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INTEROFFICE MEMORANDUM

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**SUBJECT:** COMPARISON OF CPA ORDER 45 AND THE NEW NGO LAW: IMPLICATIONS FOR NGO-MFI

**DATE:** 3/23/2010

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***Implications of the New NGO Law for NGO-MFIs***

***1. Definition of NGO and NGO Activities:***

Similar to existing legislation, the newly passed NGO Law, herein referred to as the 'New Law' defines NGOs as pursuing "not-for-profit" objectives. Revenue generating activities allowed under the New Law are similar to CPA Order 45 in that NGOs are allowed to engage in revenue-driven activities and projects as long as these projects/activities are well aligned with the social objectives of the NGO<sup>1</sup>. While CPA Order 45 made specific reference to the treatment of "profits"<sup>2</sup>, the New NGO Law only refers to "money"<sup>3</sup>, which is an imprecise translation and should be read as "assets".

Both the existing and new laws explicitly prohibit the use of "profits" (in CPA Order 45) and "money" (in the New NGO Law) for personal gain; however the New Law graduates from a general prohibition to a specific prohibition, i.e. prohibiting the distribution of "money" or assets among its "members"<sup>4</sup> instead of prohibiting the distribution of "profit" to "any persons"<sup>5</sup>.

It is important to note that the expression "not-for-profit" and "non-profit" have in the past led to the faulty inference on the part of some staff within the NGO Assistance Office that lending and the charging interest on loans are activities in which an NGO may not engage, based on the logic that these are activities which are ordinarily undertaken by for-profit institutions. Additional lobbying effort directed at the NGO Department and the General Secretariat of the Council of Ministers is required to ensure that these misinterpretations do not arise again.

The New Law makes a new provision allowing NGOs to earn incomes through membership fees/dues.

***2. Types of NGOs & Founders***

The New Law is more specific about the differences between domestic and foreign NGOs and introduces some important changes in establishment/registration criteria. In addition, the New Law makes provision for the establishment of an NGO Network and provides specific directions on key aspects such as its registration process and membership criteria.

***Domestic NGOs:***

- Domestic NGOs can be established and registered by both Iraqi nationals and foreign residents with at least three founding members over the age of 18.<sup>6</sup> CPA Order 45 did not specify any guidelines on founding

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<sup>1</sup> CPA Order 45 –Definitions – listed a number of illustrative activities, including "economic reconstruction and development", a generic heading under which MFI NGOs in Iraq currently classify their activities. The New Law does not give any illustrations and defines NGOs only as civil society organizations pursuing "not-for-profit purposes".

<sup>2</sup> CPA Order 45 – NGOs, Section 7 – Economic Activities (3): "An NGO shall not distribute any net earnings or profits to any person".

<sup>3</sup> Draft NGO Law, Chapter 2 – Establishment, Article (10) Second

<sup>4</sup> Draft NGO Law, Chapter 2 – Establishment, Article (10) Second

<sup>5</sup> CPA Order 45 - NGOs, Section 7 – Economic Activities, Number (3)

<sup>6</sup> Draft NGO Law, Chapter 2 – Establishment, Article (5) First

members nor did it stipulate an upper limit on the required number of founding members. The New Law also stipulates that a Founding Member should not be “convicted of non-political crime or crime of honor”.<sup>7</sup>

*Foreign NGOs:*

- Similar to CPA Order 45, Foreign NGO branches can be established and registered in Iraq under the New Law, and must prove their authenticity as a registered NGO in its country of origin.

*NGO Network:*

- Different from CPA Order 45, the concept of NGO Networks is a new and welcome provision in the New Law. NGO Networks can be established and registered by two or more registered Domestic NGOs, provided that their objectives are similar. Previously CPA Order 45 allowed for a contractual partnership arrangement<sup>8</sup> between NGOs but did not allow for a separate legal entity.

### **3. Registration Timeline & Requirements**

The timeline and requirements for registration as an NGO (domestic, foreign, and network) has been elaborated in greater detail in the New Law (see *Table 1* below). For Foreign NGOs, the registration documentations are less cumbersome than under CPA 45, however the New Law requires them be translated into Arabic and approved by an “official body” for translation accuracy.<sup>9</sup>

Different from CPA Order 45, the New Law requires that NGOs follow a two step procedure for attaining legal status as NGOs in the country. Both Domestic NGOs and NGO Networks must apply for an establishment certificate, which is reviewed and approved within seven days. Under the New Law, Domestic NGOs must have three or more founding members (Iraqi nationals or foreign residents) in order to apply for the establishment certificate. With NGO Networks, the New Law allows only Domestic NGOs (two or more) to apply for an establishment certificate. All NGOs issued with establishment certificates must submit the documents necessary for registration within 30 days of establishment approval. Different from CPA Order 45, the New Law requires that the official address of an NGO is certified by a “competent official body”.<sup>10</sup>

*Specification for all NGO By-Laws<sup>11</sup>:*

Different from CPA Order 45, the New Law stipulates specific requirements for the By-Laws and demands the establishment of a Remuneration Committee and a By-Laws Committee among others as set forth below (See *Table 1* for a complete list provided in the New Law). The most important inclusion is the “Identification of a body within the NGO that has the powers to amend the By-Laws and make decision regarding dissolution, merger or division, and moving funds inside the NGO”<sup>12</sup>.

### **4. Appeal Procedure in Case of Denied Establishment/Registration**

Different from CPA Order 45, the New Law makes provision for any NGO denied legal status (either in the establishment or in the registration step) a period of 30 days to appeal the decision at the Court of Appeals.<sup>13</sup>

### **5. Board of Directors**

Both CPA Order 45 and the New Law do not specify any limit on the number of Board of Directors required for an NGO. However, different from CPA Order 45, the New Law requires that the Registration Application include the “minutes of the elections of Board of Directors or decision of appointment”.<sup>14</sup>

### **6. General Assembly Membership & Criteria**

Neither CPA Order 45 nor the New Law specify any limit on number of members required per NGO. Different from CPA Order 45, the New Law makes specific reference to membership criteria for both Domestic NGOs and NGO Network.

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<sup>7</sup> Draft NGO Law, Chapter 2 – Establishment, Article (4) Second 3

<sup>8</sup> CPA Order 45 – NGOs, Section 8, Partnership Arrangements with Other Agencies and Local NGOs (2)

<sup>9</sup> Draft NGO Law, Chapter 8, Article (25) Second

<sup>10</sup> Draft NGO Law, Chapter 2 – Establishment, Article (5) First

<sup>11</sup> Draft NGO Law, Chapter 2 – Establishment, Article (6)

<sup>12</sup> Draft NGO Law, Chapter 2 – Establishment, Article (6) Seventh

<sup>13</sup> Draft NGO Law, Chapter 2 – Establishment, Article (8) Seventh

<sup>14</sup> DRAFT NGO Law, Chapter 2 – Establishment, Article (8) Third (b)

#### *Domestic NGOs<sup>15</sup>*

- Any person has the right to be member of several NGOs but may not Chair more than one NGO.
- A member must be an Iraqi citizen or a resident in Iraq.
- A member must be 18 and above.
- Juveniles may join the NGO General Assembly as honorary members only. They may not attend the meetings of the general assembly or vote on its decision.
- CPA Order 45 did not impose any limit on foreign membership in the NGOs while the New Law limits foreign membership in Domestic NGOs to 25 percent, with the exception of domestic NGOs founded by foreign residents<sup>16</sup> where foreign membership may be more than 25 percent. This difference in membership criteria could become contentious in cases of Domestic NGOs founded by a mix of Citizens and Residents.
- Members, founders, employees and directors of NGOs may not be held financially liable as individuals for the NGO's legal obligation, wherein the NGO's creditors may not seek repayment of debt from personal accounts of the specified individuals.
- A NGO has the right to set its own membership requirements provided they do not violate the above stipulated provisions.

#### *Foreign NGOs<sup>17</sup>*

- The New Law does not stipulate any specific rules on membership for Foreign NGOs however it does state that "all Iraqi laws apply to foreign NGO branches operating in Iraq"<sup>18</sup>.

#### *NGO Network<sup>19</sup>*

- A network may accept the membership of other NGOs including foreign NGOs.
- The representative of the foreign NGO may not be the head of the network.
- The number of foreign NGOs registered with the network and in each of its committees may not exceed 25 percent of the total number of members.

### **7. Accountability & Reporting to NGO Office<sup>20</sup>**

Different from CPA Order 45 where NGOs had to submit quarterly reports on their activities and finances, the New Law stipulates that NGOs must submit a financial report and an activity report only on an annual basis. NGOs are required to keep all financial documents, reports and records for five years.

The New Law requires NGOs with a budget of more than 75 million Iraqi Dinars to conduct annual external audit through a legally certified accountant.

The New Law also specifies that NGOs must conduct all their financial transactions (receiving and disbursing financial resources) through public or private banks via a bank account.<sup>21</sup>

Different from CPA Order 45, the NGO will be informed 30 days prior to an audit which can be initiated where the NGO Department believes that the accounts are not accurate or have been manipulated. Different from CPA Order 45, the audit will be conducted by the Board of Supreme Audit.<sup>22</sup>

### **8. Taxation Policies<sup>23</sup>**

The New Law stipulates that a public utility NGO is exempted from income tax, VAT, tariffs and custom duties.. According to Article 17, "the capacity of the public utility organization shall be granted to an NGO or withdrawn from it under a decision by the Council of Ministers based on a proposal by the Secretary General of the Council of Ministers" thereby suggesting that a tax-free status will not apply to an NGO other than with the explicit decision to that effect from the Council of Ministers.

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<sup>15</sup> Draft NGO Law, Chapter 3 – Membership

<sup>16</sup> Draft NGO Law, Chapter 3 – Membership, Article (11) Second

<sup>17</sup> Draft NGO Law, Chapter 8 – Foreign NGOs

<sup>18</sup> Draft NGO Law, Chapter 8 – Foreign NGOs, Article (27)

<sup>19</sup> Draft NGO Law, Chapter 9 – NGO Network, Article (28)

<sup>20</sup> Draft NGO Law, Chapter 4 – Financial Provisions, Article (15)

<sup>21</sup> Draft NGO Law, Chapter 5 – Record and Accounts Auditing, Article (19) Third

<sup>22</sup> Draft NGO Law, Chapter 5 – Records and Accounts Auditing, Article (20) First

<sup>23</sup> Draft NGO Law, Chapter 3 – Membership, Article (17)

### **9. Maintenance of Records at Head Office & Branches<sup>24</sup>**

Different from CPA Order 45, the New Law stipulates that the NGO and its branches must keep record of the following:

- Register of Members where names, addresses, nationalities, ages and positions of members are recorded.
- Register of resolutions where decisions of the General Assembly and the Administrative Board are recorded.
- Record of Accounts where the NGO's revenue and expenses are recorded.
- Property Record where the NGO's movable and immovable assets with descriptions and values are recorded.
- Activities and Project Record where the type of activity or project, the funding entity and the benefit of it, are recorded.
- The NGO must keep financial documents, reports and record for five years.
- The NGO must confirm to legally approved accounting principles.

### **10. Opening Branches<sup>25</sup>**

Under the New Law, NGOs are permitted to open branches inside Iraq and abroad (for Domestic NGOs) and are not required to give prior notification to the NGO Office (as was the case under CPA Order 45<sup>26</sup>).

### **11. Dissolution & Disposition of Assets**

Different from CPA Order 45, the New Law recognizes the authority of the NGO's By-Laws for specifying asset distributions upon dissolution (keeping in mind that it cannot be distributed among its members).<sup>27</sup> The New Law states that "if assets were raised from grants, donations and bequests, they shall be transferred to a successor organization of similar objectives to be determined by the Board or the General Assembly of the NGO. The New Law, however, does not specify if it is mandatory that the successor organization be another NGO.

*Self Dissolution<sup>28</sup>: A NGO may dissolve voluntarily by a decision of its members and according to its By-Laws*

- The NGO must inform the NGO Office of its decision to dissolve within 30 days of the decision to voluntarily dissolve and appoint a liquidator.
- The NGO must submit a statement of its movable and immovable assets.

*Court Enforced Dissolution<sup>29</sup>: A NGO may be dissolved by a Court Order*

- In the event of a court decision of dissolution, the court will appoint a liquidator.
- The NGO must submit a statement of its movable and immovable assets.

### **12. Mergers of NGOs and Affiliation with External Networks**

Similar to CPA Order 45, the New Law also makes provision for possible mergers between two NGOs; however the New Law specifies that the merging NGOs must have "similar or convergent" objectives<sup>30</sup>. The New Law also specifies that a "public utility" NGO may be merged only with another "public utility" NGO.<sup>31</sup>

Different from CPA Order 45, the New Law makes provision for NGOs to become members or affiliates of organizations, commissions, clubs, firm or networks based outside Iraq if their objectives are consistent with the NGO's objectives.

### **13. Suspension and Dissolution Appeal Timeline**

NGO Office can initiate dissolution of an NGO in the following cases:

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<sup>24</sup> Draft NGO Law, Chapter 5 – Record and Accounts Auditing, Article (18), (19)

<sup>25</sup> Draft NGO Law, Chapter 10 – General and Final Provisions, Article (29)

<sup>26</sup> CPA Order 45 - NGOs, Section 3 – Processing Application for Registration (5)

<sup>27</sup> Draft NGO Law, Chapter 5 – Record and Accounts Auditing, Article (22) First

<sup>28</sup> Draft NGO Law, Chapter 5 – Record and Accounts Auditing, Article (22)

<sup>29</sup> Draft NGO Law, Chapter 5 – Record and Accounts Auditing, Article (22) Third

<sup>30</sup> Draft NGO Law, Chapter 5 – Record and Accounts Auditing, Article (21) First

<sup>31</sup> Draft NGO Law, Chapter 5 – Record and Accounts Auditing, Article (21) Third

- The NGO fails to fulfill its duties
- The NGO violates any Iraqi law/s
- The NGO fails to appeal its suspension

Different from CPA Order 45, the New Law provides a more consistent and process orientated framework for appealing suspension and dissolution, however both CPA Order 45 and the New Law prohibit NGOs from operating during the suspension period. Under CPA Order 45, NGOs are provided 60 days to remedy the situation and apply for restoration of its registration. Under the New Law, the NGO will be notified and provided 10 days to remedy the situation. If the violation is not corrected, the NGO's license will be suspended for 30 days, during which it has to appeal the decision, within 10 days of suspension notice, to the Secretary General of the Council of Ministers. The Secretary General will provide a decision within 10 days of appeal submission, which can be appealed again at the Court of Appeals within 10 days of Secretary General's decision.

#### **14. Property Ownership**

Similar to CPA Order 45, the New Law allows Domestic NGOs to buy/own real estate and stipulates that revenue received from sale of property must be recorded as "revenue".<sup>32</sup> While CPA Order 45 explicitly prohibited Foreign NGOs from purchasing or owning "real property, either directly or indirectly"<sup>33</sup>, the New Law only specifies that the "branches of foreign NGOs have the right to possess moveable assets under this law"<sup>34</sup>. It is likely that the intention was to exclude foreign NGOs from real estate ownership.

#### **15. Prohibited Activities**

Similar to CPA Order 45, the New Law prohibits support to candidates in public positions, either in terms of fund-raising or direct financial support. While CPA Order 45 prohibited the distribution of any net earnings or profits among its members, the New Law prohibits the distribution of "money" among its members. The key difference within these two prohibitions is that CPA Order 45 prohibited distribution of net earning or profits to "any persons"<sup>35</sup> while the New Law prohibits asset distribution among "its members"<sup>36</sup>.

Compared to CPA Order 45, the New Law does not stipulate any cautionary limit on employee compensation and/or benefits. The New Law implicitly prohibits the NGO's By-Laws to include any statements referring to the distribution of grants and aid funds among its members in the event of dissolution.

#### **Timeline for the Application of New NGO Law:**

Existing NGOs, both foreign and domestic, are committed to adjust their situation under the provisions of the New Law within 180 days from the date of enforcement (i.e. publication in the Official Gazette).

The Secretary General of the Council of Ministers may issue instructions to facilitate the implementation of the provisions of this law.

#### **Overruled Laws:**

With the enforcement of the new NGO Law, the following are cancelled:

1. The Law of Societies Relating to Foreigners (No. 34) of 1962
2. The Law of Societies (No. 13) of 2000
3. The Coalition Provisional Authority Order 45 on Non-Governmental Organizations of 2003
4. The Detachment of NGO Assistance Office Order 16 of 2005

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<sup>32</sup> Draft NGO Law, Chapter 4 – Financial Provisions, Article (14) Fourth

<sup>33</sup> CPA Order 45 – NGOs, Section 7 – Economic Activities (1)

<sup>34</sup> Draft NGO Law, Chapter 10 – General and Final Provisions, Article (32)

<sup>35</sup> CPA Order 45 – NGOs, Section 7 – Economic Activities (3)

<sup>36</sup> Draft NGO Law, Chapter 2 – Establishment, Article (10) Fourth

Table 1 – Comparison of CPA Order 45 and the New (draft) NGO Law

Definition of NGO	
<ul style="list-style-type: none"> <li>• <b>CPA 45</b> defined NGOs as pursuing public interest, not-for-profit activities.</li> <li>• CPA 45 stipulated that an NGO is “non-profit making” entity that cannot distribute its profits, earnings and assts to any <b>persons</b>.</li> </ul>	<ul style="list-style-type: none"> <li>• The <b>New NGO Law</b> defines NGOs as pursuing not-for-profit purposes.</li> <li>• The New NGO Law stipules that NGO may not distribute assets among its <b>members</b>.</li> </ul>
Authority of Power	
<ul style="list-style-type: none"> <li>• The NGO Assistance Office within the Ministry of Planning and Development Cooperation.</li> </ul>	<ul style="list-style-type: none"> <li>• The NGO Office in the General Secretariat of the Council of Ministers.<sup>37</sup></li> </ul>
Types of NGOs – Domestic, Foreign, and NGO Network	
<ul style="list-style-type: none"> <li>• <b>CPA 45</b> defined two types of NGOs: domestic and foreign.                             <ol style="list-style-type: none"> <li>1. <i>Domestic NGO</i> refers to NGOs established and registered in Iraq.</li> <li>2. <i>Foreign NGO</i> refers to NGOs registered outside Iraq but established and functioning in Iraq through Branch Offices.</li> </ol> <p><i>Note: NGO Arrangement</i> refers to joint ventures or other contractual arrangements among NGOs</p> </li> </ul>	<ul style="list-style-type: none"> <li>• The <b>New NGO Law</b> defines three types of institutions within the purview of the NGO Department.                             <ol style="list-style-type: none"> <li>1. <i>Domestic NGO</i> refers to NGOs established and registered in Iraq by Iraqi citizens and/or legal foreign residents.</li> <li>2. <i>Foreign NGO</i> refers to NGOs established and registered outside Iraq but registered and functioning in Iraq through Branch Offices.</li> <li>3. <i>NGO Network</i> refers to an NGO established by two or more Domestic NGOs registered in Iraq.</li> </ol> </li> </ul>
Registration Process & Requirements	
<ul style="list-style-type: none"> <li>• <b>Domestic NGOs &amp; Foreign NGOs</b> <ol style="list-style-type: none"> <li>1. <i>Submit Application for Registration:</i> <ul style="list-style-type: none"> <li>- Full name of the NGO.</li> <li>- Full address and contact persons.</li> <li>- Complete list of previous visits or activities in Iraq.</li> <li>- Copy of articles of association, constitution, or other documents stating its aims, objectives, governing structure, and sources of funding.</li> <li>- List of all/any Governing Body of the NGO who are also public officials/employees of any government entity.</li> <li>- Domestic NGO: List of all Board Members’ name and addresses.</li> <li>- Foreign NGO: Name of Iraq Mission Head and Worldwide Head.</li> <li>- Foreign NGO: Notarized copy of registration in Mother country.</li> <li>- Foreign NGO: Written statement by authorized representative on activities planned in Iraq.</li> <li>- Foreign NGO: Names and contact information of all Iraq based staff members.</li> <li>- List of external ‘substantial<sup>38</sup>’ funders of the NGO.</li> <li>- List of loans to the NGO other than from banks or other lending institutions in excess of both 10,000,000 Iraqi dinar and 10 percent of total</li> </ul> </li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Submit Application for Establishment: Reviewed in Seven Days</b> <ol style="list-style-type: none"> <li>1. <i>Domestic NGO Requirements:</i> <ul style="list-style-type: none"> <li>- Official Names in Arabic or Kurdish, and English.</li> <li>- Official Address of the NGO certified by “competent” official.</li> <li>- Names and addresses of three of more founding members.</li> </ul> </li> <li>2. <i>Foreign NGO Requirements:</i> <ul style="list-style-type: none"> <li>- N/A</li> </ul> </li> <li>3. <i>NGO Network:</i> <ul style="list-style-type: none"> <li>- Official Names in Arabic or Kurdish, and English.</li> <li>- Official Address of the NGO Network certified by a “competent” official.</li> <li>- Names and addresses of two or more founding Domestic NGO members.</li> </ul> </li> </ol> </li> <li>• <b>Submit Registration Application in 30 Days from Establishment Decision</b></li> <li>• <b>Application for Registration: Reviewed in 30 Days</b> <ol style="list-style-type: none"> <li>1. <i>Domestic NGO Requirements:</i> <ul style="list-style-type: none"> <li>- Statement of Establishment.</li> <li>- The NGO By-Laws.</li> <li>- Copies of Iraqi National Certificate and Civil</li> </ul> </li> </ol> </li> </ul>

<sup>37</sup> The New NGO Law dissolves the authority of the CPA Order 45 on NGOs

<sup>38</sup> A contribution is substantial if it was received in the current year or any of the previous three years, and it is both valued at over 10,000,000 Iraqi dinar and is over 10 percent of the total revenue for the organization for the year in which it was received.

<ul style="list-style-type: none"> <li>revenue.</li> <li>- Statement of revenue, expenses, assets, liabilities for current year and previous years (if applicable) as well as projected budget for next two years.</li> <li>- A report on the proposed program (including budget for the first year) prepared in consultation with the relevant 'Ministry'.</li> </ul>	<p>Identification Cards of the founding members or documents of residence of foreign residents.</p> <ul style="list-style-type: none"> <li>- The name/s and contact information of the persons legally authorized to represent the NGO.</li> <li>- Minutes of the election of board of directors or the decision of appointment.</li> </ul> <p>2. <i>Foreign NGO Requirements:</i></p> <ul style="list-style-type: none"> <li>- Official Name.</li> <li>- Address of the main office of the Foreign NGO's branch in Iraq certified by a "competent" official.</li> <li>- A detailed statement of activities that Foreign NGO aims to accomplish in Iraq.</li> <li>- Name and contact information of the Foreign NGO's current Iraq-based staff.</li> <li>- Copies of Iraqi National Certificate and Civil Identification Cards for national staff.</li> <li>- Copies of passports and residence documents of foreign staff members.</li> <li>- Notarized document certifying that the foreign NGO is registered as a "not-for-profit" NGO in its country of origin.</li> <li>- A report on the "mother" Foreign NGO's activities outside Iraq.</li> </ul> <p>3. <i>NGO Network:</i></p> <ul style="list-style-type: none"> <li>- Statement of Establishment.</li> <li>- By-Laws of the Network.</li> <li>- Copies of registration certificates of NGOs forming network.</li> </ul>
<b>Registration Timeline</b>	
<ul style="list-style-type: none"> <li>• After application is submitted, the NGO Assistance Office will issue registration certificate within 45 business days of receiving an application.</li> <li>• After submitting application for registration, the NGO has temporary legal status to operate in Iraq until receiving approval/denial from the NGO Assistance Office (in 45 days from registration application).</li> </ul>	<ul style="list-style-type: none"> <li>• Establishment Application reviewed in seven days and Establishment Certificate issued.</li> <li>• NGO must submit Registration Application within 30 days of receiving Establishment Certificate.</li> <li>• Registration Certificate issued within 30 days.</li> <li>• If Establishment or Registration denied, the NGO may appeal to court of appeals within 30 days from the date of receiving the refusal decision.</li> </ul>
<b>By-Law Requirements</b>	
<ul style="list-style-type: none"> <li>• CPA Order 45 makes no specific reference to by-laws</li> </ul>	<ul style="list-style-type: none"> <li>• Official name of the organization in Arabic or Kurdish or any other language of the NGO's choice.</li> <li>• The address of the organization's main office.</li> <li>• A detailed statement of the organization's objectives and the means to achieve them.</li> <li>• A copy of logo and stamp of the organization.</li> <li>• The organization's rules of obtaining or losing membership and the rights and duties of members.</li> <li>• The organizational structure, election mechanism and powers of each committee.</li> <li>• Identified body within the NGO that has the power to amend the by-laws and make decisions concerning dissolution, merger, division, and moving funds inside the NGO subject to the requirements of Article 22 (1) and (4).</li> <li>• Identifying the body within the NGO that appoints</li> </ul>

	<ul style="list-style-type: none"> <li>employees and determines their remunerations.</li> <li>The financial resources of the NGO and the sum of monthly or annual membership subscription if any.</li> </ul>
<b>Taxation</b>	
<ul style="list-style-type: none"> <li>CPA Order 45 makes no reference to tax policy/guidelines.</li> </ul>	<ul style="list-style-type: none"> <li>A public utility NGO is exempted from income tax, VAT, tariffs and custom duties.</li> <li>The capacity of the public utility organization shall be granted to an NGO or withdrawn from it under a decision by the Council of Ministers based on a proposal by the Secretary General of the Council of Ministers.</li> </ul>
<b>Founding Member Criteria</b>	
<ul style="list-style-type: none"> <li>CPA Order 45 makes no reference to Founding member criteria.</li> </ul>	<ul style="list-style-type: none"> <li>A Founding Member must be an Iraqi National or residing in Iraq (legal resident)</li> <li>A Founding Member must be at least 18 years of age, for natural persons</li> <li>A Founding Member must not be convicted of any non-political crime or crime of honor.</li> </ul>
<b>General Assembly Membership Criteria</b>	
<ul style="list-style-type: none"> <li>CPA Order 45 makes no reference to membership criteria.</li> </ul>	<ul style="list-style-type: none"> <li>A member must be an Iraqi citizen or a legal resident in Iraq.</li> <li>Foreign members cannot exceed 25 percent membership, except for NGOs founded by foreign residents.</li> <li>Juveniles (under 18 years) may join NGOs as honorary members only. They may not attend General Assembly meeting or vote on decisions.</li> <li>Any person has right to be a member of several NGOs but may not chair more than one NGO.</li> <li>Members, founders, employees and directors of the NGO may not be held financially liable in person for the NGO's legal obligations.</li> <li>NGO creditors may not seek repayment of outstanding debts from the above.</li> <li>An NGO has the right to set its own membership requirements (as defined in the NGO's by-laws) provided they do not violate the provisions of the New Law.</li> </ul>
<b>NGO Sources of Income</b>	
<ul style="list-style-type: none"> <li>Raise funds through income generating projects.</li> <li>Internal and external donations, grants etc.</li> </ul>	<ul style="list-style-type: none"> <li>Member fees and due, if any.</li> <li>Internal or external donations, grants, bequests and gifts.</li> <li>Revenue from its activities and projects.</li> </ul>
<b>Reporting &amp; Financial Accountability</b>	
<ul style="list-style-type: none"> <li>Activity Reports – Quarterly (this will also include updates on foreign staff stating their qualification and responsibilities).</li> <li>The NGO Assistance Office may conduct audits</li> </ul>	<ul style="list-style-type: none"> <li>Financial report including description of the source of the NGO funds and financial transaction – annually.</li> <li>A report on the NGO activities including brief on projects implemented by organization during the year –</li> </ul>

<p>and reviews of NGOs.</p> <ul style="list-style-type: none"> <li>The NGO will inform the Office within 30 days of any material changes with respect to documents submitted for Registration.</li> </ul>	<p>annually.</p> <ul style="list-style-type: none"> <li>All NGO must maintain all financial records for five years.</li> <li>An NGO with budget exceeding 75 million Iraqi dinars must conduct an audit of its accounts by a legally certified accountant – annually.</li> <li>The NGO will inform the Office within 30 days of any material changes with respect to documents submitted for Registration.</li> <li>All NGOs should conduct all financial transactions through public, private banks via bank accounts.</li> <li>The NGO Department can coordinate with the Board of Supreme Audit to overtake the NGO's accounts audit if the Office believes that the accounts are not accurate/have been manipulated. The NGO will be informed 30 days in advance of the audit.</li> </ul>
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**Record Keeping At Head Office/Branch**

<ul style="list-style-type: none"> <li>CPA Order 45 makes no reference to record keeping at Head Office and/or branches.</li> </ul>	<ul style="list-style-type: none"> <li>An NGO and its branches must keep the following records:             <ol style="list-style-type: none"> <li>Registrar of members (names, addresses, nationalities, ages and positions).</li> <li>Registrar of resolutions where decisions of the General Assembly and the Administrative Board are to be recorded.</li> <li>Record of accounts where NGO's revenues and expenses are recorded.</li> <li>Property record where the NGO's movable assets with descriptions and values are recorded.</li> <li>Activities and project record where the types of activity or project, the funding entity and the benefit of it, are recorded.</li> <li>The NGO must keep all financial documents, report and records for five years.</li> </ol> </li> </ul>
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**Self Dissolution**

<ul style="list-style-type: none"> <li>An NGO shall be deemed to have ceased operations if it does not commence operations in Iraq within one year from date of registration.</li> <li>In the event of a decision to dissolve or cease operations, the NGO will give a written, facsimile, or electronic notice to the Authority 30 days prior to the date of decision to dissolve.</li> <li>The NGO will submit a report stating:             <ul style="list-style-type: none"> <li>Date of dissolution or cessation of operations.</li> <li>The provisions made for terminating its affairs including arrangements for satisfactory completion of its ongoing projects in Iraq.</li> <li>The amount of assets, if any, remaining after discharge of liabilities.</li> <li>The disposition or intended of those assets, if any.</li> <li>How the determination to dispose those assets was made.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>An NGO may be dissolved voluntarily by a decision of its members and according to its by-laws.</li> <li>An NGO which has taken a decision to dissolve must inform the NGO Department within 30 days of the decision to voluntarily dissolve and appoint a liquidator or contact the NGO Department to appoint one.</li> <li>The NGO must submit a statement of its movable and immovable assets.</li> <li>Assets raised from grants, donations and bequests will be transferred to successor organization of similar objectives to be decided by the General Assembly or the identified body within the By-Laws of the NGO.</li> </ul>
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**Mergers & Joint Ventures**

<ul style="list-style-type: none"> <li>• NGOs may form Joint Ventures with one or more foreign entities and/or domestic NGOs.</li> <li>• NGOs must inform the NGO Assistance Office of its proposed program, including budget.</li> <li>• Two or more NGOs may voluntarily merge in accordance with their by-laws and Iraqi constitution.</li> </ul>	<ul style="list-style-type: none"> <li>• NGOs with similar or convergent objectives have the right to merge and form a new NGO with its own by-laws.</li> <li>• A public utility NGO may be merged only with another public utility NGO.</li> <li>• The merged NGO obtains its legal personality and becomes the successor of the merged NGOs.</li> </ul>
<b>Penalties – Suspension &amp; Dissolution</b>	
<ul style="list-style-type: none"> <li>• <b>Suspension</b> <ul style="list-style-type: none"> <li>- If an NGO has its registration suspended, it may not operate in Iraq for the duration of its suspension.</li> <li>- The NGO has 60 days to remedy the situation and apply for restoration of its registration in Iraq.</li> </ul> </li> <li>• <b>Revocation</b> <ul style="list-style-type: none"> <li>- If an NGO has its registration revoked, it may not operate in Iraq.</li> <li>- It has 60 days to remedy the situation and apply for restoration of its registration in Iraq.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• <b>Suspension</b> <ul style="list-style-type: none"> <li>- An NGO will be notified and given 10 days to correct the violation.</li> <li>- If violation is not corrected, the NGO's activity will be suspended for 30 days.</li> <li>- The NGO may appeal the suspension decision to the Secretary General of the Council of Ministers within 10 days from the date of notification of suspension.</li> <li>- The Secretary General must decide on the appeal within 10 days from the date it was received in his/her office.</li> <li>- The Secretary General's decision can be appealed to the Court of Appeals within 10 days of the Secretary General's decision.</li> </ul> </li> <li>• <b>Dissolution</b> <ul style="list-style-type: none"> <li>- Failure to fulfill its duties.</li> <li>- Violation of any Iraqi laws that are in force.</li> <li>- In case the NGO failed to correct violation (see above) despite being notified and the appeal period expires.</li> <li>- Dissolution by a court decision upon request by NGO Office.</li> </ul> </li> </ul>
<b>Property Ownership</b>	
<ul style="list-style-type: none"> <li>• A Domestic NGO may own property.</li> <li>• A Foreign NGO may not own/purchase real estate property directly or indirectly.</li> </ul>	<ul style="list-style-type: none"> <li>• A Domestic NGO may own real property.</li> <li>• An NGO may sell any property not essential to attaining its objectives and the received property price will be recorded as 'revenue'.</li> </ul>
<b>Opening Branches</b>	
<ul style="list-style-type: none"> <li>• An NGO may open other local offices upon prior notification to the NGO Assistance Office.<sup>39</sup></li> </ul>	<ul style="list-style-type: none"> <li>• An NGO is permitted to open branches inside Iraq and abroad, without prior notification.</li> </ul>
<b>Prohibited Activities</b>	
<ul style="list-style-type: none"> <li>• Avoid: An NGO may not distribute any net earnings or profit to any <b>persons</b>.</li> <li>• Avoid: All employee compensation and benefits must be 'reasonable' and in line with what is</li> </ul>	<ul style="list-style-type: none"> <li>• Avoid: Pursuing goals or conducting activities that violate the constitution or the Iraqi laws.</li> <li>• Avoid: Carrying out business so as to distribute money among its <b>members</b> for personal benefit or using the</li> </ul>

<sup>39</sup> CPA Order 45 – NGOs, Section 3 (5)

generally available to the public.

- Avoid: Raising funds to support candidates into public positions, or providing candidates with financial support.
- That the organization is non-political, non-profit making, non-governmental and does not discriminate on the basis of race, religion, or national or ethnic origin.

organization to evade tax.

- Avoid: Raising funds to support candidates into public positions, or providing candidates with financial support.
- Avoid: including in its by-laws a statement referring to the distribution of grants and aid funds among its members in the event the organization is dissolved.

### ***Follow-up Questions for the NGO Department***

1. NGOs are allowed to generate “revenues from its activities and projects” (Chapter 4 – Financial Provisions, Article 13, Third) and there is no explicit mention of profit in this New Law compared to CPA Order 45. We also agree that “money” that belong to the NGO through grants or revenue should and will not be “distributed among its members for personal benefits” (Chapter 2 – Establishment, Article 10, Second). Please correct us if we are wrong in interpreting that NGOs can generate revenue through its humanitarian work of providing access to finance for those who need it and that the revenue can be used to lend to more people and make the NGO sustainable.
2. We would also like to request clarification on the treatment of interest rates, specifically if they exceed 7 percent.
3. According to Chapter 2 – Establishment, Article 6 Seventh, an NGO’s By-Laws must identify the authorized body within the NGO that has the decision-making powers in the event of dissolution. Chapter 5 – Records and Accounts Auditing, Article 22 Fourth, mentions that if an NGOs assets were “raised from grants, donations and bequests, they shall be transferred to a successor organization of similar objectives to be determined by the Board or the General Assembly of the NGO”. In deciding successor organizations of similar objectives, can the successor be an institution of a different legal status?
4. According to Chapter 3 – Membership, Article 11, Second membership in Domestic NGOs’ cannot exceed 25 percent foreign membership with the exception of Domestic NGOs founded by foreign residents in Iraq’. Please provide us guidance on a possible situation if only one (or two) of the three founding members are foreign residents. What should be the constitution of membership in such a case?
5. Related to the 4<sup>th</sup> question, please advice us on a situation when the Foreign Resident who participated as a founder in an NGO leaves the country or ceases to be a registered resident?
6. According to Chapter 3 – Membership, Article 17, “public utility” NGOs are exempted from income tax, VAT, tariffs and custom duties. The same Chapter also mentions that Council of Ministers (based on proposal by its Secretary General) has the authority to grant such a status to an NGO. Can you please shed some light on what process NGOs have to undergo in order to receive a status as a “public utility” NGO?
7. Based on the external auditing requirements for those NGOs with a budget of more than 75 million Iraqi Dinars (Chapter 4 – Financial Provisions, Article 15 Third), please advise us on the process of engaging the services of a “legally certified accountant”.
8. According to Chapter 10 – General and Final Provision, Article 29, NGOs are permitted to open branches inside and outside Iraq. Please specify if that applies to Foreign NGOs opening more than one Branch in Iraq. In addition, please clarify if the NGOs need to give prior notice to the NGO Department informing them of such intention (besides inclusion in the annual report to the Department).
9. According to Chapter 4 – Financial Provisions, Article 15, all NGOs must submit a financial report and a activity report on an annual basis (as opposed to quarterly reporting under CPA Order 45). Please advice as to whether the existing procedure of submission will change under the New Law and if there are specific reporting formats (for activity report and financial report) provided by the NGO Department.
10. With respect to NGO Network, can Domestic NGO Members of the Network become one of three required founders in the event of one of the founding Domestic NGO’s dissolution?
11. We would like to seek clarification on the required number of General Assembly members and Board members.