraq Stock Exchange
KRG	Kurdish Regional Government
MENA	Middle East & North Africa
MIGA	Multilateral Investment Guarantee Agency
MIM	Ministry of Industry and Minerals
MoLSA	Ministry of Labor and Social Affairs
MoPDC	Ministry of Planning and Development Cooperation
MoT	Ministry of Trade
NGOs	Non Governmental Organizations
NIC	National Investment Commission
OCR	Office of Company Registration
OECD	Organization for Economic Cooperation and Development
OPIC	Overseas Private Investment Corporation
OSS	One Stop Shop
PIC	Provincial Investment Commission
RCC	Revolutionary Command Council
SME	Small & Medium Enterprises
SOE	State Owned Enterprise
TBT	Technical Barriers to Trade
TRIPS	Trade Related Aspects of Intellectual Property Rights
UNCITRAL	United Nation Commission on International Trade Law
USAID	United States Agency for International Development
WCO	World Customs Organization

WIPO World Intellectual Property Organization

WTO World Trade Organization

1. INTRODUCTION

BACKGROUND OF BASRAH INVESTMENT COMMISSION (BIC)

BASRAH INVESTMENT COMMISSION (BIC) is established under the Iraqi Investment Law number (13) in (2006). The law entails setting of a National Investment Commission (NIC) and other ones as local level investment commissions that are tasked with:

- Granting investment licenses.
- Identifying and securing strategic investment opportunities.
- promote investment, activate, and guarantee the provisions of the Investment Law

GEOGRAPHY

Iraq is located in the Middle East, bordering the Arab Gulf, between Iran; Turkey; Syria; Jordan; Saudi Arabia; and Kuwait.

LAND BOUNDARIES

Total: 3,650 km; border countries: Iran 1,458 km, Jordan 181 km, Kuwait 240 km, Saudi Arabia 814 km, Syria 605 km, Turkey 352 km.

AREA OF IRAQ

Total: 438,317 sq km; land: 437,367 sq km; water: 950 sq km.

FACTS ABOUT BASRAH PROVINCE

Located in the far south, Basrah province is a center of the oil, fishing and shipping industries.

- **Population:** more than 2.5 million¹.
- **Population Density:** about 7,133 per sq.km.
- **Labor Force:** 1,330,000
- **Capital:** Basrah city
- **Area:** 19,070 sq. km.
- **International borders:** Iran, Kuwait

Administrative Division

- Shaat Al-Arab
- Al-Madina
- Al-Qurna
- Al-Basrah
- Al-Zubair
- Al-Fao
- Abu Al-Khasib



¹ COSIT estimates for 2009.

Major Industries

Oil, oil processing, shipping, agriculture, tomato paste, dates, fishing and fisheries

Potential Areas for Investment

Those are plastics, fertilizers and other petrochemicals, expansion of existing port facilities, trade logistics, and tourism (including eco-tourism).

Education:

Basrah has One university (Basrah University, 7000 students), 320 secondary schools, 14 vocational schools (commercial, industrial and technical), 14 teacher training institutes.

Health:

Basrah has 15 hospitals and 39 public medical clinics. In 2003 there were 862 general practice medical doctors in the province, both male and female. Basra has over 2500 in-patient hospital beds.

Infrastructure:

Some of Iraq's largest oil fields are in Basrah, as well as major refining and export facilities.

Tourist attractions:

Qurna, where the Tigris and Euphrates rivers converge, is rumoured to be the original site of the Garden of Eden.

Natural Resources:

Natural resources in the province are classified into two sections: waters and minerals:

WATERS

A. Surface Water

Surface water includes the following:

1. Tigris River:

In Basra Province the Tigris River extends from the boundaries of Maysan Province from the north, reaching its confluence with the Euphrates River in Al Qurnah District 47km (29 mi.) downstream. About 24 subsidiary rivers feed into the Tigris for a combined total length of approximately 69,500 km (43,185 mi.). Settlement on both sides of the Tigris is recorded throughout history, a result of the river's source being constant and its banks fertile.

2. Euphrates River:

The Euphrates River currently has two riverbeds in Basra Province. One is the old north riverbed, which enters the province coming from Dhi Qar Province. It then flows

eastwards, parallel with the east bank of Al Hammar Marsh, 40 km. (24.8 mi.) Inside Basra Province, until it meets the Tigris River in Al Qurnah District. The river width varies from 50 m (164 ft.) when it enters the province to around 200 m(656 ft.) in Al Qurnah.

3. **Shatt Al-Arab River:**

The length of the Shatt Al-Arab River from Al Qurnah City to where it flows into the Arabian Gulf/Persian Gulf is around 95 km (59 mi.). Its width expands from Al Qurnah City, where it is about 25 m (82 ft.) wide, to Al Ma'qil Quarter, where it is about 305 m (1,000 ft.), to the Ashar area (457 m/1,499 ft.), to Muhammara City (805 m/2,641 ft.), to Al Fao City (1,600 m/5,249 ft.), and to around 2,500m (8,202 ft.) wide in its final flow to the Gulf.

4. **Al Basrah River:**

The Al Basra River extends to the west side of the Shatt Al-Arab River. It starts from Hareer Village and connects to Garmat Ali River in the north until it ends with the Khor Al Zubair water surface in the south. Its length is around 42 km (26 mi.). Through this river, the waters of the Al Hammar Marsh flow directly into the Arabian Gulf/Persian Gulf.

5. **New Irrigation Projects:**

A number of important new irrigation projects were implemented after 1991. These include:

- **Al Iz River.** The Al Iz River project, built in 1993, extends on the west side of the Tigris for 32 km (20 mi.) before it flows into the Euphrates, about one km (0.62 mi.) west of the Tigris and Euphrates confluence in Al Qurnah. The Al Iz River project is one of the irrigation projects that caused the marshes to dry out.
- **Al-Masab Al-Aam River.** The Al-Masab Al-Aam River canal, created in 1992, passes through the western part of the province. The south part of the river canal's flow curves along the west path of the Euphrates until it joins the Al Basra River four km (2.5 mi.) south of Hareer Village. The length of this part of the river is 210 km (130.5 mi.). It controls the irrigation waters and drains them to the Arabian Gulf, away from the rivers and marshes.

6. **Marshes and Swamps:**

The northern parts of Basra Province have both constant and seasonal surface waters in the form of marshes, such as Al Huweiza Marsh, which lies northeast; Al Qurnah Marsh in the northwest; and Al Hammar Marsh in the west. The marsh areas extend from Basra City to the north of Al Qurnah. These areas lie west of Shatt Al-Arab and are on both sides of the Tigris River.

B. Groundwater:

There is little usable groundwater in the eastern part of the province because of the existence of rivers and the high level of salinity, nor is groundwater needed. The opposite is true in the western part of the province, where groundwater plays a pivotal role and is considered an essential source of water dedicated for agricultural purposes and human

settlement. The geographical nature of the area allows for storage of large amounts of water that can travel under and near the land surface.

Minerals

Three different groupings of minerals can be found in Basra province – oil, natural gas, and other materials:

- a) Oil. Oil is considered one of the most important minerals available for exploitation in Basra Province. The Al Zubair, Al Rumailah, and Nehran Omar fields are areas of current extraction, while the west Qurnah fields and Majnoon fields are not yet exploited. As of this writing, the daily oil extraction amounts to around 2 million barrels a day. Of these, 1,650,000 barrels are exported via ports in the Arabian Gulf/Persian Gulf. In addition, the working fields are connected with strategic pipelines to transport oil to Mediterranean seaports and to Turkey. Basra's reserve is estimated at 65 billion barrels.
- b) Natural Gas. Natural gas accompanies oil in all fields. Currently, accurate figures for the amount of natural gas production in the province are not available.
- c) Other Materials. Other materials include materials used for construction, such as sand and lime (34 million tons available), limestone (30 million tons available), and clay (4.8 million tons available)

ECONOMY

Iraq has undergone a difficult period of both oppression and upheaval over the past three decades. Ravaged by wars and unsafe security situation after 2003, the country's economy and infrastructure have languished and fallen into disrepair.

Decreased insurgent attacks and an improved security environment are helping to spur economic activity, particularly in the retail sector. Broader economic improvement, long-term fiscal health, and sustained increases in standard of living still depend on the government passing major policy reforms. Iraq's economy is dominated by the oil sector, which provides over 90% of government revenue and foreign exchange earnings. Oil exports have returned to levels seen before 2003 and government revenues have rebounded along with global oil prices since mid-2009. Iraq is making modest progress in building the institutions needed to implement economic policy. Iraq has held serious discussions with both the IMF and World Bank for new programs that would help further strengthen Iraq's economic institutions. The Iraqi government is seeking to pass laws and undertake economic, legislative, and administrative reforms to strengthen the economy and improve the business environment

General View of the Iraqi Economy

GDP: \$113.4 billion at purchasing power parity (2010 est.)

GDP - per capita \$3,800 at purchasing power parity (2010 est.)

GDP - composition by sector: agriculture: 9.7%, industry: 63%, services: 27.3% (2010 est.)

Labor force: 8.5 million (2009 est.)

Unemployment rate: 15.3%, (2009 est.)

Population below poverty line: 25% (2008 est.)

Inflation rate (consumer prices): 4.2% (2009 est.)

Budget: revenues \$52.8 billion; expenditures \$72.4 billion (2010 est.)

Agricultural products: wheat, barley, rice, vegetables, dates, cotton; cattle, sheep, poultry

Industries: petroleum, chemicals, textiles, leather, construction materials, food processing, fertilizer, metal fabrication/processing

Industrial Production Growth Rate: 4.8% (2010 est.)

Electricity (2009 est.):

- Production – 46.39 billion kWh
- Consumption – 52 billion kWh
- Electricity Imports – 5.6 billion kWh

Oil (2009 est.):

- **Production:** 2.399 million bbl/day
- **Exports:** 1.91 million bbl/day
- **Imports:** 116,900 bbl/day

Oil - proved reserves: 115 billion bbl (1 January 2010 est.)

Natural Gas (2008 est.):

- **production:** 15.66 billion cubic meters
- **Consumption :** 9.454 billion cubic meters

Natural Gas - proved reserves: 3.17 trillion cubic meters (1 January 2010 est.)

Basrah Economy at a Glance:

- Basra is home to a free zone in the port of Khor Al-Zubair. The area of the free zone is 1 million square meters, located at a distance of 40 km south - west of Basra on the Persian Gulf in the port of Khor Al-Zubair
- Some of the largest oil fields in Iraq (Northern Rumaila field, Majnon, and southern Rumaila) are located in the province of Basra. The majority of Iraq's oil exports leave the country through the ports of Basra.
- The headquarters of the South Oil Company (owned by the Iraqi Ministry of Oil) is in Basra and operates 2 of the oil ports located near the city.
- Basic economic activities in Basra are based on the petrochemical industry. The Southern Fertilizers Company produces ammonia and urea solution and nitrogen gas.
- The State Company for Petrochemical Industries (SCPI) houses the largest complex in Basra. The complex contains six major plants, each plant produces one of the main products: ethylene and caustic / chlorine and phenol mono-chloride (VCM), multi-phenol chloride (plastic) (PVC), and low and high density polyethylene.

- State Company for Petrochemical Industries (SCPI) can meet all the requirements of heat treatment techniques including extrusion blown tape, tape extrusion molding, wires and cables covering, pipe extrusion and injection molding and blow and rotational molding. Company tenders are available on its website.

Shipping, logistics, and transport are also major industries in Basra.

- Basra is home to all six Iraqi ports port. Umm Qasr is the main port of deep-water quay with 22 berths; some of these berths are dedicated to particular commodities (such as sulfur, seeds, oils, lubricants, etc. ...) while the other five ports are smaller in size and specialized on a smaller scale.
- In addition to loading and unloading cargo, the Umm Qasr warehouse covers an area of 175,000 square feet and there are other spaces for storage of up to 800,000 square feet each. A Fence has been installed around the perimeter of the port and it is fully lit at night. There is enough land adjacent to the port for expansion of port facilities in the future.
- Al-Maakal Port was idle for more than 20 years since the cessation of operations in 1980. More than \$ 7 million were invested for the port infrastructure since 2003, but this Port requires more investment to become fully operational again.
- Abu Flus Port, on Shatt al-Arab is used in the import and export loads of cars, agricultural products, construction materials and electrical goods. This Port requires further investments in infrastructure to reach full capacity.

Fishing and fisheries show some potential for growth in Basra.

- Marine fishing in the Iraqi territorial waters and in the Persian Gulf was active in Basra. The main fish varieties that were caught included Shabel, Alboom, and Mullet fish. Fishing techniques used by fishing vessels, included fishing by nets, drift nets, curb nets, circular nets and trap nets.
- Currently fish catch decreased in part due to the dryness of the southern marshes. Marshes supported the fishermen as well as being incubators for commercial species. With the ongoing rehabilitation of the marshes, the fishing industry in Basra could face a brighter future.

2. THE INVESTMENT ENVIRONMENT

INTRODUCTION

Iraq is now on the path to establishing laws and regulations intended to attract foreign investment and rebuild the economy.

Substantial progress has already been made to remove some of the obstacles to open up the market and to develop an investor-friendly business environment. Inflation had been substantially decreased and the value of the currency has been stabilized. Iraq has an open trade and investment regime with a focus on strengthening the private sector.

The government has made rejoining the international community a key part of its economic development strategy, and investment will play a key role. Iraq's National Development Strategy for 2005-2007 and that for 2007-2010 and the Economic Development Plan 2010-2014 as well as the International Compact with Iraq articulate this new direction. Several goals outlined in these strategies include ensuring private sector growth through creation of a favorable legal environment, fostering a transition to a modern free market economy, and integrating Iraq into the global economy.

OPENNESS TO FOREIGN INVESTMENT

Several laws that went into effect since 2003 improved Iraq's business environment and changed the legal regime with respect to attracting foreign investment, giving foreign investors national treatment with regard to their investments:

- Trade Liberalization Policy Law No. 54 of 2004
- The Central Bank Law No. 56 of 2004
- Law No. 64 of 2004, Amending Company Law No. 21 of 1997
- Interim Law on Securities Market No. 74 of 2004
- Law No. 80 of 2004, Amending Trademarks and Descriptions Law no. 21 of 1957
- Patent, Industrial Design, Undisclosed Information, Integrated Circuits And Plant Variety Law No. 81 of 2004
- The Banking Law No. 94 of 2004
- Insurance Regulatory Law No. 10 of 2005
- Investment Law No. 13 of 2006
- Kurdistan Region Investment Law No. 4 of 2006
- Private Investment In Crude Oil Refining Law No. 64 of 2007

PREVAILING IRAQI INVESTMENT LAWS AT A GLANCE

The new Iraqi investment law No.13 of 2006 passed by the Iraqi parliament in October 2006 and came into force on January 17, 2007, regulates the national and foreign investment

process in Iraq. Investments less than USD 250,000 or equivalent in IQDs are not covered by this law.²

The Iraq Kurdistan Region Government (KRG) has also issued its own investment law for the Region under number 4 for 2006.

Iraqi Investors in the industrial sector can apply to the Ministry of Industry and Minerals/Industrial Development Authority pursuant to Law No. 20 of 1998, Industrial Investment Law for Private and Mixed Sectors as amended.³

➤ **PRIVILEGES AND GUARANTEES OF INVESTMENT LAW NO. 13 OFFERED TO INVESTORS**

Major privileges and guarantees offered to investors under the Investment Law No. 13 of 2006 include:

- Repatriation in hard currency of profit and capital brought into Iraq.
- Trading in the Iraqi Stock Exchange market.
- Leasing land needed for the project or using it on condition that the term does not exceed a period of 50 years that can be renewed.
- Insuring the investment project at any national or foreign insurance company.
- Opening accounts in Iraqi Dinar or foreign currency or both at Iraqi banks or at banks outside Iraq.
- Granting foreign investors and non-Iraqis working in investment projects the right of residency in Iraq and facilitating their entry and exit to and from Iraq. Applications for business visas should be made at the Iraqi Consulate prior to departure. Consular officials at the Iraqi Embassy have indicated that visa approval can take two to six weeks from the date of submission. Visas are issued to business people, provided that they have official invitations from Iraqi authorities or are introduced as such by their respective Ministries of Foreign Affairs and are supplied with letters from the Chamber of Commerce. Applicants should also submit a letter of request from their own company stating the reason for their travel.
- Investors can also apply for a visa to Iraq through the National Investment Commission which will facilitate the process Non-confiscation or nationalization of the investment project.
- Non-Iraqi workers have the right to transfer their salaries and indemnities outside Iraq.
- Exemption from fees and taxes for ten years beginning with the date of starting the project. This period is renewable. Also, furniture and assets needed for expanding and modernizing the project are exempt from import duties.
- Exemption period may be extended up to 15 years in case of foreign and Iraqi partnership.
- Assets imported for the purposes of the investment project shall be exempted from duties.

² Article No. 1 (Third) of the Investment Statute No.2 of 2009.

³ Provisions of Law No. 20 for 1998 cover only Iraqi Industrial Investors, but an amendment law has been drafted to include the coverage of foreign industrial investors by the said law as well.

- Imported assets required for the expansion, development or modernization of the project shall be exempted from duties in case they lead to an increase in the designed capacity.
- Spare parts imported for the purposes of the project shall be exempted from fees if the value of these parts does not exceed (20%) twenty percent of the fixed assets purchased value.
- Hotels, tourist institutions, hospitals, health institutions, rehabilitation centers and educational and scientific organizations projects shall be granted additional exemptions from duties and taxes on their imports of furniture, furnishings and requisites for renewing and updating purposes at least once every four years.
- For housing projects the National Investment Commission may transfer the ownership of the land to the investor for free. The investor has the right to manage other parts of the housing project, as he sees appropriate, for the period of the license and according to the terms of the agreement signed with him.
- Lands for the construction of services or commercial projects within the residential city shall be allocated for investors free of charge vis-a-vis a share for the relevant province amounting to (7%) of the annual rent of the land⁴.

INVESTOR COMMITMENTS

- Informing the commission of the date of starting work on the project.
- Maintaining accurate book-keeping checked by an authorized auditor.
- Presenting economic and technical feasibility studies with maps related to the project.
- Keeping a record of imported materials, protecting the environment, and commitment to qualitative control systems.
- Complying with Iraqi laws and the action plan methodology presented by investors.
- In housing projects, the investor to whom the land is given free, is committed to the purpose of the land or property and not speculates with it. He is also committed to the construction of the housing units during the period specified in the agreement and sell them to the citizens.

AREAS OF INVESTMENT

The law opened most areas of investment to Iraqi and foreign investors. Exceptions are the extraction and production of oil and gas, and the banking and insurance sectors. A separate hydrocarbon law is contemplated⁵, and financial services fall under their own legislation and regulations⁶.

Land cannot be owned by foreigners except for housing projects under the condition that the housing units are sold to Iraqis on project completion. For other projects the lease period is fifty years, renewable.

4 See Rule No. (7) of 2010 "Regulations for the Sale and Rental of State-owned and Public Sector Property and Land for Investment Purposes" as amended by First Amendment of Rule No. (1) of 2011 and Second Amendment of Rule No. (5) of 2011.

5 Draft Oil and Gas Law is still under discussion at the Council of Representatives (Parliament).

6 Foreign investments in the banking sector are governed by the Banking Law No. 94 of 2004, while branches of foreign insurance companies are governed by the Insurance Regulatory Law No. 10 of 2005.

➤ **PRIVILEGES AND GUARANTEES OF INDUSTRIAL INVESTMENT LAW NO.20 OFFERED TO INDUSTRIAL INVESTORS**

- Industrial projects existing before the date at which this law came into force (with its 4th amendment) shall be exempted from all taxes and duties (except for income tax and fees imposed on the production of cigarettes, beer and liquors) including the share of the workers determined according to the Law of Distribution of Corporate Profits No. 101 of 1964, for a period of ten years, taking into account provisions of Paragraph Third of Article Eight of the said law..
- Industrial projects which obtain the incorporation license after the enforcement of this law shall be exempted from all taxes and duties (except for income tax and fees imposed on the production of cigarettes, beer and liquors) including the share of the workers determined according to the Law of Distribution of Corporate Profits No. 101 of 1964 for a period of ten years as from the date of obtaining the incorporation license,.
- Also, project's annual profits are exempt of income tax for a period of five (5) years, in accordance with percentages ranging between 10% and 30% of net profit, depending on the degree of development of the region where the project is erected from the first year profit is achieved after being licensed, or from the date of entry into force of this Act for the existing projects and half of these percentages in the next five years as follows:
 - Individually owned projects or those belonging to companies (except for joint stock companies)
 - 10% in developed cities,
 - 20% in less developed cities, rural areas and remote villages
 - Projects belonging to joint-stock companies (except for joint stock companies of the mixed sector):
 - 15% in developed cities,
 - 25% in the less developed cities and rural areas and remote villages
 - Mixed sector companies:
 - 20% in developed cities
 - 30% in the less developed towns and rural areas and remote villages.
- Reserves withheld from project profits which are devoted to the development or expansions are exempt from income tax at the rate of (25%) of the total annual profits (before tax) maximum.
- Relevant government agencies shall allocate state-owned lands needed for the industrial project, within the basic cities masterplan, and supply them with necessary services and lease them to the project owner for a period that ends with validity date of the licence of incorporation not taking into account the provisions of law on the Sale and Lease of State Property No. (32) of 1986.
- Machines for the expansion and development, land and necessary buildings are covered with exemptions and privileges contained in the law for ten (10) years from the date of the actual production.

- If the investor owns an agricultural land or has the right to use it, then he can establish an industrial project on it provided that the environmental conditions required are met and that the project is not harmful to health.

INVESTMENT COMMISSIONS IN IRAQ

The law stipulates the formation of two kinds of investment commissions in Iraq: The National Investment Commission is responsible for the formulation of the national policy for investment, the development of plans and controls, and monitoring the application of same. It is exclusively responsible for strategic investment projects of federal nature⁷. The chairman has the rank of Minister. The board includes in addition to the chairman, his deputy, and 4 public sector officials, three representatives from the private sector chosen by the prime minister.

Because Iraq adopted a federal structure through the law on the formation of regions, the investment law has also provided for the establishment of commissions at the regional and governorate level. Regulations No (3) for 2009, "Bylaws for provincial investment commission not organized in a region", explains how to form the commission and its organizational structure. The regional and governorate commissions will have the power to grant investment licenses (except for strategic projects of federal nature), encourage investment, and open local branches in areas under their jurisdiction in consultation with the National Investment Commission. The local investment plans must not contradict the federal investment plans.

All Iraq's fifteen governorates (provinces) within the federal government⁸ have already established their provincial investment commissions (PIC). The Kurdistan Region has its own Investment Board in Erbil with two branch offices in the other 2 provinces, Dahuk and Sulaymaniyah. The Kurdistan Investment Board was established according to Investment Law No. 4 of 2006 issued by the KRG covering investments in the Kurdistan Region only.⁹

There is also the Industrial Development Authority under the Ministry of Industry and Minerals concerned with the development of small and medium industrial enterprises (SMEs) for both the private and mixed sectors based on the Law of Industrial Investment No. 20 of 1998 (as amended). Therefore, submission of Iraqi Industrial Investors applications is centralized and it must be done at MIM's Industrial Development Authority in Baghdad.¹⁰

For more information on the industrial and investment opportunities available in this area, visit the website of the Ministry of Industry and Minerals (www.industry.gov.iq/investments) Also, visit Basrah Investment Commission website (www.invesbasrah.com)

EFFICIENT CAPITAL MARKETS AND PORTFOLIO INVESTMENT

The new Gol investment law allows for foreign investors to trade in shares and bonds listed in the Iraqi Stock Exchange (ISX). It also allows foreign investors to form investment portfolios. The ISX is governed by law # 74 of 2004 Interim Law on Securities Markets. From June 2004 till March 2009 Trading transactions and buy and sell orders were written manually on grease boards in trading sessions. This system did not allow for full transparency in terms of timing of market participants or knowledge of who has placed the bid. Electronic Trading started on April 19, 2009 in cooperation with NASDAQ-OMX. The ISX

7. See definition of Strategic Investments in Article 4 (Second) of the Investment Statue No. 2 for 2009.

8. Iraq consists of 18 governorates (provinces) 15 within the federal government and 3 within the Kurdistan Region.

9. For Kurdistan Investment Law incentives go to www.kurdistaninvestment.org.

10. The provisions of this law cover Iraqi industrial investors only. But, the MIM is making tremendous efforts to amend this law to include foreign investors in addition to other amendments.

operates under the oversight of the Iraq Securities Commission, an independent commission. The automation of the ISX will provide much greater transparency as well as pave the way for foreign investment on the exchange. In addition, a new permanent securities law is being drafted as well as rules and regulations for the Iraq Securities Commission (ISC).

As of December 20, 2010, the number of listed companies at the ISX reached 85 with an average trading volume of about USD 5 - 7 million weekly.

EXPROPRIATION AND COMPENSATION

Iraqi law affords protection to foreign investors from expropriation. Article 23 (Second) of the new Constitution prohibits expropriation in Iraq, unless it is "for the purpose of public benefit in return for just compensation." The constitutional provision further stipulates that this provision shall be regulated by law. Although this provision offers protection to foreign investments, a law has yet to be considered. Article 12 (Third) of the new Iraqi investment law also guarantees, "non-seizure or nationalization of the investment project covered by the provisions of this law in whole or in part, except for a project on which a final judicial judgment was issued."¹¹

DISPUTE SETTLEMENT

While the law of domestic arbitration is fairly well developed in Iraq, international arbitration is not sufficiently supported by Iraqi law. Iraq is a signatory to the Arab League Convention on Commercial Arbitration (1987) and the Riyadh Convention on Judicial Cooperation (1983), but it has not signed or adopted the two most important legal instruments for international commercial arbitration: The United Nations New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (1958) (commonly called the New York Convention) and the attendant rules and procedures established by the UN Commission on International Trade Law (UNCITRAL).

Dispute resolution is laid out in Article 27¹² of the new investment law, which details the rights of Iraqis and foreigners with respect to Iraqi law. Domestic arbitration is also provided for in Articles 251-276 of the Iraqi Civil Procedure Code. Arbitration agreements must be in writing. Panels of arbitrators are available through the Iraqi Union of Engineers, the Iraqi Federation of Industries, and private arbitrators.

BILATERAL INVESTMENT AGREEMENTS AND REGIONAL COOPERATION

Iraq is signatory to thirty-two bilateral, and nine multilateral agreements within the Arab League, with respect to Investment Promotion and Protection (IPPA). There are also existing bilateral agreements with India, Iran, Japan, Jordan, Kuwait, Mauritania, Republic of Korea, Sri Lanka, Syria, Tunisia, Turkey, the United Kingdom, Vietnam and Yemen amongst others. In addition, Iraq has bilateral free trade area (FTA) agreements with UAE, Oman, Qatar, Algeria, Egypt, Jordan, Lebanon, Syria, Tunisia, Yemen, and Sudan. On July 11, 2005, Iraq and the U.S. signed a Trade and Investment Framework Agreement (TIFA) as a first step toward creating liberalized trade and increasing investment flows between the U.S. and Iraq.

11. The Iraqi National Investment Commission has become a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA).

12. Article 27 of the Investment Law No. 13 states: "Disputes arising between parties who are subject to the provisions of this law shall be subject to the Iraqi law unless otherwise agreed....."

Apart from the relevant provisions of national legislation, and in addition to the above mentioned, Iraq is a signatory to or a member of many other bilateral and multilateral agreements).

FREE TRADE ZONES AND PORTS

The Free Zone Authority Law No. 3/1998 (FZL) permits investment in Free Zones through industrial, commercial, and service projects. This law operates under the Instructions for Free Zone management and the Regulation of Investors' Business No. 4/1999. Under the Free Zone Authority Law, goods imported and exported from the FZs are exempt from all taxes and duties, unless imported into Iraq. However, this exemption does not apply to the Reconstruction Levy (CPA Order No. 54). Capital, profits, and investment income from projects in the FZ are exempt from all taxes and fees throughout the life of the project, including in the foundation and construction phases. The application process for an investor involves submitting an application and a fee of US\$100 to the Free Zone Authority. The investor must sign a lease within 30 days of lease approval.

ACTIVITIES PERMITTED IN FREE ZONES

- Industrial activities (both production and consumer), assembly, installation, sorting and refilling processes;
- Storage, re-export and trading operations;
- Service and storage projects and transport of all kinds;
- Banking, insurance and reinsurance activities; and
- Supplementary and auxiliary professional and service activities. Prohibited activities include actions disallowed by other laws in force, such as weapons manufacture, environmentally-polluting industries and those banned by the place of origin of the investor.

CURRENT FZ LOCATIONS

- Basra/Khor al- Zubair Free Zone: This one million square mile zone is located 40 miles southwest of Basra on the Arabian Gulf at the Khor al-Zubair seaport and has been in operation since June 2004;
- Ninewa/Falafel Free Zone: this 400,000 square meters zone is located in the north, near roads and railways that reach Turkey, Syria, Jordan and the Basra ports; and
- Al-Qayim Free Zone; this zone is being developed in two stages near the Iraqi-Syrian border. It is close to roads and railways that reach Turkey, Basra, and Jordan. The zone's first phase is limited to commercial and service activities.

IRAQ'S BANKING SYSTEM

HISTORICAL BACKGROUND

Rafidain Bank, the biggest Iraqi state-owned bank was founded in 1941 and was originally a privately-owned bank. By the early 1960s the following banks were represented in Baghdad: Ottoman Bank; the Eastern Bank (British owned); the British Bank of the Middle East; Federal Bank of Lebanon; National Bank of Pakistan; Arab Bank; Intra Bank (Lebanon); and the Iraqi banks, Rafidain, Commercial Bank, Credit Bank and Bank of Baghdad. In 1964 a

wave of nationalizations took place and banks were seized and merged into four groups – Rafidain, Commercial, Bank of Baghdad and Credit Bank. In 1970 a further consolidation took place, with banks merged into either Rafidain or Commercial, and in 1974, the Commercial group was put under the Rafidain banner, leaving the country with one state-owned bank. On January 1, 1989, the Rasheed Bank was spun off from Rafidain.

Following the Gulf War of 1991, the government once again allowed the establishment of private banks. Indeed, the motive for establishment of these banks was an attempt to reach some of the vast majority of small businesses in Iraq. The state-owned banks alone were allowed to lend to state-owned enterprises.

STATE-OWNED COMMERCIAL BANKS

As mentioned above, Iraq nationalized its commercial banks in 1964. In 1974, four commercial banks were merged into one – Rafidain -- which had a commercial banking monopoly until Rasheed bank was established by the government. Before the Gulf War, Rafidain was the Arab world's largest commercial bank with total assets of USD 47 billion.

Public sector banks include also four special-purpose banks: The Real Estate Bank; the Agriculture Bank; the Iraq Bank (formerly the Socialist Bank) and the Industrial Bank. These four specialized banks have become commercial banks as well. After 2003 another state-owned bank, the Trade Bank of Iraq was established.

PRIVATE BANKS

In addition to 6 foreign, there are (30) Iraqi private banks licensed and in operation, 7 of which operate on Islamic banking principles¹³. By contrast, there were eighteen private banks licensed and operating in the country in 2003, most of them having opened their doors in the early 1990s.

Six foreign banks have been licensed by the CBI – T.C. Ziraat Bankasi of Turkey (the state agricultural bank), Bank Mili Iran (the national bank of Iran), Byblos Bank (Lebanese), the Arab Banking Corporation (ABC) from Bahrain. ABC maintains an office in Baghdad but is not engaged in retail banking operations, Intercontinental Bank and Beirut and the Arab Countries Bank are operating in Erbil.

After the second Gulf War in 2003, the expectation was that, as the situation in Iraq stabilized, and as foreign investment in the banking sector took place, there would be closures of weaker banks and a series of mergers to create larger, more competitive private banks. In fact, despite a certain degree of post-conflict euphoria, foreign investment in the banking sector has been limited to few banks, and there were no mergers.

No bank mergers have taken place. Although some private banks remain small, they have managed to increase capital to satisfy the IQD 50 billion (USD 42.735 million)¹⁴, requirement mandated by the Central Bank of Iraq (CBI).

The CBI has recently decided to raise the minimum capital requirement of banks to IQD 250 billion and asked existing banks to adhere to this within three years (by 2012).

In Kurdistan, the Emerald Bank, Kurdistan International Bank, North Bank, Ashur Bank, Al-Warka Bank, Bank of Baghdad, Basrah Bank, Gulf Bank, Investment Bank, Middle East

¹³ See CBI's website – www.cbi.iq

¹⁴ Exchange rate on June 30, 2011 was one USD = IQD 1170.

Bank, Mosul Bank, Byblos Bank (of Lebanon), and the Intercontinental Bank are operational. Standard Chartered Bank has a representative office in Erbil.

BANKING PRODUCTS AND SERVICES

Services offered by Iraqi commercial banks include current accounts, savings accounts and time deposits, short-term overdraft and bills discounted facilities, as well as short-term loans and advances. Banks also offer bid, advance payment, and performance bonds (but the maximum period is 12 months). A few banks offer loans over one year term.

Since the issuance of the Banking Law, banks started offering additional services such as trading in foreign exchange through the Central Bank's Daily Auction, internal and foreign transfers, opening of L/C and documentary credits.

Operating banks

Most operating banks in Iraq are a part of financial communications between banks throughout the world (SWIFT). All banks use the Iraqi Payments System run by Central Bank of Iraq and thus they are able to make local payments.

In Iraq, several banks are capable of transferring funds electronically as they have more than 200 branches across the country. The operation of automated teller machines is progressing and they shall be set up throughout the country.

3. THE REGULATORY FRAMEWORK

TRANSPARENCY OF THE REGULATORY SYSTEM

Potential investors in Iraq face complex procedures under various laws, regulations and administrative requirements. However, the government intends to begin a program to reduce such difficulties, and the new investment law was the first step in that direction. In addition, Iraq intends to improve and simplify various procedures for obtaining investment licenses and project establishment licenses and permits, and expects the new National Investment Commission to lead the way.

INSTITUTIONAL FRAMEWORK

According to the Investment Law No. 13 of 2006, an investor is required to apply to the NIC or a PIC for an investment license to start a business in Iraq. An investment license is issued within forty five (45) working days if the application form is properly completed.

Investment Regulations No. 2 of 2009 have set the minimum investment limit not be less than USD 250,000/-.¹⁵

As mentioned in 2.3.3, the Law allows both foreigners and Iraqis to invest in all activities, except those relating to Oil Extraction & Production and Banks & Insurance companies¹⁶. Ownership of land is not allowed for foreigners. Foreign investors may, however, lease land for up to 50 years renewable. They can, however own land for housing projects on the condition that the housing units shall be allocated for ownership by the Iraqis after completion of the project.

In addition, Iraq imposes no limit on equity ownership. Foreign ownership of up to 100% is allowed. Investors are also free to bring in and take out their capital.

THE ONE-STOP-SHOP

The One-Window (One Stop Shop) is a requirement of the new Iraqi legislation. Current legislation places the One-Stop-Shop within the National Investment Commission (and Provincial Investment Commissions) linked to the Prime Minister and suggests a strong model with the authority to issue investment licenses.

In setting up the OSS within the NIC and PICs, it was expected that all investment-related issues would be handled by the NIC and PICs through the “One-Stop-Shop”. This means having all services such as licenses and permits, immigration, customs, land, utilities, etc would be processed by NIC or PICs.

¹⁵ Iraqi investors with Industrial investment projects which are not covered by Law No. 13 may apply to the Ministry of Industry and Minerals – General Directorate of Industrial Development to receive incentives under Law No. 20 of 1997 Industrial Investment Law for Private and Mixed Sectors.

¹⁶ See footnotes Nos. 4 & 5.

For the time being, the NIC OSS is only handling investment applications and facilitating visa issuance for potential investors who contact the NIC¹⁷.

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS (IPRS)

This section discusses the processes needed to register patents, trademarks, industrial designs, and copyrights.

PATENTS

Iraq's patent law and procedures are similar to the laws and registration procedures of many other countries.

The Ministry of Planning and Development Cooperation administers the country's patents law— "*Patents, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law*."¹⁸ This law covers inventions and innovative ideas in technology, products, and manufacturing processes.

The government registers patents in the inventor's name unless the product is patented in another country. If this is the case, the government will register the patent in the name of the company, organization or association that owns it. The government grants patents for a twenty-year period from the application date

VARIANTS

Chemicals. For pharmaceuticals and/or agricultural chemicals containing new substances, the Ministry requires test data and any other available data it may deem necessary for granting market access. The Ministry shall protect such data from unauthorized commercial use until five years after approval to market the products. The Ministry will also protect the data from disclosure except if the disclosure is necessary to protect the public or if the Ministry takes the necessary precautions to guarantee unclassified commercial use of such data.

Integrated Circuit Designs. Integrated circuit designs are recorded separately at the Register of Integrated Circuit Designs of the Ministry of Industry and Minerals. Applicants must provide information related to product design. Applicants must also provide patent holder names and addresses and any information regarding any relevant certificates issued for the integrated circuit designs. The protection of integrated circuit designs extends to foreigners, whether natural or juridical persons, on a basis no less favorable than that afforded to Iraqi nationals.

Plants. Iraqi law protects new varieties of plants. The Ministry of Agriculture maintains a Register of New Plant Varieties containing data related to new plant varieties. The term of protection is set at twenty years from the date of application, except for trees and vines, which may be protected for twenty five years. Rights to protected varieties are heritable.

17 Item First/b of Article 25 of the Investment Statue No. 2 of 2009 sets out the powers of relevant ministries representatives within the OSS to include taking decisions relating to the Investment License only, thus limiting the possibility of providing other services related to other licenses and permits required by the investor.

18 The current competent authority is the Central Organization of Standardization and Quality Control (COSQC), which is a department at the Ministry of Planning and Development Cooperation (MOPDC). Plant Variety is covered by the Ministry of Agriculture. CPA Order No. 81 proposes three separate IP registries but nothing has been done about moving these registries/functions to the designated organizations. The issue has been addressed by a special committee at the PM's office, which recommended establishing one central department as a sole competent authority for all IP related areas. There is, under discussion, a comprehensive IP draft law in compliance with WTO requirements.

Undisclosed Information. Undisclosed or secret information is protected under the following conditions:

- Natural and legal persons may prevent information lawfully within their control from being disclosed to, acquired by, or used by others without their consent or unfairly, so long as such information:
 - is not generally known among, or readily accessible to, persons experienced with the kind of information in question
 - has commercial value because it is secret
 - has been subject to reasonable efforts intended to keep it secret
- If the Minister requires the submission of data pertaining to secret tests, or data derived from development and approval procedures for pharmaceuticals or chemical agricultural products containing new substances, then the Minister shall protect such data from commercial use through prohibiting any unauthorized use for five years from the application for protection, except if:
 - disclosure is necessary to protect the public, or
 - the Minister takes necessary precautions to guarantee unclassified commercial use of the data

Patent Infringement. The owner of intellectual property rights may, in case of infringement of their rights, bring a case before a Court in Iraq. The Iraqi Law on Civil Procedure Code No. 83 of 1969 provides for effective action against infringement of intellectual property rights, and also provides enforcement procedures. Article 45 of the Copyright Law and article 35 & 36bis of the Trademark and Geographical Indications Law provide for criminal procedures and penalties for trademark counterfeiting and copyright piracy. Furthermore, the Civil Procedure Code No. 83 of 1969 provides for appeal provision of any administrative decision. The decision of lower Court is subject to appeal before the Court of Appeal. All related laws and regulations are published in the Iraqi Gazette. The decisions of the Courts are available to any concerning parties. The decisions of superior courts are published regularly.

The owner of a patent or an industrial design that is registered in Iraq may seek to prevent infringement by undertaking the following procedure: file a complaint with the competent court and deposit a bond, which the court may require. Subsequently, provisional measures shall be taken to discontinue any possible infringement; seize any products resulting from the alleged infringement; and preserve evidence that related to the infringement.

TRADEMARKS

Iraq enacted its first trademark law in 1931. The subsequent Iraqi Trademark Law No. 21 of 1957 remained in force until April 2003. The government modified the trademark law through CPA Order No. 80 of 2004 renaming it to "Law of Trademarks and Geographical Indications". CPA Order 80 amended existing Iraqi trademark law by suspending enforcement of the Arab League Boycott in the trademark registration process.

Investors register trademarks with the Trademark Registration Office at the Ministry of Industry and Minerals. The government protects certain well-known trademarks even if they are unregistered in the country. A number of measures to prevent potentially confusing indications apply to trademarks. For instance, Article 5 of the Iraqi Trademark Law No. 21 of

1957 states that trademarks may not be "confusing, contrary to public order and morality, and may not mislead the public by purporting to be flags, state emblems, or the Red Cross".

The penalty for contradicting the law is a maximum of five-year imprisonment, or a fine of up to ID 50,000,000-100,000,000 or both.

An investor may transfer a registered trademark. He/she may also license a trademark. There is no provision for compulsory licensing of trademarks. Iraqi law protects registered trademarks for ten years, renewable indefinitely for a further 10 years in the last year. The owner may apply for renewal within six months of the expiration date. The ownership of the trademark cannot be contested if it has been in use for five years.

INDUSTRIAL DESIGNS

Approvals pertaining to industrial designs or models shall be granted where the design or model is new or original. The Ministry of Planning and Development Cooperation is the responsible Ministry with respect to Industrial Design registration. Designs are protected for a period of ten years. An industrial design or model is not considered novel in the any of the following cases:

- The product has been displayed or described publicly prior to the date of application
- The product's description or display was made public after an application was filed in a country that has reciprocity with Iraq
- The product has been displayed in national or international exhibitions, or has been made public in a conference or scientific journals not more than six months prior to the date of the application in Iraq
- The product entails minor differences from prior industrial designs or models, or entails applying a product or technique in a new fashion

Applications pertaining to industrial designs that are defined essentially by technical or functional considerations may not be granted, if the patent holder would be able to prevent a third party from making, selling, or importing copies or imitations of the protected design when such acts are undertaken for commercial purposes. The Minister may provide limited exceptions to the protection of industrial designs, provided such exceptions do not unreasonably conflict or prejudice the legitimate interests of the patent owner for normal exploitation, and taking into account the legitimate interests of third parties.

COPYRIGHTS

Iraqi copyright law is intended to meet the current internationally recognized standards of protection. The Copyright Committee at the Ministry of Culture is responsible for copyright registration. The current rules protect the rights of creators or authors of original literary, artistic, and scientific works. The person in whose name the work is published is considered the author. Protection includes works in writing, sound, drawing, painting, and performance. Authors have the exclusive right for reproduction, translation, distribution, or transmission of any work. Rights to a work created for another person remain with the author absent a written agreement stating otherwise.

Work published in newspapers or periodicals may not be adapted as commercially distributed novels, short stories or other literary, artistic or scientific works except by permission of the author. The rights of an author are protected for the life of the author plus 50 years after death.

New legal provisions (CPA Order No. 83) also protect performers, sound recorders, broadcasters, and innovative forms of communication in accordance with internationally accepted standards. There are no fees associated with registering copyrights in Iraq.

UPCOMING NEW TRADE RELATED LEGISLATIONS

The GOI is in the process of developing a new intellectual property rights (IPR) law in line with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), but the exact structure of this and related legislation is still being determined:

Intellectual Property (IP). Iraq has a comprehensive draft IP law in compliance with the requirements of the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement). The proposed legislation is undergoing the review process for ultimate passage in parliament. The GOI has submitted its completed ACC/9 and the draft IP law to the WTO.

- **Technical Barriers to Trade:** Iraq has a draft WTO-compliant TBT law which is undergoing review for ultimate passage in parliament. The legislation calls for Iraq to adopt international technical regulations, standards and conformity assessment procedures when these are effective in fulfilling Iraq's legitimate objectives. The GOI has submitted its completed ACC/8 (for TBT) and the draft TBT law to the WTO.
- **Agriculture:** Iraq is in the process of preparing a revised ACC/4 for submission to the WTO.
- **Sanitary and Phytosanitary Measures:** Iraq is reviewing its laws and drafting the necessary legislation to comply with the WTO Agreement on Sanitary and Phytosanitary Measures.

Services. Iraq is currently reviewing its services regime with an eye towards further reform in opening up service sectors. Iraq is also in the process of preparing its ACC/5, for tourism, financial, telecommunications and transportation services.

Iraq is also a member of several international intellectual property conventions, and of regional or bilateral arrangements which include:

- Paris Convention for the Protection of Industrial Property (1967 Act) ratified by Law No. 212 of 1975.
- World Intellectual Property Organizations (WIPO) Convention; ratified by Law No. 212 of 1975. Iraq became a member of the WIPO in January 1976.
- Arab Agreement for the Protection of Copyrights; ratified by Law No. 41 of 1985.
- Arab Intellectual Property Rights Treaty (Law No. 41 of 1985).

IRAQ'S WTO ACCESSION

The conditions for Iraq's accession to WTO membership are embedded in three key commitments:

- A goods offer that complies with the provisions of the GATT and WTO agreements on trade in goods;
- A services offer that complies with the WTO General Agreement on Trade in Services (GATS); and

- Enactment and implementation of legislation that complies with the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

To support these commitments, the GOI responds to periodic questions and requests for documents from the WTO Working Party for Iraq's Accession. To begin the accession process, Iraq submitted a Memorandum on Iraq's Foreign Trade Regime (MFTR) in 2005. This memo served as the basis for a series of questions and document requests that have been posed by the Working Party. The Legislative Action Plan (LAP) is one of the WP's key tools for tracking progress on compliance with the WTO agreements.

A draft of Iraq's initial Goods Offer has been completed and will be submitted to the WTO as soon as GOI reviews are completed. The Goods Offer consists of a proposed schedule of bound tariff rates according to the Harmonized System of goods categories; a proposed agricultural subsidy offer; and a schedule of commitments to enact and implement legislation that complies with the provisions of WTO agreements on technical barriers to trade (TBT), sanitary and phytosanitary measures (SPS), trade-related investment measures (TRIMS), customs administration and intellectual property rights. With respect to legislation affecting the Goods Offer, laws have been drafted (with English translations) on customs tariff administration, technical barriers to trade (TBT), food safety (SPS), and intellectual property rights. Once the initial Goods Offer is submitted to the WTO, negotiations will proceed with WTO members having significant interests in goods trade with Iraq. During the negotiations, additional legislation will be undertaken to bring Iraq's goods trading regime into compliance with WTO agreements.

Positions on market access to services have been drafted for the tourism, finance, computer and R&D services, telecommunications and transportation services sectors, covering 81 of the 152 services sub-sectors of the GATS framework. The GOI intends to draft additional positions on market access to services in the health, education, environment and construction sectors. An initial Services Offer is expected to be submitted to the WTO and negotiations are expected to be started with WTO members having significant interests in services trade with Iraq, before all of the sector services positions are completed. During the negotiations, additional legislation will be undertaken to bring Iraq's services trading regime into compliance with the WTO GATS and TRIMS.

Finally, Iraq has drafted a new intellectual property law that is compliant with the WTO TRIPS agreement. While providing systematic protection of patents, trademarks and copyrights, the new law will complement Iraq's new investment legislation by affording investors the same intellectual property rights as all other WTO member countries.

Iraq is currently participating in the meetings of the World Trade Organization as an observer.

4. ESTABLISHING A BUSINESS

BACKGROUND/GOVERNING LAWS

Iraq's Commercial Law No. 30 of 1984 (Articles 5 to 15) regulates all 'trading activities' undertaken by the Iraqi public and private sectors. 'Trading' is defined as for-profit economic activities in a wide range of industry sectors including importing/exporting, manufacturing, logistics and transportation, construction, tourism, banking, insurance, buying and selling of securities and stocks and contracting.

The Commercial Law differentiates between two categories of 'traders'. These are:

Retail trader — a natural person who carries out commercial activities that are registered in his/her own name. He/she is a sole trader, buying and selling as an individual or as an intermediary. Retail traders/natural persons' activities are governed by Commercial Law No. 30 of 1984.

Legal trader — a legal entity or company: Legal traders' activities, i.e. companies', are governed by Companies Law No. 21 of 1997 as amended by CPA Order No. 64 which was issued in February 2004.

FORMS OF BUSINESS

This section of the Investor Guide categorizes the types of businesses that can be registered in Iraq in accordance with the Companies Law. They are as follows:

COMPANIES

Companies Law no. 21 for 1997 as amended lists the following types of companies:

Joint stock companies—private or with state shareholding

Joint stock companies must be formed by at least five natural or legal persons. They offer shares through public subscription. All shareholders are responsible for company debts to the extent of the value of their respective shares.

Sole Proprietorships

Sole proprietorships may be established by a single natural person. In sole proprietorships the owner assumes personal, unlimited liability. In Iraq a sole proprietorship is called a "sole owner enterprise".

Joint liability companies

Joint liability companies are formed by a number of investors ranging between two and twenty five natural or legal persons. Owners participate in proportion to their respective quotas and they have unlimited personal liability.

Simple companies

Simple companies are established by a number of investors ranging between two and five, each of whom contributes capital to the company in the form of cash or in kind. The Companies Law requires simple companies to have notarized incorporation papers. Simple company's owners must deposit a copy of the incorporation document, delineating the shareholders and their shares with the Iraqi Office of Company Registration (OCR) at the Ministry of Trade (MoT).

Limited companies - private or with state shareholding

The Companies Law stipulates that limited companies can be established by no less than two and no more than 25 founders. Founders of a limited company may be natural or legal persons and are responsible for company debts to the extent of the nominal value of their respective shares. A mixed company may be formed by agreement between one or more legal persons from the public sector and one or more from other sectors, i.e., private, mixed, and/or cooperative, provided that public sector shares represent no less than 25 percent of the total company capital. If the percentage of state-owned shares falls below 25 percent, the company is considered a private company. Limited liability companies may also be established by a single natural or legal person.

INCORPORATING A COMPANY

Background on Registering Foreign Companies in Iraq

Foreign entities may incorporate companies and trade representation offices/branches, and operate in Iraq under the Companies Law 21 of 1997 and the existing instructions set out by the MOT. The MOT relevant Instructions are:

1. Instruction No. 196 of 2004 regarding the registration of national companies; and
2. Instruction No 5 of 1989 for the registration of branches and trade representative offices of foreign companies.

On the other hand, foreigners are not allowed to engage in retail sales activities before fulfilling the following requirements:

- Depositing a US \$100,000 surety in a non-interest-bearing account with an authorized bank in Iraq 30 days prior to registration¹⁹
- Obtaining a certificate of authorization from the MOT

The foreign retailer may apply to the OCR who in turn provides him with a letter to the relevant bank approving the reimbursement of the surety deposit. However, this can only be done after the retail activity in question has ceased.

¹⁹ This requirement which was stipulated by the annulled CPA Order No. 39 of September 2003 on foreign investment was supposed to be cancelled from the MoT regulations No. 196 mentioned above, but they are still in force, but the requirement is not being implemented (frozen).

It is worthy to note here that any natural or legal person has the right to trade with shares at the Iraq Stock Exchange (ISX). This is true of Iraqi residents, Iraqis who live abroad, and foreigners.

Foreigners wishing to conduct business in Iraq may now enter the market in any of the following ways:

- Establishing a wholly foreign-owned business entity or subsidiary in Iraq.
- Establishing a business entity jointly with an Iraqi.
- Establishing a branch office and registering it with the OCR.
- Acquiring shares of an existing Iraqi company.

INCORPORATING A LOCAL COMPANY

In this section we analyze the company registration processes and associated fees necessary to register a company name with local Chambers of Commerce and obtain a registration certificate from the OCR. The appeal process, in case of rejecting of the application, is also discussed in this section.

Domestic and foreign companies must register with the OCR prior to commencing business activities. Companies must also meet other requirements and licensing procedures (as detailed in the following section) prior to starting their economic activities. Companies may choose to complete all procedures by themselves, or alternatively they may choose to do so, through a designated lawyer authorized by a power of Attorney.

The steps required by the Iraqi laws to register a company in Iraq are presented below.

Step 1: file a request for a name search at the local Chamber of Commerce.

As a first step of registering a company in Iraq, the founders are expected to submit a request at the local Chamber of Commerce containing:

- Proposed name of the company
- Type of business
- Names and nationalities of founders
- The Chamber of Commerce then checks whether the proposed name has been registered by any other company, using a computerized database of registered names within that particular Chamber.

Step 2: pay registration fees. The founders are then required to pay a registration fee of IQD 130,750 at the Chamber of Commerce. Payment is made either in cash or by certified check.

Step 3: Local Chamber of Commerce sends the request to the Union of Chambers of Commerce. After checking for the name locally, the local Chamber forwards the request to the Union of Chambers of Commerce to check whether the name has been registered elsewhere in Iraq, i.e., with other local Chambers. Each local Chamber of Commerce in Iraq shares the data of registered names with the Union of Chambers of Commerce periodically. The various local databases are not electronically connected

with each other, i.e., a particular Chamber would not have access to the databases of registered names nationwide, hence the need to forward the request to the Union of Chambers of Commerce.

Step 4: The Union of Chambers of Commerce issues a letter. If the name is not registered by any other company in the country, the Union of Chambers of Commerce would issue a letter certifying that the requested name belongs to the investor and collects IQD 125,000 fee.

Step 5: The company obtains the relevant sectoral approval.

Companies are not obliged to get the sectoral approval prior to registration except for:

- a. Financial services companies which must get the Central Bank approval prior to registration.
- b. In the event that the company's activity includes communications then the Ministry of Interior is approached.
- c. If the activity of the company is escorts and security services, then the Ministry of Interior and the Minister of State for National Security Affairs are approached.
- d. In case the activity of the company is mine removal, then Ministry of Defense and the Ministry of Environment and the Iraqi National Intelligence Service and the Ministry of Interior and the Minister of State for National Security Affairs are approached.

Step 6: Company deposits capital in an authorized bank in Iraq. The company is required to deposit the company's capital as a surety in an authorized bank in Iraq. The bank will in turn provide the company with a bank statement, addressed to the OCR, indicating that the capital has been deposited in the bank, in order to process the subsequent registration steps.

Article 28 of the Companies Law No. 21 of 1997 specifies minimum capital requirements for the various types of companies as follows:

- Joint stock company— the minimum capital is ID 2 million
- Limited company— the minimum capital is ID 1 million
- Other types of companies— the minimum capital is ID 500,000

Step 7: Founders draft a Memorandum of Incorporation. The law requires that company founders create and sign a Memorandum of Incorporation for the company, which at minimum must contain the following details:

- The company name and business type— with the word "mixed" added if it is a mixed sector company (state-owned and private);
- The company head office address, which must be in Iraq;
- The purposes for which the company is established and the general nature of the business to be transacted;

- The company capital;
- For joint liability companies: The method of distributing profits and losses;
- For private joint stock companies: The number of members to be elected on the board of directors;
- The names of the founders and their nationalities, professions, permanent addresses, and the number of shares they own, as well as their respective ownership as a percentage of company capital.

Step 8: Company submit to OCR application form and its attachments. After receiving the letter from the Union of Chambers of Commerce and depositing the required capital, the company fills out an application form provided by the OCR for a minimal fee, and submits the completed form to the OCR. The company is also required to attach the following documents along with the completed OCR application form.

- The letter from the Union of Chambers of Commerce indicating the registered name;
- The letter from the bank showing that capital has been deposited
- The Memorandum of Association;
- Completed form of founders bio-data that includes their names and addresses and authorized signatures;
- Subscription document and a feasibility study for the project if the company to be registered is a joint stock company;
- A copy of the passport information pages (or personal Iraqi identification card) of the founders and of the company's legal representative, or their personal Iraqi identification card;
- Receipt for the payment of required fees.

Step 9: Company pays for the application processing at OCR. The company is required to pay a fee for processing the application to register the company at the OCR. The fees to be paid at the OCR according to the type of company are as follows:

Joint Stock Company

- IQD 200,000 registration fee;
- 0.002 of company capital as stamp duty;
- IQD 500 stamp duty for articles of incorporation of JSC and LLC;
- IQD 100 application form fee;
- IQD 10,000 fee for the revision of JSC articles of incorporation;
- IQD 25,000 fee for documenting founders personal information in JSC;
- IQD 10,000 fee for publishing company incorporation decision;
- IQD 1,500 fee for archiving and certifying articles of incorporation;
- IQD 25,000 fee for revision of feasibility study on JSC;
- IQD 1,000 fees for any confirmation letter.

Other Types of Companies

- IQD 20,000 registration fee except JSC;
- 0.002 of company capital as stamp duty;
- IQD 500 stamp duty for articles of incorporation of JSC and LLC;
- IQD 250 stamp duty for articles of incorporation of other types of companies;
- IQD 100 application form fee;
- IQD 2,000 fee for the revision of articles of incorporation of other types of companies;
- IQD 1,000 consultancy fee of how to incorporate a simple company;
- IQD 5,000 fee for documenting founders personal information in other types of companies;
- IQD 10,000 fee for publishing company incorporation decision;
- IQD 1,500 fee for archiving and certifying articles of incorporation;
- IQD 1,000 fees for any confirmation letter.

Step 10: OCR accepts or rejects application. The OCR must accept or decline the company application within ten days of submission. If the application is accepted, the company pays fees amounting to IQD 2,000 for each IQD million of the company's capital. The OCR publishes application approval in the Official Gazette, the Bulletin of OCR, and in a major local newspaper. OCR issues a preliminary registration certificate.

Step 11: Company holds a founding (inaugural) meeting. If the OCR approves the application, the founders must convene an initial company meeting within 30 days of OCR's approval. The law requires company owners to include the following statement in the minutes of this meeting: "Owners may not use their voting rights to harm the company or its associates in any way, nor may they use their voting rights to benefit themselves or to jeopardize creditors".

Step 12: Company submits a letter to receive an authenticated Registration Certificate. The founders must then submit a letter to the OCR in order to obtain an authenticated registration certificate. The founders need to attach the following documents with the letter:

- Five copies of the preliminary registration certificate
- Five copies of the Memorandum of Association
- Five copies of the minutes of the company founders meeting
- Receipt of the authentication fees paid.

At this stage, the OCR will authenticate the registration certificate and will also provide the company with a letter addressed to the relevant bank permitting the bank to release the deposited surety.

Step 13: Company registers the business name in the Commercial Record. The company must register in the Commercial Record Registrar within 30 days of receiving the registration certificate. The Commercial Record is maintained by the local Chambers of Commerce in Iraq.

To register in the Commercial Record the company must provide the local Chamber of Commerce with the following information:

- Names of the company founders, chairman of the board, and the managing director
- Company name
- Incorporation date
- Address of the company's headquarters and other branches, whether in Iraq or abroad
- Description of the company's commercial activity

Any decision of the Commercial Record Registrar (approval, denial, transferring of ownership or amendment and deletion of a commercial name) can be appealed at the competent court of first instance within 30 days following notification of the decision.

Time Needed. The time that the company needs to complete all steps detailed above is estimated to be:²⁰

- Approximately two months for a joint stock company
- Approximately 20-25 days for all other company types. It should be mentioned here that registration of a limited liability company does not take more than 2-3 days if all documents were complete and adequate upon submission.

Company founders appeal process in case of application rejection. If the OCR refuses the company application to obtain a registration certificate, the founders may appeal their case to the Minister of Trade within 30 days of application rejection. The founders must submit a letter to the Minister detailing the reasons their application was rejected and also their response and/or actions to correct their status. If the Minister of Trade rejects the appeal, the founders may then appeal to the relevant court of first instance within 30 days of notification.

Registration of a Trade Representation Office or a Branch of a Foreign Company²¹

This section details the steps necessary to register a trade representation office or a branch office of a foreign company to conduct business in Iraq.

Step 1: Company submits an application. The company starts the process of registering a trade representation/branch office in Iraq by filing and submitting a registration application form to the OCR. The company must submit two completed copies of this form. The OCR retains one copy and signs the other copy, attaches an auditing checklist to it, and returns it to the company as proof of submission.

The application form contains the following information:

- Legal name (Trade name to be acquired from the local Chamber of Commerce)

²⁰ In case one of the founders is a non-Iraqi citizen or the company activity is communications, or escorts and security, or mines removal then the time needed to complete all procedures shall be longer than the period mentioned above.

²¹ See Instruction No 5 of 1989 for the registration of branches and trade representative offices of foreign companies.

- Type of economic activity
- Company address in Iraq
- Name, address, and contact information of the Country manager who must be a resident of Iraq:
- Name, address, and contact information of the company's Chief Executive Officer (CEO)
- The amount of authorized or registered capital
- The names and addresses of owners whose holdings exceed 10% of the company's equity
- The company net worth for the most recent financial period
- False information statement signed on behalf of the foreign entity.

The following documents are to be submitted with every application related to a foreign entity intending to register in the companies' registrar:

- a. A copy of the application form requesting the license.
- b. A copy of the Memorandum and Articles of Association of the Company or the parent organization or its substitute.
- c. A copy of a valid certificate of registration of the company or institution in the country of establishment.
- d. List of names of the members of the Board of Directors of the company or institution and nationality of each, and the names of persons authorized to sign.
- e. A copy of the power of attorney of the Director in charge of the management of the branch in Iraq and who is actually residing there, issued by the management company or institution.
- f. Copy of the institution or company's latest financial statement with the Board of Directors report attached to the statement.
- g. Letter from the parent company stating that it will bear all financial responsibilities and legal implications of the branch or representative office in front of the Iraqi authorities.
- h. Letter of support from contracted government departments and the socialist sector entities illustrating the nature of the contract with beginning and end dates, total amount, and the period of maintenance, if any, in respect of companies w open a branch only.
- i. Color scanned copy of the passport (for foreign person) or identity card and ration card (for the Iraqi people) for the employee authorized with the Registrar of Companies.
- j. Color scanned copy of the identity card and ration card of the person authorized to deal with the Registrar of Companies office.

The company must submit all documents in both Arabic and English. Documents should be certified by relevant authorities in the mother's company country and in Iraq.

Step 2: Company pays part of the registration fee. The company must pay the OCR 50% of the registration fee upon submitting the application, which is non-refundable even if the OCR does not approve the application. The full fee is ID 200,000. Payment is made in cash or by certified check at the OCR.

Step 3: OCR checks applications for completeness and correctness. The OCR verifies the application and its attachments for completeness and correctness. The OCR then records the application receipt in a log and provides the company with a receipt and control (tracking) number.

Step 4: Company collects registration certificate and pays remaining fees. The company returns to the OCR after the application has been processed in order to obtain the registration certificate and pay the remaining 50% of the registration fee, which is ID 100,000. Again, payment is in cash or by certified check. The remaining fees, if the application is rejected, are not due.

The OCR provides copies of the company's registration certificate so that the company can submit them later to the General Taxation Commission of the Ministry of Finance, and the Ministry of Labor and Social Affairs.

The OCR publishes its decisions on registration certificates in the Official Gazette, the Bulletin of the OCR, and a major newspaper in Iraq.

Time Needed. The time needed to process the company's application for a registration certificate for a trade representation/branch office by the OCR is estimated at:

- 2-3 days to register a foreign company branch office
- 5-7 days to register a trade representation office.

Company Appeals Process in case of application rejection. If the OCR refuses an application for a registration certificate for a trade representation/branch office of a foreign company, the company may appeal to the Minister of Trade within 30 days of the rejection. The Minister must review the applicant's appeal within 30 days of submission. If the Minister of Trade rejects the appeal, the company may appeal to the relevant court of first instance within 30 days of notification.

2. ADDITIONAL REPORTING REQUIREMENTS FOR COMPANIES

This section of the report outlines other specific requirements necessary to register companies in Iraq. These include sectoral licensing (approvals) and other registration requirements pertinent to the Ministry of Labor/Pension and Social Security Commission, and Ministry of Finance/General Taxation Commission. Additionally, special requirements for certain types of businesses, public subscription of capital, and the transfer of ownership and disposal of shares are also discussed in this section.

2.1 Sectoral Approval

In addition to registering a company with the OCR of the MOT and with the local Chamber of Commerce, companies must complete other registration processes, depending on the company's economic activity. For instance, a company interested in establishing a tourism related company, e.g., a hotel, must get approval from the Ministry of Tourism, and a company interested in setting up and operating an investment services company must obtain an approval from the Central Bank of Iraq.

2.2 Special Requirements for Certain Types of Businesses and Public Subscription of Capital

Only joint stock companies, mixed or private, can issue publicly traded stock²². The founders of a mixed joint stock company shall subscribe to not less than 30% and not more than 55% of its nominal capital and it must include a minimum of 25% for the state (public) sector.

Founders of private joint stock companies must subscribe at least 20% of the initial capital, and offer the remaining shares through an initial public offering within 30 days of company registration. Private joint stock companies commence a public offering through an announcement to be published in the Bulletin of OCR and at least two daily newspapers in Iraq. This takes place after receiving the OCR approval to do so. If the OCR finds the company's documents potentially misleading to investors it refers the case to the Securities Commission.

The announcement to be published in the Bulletin of OCR and newspapers shall include, at minimum, the following information:

- The text of the company's Memorandum of Association
- The number of shares offered for subscription, the value of each share, and the cost of each share
- The minimum and maximum number of shares one can purchase
- The place and period of subscription
- The expenses incurred in establishing the company
- The contracts and agreements which the founders have committed to in the interest of the company
- The report of the evaluation committee in case some of the founders have subscribed their capital with property in-kind.

Companies must follow specific requirements in offering public shares and in managing unsold shares. For instance, according to Article 43 of the Companies Law No. 21 of 1997, as amended, "If the subscription does not reach 75% of the nominal capital at the end of the extension period, the founders must decrease the company's capital so that the value of the subscribed shares will be equal to 75% of the nominal capital, unless the

²² Public trading of the JSC shares after acquiring the approval of the Board of Governors of the Iraq Stock Exchange (ISX) to list the company at the ISX.

founders cancel the establishment of the company. The founders shall inform the OCR of such a decision."

The capital of joint stock companies, limited companies, and sole proprietorships must be paid up before the issuance of the certificate of establishment.

The formation of mixed joint stock companies requires the OCR to form a technical committee tasked with valuing the company before the OCR can register paid in capital, which includes a legal expert and a certified accountant who are experts in company valuations. Within sixty days of its formation, the committee must report its findings to the OCR. The OCR subsequently reports to the Board of Supreme Audit (BSA)²³ within thirty days of receiving the committee's report. The BSA endorses the committee's findings or it may write a note indicating that the evaluation is not at market rate and will return it to the committee for reconsideration of the evaluation. This is only in case of companies that have in-kind capital, rather than cash.

Iraqi laws address transfer of ownership and disposal of shares or quotas in a detailed manner. The relevant aspects of ownership transfers and shares disposal are discussed below.

- (1) Founding shareholders of joint stock companies may not transfer ownership of their shares unless the following conditions are met:
 - The company has been in existence for at least one year.
 - The distributable profit/reserve is at 5% or more.
- (2) Private sector shareholders in joint stock companies cannot transfer ownership of their shares in any of the following cases:
 - The company is mortgaged, seized, or sequestered under a court decision.
 - The company certificate is lost and a replacement has not yet been issued.
 - The shareholders wishing to transfer their shares owe debts to the company.
 - The transferee is prohibited from owning shares in the company under a law or a decision issued by a competent body.
- (3) Shareholders in a limited liability company may choose to sell their shares to outsiders, i.e. persons who are not *shareholders* or founders of the company. The law addresses this matter and requires the following:
 - The seller must notify the other shareholders through the managing director of his/her desire to sell their shares. He/she must indicate the number of shares, the registration number of their shares' ownership certificate, and the price they are asking for, or the price a buyer has offered. Proper documentation must support the buyer's offer

²³ BSA is a separate and independent government institution, which currently reports to the Council of Ministers, with juridical personality working in conjunction with the Commission on Public Integrity and the Inspectors General of individual ministries to ensure that Iraqi government remains honest, transparent and accountable to the people of Iraq. (CPA Order 77 of 2004, Article 2 section 2)

- If 30 days after notification, none of the other shareholders has come forth to buy the shares, or if they have offered a lower price than the seller has proposed, the seller is free to sell his/her shares to others at the higher price. A sale of shares at a price lower than that offered by other shareholders of the company shall be considered null and void
- If several shareholders wish to buy the shares at the same price, the shares shall be divided among them in the ratio of their existing shareholding, allocated to the nearest full share

A sale of shares in a joint stock company or a limited liability company shall take place at a meeting between the seller and the buyer, or between their legal representatives, in the presence of a representative of the managing director. A contract shall be drafted containing the names of the seller and the buyer, their addresses, the shares' ownership certificate registration numbers, the transaction date, the share price, a statement from the seller indicating that he/she received the payment for the shares, and a verification by the buyer that he/she approves of this contract. The transaction contract shall be recorded in the company's share register, along with the signatures of the buyer(s) and seller(s) and of the representative of the company. Any transaction that is concluded in breach of these rules shall be considered null and void, and shall not be recorded.

Ownership of shares in joint stock companies that are trading on the Iraq Stock Exchange shall be transferred in accordance with the relevant by-laws and guidelines of the Exchange.

If an Iraqi shareholder in a joint stock company or a limited liability company dies, his/her shares shall revert to their heirs in accordance with the ratios specified by Islamic Shari'a Law. If the shareholder is a citizen of another country than Iraq, the shares shall revert to the shareholder's heirs in accordance with the applicable law of that country.

Distribution of inherited shares may not increase the number of partners in a limited liability company; inherited shares shall be considered as representing one legal person, and heirs must designate their representative within 60 days of the registration of the shares' transfer in the company's records.

FINANCIAL CONTROLS

A controller, assigned at the company's general meeting, controls and audits private companies' accounts. Audits and other financial reports are generally subject to acceptance by shareholders at the company's annual meeting. For joint stock companies, annual reports and audited results must be signed by the Chairman of the Board and the managing director. At other companies the managing director is the responsible officer. The Board of Supreme Audit (BSA) governs mixed companies' accounts.

LABOR

The GOI has drafted a new labor law, which is under review by the Prime Minister's cabinet. Current Iraqi labor law remains weak in promoting a flexible, business-friendly employment environment.

Iraq is a party to both International Labor Organization (ILO) Conventions related to youth employment, including child labor abuse.

The new investment law states that priority in employment and recruitment shall be given to Iraqis, but does not establish any quotas. However, the NIC shall observe, when granting an investment license, that the number of local employees should not be less than 50% of the project total employment²⁴. In addition, foreign investors are expected to help train Iraqi employees as well as to raise their efficiency, skill, and capabilities. Separate from the new law, there are existing labor-related requirements for foreign companies employing Iraqi or foreign workers.

CURRENT EMPLOYMENT ISSUES

The existing Saddam-era law includes regulations that require revisions, including: benefit clauses, working conditions for foreign expatriate workers, and rules governing working hours. The Ministry of Labor and Social Affairs (MOLSA) also sets a minimum monthly wage for unskilled workers. In addition, according to Iraqi law, all employers must provide some level of transport, accommodation, and food allowances for each employee. The law does not fix allowance amounts.

There are also requirements for foreign companies employing Iraqi or foreign workers. The investor must notify relevant investment commission and the Ministry of Labor and Social Affairs (MOLSA) when he employs Iraqi or foreign workers, when the job ends and when there are vacancies, among other requirements. There are also work permit requirements for hiring expatriate employees.

²⁴ Item 1, Article 30 of Investment Rule No. 2 of 2009.

ACQUIRING LAND/SITES FOR INVESTORS

The ownership of Government land depends on many factors. A large proportion of the land is owned by the Ministry of Finance but certain Ministries control certain types of land. In this area, the roles of the Governorates and Municipalities are important and must be considered by the investor.

Several legislations govern land acquisition in Iraq, but the main ones are:

- Law No. 35, 2002, Law of Public Roads
- Law No. 45 of 1980, which regulates procedures of purchase and sale of private lands by judicial decisions
- Law No. 30 of 2000, Organization of Industrial Services and implementing regulation No. 9 of 2000, which governs the lease of state land for industrial services projects
- Law No. 3 of 1998, Commission of the Free Zone Administration and implementing regulation No. 4, 1999
- Law No. 20 of 1998, Industrial Investment for the Private and Mixed²⁵ Sectors, which regulates the lease of state land for Iraqi industrial projects producing consumer and capital goods
- Law No. 32, 1986, Selling and Leasing of State Properties²⁶

IDENTIFYING LAND

Investors have several choices with respect to locating land for industrial and commercial projects in Iraq. Investors with industrial projects may lease land in government industrial estates and free zones. Investors with non-industrial projects may lease land within a free zone, or government land outside the industrial estates via an auction process. Iraqi investors may purchase government land for non-industrial projects via an auction process. Iraqi investors may purchase or lease property for non-industrial projects from the private property market. While foreign investors may lease property for non-industrial projects from the state or private property market, ownership of private property is still not allowed except for housing projects as stated in Law No. 13 for 2006, Regulations No.2 for 2009, and Regulations No. 7 for 2010

Government Land

1. Leasing Government Land in Industrial Estates

No single agency manages Iraq's industrial estates. Instead, a number of ministries and government agencies play a role in the country's industrial estates.

- **Ministry of Industry and Minerals (MoIM)**, through its Industrial Development Authority and General Establishment of Geological Exploration for Mining and Quarrying
- **Ministry of Labor and Social Affairs (MoLSA)**, through its Directorate of Labor and Social Security, which is responsible for industrial services projects

²⁵ Mixed enterprises are those in which the state has a 25% or greater stake.

²⁶ The first amendment to Investment Law No. 13 issued on January 4, 2010 stipulates that all projects (investors) governed by this law are exempted from Law No. 32 of 1986 Selling & Leasing of State Property Law.

- **Amanat of Baghdad (Mayorality) and governorate and municipal governments** are responsible for utilities such as water and sewerage and licenses for site development within the country's industrial estates.

2. Leasing Land in Government Free Zones

Iraqi legislation treats free trade zones differently than industrial estates. The following legislation governs free trade zones in the country:

- Free Zone Law No. 3 of 1998
- Instruction No. 4 of 1999 on the Administration of Free Zones
- Regulations of investors' activities in free zones

Law No. 3, Article 1 identifies the General Commission of Free Zone Administration under the Ministry of Finance as the competent Free Zones Authority Instructions No. 4, 1999; Article 4(4) permits investment in Free Zones for industrial, commercial, and service projects.

3. Leasing Government Land outside of Industrial Estates and Free Zones

Investors covered by Investment Law No. 13 of 2006 shall enjoy the privilege of renting or leasing lands needed for the project for a period not to exceed (50) fifty years renewable²⁷.

For housing projects, the National Investment Commission may grant ownership of the land to investors free of charge. Both Iraqi and Foreign investors are committed to use the land for the purpose it was granted for and not speculate. Also they are committed to the construction of housing units during the period specified in the agreement and sell them to citizens. The investor has the right to use other parts of the housing project as he sees suitable for the duration of license and under the terms of the agreement concluded with him.

Allocation of land for investors for the purposes of establishing commercial or services projects within the residential city shall be free vis-a-vis a share to the relevant province amounting to (7%) of the annual land rent.

The National Investment Commission shall lease lands required for investment projects in industrial, agricultural, services, tourism, entertainment and other sectors as follows:

- Strategic agricultural projects that lead to increasing and improving animal and agricultural production:
 - Reclaimed land suitable for agriculture and has a water share at a rent amounting to 20% of the annual rent.
 - Arable un-reclaimed land and has a water share at a rent amounting to 10% of the annual rent.
 - Un-reclaimed land and not suitable for agriculture and has no water share at a rent of 1% of the annual rent.
- Industrial projects that are to be erected in areas that are determined for industrial investment projects at rent amounting to 2% of the annual rent.

²⁷ Item (Third) Article 11 of the said Investment Law.

- Electrical, oil, and other projects that are outside the municipality limits established according to the BOO formula (Build, Own, and Operate) and BOT (Build, Operate, and Transfer) at a rent of 2% of the annual rent.
- Services sector projects (hospitals, educational centers, universities, and other projects) at a rent amounting to 5% of the estimated annual rent.
- Tourism projects (touristic cities, amusement parks and entertainment complexes, etc.) at an annual share amounting to (10%) of the land rent to be allocated to the land owner.
- Commercial projects (shopping centers, hotels, etc.) at an annual share amounting to (10%) of the land rent to be allocated to the land owner for the first three years from the date of commencement of commercial operation. The share becomes (5%) of the land value after the period stated above. This should be included in the investment contract signed by the two parties.

Due date of the land rent commences from the starting date of the project commercial operation taking into consideration the investor's commitment to complete the project within to the period specified in the contract.²⁸

Other investors not covered by the said Investment Law may lease government land outside of Iraq's industrial estates for residential, commercial, or agricultural purposes. Law No. 32 of 1986, "The Law of Sale and Lease of State Properties," as amended governs the purchase or lease of this land. Iraqi and foreign investors may lease government land outside industrial estates²⁹.

4. Purchasing Government-Owned Land

The government also sells land outside industrial estates through a public auction process. Since Iraqi law forbids foreigners from purchasing government land only Iraqi citizens have access to sale auctions³⁰. As with lease auctions, industrial zoned property is excluded from the sale auction process since industrial projects may only locate in Iraq's industrial estates.

The committee sets an auction date and advertises it in the relevant local newspaper. In the advertisement the committee describes the property, notes its assessed value, and indicates the auction day, time, and venue. The advertisement includes an explanation of participation procedures.

Purchasing or Leasing Land from the Private Property Market

Iraqi investors have the right to buy and/or lease property from the private real estate market for residential, commercial, or agricultural use, while foreign investors may only lease property from the private real estate market. Twenty percent of Iraqi land is in the private property market, the majority of it residential. According to current law, foreigners may lease property in the private market for a period not to exceed 50 years renewable. Iraq does not

28 For more details, see regulations No. 7 of 2010 "Sale and Lease of State-owned and State Sector Owned Property and Land for Investment Purposes" amended by first amendment regulations No. 1 of 2011 and the second amendment regulations No. 5 of 2011.

29 On April 1, 2011 the first amendment to Investment Law No. 13 was issued. It shall enable foreign investors to own land for housing projects provided that the housing units are sold to Iraqis on completion of the project. Also, the amendment law excludes implementation of Law No. 32 of 1986 "The Law of Sale and Lease of State Properties" for Iraqi and foreign investors covered by Investment Law No. 13 for 2006.

30 See Footnote 22

yet host large international real estate companies; however, there are numerous small real estate agents in the country.

COMMUNICATIONS

Telecommunications networks in Basrah

1. Land lines network

2. Wireless

- Omnea
- Itisaluna
- Kalimat

3. mobile phone lines

- Zain Iraq
- MTC Atheer
- Asia Cell

4. internet service

In Basrah Province, there are several privately owned internet providers in addition to networks run by Ministry of Telecommunications. In Basrah districts, internet cafés are spreading.

TRANSPORTATION

Basrah is home to all six of Iraq's ports, including its only deep-water port, and is thus the major transportation nexus in the southern part of the country. See more information below, and also the [Iraqi Ports](#) website.

Basrah can be reached by Expressway from Baghdad. Basrah is also connected by primary road to Kuwait City, and the Safwan border crossing between Kuwait and Iraq is a major trade port.

Basrah International Airport receives regular domestic and international flights.

Regular ferry service operates between Basrah's Umm Qasr port and Dubai, UAE for both passengers and cargo.

The Iraqi railroad network begins its southern route at Umm Qasr port, and heads north.

HOW TO OBTAIN AN ENVIRONMENTAL COMPLIANCE CERTIFICATE

The statement of opinion about the validity of investment projects sites depends on the environmental regulations for establishing industrial, agricultural, and services projects approved by the Council of Environment protection and improvement in its session numbered (14) for the year 1990, which include the determinants of locational and environmental requirements which must be met when implementing the project, as well as instructions subsequent to the illicit activities described in the instructions referred to above and issued by the Council and the Ministry of Environment under the powers granted to the minister.

Some activities have their specificity and there are laws or regulations or instructions or decisions that govern them. Therefore they should be taken into consideration when examining request for the allocation of land, for example, the law of mineral investment for the diggers, and the law organizing the slaughter of animals for the Ministry of Agriculture, and rules for the establishment of projects on agricultural land etc.

The environmental instructions included classification of projects into three categories (A - B - C) as follows:

Environment Polluting Activities Category (A):

Those activities with severe pollution to the environment and include industrial or agricultural super projects which has several influences on the quality of the environment and effects large areas, therefore, they must be kept farther distances from cities master plans and expand to cities and districts, counties and villages candidated for development under the rural settlement plan with the requirement of providing all the treatments that ensure adequate protection for the environment .

Environment Polluting Activities Category (B):

Those activities polluting to a lesser degree than in Category (A) and include Industrial, agricultural, or other sources that result in contamination of sites which can be controlled. Therefore, they can be established within the borders of the cities master plans and within the plots allocated for them provided that treatment units are installed according to the instructions and rules. In case control of pollution (odors, and the like) is out of hand, the project should be located outside the boundaries of cities master plans and according to the determinants of the type of activities mentioned in the detailed instructions.

Environment Polluting Activities Category (C):

Those remaining human activities which result in simple contamination that can be treated i.e. industrial factories that do not result in a significant contamination and small-scale agriculture and residential complexes, hotels, hospitals, resulting in pollution of organic content mainly that can be treated easily through the processing units, thus can be established within and outside the borders of cities master plans, without any limitation, in accordance with instructions and allow farm owners to set up environment non-polluting industries within their farms.

After receiving the approved Environmental Compliance Certificate, the investor can proceed with the construction and/or start business activities. The Ministry will inspect and monitor compliance report from the Investor.

OPERATING

The most important procedures that investors must complete on an ongoing basis once operating in Iraq are tax payment, social security, import/export procedures, and complying with currency controls. There are significant issues in all three of these areas but by far the most important are those relating to import and export procedures.

Functionally, taxation and customs areas are regulated by the Ministry of Finance through two independent agencies: The General Taxation Commission (GTC) and The General Commission of Iraqi Customs (GCIC). Both these agencies have regional and governorate branches throughout Iraq. Currency matters are generally dealt with by the Central Bank of Iraq (CBI). (See flowchart on last page – Procedures for Operation).

TAXATION

This section deals with taxation for projects not governed by Investment Law No. 13 for 2006 and Industrial Investment Law for Private and Mixed Sectors No. 20 for 1998 as amended. Investment projects governed by the said laws are exempt from payment of taxes for several years mentioned in the said laws.

There are four types of taxes in Iraq: corporation tax; personal income tax; real estate tax; and leased land tax. All taxes due are a legally binding obligation on the taxpayer. The tax assessment and payment process is usually initiated by the tax liable individual reporting his income during the preceding year on pre-printed returns to the taxation department in the area where his work or business activity is located.

Registration to Pay Taxes

Companies are issued a taxpayer ID number upon being licensed by the Office of Companies Registration. Companies receive a separate tax ID number for each tax. Tax registration normally must occur within one month of starting operations. Taxes are due three months after the close of the fiscal year.

Corporation Income Tax

The tax rate applied on the net income earned by all corporations after April 1, 2004 is a flat rate of 15%. As provided for in Income Tax Law 113 of 1982, the rate is levied on the income of all private sector companies, including the income of foreign companies operating in Iraq (except those exempt according to the new Investment Law).

Personal Income Tax

Under CPA Order 49 of February 20, 2004, corporate and personal income taxes have been capped at significantly reduced rates of no more than 15%. Employees are entitled to basic personal income exemptions which were significantly increased in 2004, and rate bands range from 3% to a maximum of 15%. Administrative requirements with regard to collection, appeals and penalties for late payment or nonpayment of income taxes are as established in 1982 and remain in force.

Worker's Pensions and Social Security

Before commencing operations all companies must register with the Ministry of Labor and pay a deposit toward social security withholdings based on the number of employees and estimated payroll for three months. The investor then obtains a receipt from the Ministry indicating that payments have been made. The receipt includes the company's social security number. Social security payments are then made on a quarterly basis. Social security amounts to 17% of employee salaries. The employer's contribution is 12% and the employee's is 5%. Payments are made by employers through certified checks to the Worker's Pension and Social Security Organization. The initial step of registering with the Ministry of Labor and obtaining the letter takes about one week. There are fees associated with this procedure.

IMPORT/EXPORT PROCEDURES

Introduction and Overview

The principal Customs law in Iraq is derived from the Iraqi Customs Law 23 of 1984 combined with CPA Orders 16 (Temporary Control of the Iraqi Borders), and 26 (Creation of the Department of Border Enforcement). Under CPA Order No. 26 the responsibility to monitor and control the movement of persons and goods in and out of Iraq rests with the Ministry of Interior's Department of Border Enforcement.

Import Regulations and Procedures

In accordance with Orders No. 38 and 54, as amended by Order No. 70 the government of Iraq collects a 5% reconstruction levy on the total taxable invoiced value of all goods imported into Iraq from all countries, effective April 15, 2004. Exceptions to the levy are food, medicines, clothing, books, humanitarian goods, Coalition forces, reconstruction contractors, NGOs, international organizations, diplomats and Coalition governments, and goods imported under the Oil-for-Food contracts.

All persons crossing the Iraqi borders must undergo a process consisting of a visit to the Passport office and an inspection at the Customs inspection point. Imports are subject to review of the Bill of Lading and inspection of goods.

Tariff Structure

As mentioned in the previous page, Iraq, currently imposes a 5% "Reconstruction Levy" on all imported goods except food items, medicines, books, clothing and items pertaining to humanitarian assistance. Also exempted are the coalition forces, NGOs, foreign governments and companies undertaking reconstruction work and international organizations and agencies providing assistance. All other customs tariffs, duties, import taxes and surcharges remain suspended; the only exception is the vehicle entry inspection fee of \$30 per truck.

The new Law on customs tariff, ratified by the Iraqi Council of Representatives on 12/1/2010 contained schedule of fees on imported goods according to the rates set forth in the tariff schedules and agricultural calendar thereto. The said law has not been put into force until now

Customs Valuation

The reconstruction levy is assessed *ad valorem* in accordance with Article VII of the General Agreement on Tariffs and Trade 1994 (GATT), which is adopted in CPA Order 54.

Pre-Shipment Inspection

Iraq does not require pre-shipment inspections.

Rules of Origin

Under the Law of Customs No.23 (1984), the Director General of Customs may require a separate certificate of origin. The practice is to require such a certificate, certified by the Chamber of Commerce or similar body in the country of origin.

Export Regulations and Procedures

The law applicable to exports are contained in Iraq's Customs Law Number 23 (1984) and CPA Order 54.

Exports must be by license issued by the Ministry of Trade, Department of Planning, Import-Export Section.

Tariff

There are no export tariffs other than a \$35 per ton levy on scrap metal.

Transit Trade

As all customs duties are presently suspended, no duties are applicable to goods in transit. Furthermore, according to CPA Order 54, the Reconstruction Levy does not apply to goods in transit.

Technical Regulations and Standards

Product standards in Iraq are controlled by the Central Organization for Standardization and Quality Control (COSQC), an independent government agency. The COSQC reviews domestic goods for health, safety and quality factors. The COSQC maintains relations with international standards organizations and provides technical assistance to the offices responsible for patent and other intellectual property rights matters. Iraq currently has approximately 3000 product standards.

Iraq is a member of the International Organization for Standardization (ISO).

Sanitary and Phytosanitary Standards

Phytosanitary Certificates are issued for plant products by the Ministry of Agriculture.

Animal Health certificates are issued for live animals by the Ministry of Agriculture.

Food Sanitation certificates are issued for processed food products by the Ministry of Health.

Trade Related Intellectual Property Regime

Iraq is pursuing a policy of strong intellectual property protection, which it recognizes will be the engine for economic development. Iraq's intellectual property laws are being updated with the goal of bringing the country's legal regime into compliance with the requirements of the WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement):

- Trademarks and Indications Law No. 21, 1957 has been amended by CPA Order 80.
- Patent and Industrial Specimens Act No. 65, 1970 has been amended by CPA Order 81.
- The Copyright Law No. 3, 1971 has been amended by CPA Order 83.

Iraq is also a member of several international intellectual property conventions, and of regional or bilateral arrangements which include:

- Paris Convention for the Protection of Industrial Property (1967 Act) ratified by Law No. 212 of 1975.

- World Intellectual Property Organizations (WIPO) Convention; ratified by Law No. 212 of 1975. Iraq became a member of the WIPO in January 1976.
- Arab Agreement for the Protection of Copyrights; ratified by Law No. 41 of 1985.
- Arab Intellectual Property Rights Treaty (Law No. 41 of 1985)

Trade in Services

Iraq's transition from a centrally planned to a market economy is expected to usher in a new era for the development and expansion of the services sector. The government is determined to increase the share of services in the GDP by attracting foreign investment as well as generating local resources.

There has been substantial expansion in the areas of retail services and construction since 2003. Recent policy changes in Iraq have opened up important services sectors such as financial services, insurance and telecommunications. Privatization of state owned enterprises (SOEs) is expected to further bring about fresh opportunities. In addition, Iraq's new investment laws and regulations both encourage and facilitate foreign investment, which in turn should lead to attracting capital to the services sector.

The MoT is primarily responsible for overseeing international trade in services; however various departments and agencies are involved in regulatory affairs relating to trade in services.