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# IRAQ PRIVATE SECTOR GROWTH AND EMPLOYMENT GENERATION

May 2006

## The Investor Roadmap of Iraq



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May, 2006

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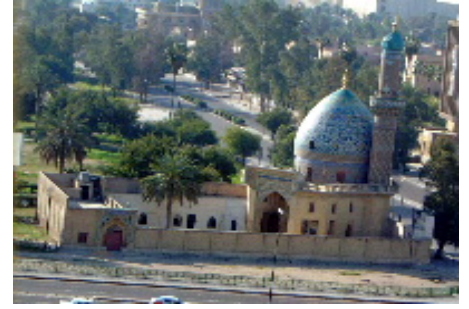
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## Glossary

ASEZA	Aqaba Special Economic Zone Authority
BSA	Board of Supreme Audit
CBI	Central Bank of Iraq
CEO	Chief Executive Officer
COSQC	Central Organization of Standardization and Quality Control
CPA	Coalition Provisional Authority
EIA	Environmental Impact Assessment
FDI	Foreign Direct Investment
GCIC	General Commission of Iraqi Customs
GDID	General Directorate of Industrial Development
GDRER	General Directorate of Real Estate Registration
GEC	General Establishment for Communications
Gol	Government of Iraq
GTC	General Taxation Commission
ID	Iraqi Dinar
IIPA	Iraqi Investment Promotion Agency
ILO	International Labor Organization
IO	Immigration Office
IPRs	Intellectual Property Rights
ISO	International Standards Organization
MoF	Ministry of Finance
MoFA	Ministry of Foreign Affairs
Mol	Ministry of Interior
MoIM	Ministry of Industry and Minerals
MoLSA	Ministry of Labor and Social Affairs
MOPDC	Ministry of Planning and Development Cooperation
MOT	Ministry of Trade
OCR	Office of Company Registration
RCC	Revolutionary Command Council
SOP	Standard Operating Procedure
TRIPs	Trade-Related Aspects of Intellectual Property Rights
UAE	United Arab Emirates
U.K.	United Kingdom
US \$	United States Dollar
USAID	United States Agency for International Development
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization



## Executive Summary



Abbasid Palace— Baghdad



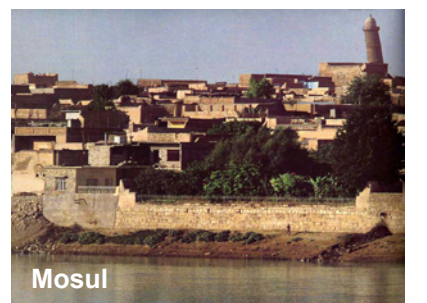
Parthian-style temple— Hatra



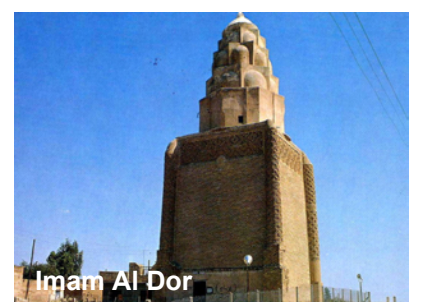
Mosul & city wall of Nineveh



Khan Mirjan— Baghdad



Mosul



Imam Al Dor

## 1. Introduction

Iraq has undergone a difficult period of both oppression and upheaval over the past three decades. Ravaged by wars and brutally controlled under a repressive and dictatorial regime, the country's economy and infrastructure have languished and fallen into disrepair. The prior regime's policies seriously weakened Iraq's business environment and international trade relations and repressed legitimate forms of business activity and international exchange of goods and services.

Since the fall of the former regime in 2003, Iraq has embarked on a new path for economic growth. Current laws, regulations and policies have begun the process of rebuilding Iraq's vibrant trading culture and economic infrastructure. In order for Iraq to experience long-term sustainable growth, it needs to be a more open and competitive marketplace driven by the private sector with a government commitment to the benefits of open international trade.

One of the most significant constraints faced by potential investors in Iraq is the serious difficulty in understanding how to start and operate a business according to existing laws and regulations, while complying with relevant administrative procedures. Few agencies offer written guidelines; gaining access to legislation is either time-consuming or expensive; and government officials exercise significant discretion in issuing approvals and conferring incentives. This lack of administrative clarity and consistency in regulating the private sector has the effect of increasing risk, and increasing the costs of investment, subverting national economic competitiveness.

The World Bank's Doing Business in 2006 ranks Iraq within the bottom 30% in terms of the ease of doing business. It is more difficult to do business in Iraq than in most of its regional competitors (Iran, Jordan, Kuwait, Saudi Arabia, Turkey and the UAE). However, Iraq ranks slightly better than other conflict/post-conflict countries reviewed (Afghanistan and West Bank/Gaza). Some of the relevant ease of doing business rankings are detailed in the Table to the right<sup>1</sup>.

What is presented here is a review and analysis of the Iraqi legal and administrative environment for business, as reflected in the existing Iraqi laws. These laws are a combination of rules set by the previous regime, laws which pre-date the previous regime, orders of the Coalition Provisional Authority (CPA) and administrative orders and guidelines. In Iraq the problems of data collection were made far more difficult by the continuing security problems inherent in the post-conflict environment in the country. The issues identified in this analysis are therefore not exhaustive. Rather, they represent an accounting of constraints based on a Roadmap analysis of procedural efficiency with reference to international best practice, a review of government documents and available literature, and meetings conducted by our consultants and the IZDIHAR Project.

**Ease of Doing Business**

Location	Ranking (1-155)
Singapore	2
Ireland	11
Saudi Arabia	38
Kuwait	47
UAE	69
Jordan	74
Turkey	93
Iran	108
<b>Iraq</b>	<b>114</b>
Syria	121
Afghanistan	122
West Bank/Gaza	125
Egypt	141

<sup>1</sup> Source: Doing Business in 2006, World Bank



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The study below therefore is a baseline of the current business environment in Iraq, which is still in an embryonic state with respect to administrative control and enforcement, as well as the establishment of detailed procedures. It is the outcome of an approach employed successfully by TSG in over 39 countries worldwide. It is however, a snapshot of conditions at a fixed point in time. Therefore, conditions should be monitored as to the evolution of the Iraqi political economy and relevant legal and administrative changes. This should be followed by updates where necessary and a similar full-scale exercise when all relevant government agencies are in place so as to identify progress and any continuing gaps from best practice.

The Roadmap employs a technique of investigating four process group areas: Employing, Reporting, Locating, and Operating. Each of these is standard for Roadmaps and forms the core areas of investigation in this type of analysis. The methodology for each of these is discussed in Section 1.2 of the Introduction following this Executive Summary. We have briefly summarized all the recommendations in this study under each process group area, followed by a summary table prioritizing these recommendations. It is of highest priority that the private sector plays a central role in supporting these recommendations and their implementation. Only through an enhanced and growing private sector can Iraq prosper. The reforms set out here will benefit the private sector by increasing the speed, fairness and predictability of doing business in Iraq. They will also benefit Iraq as a whole through increased business activity, job creation and capital investment.

## 2. Recommendations

### EMPLOYING

***Liberalize employment environment.*** While international best practice recognizes the importance of protecting employees from unsafe working conditions and unfair treatment, governments must reach a balance between good labor policy for workers and a flexible employment environment for business. The Iraqi Government should reconsider unnecessarily restrictive existing employment policies.

***Update labor law.*** While increasing flexibility in the employment environment, the government should also improve other aspects of labor law cited as troublesome by the private sector. The government should establish clear working hour rules, and clarify conditions for expatriate workers, for instance. Private sector input will be valuable as the government considers revisions to the labor laws. Businesspeople have informed opinions about their own needs, and can contribute meaningfully to the discussion of future policies.

***Clarify employer requirements regarding work site facilities and transportation allowances.*** While the government should encourage employers to provide facilities that increase employee comfort and boost morale, such as a cafeteria and an employee lounge, the government should not require such facilities. The government should ensure that employers provide a safe work environment for employees; however, it should clarify that additional facilities are not presently required nor will they be under new laws.

***Eliminate discrepancies in visa process and options.*** The Ministry of Foreign Affairs and the Immigration Department should convene a meeting with senior decision-makers to rationalize the procedures for issuing visas. The discrepancies in such things as fees and submission requirements must be eliminated. Once the procedures are harmonized, the MoFA and Immigration Department should provide current information on the visa procedures through commercial attachés and branch offices. As is the practice in most

countries the Ministry of Foreign Affairs should maintain a web site in several languages, including Arabic and English, with current visa procedures, costs, and timeframes along with downloadable forms.

**Harmonize the legal regime governing visas.** As part of the government's effort to harmonize Immigration Office and MoFA procedures, legal conflicts should also be eliminated. In particular, the government should rectify discrepancies between visa validity periods and amend relevant regulations and instructions.

**Clarify rules and procedures for visas to enter the country for work and preliminary work permits.** While the government overhauls the visa process as recommended above, it should also clarify procedures that appear to overlap with preliminary work permit processes. If it is possible for an expatriate employee to obtain an Ordinary Visa and a preliminary work permit from outside the country there is little reason for the investor to be involved in the visa process as per the steps outlined in "Ordinary Visa to Enter Iraq to Work in the Private Sector."

**Ensure visas are issued in a short timeframe consistently.** Good government service is characterized by quick and predictable approvals. In regard to visas, both the Ministry of Foreign Affairs and the Immigration Office should consider evaluating how much time is required for internal application processing and establish and announce processing timeframe goals. These agencies should also develop an internal tracking system to monitor application status and record progress in meeting timeframe goals. International best practice suggests that if an applicant submits all required information, immigration officials should grant a visa within one week. This time delay includes an Interpol criminal database name search.

**Extend the validity period for visas for business travelers and allow for easy extensions and multiple entry visas.** By extending the standard visa period and allowing for easy extensions and multiple entry visas the government can ease and business travel and reduce business costs. Investors waste time and money leaving the country to file for an extension. Many countries allow business visitors to remain in country more than three months. Moreover, best practice recommends that governments allow business visitors to easily renew or extend visas in country, and/or to purchase multiple entry visas at the time of application. Business visitors are likely to visit Iraq more than once to explore investment opportunities; therefore, the government should reduce visa red tape by allowing unlimited entries for the duration of visa validity.

**Rationalize visa types.** Many countries issue visas for five purposes only, usually for business, study, transit, diplomats, and non-work related travel. The broad category of non-work related travel visas often includes visiting family members, tourism, and seeking medical treatment. Iraq should condense and simplify its existing seven visa categories. The government should, for instance, merge the two transit categories into one. Moreover, the government should consider abolishing the service visa. Immigration authorities could also eliminate the emergency visa in favor of establishing a process to care for and register refugees as needed.

**Standardize restrictions.** Very few countries still maintain restrictive or discriminatory entry policies by nationality. Modern screening methods, including linking with Interpol to obtain an international police check on individuals, can reduce potential security or economic risks. The Ministry of Interior, in coordination with the Ministry of Foreign Affairs, should develop

more screening and intelligence capabilities to ease the entry of legitimate foreign visitors while enhancing government's ability to protect national security.

**Eliminate sponsorship requirement for investors.** While it may be appropriate for an employer to sponsor a prospective expatriate worker, it is not clear why legitimate business visitors or tourists require sponsorship merely to enter Iraq. Assuming that appropriate security and immigration controls are in place, such practices can only dissuade investors from considering Iraq and discourage otherwise potentially lucrative tourist traffic.

**Eliminate Chamber registration requirement for sponsors.** If the sponsorship requirement is maintained, the government should cease requiring sponsors to register with a local Chamber of Commerce. It is not clear what extra surety this requirement provides; it is likely that criminals could easily establish an illegitimate business and register with a Chamber. As it is, this represents another step in an already convoluted process.

**Eliminate health inspection at Iraqi hospitals.** While the Iraqi state needs to ensure that public health is protected, requiring that visitors physically undergo a health inspection in local hospitals is excessive. A more sensitive health inspection system should be put in place. The elements of this inspection system might include establishing a formal relationship with the WHO to identify countries with current contagious outbreaks that may require special measures, identifying what vaccinations are required for entrance into the country, and requiring that entrants have an updated travel medical log.

**Improve security screening for visitors.** Given Iraq's unique security situation, the government should prioritize improving its border control capacity. Part of this effort should involve establishing efficient border security mechanisms for travelers. While security scrutiny should not deter tourism and other travel to Iraq, it must be effective. The government should immediately link Iraq's security clearance with international security agencies. Immigration officials should institutionalize an Interpol database search as the first internal step in the visa granting process.

**Redesign visa applications.** The government should redesign visa application forms to request only necessary information. Currently the Ordinary Visa form requests standard information including name, nationality, profession, purpose or visit, passport number, etc. However the form also requests considerable superfluous information, including the applicant's religion; previous occupation; spouse name; spouse nationality; spouse occupation; spouse work address; and spouse birth place/date. It is not clear why the government requires detailed spouse information. It is also unclear why the government requires the applicant's religion and previous occupation. Moreover, a lengthy application form often increases completion time on the part of the investor and processing time on the part of the government.

**Eliminate "Affidavit of Entrance" at Immigration Office requirement.** The government should cease requiring foreigners who have entered the country on a valid visa to visit the Immigration Office within 48 hours of arrival. Immigration authorities can request necessary information from visitors at their point of entry, via an immigration card, as many countries currently do. Immigration authorities should shorten the form, and request only necessary information, which does not include religion, visitor's spouse name, and former occupation.

**Allow for the direct sponsoring of workers.** In many countries, companies are allowed to sponsor their own workers and work permits are linked to a specific job. Many countries also offer expatriates the chance to obtain some form of residency after working in a country

for a period of years. This allows individuals to remain in a country while planning new investments without having to be employed by someone else. Erecting rules that interfere with hiring needed workers, including expatriates, creates inefficiencies in the labor market.

Liberalized labor markets are usually efficient labor markets. While sponsors of expatriate workers in Iraq incur some unique costs, including travel, labor contracts in most modern economies do not empower employers to limit the mobility of workers or their right to take on new employment, assuming that no contractual obligations have been violated. Foreign workers should not need permission from their employer to end the employment. If the foreign worker is offered another job, he or she should be able to apply for a new work permit without having to leave the country.

**Clarify and properly enforce rules about expatriate women employees.** From a purely economic point of view, it is not clear why expatriate women 18 years and older would be denied employment in Iraq. The government should consider clarifying rules and legislation regarding female employment and issuing appropriate instructions to MoLSA, the Immigration Office, other agencies, and the private sector.

**Consider eliminating the application of expatriate employment quotas.** While it is understandable and fair that the Iraqi Government's employment policy focus on increasing employment for Iraqi citizens, enforcing a quota for expatriate workers is not the best mechanism. Rather than using quotas, the government might consider requests for work permits individually with the knowledge that personnel policy is an important part of investment decisions. To review work permit requests, the government needs to have an accurate sense of what skills do and do not exist in Iraq and what types of Iraqi workers are available at the level of international standards.

**Clarify expatriate Work Permit revocation rules.** The current regime governing Work Permits affords considerable uncertainty and seems open to abuse. In more liberalized countries, work permits are generally not revoked unless the individual has been convicted of a crime. If there are other legitimate reasons why the Iraqi government would want to expel foreign workers, these criteria should be clearly articulated. In addition, it is recommended that an appeals process be established to protect foreign workers from frivolous charges that they are somehow undermining national interest. Without clear criteria for these stipulations, the threat of work permit cancellation creates considerable uncertainty for employers and foreign workers. More precise definitions of standards of conduct, and clear information about the rules governing appeals would assist investors in managing their labor affairs more effectively.

**Reevaluate the work permit finalization process.** The government should reevaluate the rationale for the existing work permit finalization process, in particular accessing why the procedures for applying from outside Iraq and within Iraq differ considerably. If there is no clear reason for the process it should be terminated, or the process should be simplified. Residency permits and work permitting processes need to be reconciled, simplified and eliminated where appropriate in order to end confusion and overlap. As is the process creates another set of steps and documentation submission. Moreover, an additional approval process increases uncertainty on the part of the employee, after he has already spent considerable time and money traveling to Iraq for a particular employment position.

**Terminate guarantee letter.** If the government seeks to improve Iraqi skill levels, insisting that a work permit holder train Iraqis is not the most appropriate mechanism. In most cases training and professional advancement of citizens would fall to employers and the

government. It is highly unusual that an expatriate employee be required to train citizens in exchange for a work permit. The government should abolish this practice and consider wholly terminating the guarantee letter.

**Eliminate in-country medical examinations.** If the government requires a medical check for residency permit it should consider allowing this check up to take place in the applicant's home country. Since the government currently allows visitors to complete an HIV test prior to entering Iraq, it seems plausible that additional medical tests could be done overseas as well.

## REPORTING

**Produce an Investor Guide and make it easily available to the private sector.** The Iraqi Investment Promotion Agency (IIPA), in coordination with the OCR, should prepare an Investor Guide detailing business registration procedures, requested fees, sequencing of steps, and all needed supporting documents. The development of a company registration web site ([www.br-iraq.com](http://www.br-iraq.com)) is a step in the right direction but on-line registration needs enhancement to include all aspects of corporate registration in a single window. The Guide would also include other important information related to investing in Iraq such as a comparison of operating costs in Iraq and its regional competitors. The Guide should be made available to investors and potential investors via conventional methods, e.g. hard copies at the OCR, IIPA, and Iraqi embassies abroad, and other methods such as the IraqInvest web portal and a promotional CD-ROM. It is recommended that the Investor Guide be produced in Arabic, English, and other languages spoken in countries identified in Iraq's investor targeting strategy.

**Produce standard operating procedures and train staff.** The OCR and all other government bodies that are involved in the registration process are advised to produce comprehensive standard operating procedures for company and trade representation/branch office registration in order to standardize procedures and make sure relevant laws are consistently correctly interpreted. These should be periodically reviewed and amended if needed. It is also recommended to hold training sessions for relevant staff and possibly invite a few businesspeople from the private sector to those training sessions to make sure that the relevant personnel understand the process from an investor perspective.

**Eliminate the requirement of providing a feasibility study.** Assessing the investment risk and financial viability of a project should be the responsibility of the investor. It is recommended that the Government of Iraq reconsiders the necessity of this requirement and study its elimination.

**Eliminate (or amend) the requirement of depositing US \$100,000 for investors in the retail business.** It is recommended that the Government of Iraq eliminate this requirement in order to enhance Iraq's business environment. If the Government of Iraq chooses to keep this requirement, which is unadvisable, it is recommended to amend the relevant law. Amendment should include reducing the amount of surety and allowing investors to deposit this amount in an interest bearing bank account.

**Allow foreign ownership in the natural resources sector.** It is recommended that the Government of Iraq reconsider prohibiting foreign ownership in this sector after assessing the associated risks and benefits. This adjustment is expected to have a positive impact on Iraq's economic development.

**Enforce laws allowing for free repatriation of profits and proceeds.** The Government of Iraq must enforce the freedom of profit and proceeds repatriation to encourage foreign investment. This can be achieved by producing implementing regulations and training the implementing staff.

**Open OCR branches in all governorates.** The Government of Iraq should promote regional economic development and better facilitate investments in all governorates in Iraq. It is recommended that the Ministry of Trade open an OCR branch (or a small representative office) in each governorate. This recommendation should be implemented in phases based on the feasibility of this recommendation. It may be cost effective and is certainly easier for investors from a process point of view if the OCR branches are located at the local Chambers of Commerce.

**Establish a one-stop-shop.** The Government of Iraq should jumpstart the establishment of an investor “one-stop-shop” as soon as possible. This operation should have the power and mandate to deal with all aspects of investment and should be a small and efficient organization designed to facilitate and simplify the investment process through coherent access to all relevant aspects of government. As a first step, it is recommended to streamline business registration processes— cutting down the number of procedures, the number of visits that investor has to pay to government bodies, and the time needed to obtain a registration certificate, and making involved authorities’ procedures time-bound. The IIPA, in coordination with the OCR, should spearhead the efforts of establishing communication systems and mechanisms between all involved authorities. An important recommendation necessary to facilitate communication between all relevant authorities is to create a single, unique tracking number for investors when they first submit their applications and also to create a single company ID number once a company is registered. The team is well aware of the Government of Iraq plans and USAID’s support for establishing regional offices for the IIPA. It is recommended that each regional IIPA office acts as Iraq’s one-stop-shop in that particular region. This of course needs to be very well coordinated with regional OCR branches.

**Electronically enable business registration processes.** As the implementer of the one-stop-shop initiative, the IIPA should lead the efforts of electronically enabling business registration processes in Iraq. The development of a company registration web site ([www.br-iraq.com](http://www.br-iraq.com)) is a step in the right direction, but on-line registration needs enhancement to include all aspects of corporate registration in a single window. A process-based system needs to be designed, developed, and deployed allowing for e-registration of business and also keeping record of all registered companies in Iraq in one place. The one-stop-shop authority will own this system and manage it and at the same time will grant all other involved authorities restricted access to it

**Build capacity of implementing staff and produce Standard Operating Procedures (SOPs).** The Government of Iraq should ensure the consistency of allocating investment incentives to all entrepreneurs wishing to conduct business in Iraq. This can be achieved through a series of actions including the following:

- Holding training sessions for the implementing staff constantly. In addition to procedural and legal issues, training should also cover aspects such as FDI’s role in economic development and creating jobs for Iraqis
- Draft comprehensive standard operating procedures and make them available to all implementing staff
- Increase public awareness of these incentives

**Design an appropriate incentives policy.** The Government of Iraq should initiate a study, including cost-benefit analyses, to determine what economic activities, if any, should receive incentives and what kind of incentives should be offered, in order to design an effective incentives policy. Any such policy must be WTO compliant and should avoid subsidies on utilities, land, raw materials, and other inputs. The policy should build upon the work already undertaken by the Government, USAID, and other donors, including legal reviews on the investment environment, the industry sectors and competitiveness analyses, and regional development plans. The policy should be publicly available to the private sector— for example, the IIPA could post it on the IraqInvest web portal in order to electronically facilitate the whole process. The system will serve as a management tool for monitoring and evaluating business registration activities and will also produce statistical reports necessary for policy-makers in Iraq. It is recommended to ‘pilot’ this effort, e.g., start the implementation in Baghdad and then replicate it in all other governorates. On the longer term, the Government of Iraq should consider web-enabling this system allowing investors to submit and track the status of their applications on-line.

**Build capacity to enforce IPRs in Iraq.** Design and implement a capacity building program for all involved authorities as well as judges and the court system. It will be necessary to build capacity amongst the relevant officials both inside and outside the IPR department in order to comply with and enforce WTO and WIPO rules. Training and possible technical assistance will enhance both the speed and the quality of this process. Education efforts will also be necessary on the private sector to enhance knowledge and compliance with IPR rules. The Government of Iraq officials should also be trained in enforcement mechanisms and procedures.

**Draft implementing regulations and SOPs.** New regulations will need to be written to ensure proper operation of the rules. As an initial step, the Government of Iraq should draft implementing regulations for the existing IPRs laws. Following that the government should draft standard operating procedures to guide the implementing staff and assure the consistent, transparent implementation and enforcement of IPRs.

**Undertake a legal review of old IPRs laws and amend or eliminate them accordingly.** The Government of Iraq should initiate a comprehensive legal review of all IPR laws in order to assess their compliance with WTO TRIPs and relevant WIPO conventions. Necessary amendments should be drafted and enacted based on this review. A new IPR law or laws should be prepared in order to consolidate the existing rules.

**Assign a single authority to disseminate information on IPRs to the private sector.** International and regional best practices, as well as WTO rules, indicate that it is necessary to assign a single authority within the Government of Iraq to disseminate IPR information to the private sector and foreign investors. This authority should be housed within the IPR department and be tasked with improving transparency in IPR rules. The Government of Iraq should also include an investor-friendly interpretation of the relevant laws and regulations in an Investor Guide to be produced both in Arabic and English— at minimum. As discussed earlier, the Investor Guide should be widely distributed in hard copies and electronically.



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## LOCATING

**Release land to private sector.** The government should consider creating and implementing a countrywide land use policy. The land use policy should include the sale of government land to the private market to encourage more productive use.

**Allow foreigners to purchase public and private property.** The government should reevaluate its prohibition on foreigners purchasing public property, and clarify the existing legal regime governing foreign ownership of private property. In both cases the government should prioritize drafting and implementing a land law that allows foreigners to purchase public and private property in Iraq. To avoid land speculation it could insist that purchases be limited to particular investment projects. The government can subsequently ensure that the land is developed, rather than used speculatively, by establishing and enforcing time limits for development, and by assessing fines and additional taxes if purchasers do not respect time limits. Since speculative buying is not limited to foreigners, in any country, the government must be careful to apply land development criteria equally to all investors who purchase government land. The government might also consider long-term leases instead of outright sale to foreigners, especially in the short term.

**Develop centralized site for market information.** The government should establish a central site for information on site acquisition in Iraq. At the very least this site should have details about government property, and explain the various processes by which an investor may acquire land in Iraq. The government should create a brochure, which details what government authorities own what land and the steps an investor must complete to lease or purchase various land. The government should also provide a range of fees for leasing and purchasing government property throughout the country. The Ministry of Industry should consider taking the lead in assembling information on all industrial estates and publishing this information on a central website or in paper form to interested investors. Ideally, a site acquisition brochure would also contain information on the country's private property market, including information on market lease and sale rates, and details on some of the country's main real estate agents. Iraq's Investment Promotion Agency would be an ideal site acquisition information host.

**Condense land-related legislation.** The government should consider consolidating the country's numerous laws governing land acquisition. A much smaller number of laws could effectively govern all aspects of property acquisition and ownership in Iraq. In restructuring the land regime the government should formulate a clear land policy, preferably transferring a substantial amount of land currently under state control to the private sector to encourage productive usage.

**Reevaluate the role of all ministries and agencies involved in public land acquisition process.** In addition to consolidating site acquisition laws in the country, the government should reevaluate the role of all agencies and ministries involved in the process. In the absence of a single industrial estate authority, a single ministry should control industrial estates that belong to the national government; and, each governorate or municipality that owns industrial estates should have the authority to terminate leases.

**Study revenue implications and necessity of subsidizing land leases.** The government should undertake a demand study to assess private sector demand for commercial and industrial land in the country. Concurrently, the government should study the revenue impact of leasing government land at the current flat rates instead of market rates. The



government should subsequently either move to a full market rate lease system or at least move closer to the market rate, depending on the studies' findings.

***Evaluate industrial estate/free zone potential.*** As part of a general investment promotion effort, the government should evaluate Iraq's existing industrial estates/free zones' potential. And ensure that all industrial estates/free zones are consistent with WTO rules, in particular the Agreement on Subsidies and Countervailing Measures. The government should complete cost benefit analyses to determine the appropriate mix of state and private financing required to renovate the country's industrial estates/free zones. The government might also consider public-private partnerships in the development and management of all or some of these estates/free zones. If studies indicate there is sufficient existing and anticipated demand to locate in industrial estates/free zones the government should upgrade them with infrastructure improvements.

***Reevaluate deposit and bidding amount for lease auctions.*** The government should reevaluate the lease auction participation deposit amount and the level at which it commences lease bidding. Currently the government requires participant applicants to provide a cash deposit of between 10-20% of the property's assessed value. Since the bid is for a lease on the property, rather than a sale, a deposit on the property's full value seems high. Instead, the government should require a deposit commensurate with the lease value. Likewise, the beginning bid level should be commensurate with the lease rate, not the property's full value.

***Announce state land auctions in additional publications.*** To increase transparency, the government should require ministries to announce auctions in a number of local newspapers, a national level newspaper, and in the government gazette. In addition, the government should consider announcing auctions on a central website that contains all site acquisition information, as recommended above. The Iraqi Investment Promotion Agency might be an ideal host for such information, including electronic auction announcements.

***Reevaluate rationale of lease auction process.*** In fact, the government should reevaluate the rationale for the lease auction process. While an auction makes sense for a land sale, it is less effective for leasing government land. Ministries with land to lease should rather establish lease rates that are based to some degree on market rates, and develop a system by which investors can apply for and obtain a lease without having to compete in an auction.

***Automate land lease and land registration application processing.*** The government should automate the industrial estate lease application process, the land registration process, and the process by which an investor applies to participate in a lease or sale auction. At the very least the relevant ministries should post application forms on a central website. In the longer term the ministries should develop online systems by which investors may submit applications electronically and track application progress. In addition, ministries involved in the site acquisition process should develop internal automation so that, for instance, GDID could send an industrial estate application electronically to the relevant estate authority.

***Clarify and publish free zone approval process, criteria, lease rates.*** The Free Zone Authority should clarify the lease application and approval process and ideally post this information on a central website. The authority should include information on the minimum requirements for an application form and attachments and detail lease rates. The authority should also provide information on free zone incentives, which should be WTO compliance.

**Establish and enforce building codes.** At present, there are no formal building codes in Iraq. Building permits are granted on an ad hoc basis and the process is vulnerable to corruption. The government should prioritize the development of country-wide building codes. Municipal governments should review permit applications and GDID should grant permits based on building code compliance. Building permit approval criteria, and a final occupancy permit, should be based on building code compliance. Concurrently the government should establish criteria for building professionals, ideally by drafting and implementing legislation that governs the licensing and registration of building professionals. While the country may not currently have the capacity to establish its own examination system for building professionals, the government could develop criteria for assessing professional qualifications from other countries.

While establishing building codes, the government should also develop a sequenced inspection system to better regulate the building industry. A municipal engineer could complete site inspections, or the government could outsource inspections to other licensed professionals. In the absence of sufficient inspectors, the government might also consider establishing significant failure to comply penalties for demonstration effect: A small number of inspectors assessing significant fines might persuade others to comply even if the chance of inspection is minimal.

In the medium term, when municipal governments have sufficient inspection capacity, the government should introduce an occupancy permit system through which it certifies a building completed to code and thereby habitable. Occupancy permits should be based on a physical site inspection.

**Boost Capacity of Municipal Government in Building Permits.** If the government feels that municipal governments are not sufficiently capable of evaluating building permit applications it should involve a more relevant ministry in the short term. In the long term the government should boost municipal government's technical capacity to review building permit applications and thereby remove ministries from the process.

**Develop information brochures and websites for the site development process.** Since the process steps are apparently the same or very similar across municipalities, and since GDID grants building permit approval, that agency should develop user guidelines. GDID should develop a website that details permitting requirements, offers a process guideline, and hosts all relevant forms. Moreover, GDID should develop hard copy guidelines and forms for those who do not have internet access.

**Terminate municipal committee inspections.** Since municipal committee inspections do not appear to serve a valid technical purpose and since they are not completed systematically the national and/or municipal governments should abolish the process. Instead, municipal governments should consider initiating technical inspections by relevant departments and agencies.

**Initiate automated process.** Municipal governments should work to automate the internal building permit approval process. The investor's application file moves among a number of departments within the municipal government, and the preliminary permit moves to and fro several times. Automating this process, so the file moves electronically, will likely decrease approval time.

**Prioritize sewerage system expansion and improvement.** In prioritizing infrastructure development and improvement, the government should place sewerage at the top of its list.

At the very least the government should improve sewerage systems in Baghdad and other large municipal areas where discharge into rivers, streams, lakes, and onto land could create enormous health risks. The government should also prioritize establishing sewerage systems in the country's industrial estates.

**Introduce solid waste system and/or oversight capacity.** The government should consider introducing a solid waste system, particularly in areas of main industrial activity. In the short term the government should enforce solid waste disposal compliance.

**Continue efforts to repair land line telecommunications system.** In the short term the government should continue to repair, improve, and expand existing landline systems. The government should also establish landline telecommunications service in its industrial estates. In the medium term the government should consider privatizing the telecommunications sector. Competition in the telecom sector will encourage better and expanded service and lower costs.

**Automate utility application and tracking processes.** All utilities connection application processes should be automated to the extent possible. At the very least utility providers should make application forms available on their own website and/or a centralized government service website. Making forms, guidelines, and fee structures available electronically reduces the steps an investor must complete in connecting to various utility services.

**Require environmental compliance application at another stage of locating process.** The Ministry of Environment should consider requiring investors to complete environmental compliance concurrent with or prior to building permit application. Investors could be required to provide proof of environmental compliance certification as an attachment to the building permit application. Or, the relevant municipal government could require the investor to submit his feasibility study with his building permit application; and the municipal government could pass the file to the Ministry of Environment for review during the building permit application process.

**Reevaluate EIA requirement for all projects.** The Ministry of Environment should consider requiring a full EIA for category A and B projects only. The ministry should require category C projects to present a feasibility study that details the project and its air, water, and sewerage use and waste disposal plan, but not a full EIA. Best practice in environmental compliance suggests that not all investment projects require the same level of impact study. Typically, the relevant agency provides lists of potential polluting activities to enable an investor to determine the likely category into which his project falls. The agency would subsequently screen projects that might have environmental impact, to determine whether or not a proposal should be subject to an EIA, and at what level of detail. If a project is required to complete an EIA the agency would require a scoping exercise to identify potentially important issues and impacts. Based on this scoping exercise the agency would establish a terms of reference for the project's EIA.

**Develop and publish process guidelines.** The Ministry of Environment should develop environmental compliance certification guidelines, which include information on the application and review process, the processing times, and any application fees. In addition, the guidelines should explain the three project categories and should give a description and examples of each category. The ministry should also consider publishing information on its inspection process and an investor's likely reporting requirements throughout the life of the project.

## OPERATING

***Increase computerization of tax records and numerical coding for tax registration.***

The use of numerical codes instead of names can solve the problem of duplicate names, however this must be combined with more widespread computerization of electronic tax records in order to promote efficient tax enforcement and reliable compliance.

***Provide technical assistance and training for tax officials.*** Iraqi tax officials will need extensive training in tax rules and enforcement under the new regime. Similarly extensive individual and business awareness will need to be fostered in order to ensure compliance and collection of adequate revenues for fiscal solvency.

***Consider the restructuring of GTC as a comprehensive revenue collection authority fro the state.*** Some of the problems identified above may be rooted in the institutional arrangements of the GTC. A comprehensive revenue authority would have the responsibility to collect and refund all taxes, customs duties, and other payments from taxpayers. Such an authority has several advantages that address issues problematic in Iraq such as central collection of information, combined auditing and inspection services and quicker information exchange between collecting units.

***Assess revenue sources and consider new sources of income.*** On a general note, it appears inevitable that a review of the tax regime is necessary to identify the current revenue sources and explore ways to broaden the revenue base. This includes an assessment of actual tax evasion and arrears, the determination of the effective tax rate for business and individuals and the effects and impacts of sales or value added tax.

***Close tax loopholes and improve auditing capacity.*** A thorough review of tax practices should be conducted to reveal opportunities for fiscal leakage. One way to avoid this is to improve auditing capacity. Another way is to close coordination of GTC tax data with information from the various social service and human resource related departments.

***Improve information provided to the public on the tax system and procedures.*** The Ministry of Finance and GTC should make a combined effort to increase the transparency of the tax regime. All means of marketing and public information should be utilized to close the information gap. For example, leaflets might be a good model for such an effort. A regular newsletter with decisions by the Commissioner would also increase the certainty of taxpayers. The newsletter might be distributed in electronic form via email to interested parties. The Internet, of course, is also a good means to distribute information.

***Consolidate the tax legislation as soon as possible.*** The current form of the tax legislation makes acquiring accurate and complete information on the tax regime almost impossible. Scattered amendments should be incorporated into the main acts in a consolidated version to ensure updated information to the reader of the tax legislation. Consolidated versions of the tax legislation should also be made available on the Internet.

***Increase training of officials in dealing with the public.*** Well performing government agencies are service providers and well-trained civil servants view the citizens as clients. It is important that officials understand this basic relationship. Citizens should be served in a timely and friendly manner. Officials should be trained to answer specific questions or to know to whom to refer a citizen. Simple things like returning calls in a timely manner and being available for an agreed appointment would make the life of taxpayers much easier. A

first step would be to conduct a performance audit of the GTC and program corresponding customer service training sessions. In some cases, the lack of responsiveness may be due to inappropriate management systems and in others it could be poor performance of civil servants. The behavior of officials should be monitored by superiors and the performance should be part of salary structure.

**Eliminate Export/Import Licensing.** Export and any existing import licensing restricts the movement of goods and imposes a burden on potential sources of needed goods as well as foreign revenue. Proper recording of exports and imports can ensure security without restricting and delaying them. If export or import licenses are to be retained in any form, they should be flexible, imposed only on goods of extreme sensitivity for a defined time period and granted for extended periods (e.g. one year), not on a shipment-by-shipment basis.

**Increase computerization and apply the harmonized system to the ten-digit level.** Implementation of customs software for the computerization of many processes and documents would vastly speed and increase the efficiency of trade. The use of the Harmonized System at the ten-digit level allows for better and more differentiated assessment of tariffs when specific tariffs are reinitiated.

According to the International Chamber of Commerce best practices are in place when customs departments:

1. Operate a nationwide automated system to provide electronic filing facilities for the trade community in respect of declaration data to be submitted at both import and export and for banks and corporate sureties in respect of duty and tax guarantees and surety bonds;
2. Are able to transmit and receive data, nationally and internationally, using appropriate international electronic data interchange (EDI) standards;
3. Provide automated systems for the payment of duties and other fees by electronic funds transfer;
4. Make tariff and related information/data available to the trading community from an automated system;
5. Establish and operate an automated enforcement information system, using risk assessment and other modern control techniques; and
6. Require, as a matter of routine, in automated systems, only those data items that can be clearly linked to significant gains in customs operational efficiency.

Other improvements would contribute to reducing clearance times and boost efficiency as well. For example, the customs service could: pre-process goods prior to their arrival so that administrative data are handled by post-clearance controls and use selectivity in inspections by applying a Risk Management System. Kyoto Convention compliance should be achieved as early as possible.

Procedures along ISO 9000 lines need to be developed for the Customs and Excise Division based on a systems analysis of current procedures. Writing down a set of procedures and guidelines based on best customs practices would enhance efficiency and help eliminate discretionary practices in Iraqi customs. Any customs reform should bring Iraq into conformity with the WTO Customs Valuation and Rules of Origin agreements. The World Customs Organization regularly publishes best practices in cargo processing that could be of assistance to Iraqi customs authorities.

**Develop a system of risk management to reduce the number of inspections.** To remove the responsibility on customs to inspect every shipment, inspections should be based on an analysis of the risk involved. Risk management selects certain transactions or movements for closer scrutiny, and screens out others as constituting nil or negligible risk. Profiling a potential group of targets through the use of computerized information to develop a group of characteristics, information or risk indicators and targeting either cargo or people selectively as a result has significant benefits for customs operations. These include:

- The accurate selection of high-risk transactions;
- Maximizing the efficient allocation of resources to those result areas;
- Eliminating time and resource wastage;
- Fast-tracking international trade transactions; and
- Providing a sound basis for customs decision-making to meet accountability requirements.

While the development of a similar system may not be feasible immediately, the government of Iraq should consider the implementation of a similar practice once the automation process has been completed.

**Develop guidelines for inspections and testing capacities.** The government should expedite the process of legislating mandatory standards that comply with both international best practice as well as relevant WTO agreements. The government of Iraq should expedite the development of testing facilities for the standards certification and those agencies that are involved in inspections, including the Ministry of Agriculture and the Ministry of Health. The government should consider joint development of regional testing facilities to avoid duplication and enhance efficiency as well as mutual recognition agreements on standards and testing with other countries. Additionally, the government should consider the accreditation of private sector labs to do the necessary inspections,

The government of Iraq should also introduce guidelines for inspection procedures that are in line with international standards and best practices. For example, for plant health the International Plant Protection Convention could be a reference, for food safety the Codex Alimentarius is recommended, and for animal health the Office of Epizootics and the WTO Agreement on Sanitary and Phytosanitary measures serve as a good model.

Computer programs for customs also have the capability to select food and drugs for testing based on their categorization into high, medium, and low risk. Under normal circumstances, high-risk products should be subject to 100% inspection, sampling, and testing. Fifty percent of products falling into the medium risk category should be inspected, with 25% being selected for sampling and testing. In the case of low-risk products, 75% should be passed without inspection, 25% inspected, and 10% of these sampled and tested.

**Continue to develop and implement a capacity building program in the area of Trade and Custom regime.** Customs personnel are not sufficiently knowledgeable or adequately trained in the regulations, permits, procedures, and other matters. Specific areas that require attention are: 1) the planning and strategy for the implementation of tariff commitments; 2) various areas of customs procedures, including automation, valuation techniques, risk management schemes and inspections; 3) the legislation of mandatory standards and conformity implementation; and 4) the development of guidelines and implementation of WTO Sanitary and Phytosanitary Agreement. Trade policy and negotiation skills should also be included in this training.

**Accelerate efforts to bring all existing trade-related rules into WTO compliance as well as efforts to negotiate WTO accession.** Iraq has begun the process of WTO accession and is in the process of bringing many of its rules within WTO norms. In preparation for negotiations more reforms should be initiated in order to pre-comply with WTO rules which will be required after accession. WTO accession negotiations should be a top priority, as accession will provide Iraq with a wealth of improved market access opportunities as well as an opportunity to improve trade-related rules in Iraq to promote economic growth.

### **3. Summary and Prioritization of Recommendations**

The Table below summarizes the major recommendations and our estimation of their priority and approximate time frame for beginning implementation. It also indicates whether legislation will be required to implement the changes. (A more detailed Table of Recommendations is included in Annex One). It is worth noting that some high priority changes require legislative change and thus have been indicated as requiring more time. In general, we feel that this implementation schedule is aggressive but not unrealistic. While we have tried to be cognizant of political reality we have indicated a schedule that we feel is necessary. It cannot be denied that the prioritization and implementation schedule set out herein make some assumptions about the degree of political stability and security which will prevail in Iraq over the next months and years. We have assumed that both situations will improve over time, although we do feel that most of these recommendations can be implemented even in far less than ideal circumstances. Nonetheless, the current situation in Iraq is fluid and volatile and security is a major continuing concern. Failure to achieve a security environment that is attractive to investors will render many of the changes advocated herein far less effective. Clearly an improved basic level of confidence in security will be necessary to attract significant foreign investment.

Similarly, a reasonable degree of political stability and consistency will be critical to create attractive and credible business conditions, as well as to implement legislative changes where these are required. This includes the issue of a reliable, transparent and well-trained civil service. Since bureaucrats are often the first and most important contact of businesspersons it is essential that good governance and appropriate customer service practices prevail in order to ensure a prosperous business environment that contributes to national economic growth. All of the recommendations in this report depend on a reliable civil service for implementation, and accordingly, effective human resource and training policies will be key.

Iraq's new government is embarking on a complicated set of constitutional discussions that will determine such things as the degree of federal authority and the nature of Iraqi political society. Although a detailed discussion of these issues is beyond the scope of this effort, the matter is relevant. One complaint increasingly heard from the current business community in Iraq, including potential foreign investors, is in regard to the inconsistency of rules between jurisdictions and in the need for multiple, and some times contradictory, approvals from various levels and units of government. Clearly a high degree of consistency and predictability across jurisdictions is desirable to promote business investment. In this regard, constitutional arrangements which include some form of the federal pre-emption doctrine, a legal concept which has proven highly useful in similar situations, could be extremely helpful in reconciling the multiple interests, facilitating investment and in increasing the business certainty of the sustainability of reform.

Given the above circumstances and caveats, we believe that our recommendations can be a major step forward in making Iraq a far more attractive business environment. We also believe that an aggressive implementation schedule that respects the political process and copes with the security realities is critical to the success of the overall effort.



**Summary of Recommendations**

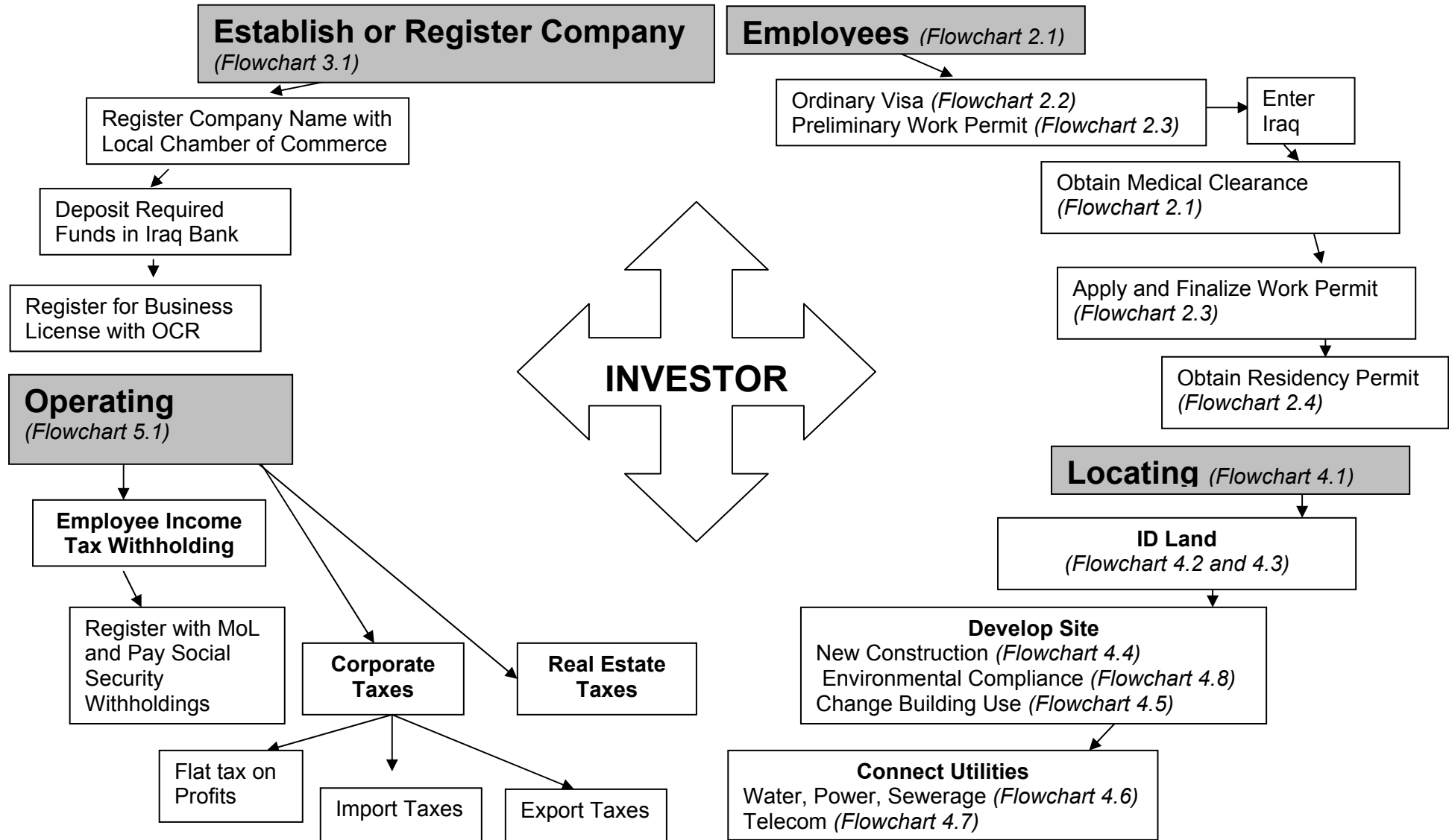
Action Item Number	Action Item Description	Legal Action Needed (Yes / No)		Priority (High / Medium / Low)																								
		Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Month 13	Month 14	Month 15	Month 16	Month 17	Month 18	Month 19	Month 20	Month 21	Month 22	Month 23	Month 24	Month 25 and afterward		
				Immediate	Short term	Short-medium term					Medium term					Medium-long term					Long term							
<b>EMPLOYING RECOMMENDATIONS</b>																												
<b>Labor regime</b>																												
1	Liberalize employment environment	Y	M																									
2	Update labor law	Y	M																									
3	Clarify employer requirements regarding work site facilities and transport allowance	N	M																									
<b>Entry visa</b>																												
4	Harmonize visa application and approval procedures, publish guidelines, and enforce consistency. (For sub-recommendations see App. 1)	N	H																									
5	Ensure visas are issued in a timely manner	N	M																									
6	Extend visa validity period for business travelers and allow easy extensions/renewals	Y	M																									
7	Eliminate sponsorship requirement for investors	Y	M																									
8	Eliminate chamber registration for sponsors	Y	M																									
9	Eliminate health inspection at Iraqi hospitals for all visitors entering country	Y	M																									
10	Eliminate in-country medical examination for work permit applicants	Y	M																									
11	Improve security screening for visitors	N	M																									
12	Eliminate affidavit of entrance at Immigration Office requirement	Y	M																									
<b>Work and residency permits</b>																												
13	Allow direct sponsoring of workers	Y	M																									
14	Clarify and enforce rules about expatriate women employees	N	M																									
15	Consider eliminating application for expatriate employment quotas	Y	M																									
16	Clarify expatriate work permit revocation rules	N	M																									
17	Reevaluate work permit finalization process	N	M																									
18	Terminate guarantee letter requirement	N	L																									

Action Item Number	Action Item Description	Legal Action Needed (Yes / No)		Priority (High / Medium / Low)																															
		Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Month 13	Month 14	Month 15	Month 16	Month 17	Month 18	Month 19	Month 20	Month 21	Month 22	Month 23	Month 24	Month 25 and afterward									
				Immediate	Short term	Short-medum term					Medium term					Medium-long term					Long term														
<b>REPORTING RECOMMENDATIONS</b>																																			
<b>Company registration</b>																																			
19	Produce and publish an Investor Guide	N	M	Immediate																															
20	Produce SOP and train staff	N	M	Immediate																															
21	Allow foreign ownership in the natural resources sector	Y	H			Short term																													
22	Enforce the freedom of profit expatriation	N	H			Short term																													
23	Establish one-stop-shop	Y	H			Short-medum term																													
24	Open OCR branches in governorates	Y	H			Short-medum term					Medium term																								
25	Eliminate (or amend) the requirement of depositing US \$100,000 for retail activities	Y	M			Short-medum term																													
26	Electronically enable business registration processes	N	M																																
<b>Allocating incentives</b>																																			
27	Build capacity of implementing staff and produce SOPs	N	M			Short-medum term																													
28	Design and incentives policy	Y	M			Short-medum term																													
<b>Intellectual property rights</b>																																			
29	Draft implementing regulations and SOPs	Y	H			Short-medum term																													
30	Build capacity to enforce IPRs	N	H			Short-medum term					Medium term																								
31	Assign a single authority to disseminate IPRs information	N	M			Short-medum term					Medium term																								
32	Review and amend old IPRs laws	Y	M			Short-medum term																													

Action Item Number	Action Item Description	Legal Action Needed (Yes / No)	Priority (High / Medium / Low)	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Month 13	Month 14	Month 15	Month 16	Month 17	Month 18	Month 19	Month 20	Month 21	Month 22	Month 23	Month 24	Month 25 and afterward			
				Immediate	Short term	Short-medium term	Medium term	Medium-long term	Long term																						
<b>LOCATING RECOMMENDATIONS</b>																															
<b>Site acquisition</b>																															
33	Release land to private sector	Y	H																												
34	Allow foreign property ownership	Y	H																												
35	Establish centralized site for property market information	N	M																												
36	Condense land-related legislation	Y	M																												
37	Reevaluate role of government bodies involved in public land acquisition	Y	M																												
38	Study revenue implications of subsidizing land leases	N	M																												
39	Evaluate industrial estate potential	N	H																												
40	Reevaluate deposit and bidding amount for lease auctions	N	L																												
41	Announce state land auctions in additional publications	N	L																												
42	Reevaluate lease auction rationale	N	M																												
43	Automate lease application process	N	L																												
44	Clarify and publish free zone information	N	M																												
<b>Site development</b>																															
45	Establish and enforce building codes	Y	H																												
46	Develop and publish informational brochures/websites on the building permit process	N	M																												
47	Boost Capacity of Municipal Government in Building Permits	N	M																												
48	Terminate municipal committee inspections	Y	L																												
49	Initiate automated approval process	N	L																												
<b>Utility connections</b>																															
50	Expand and improve sewerage system	N	H																												
51	Introduce solid waste system	N	M																												
52	Continue efforts to repair/expand land line telecommunications system, privatize land line telcom.	N	M																												
53	Automate utility application process	N	L																												
<b>Environmental compliance</b>																															
54	Require compliance application during building permit process	N	H																												
55	Reevaluate EIA requirement for all projects	Y	M																												
56	Develop and publish guidelines	N	M																												

Action Item Number	Action Item Description	Legal Action Needed (Yes / No)		Priority (High / Medium / Low)																							
		Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12	Month 13	Month 14	Month 15	Month 16	Month 17	Month 18	Month 19	Month 20	Month 21	Month 22	Month 23	Month 24	Month 25 and afterward	
				Immediate	Short term	Short-medium term						Medium term						Medium-long term						Long term			
<b>OPERATING RECOMMENDATIONS</b>																											
<b>Tax regime</b>																											
57	Increase computerization	N	M																								
58	Provide TA and training to officials	N	M																								
59	Restructure GTC as revenue authority	Y	H																								
60	Assess revenue sources and expand	Y	H																								
61	Close tax loopholes	Y	H																								
62	Improve public information	N	M																								
63	Consolidate tax legislation	Y	M																								
64	Train officials in client service	N	M																								
<b>Import and Export</b>																											
65	Eliminate export licensing	Y	H																								
66	Increase technology use and HS system	N	M																								
67	Develop and implement risk management system	N	M																								
68	Develop and implement guidelines for inspections	N	M																								
69	Develop and implement capacity building programs	N	M																								
70	Accelerate WTO compliance and accession	Y	H																								

**Flowchart 0.1: Primary Requirements for Business Operation**





## Chapter One: Introduction



Abbasid Palace— Baghdad



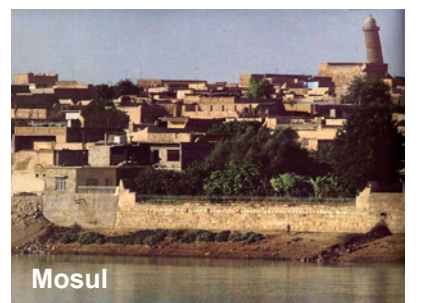
Parthian-style temple— Hatra



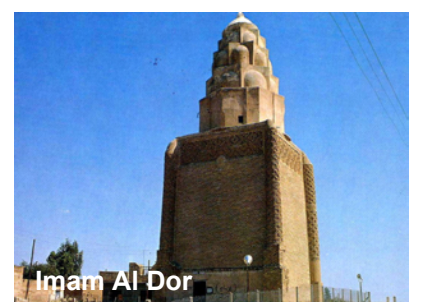
Mosul & city wall of Nineveh



Khan Mirjan— Baghdad



Mosul



Imam Al Dor



## 1.1 Project Context

Iraq has undergone a difficult period of both oppression and upheaval over the past three decades. Ravaged by wars and brutally controlled under a repressive and dictatorial regime, the country's economy and infrastructure have languished and fallen into disrepair. The prior regime's policies seriously weakened Iraq's business environment and international trade relations and repressed legitimate forms of business activity and international exchange of goods and services. International sanctions exacerbated the regime's repression of economic activity.

The results of these policies can be seen clearly in the economic data. Between 1980 and 2003 per capita GDP fell from US\$3600 to around US\$700. Unemployment increased from 15% to as much as 30-50% in the past decade.<sup>1</sup>



With this overall economic decline, came the dissolution of institutional capacity within government to properly monitor and compile key economic indicators. Accordingly, collection of all the data required for this report has been challenging. Similarly, current security issues have made collection of interview data difficult and in some cases impossible. Problems of lack of security, and poor functioning of government in some areas (notably customs) have also made it difficult to collect complete information on procedures. In many instances no procedures exist, different procedures may be used depending largely on local custom, practice or knowledge or procedures may be ignored or circumvented where they exist. Corruption on all scales is a significant problem. We have therefore produced a report that attempts to reveal as much information as possible using all the available data from primary and secondary sources. Our main emphasis, and the report's key advantage, is our description in some detail of the current legal and administrative structure of Iraq's business environment and the identification of areas for improvement.

Since the fall of the former regime in 2003, Iraq has embarked on a new path for economic growth. Current laws, regulations and policies have begun the process of rebuilding Iraq's vibrant trading culture and economic infrastructure. Iraq needs to be an open and competitive marketplace driven by the private sector with a strong commitment to the benefits of balanced international trade. This new direction is clearly articulated in Iraq's National Development Strategy, 2005-2007, which sets out the main goals of the government's economic policy:

- Fostering a transition into a modern free market economy and managing the social impact of such a transition so as to achieve employment growth with equity;
- Insuring the private sector is the engine of growth, by creating a conducive legal environment that enables it to prosper;

<sup>1</sup> Iraq, Memorandum on Foreign Trade

- Building the capacity and structure of government institutions to enhance their performance using good governance principles;
- Integrating Iraq into the global economy by adopting various liberal economic policy measures, and expediting accession to the WTO;
- Maintaining monetary and financial stability.

While the devastation brought upon Iraq by the former regime increases the challenges in achieving these objectives, there is no doubt that the government of Iraq is committed to them.

Iraq has already been able to make substantial progress in removing some of the obstacles to open markets and in developing a more investor friendly business environment. It has stabilized the value of its currency as well as reduced the rate of inflation, while beginning to implement an open trade and investment regime with an emphasis on strengthening the private sector. Rejoining the international community is an inherent part of Iraq's economic development strategy. Some early success has already been reflected by these developments where recent estimates of GDP per capita are estimated at US\$1,200 in 2004.

While several important policy and legal questions affect the degree to which a given country is attractive for local and foreign investment, the Investor Roadmap of Iraq is focused on the administrative regime governing the business environment.

One of the most significant constraints faced by potential investors in Iraq is the considerable difficulty in understanding how to start and operate a business according to existing laws and regulations, while complying with relevant administrative procedures. Few agencies offer written guidelines, gaining access to legislation is either time-consuming or expensive, and government officials exercise significant discretion in issuing approvals and conferring incentives. This lack of administrative clarity and consistency in regulating the private sector has the effect of increasing risk and adding both real and opportunity cost to investment, thereby subverting national economic competitiveness.

Amongst the underlying motivations for taking a new look at the government's administrative systems are the need to find ways to promote new entrepreneurial activity, support local businesses, and attract foreign direct investment, all of which will contribute to creating employment. This effort is thus part of the on-going attempt to boost business and trade competitiveness.

## **1.2 Investor Roadmap Goals and Methodology**

The traditional Investor Roadmap relies on a standardized diagnostic methodology to study a country's investment environment from the perspective of a private investor. As such, the Roadmap introduces the central concept of examining government performance from the point of view of the customer of public services, in this case the investor. By creating a focus on the customer, the Roadmap sets in motion a process that identifies various ways to meet the customer's needs and impact positively on the country's business climate. By pointing to the means of improving the environment for business, the Roadmap ultimately aspires to contribute to the creation of national wealth and employment.



## **Unique Situation of Iraq**

What is presented here is a review and analysis of the Iraqi legal and administrative environment for business, as reflected in the existing Iraqi laws, which are a combination of rules set by the previous regime, laws which pre-date the previous regime, Orders of the Coalition Provisional Authority (CPA) and administrative orders and guidelines. In Iraq the problems of data collection were made far more difficult by the continuing security problems inherent in the post-conflict environment in the country. Interviews were often difficult to obtain, both because of a general reluctance of business people to risk being seen by radicals as cooperating with an American led effort, and because of the difficulty of movement within Iraq. A number of security incidents also forced our Iraqi consultants to close their offices following nearby incidents. Accordingly, this study reflects the current business environment in Iraq, which is still in an embryonic state with respect to administrative control and enforcement as well as the establishment of detailed procedures. While considerable anecdotal information was obtained through our local consultants we have bolstered this data through a review of relevant studies, such as the World Bank's "Doing Business in 2006" report and other sources of information, including publicly available business sentiment polling results and other published sources.

Conceptually, the Roadmap methodology is derived from an understanding that although first-tier macroeconomic and legal reforms are often necessary to create an enabling environment for private sector activity, in most cases these policy shifts and legislative changes are not sufficient. The best policies and laws have no impact if not implemented appropriately. A truly supportive enabling environment requires improvement in the implementation of policy, including eliminating administrative and other constraints that impede investment and business operation and deter formalization. Iraq will require improvements in both its laws and administrative practices. Accordingly, the Roadmap also focuses on the procedural steps, regulatory requirements, and legal infrastructure that govern the day-to-day interaction between government and entrepreneurs. Second-tier administrative reforms can often be adopted more quickly and easily (i.e., without legislative change and a large commitment of new resources) and produce an impact that can more rapidly benefit investors.

Consistent with this methodology, the Investor Roadmap of Iraq has five related goals. These are to:

- Identify and analyze the steps, timeframes, costs, and submission requirements involved with opening and operating a business in Iraq;
- Collect and review the relevant legislation establishing the various rules and administrative procedures considered;
- Create a document that can contribute to the development of a procedural investment guide for the country;
- Analyze the efficiency of the present investment regime in Iraq; and
- Craft recommendations for meaningful, practical reform.

The approach utilized in the Investor Roadmap of Iraq has been developed and refined in similar projects conducted by TSG in some 39 countries worldwide. The Roadmap traditionally examines 14 core processes that must be completed by firms over two phases

of investment – startup and operation. Typically, a core procedure is comprised of other sub-processes. In the case of Iraq, for example, the core procedure for company registration usually involves completing the sub-processes of registering with the Chamber of Commerce, General Tax Commission, and Office of Company Registration. Depending on a county’s legal and policy framework, core procedures may be added to or subtracted from the usual list examined in an Investor Roadmap. The core processes are divided into four Process Group Areas that collectively describe what a firm must do to establish and operate a business.

The four Process Group Areas are elaborated below:

- Employing procedures, including securing visas, obtaining residency and work permits for foreign investors and expatriates workers, and procedures for hiring and dismissing local employees;
- Reporting to government, including company registration, registering intellectual property, obtaining sectoral or operating licenses and permits, and acquiring incentives;
- Locating issues, including site acquisition, site development procedures, obtaining utility hook-ups, and environmental compliance;
- Operating, which includes tax registration and payment, import/export clearance, adhering to mandatory standards, and complying with currency controls.

### **Data and Sources**

The initial phase involves several activities coupled with the consulting available data sources to elicit the information necessary to present an accurate, qualitative snapshot of the regulatory environment at the time the research is conducted. One major source of data is public sector officials who are directly responsible for administering the procedures discussed in the report. A second public sector source of information reviewed for the report is relevant legislation. The team also reviewed procedural and marketing information prepared by government, including application forms and process guides where they existed. To further inform the analysis, some individual investors and business “facilitators,” including lawyers, accountants, and customs brokers, were interviewed in order to discuss their experience with completing individual procedures as described by the public sector and to identify the constraints they faced. Additionally, a limited number of interviews with other stakeholders and a review of relevant literature were also conducted, including reports sponsored by the donor community and relevant polling data and other reports.

The issues identified in this analysis are not assumed to be exhaustive. Rather, they represent an accounting of constraints based on a Roadmap analysis of procedural efficiency with reference to international best practice, a review of government documents and available literature, and the meetings conducted. The report is a baseline for implementing administrative systems and procedures across government. Given the circumstances of Iraq this analysis should be repeated once all agencies are fully operational to determine progress and where gaps still remain with best practice.

The recommendations we put forward here are designed to be practical and readily implemented. While our recommendations are based on international best practice experience in administrative reform to ensure their sustainability, they should be seen as

proposals for implementing change that will need to be reviewed and revised to suit evolving local conditions and resource constraints as time passes. As demonstrated by TSG's experience implementing administrative changes in other countries, different approaches may emerge in a reform process that can achieve the same outcomes advocated in a Roadmap report.

### **1.3 Report Outline**

Corresponding with the Process Group Areas, this report is comprised of five chapters plus an Executive Summary. In the following report we present the four areas of the Roadmap. Chapter II, Employing, addresses the related laws and procedures, including acquiring visas and work permits and the hiring and firing of workers. Chapter III is devoted to Reporting related procedures, including company registration, intellectual property protection, and acquiring incentives. Locating procedures, including acquiring land, developing a site, obtaining utility services, and complying with environmental laws, comprise Chapter IV. Chapter V focuses on Operating procedures, including registering for and paying taxes, importing and exporting, and complying with currency controls. We have also collected a significant number of forms and other standard documents, which we will translate and include in a later phase of this work.



## Chapter Two: Employing



Abbasid Palace— Baghdad



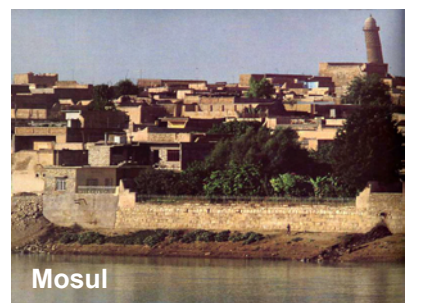
Parthian-style temple— Hatra



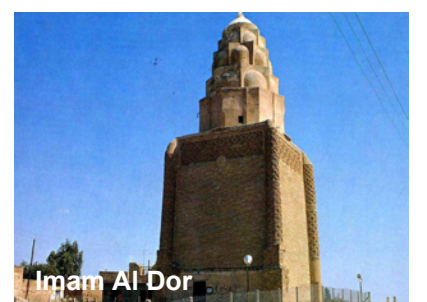
Mosul & city wall of Nineveh



Khan Mirjan— Baghdad



Mosul



Imam Al Dor

## **2.1 Introduction**

This chapter describes the major procedures investors face when employing staff in Iraq, including visa acquisition, work permit acquisition, and residency permits for expatriates. Moreover, the chapter outlines the country's labor law, as it relates to Iraqi and non-Iraqi employees in the country. At both the policy and administrative levels, labor matters figure prominently among the constraints on investors.

The following legislation governs employment processes in Iraq:

- Labor Law No. 71 of 1987
- Labor Disputes Articles
- Iraqi Nationality Law, No.26,2006
- MoFA Instructions No. 8/4/72046, June 29, 2004.
- RCC No 102, June 22, 1999
- CPA/ORD No. 17, June 27, 2004
- CPA/ORD No. 89 2004, Labor Code
- Foreign Residence Law No 118, 1978

## **2.2 Iraqi Labor Code**

### **A. Legal Regime**

Through Law No. 3 of 1987 the Iraqi Government ratified International Labor Convention No. 120/1964. This law and the international convention concerning hygiene in commercial premises and offices require all employers to provide the following safe workplace features:

- Proper maintenance and cleanliness
- Adequate ventilation
- Adequate lighting
- Temperature control
- Reasonable working space
- Safe drinking water
- Washstands and showers
- Sanitary conveniences
- Proper seats
- Clothing accommodation and changing rooms
- Standards for underground and similar premises
- Control of obnoxious, unhealthy or toxic substances, processes and techniques
- Noise and vibration standards
- Appropriate work method and pace
- First aid supplies
- Rest rooms

Iraqi law requires investors to meet certain in-house medical personnel requirements depending on company size. Enterprises with 50 or fewer employees must provide a full time nurse on site for medical emergencies. Firms with between 51 and 100 employees must provide a medical doctor on site for two hours daily. Firms with between 101 and 500 employees must employ a full time medical doctor to be on site during working hours. Iraqi law does not currently require companies to provide any other onsite resources.

## **B. Minimum Wage**

Each year the Ministry of Labor and Social Affairs (MoLSA) forms a committee of representatives from the Ministry Planning, Trade Unions, the Employers Union, and two experts in the field of labor economics to determine the minimum wage for unskilled workers. The Council of Ministers approves the committee's decision. As of September 2005, Iraq's minimum monthly wage for unskilled workers is ID 120 000 (approximately US\$82.00). In addition, according to Iraqi law all employers must provide some level of transport, accommodation, and food allowances for each employee; the law provides no minimum allowance amounts.

## **C. Collective Bargaining Agreements**

According to Iraqi law investors are not required to establish unions or to accept unionization in the workplace. However, if the employer does allow unionized labor Iraqi law provides for collective bargaining agreements. The competent union authority represents the labor side in contract negotiations with an employer and if there is no authorized union at a facility or project, the trade unions of the related profession(s) that work for the company may represent the workers. If there is no union for the project profession, the General Federation of Trade Unions represents the workers. If the Federation is representing workers, it does so with participation of three laborers from the company in question who are elected in accordance with the procedures designated by the Minister under whom their profession or trade is regulated, and on the basis of instructions issued by the Minister. The owner of a firm or employer, or his legal counsel or designated representative, represents management in negotiating collective labor agreements.

All collective contracts must be registered and published in the newspapers and the Official Gazette.

## **D. Dispute Resolution**

MoLSA is the agency that deals with labor disputes of first instance involving both local and expatriate workers. Likewise, it manages labor regulations and workers rights for both companies and workers. Either party to a dispute may file an appeal with the Minister. Either party may subsequently appeal ministerial decisions in court. Labor Law No. 71 of 1987, Part 8 "Settlement of Disputes" and Chapter 1 of the Labor Disputes Articles 130-136 detail procedures for settling disputes by the Minister of MoLSA jointly with the head of the General Trade Union Federation. If the parties fail to reach a solution within three days of notification both refer the dispute in a common letter to the Minister of Justice. The Minister of Justice will subsequently invoke the Chamber of Labor Cases in the Court of Cassation within 48 hours. The court will be in continuous session until reaching a decision in the dispute, which it will submit within 15 days. The Court of Cassation's judgment is final.

## **E. Work Hours and Leave**

Workers are entitled to eight public holidays per year at full salary. In addition, Labor Law No. 71 of 1987 as amended provides that after one year of continuous service a worker is entitled to 20 days annual vacation with full pay. For each additional five years of continuous service for the same employer, an employee gains 2 additional days of annual vacation leave. An employee who works overtime on normal working days receives payment of 150% of his normal wage for overtime hours. An employee who works overtime on national

holidays or days off must be compensated at 200% or with other days off during the week. The compensation is 200% of the regular wage for night, heavy or harmful work.

## 1. Juveniles and Women

According to CPA/ORD No. 89, 2004, Labor Code no one under the age of 15 may work in Iraq. However, in certain cases MoLSA may grant approval for male and female children who are 14 years of age to work. MoLSA must grant approval for all children between the ages of 14 and 18 to work in Iraq. They may not work more than seven hours per day, and they may not work at night

Young persons under 18 years of age may not perform work that is likely to harm their health, safety, or morals. MoLSA periodically revises the definitions by which it considers employment to be detrimental to children's' health, safety, and morals; the ministry does so in consultation with relevant employers and employees organizations. Currently children aged 14-18 may not work in the following conditions:

- Under water
- At dangerous heights or in confined spaces
- With dangerous machinery, equipment and tools
- Involving the manual handling or transport of heavy loads
- In an unhealthy environment risking exposure to hazardous substances, agents or processes, dangerous temperatures, excessive noise levels, or potentially damaging vibrations
- Under particularly difficult conditions, including long hours and night work
- Requiring unreasonable confinement to premises

Iraqi law forbids the following labor conditions for children:

- All forms of slavery or similar practices, including the sale of and trafficking in children, debt bondage and serfdom, forced or compulsory labor, including forced or compulsory recruitment for armed conflict
- The use, procuring or offering of a child for prostitution, for the production of pornography or in pornographic performances
- The use, procuring or offering of a child for illicit activities, particularly in drug production and trafficking as defined in the relevant international treaties
- Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children

The government prosecutes individuals and employers who violate the above conditions under the Iraqi Penal Code.

Iraq is party to ILO Conventions related to youth employment, including child labor abuse.<sup>1</sup> The Iraqi Government is implementing programs and policies to protect children from abusive employment conditions, including the following commitments:

- Prevent the engagement of children in the worst forms of child labor

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<sup>1</sup> ILO Conventions: No 7 of 1937 "Determining Juvenile's Employment Age", No. 32 of 1950 "Juvenal's Medical Examination", No. 71 of 1960 "Recruitment of Juveniles in Industrial Businesses" and No. 76 of 1960 "Employment of Young and Juveniles"



- Provide direct assistance to remove children from the worst forms of child labor and for provide for their rehabilitation and social integration
- Ensure access to free basic education and, wherever possible and appropriate, vocational training for children removed from abusive labor conditions
- Identify and provide programs for children at special risk
- Take account of the special situation of girls, who may be vulnerable to particular forms of abuse

All persons under the age of 18 must be found fit for work on the basis of a thorough medical examination. The medical examination shall be carried out by a certified physician approved by the competent authority, including the Ministry of Labor and Social Affairs, the Ministry of Health, or both. Through medical certification the ministries may insist on the following conditions:

- Restrict conditions of employment
- Specify a job, group of jobs, or occupations involving similar health risks and already approved by the competent authority
- Require medical supervision until the age of 18 years
- Require annual medical examinations at least once per year as a condition of continued employment. The medical examinations required shall not entail any expense for the young person, or his or her family.

An employer with underage employees (14 – 18 years of age) must post the government's child labor provisions in the work place. The employer must also maintain a register of underage employees, with their names, ages, and work assignments. The employer must file and keep available for inspection the medical fitness certificates of employees between the ages of 14 and 18.

The MoLSA 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.

## **2. Hours of Work and Annual Leave for Young Persons**

A person under 18 may not work for more than seven hours per day. He is entitled to one or more rest periods totaling at least one hour, to be scheduled so that no work period exceeds four consecutive hours. Young persons under 18 who are permitted to work shall receive 30 days paid annual leave.

Women may not work at night, except those employed in administrative work or in a medical, transport, entertainment or communications profession. Women employees are entitled to a maximum 72 days' maternity leave, 30 days prior to delivery and the rest post-delivery at full pay. Employers must provide comparable pay for comparable duties for women and men.

## **3. Liability in the Event of Unlawful Employment of Young People**

Employers found guilty of illegally employing young people may face the following sanctions:

- Be required to pay the young person the same wage that an adult receives for similar work type and similar quality
- Be required to compensate the employee for any workplace accident regardless of fault

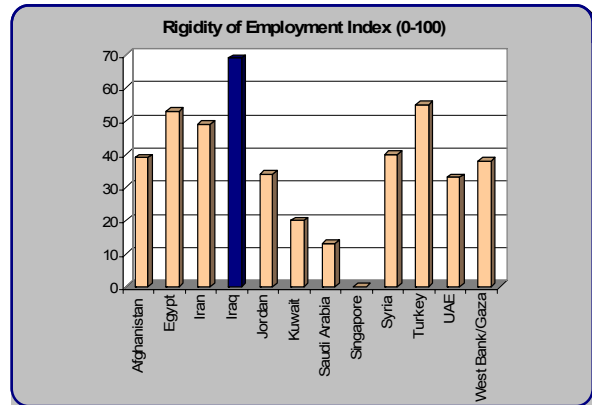


- Be required to immediately cease all illegal employment of young people

In addition, the law subjects violating employers to possible criminal or civil prosecution. The law applies to all young persons irrespective of the circumstances of their employment. However, the law does not apply to youths 15 years and older who are engaged in a family enterprise under the authority or supervision of a parent, spouse, or sibling.

The government may sentence child labor law violators to imprisonment ranging from ten days to three months. The government may also subject violators to fines ranging from twelve times the daily minimum wage to twelve times the monthly minimum wage.

Figure 2.1: Employment Rigidity

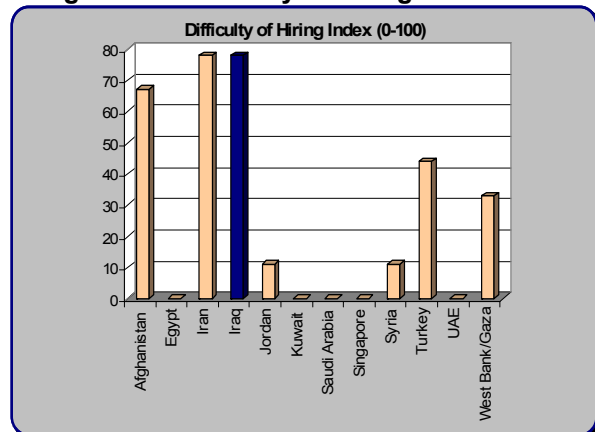


**F. Foreign Companies Employing Iraqi or Foreign Workers**

Once a foreign investor employs any individual in Iraq – Iraqi or foreigner -- he must inform the Employment Bureau. The investor must

also notify the bureau when every position ends, and when he has employment vacancies. At the same time, all Iraqis and foreigners who wish to work in Iraq must report to the Employment Bureau to complete a registration form that includes name, qualifications, and the type of work sought.<sup>2</sup>

Figure 2.2: Difficulty of Hiring

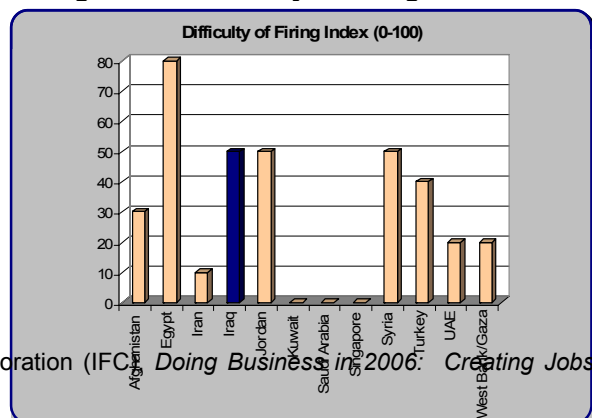


**2.3 Analysis**

**Issues**

**Rigid employment environment.** According to the World Bank’s Doing Business in 2006<sup>3</sup> findings, Iraq rates particularly poorly in terms of a flexible, business-friendly employment environment. The graphs below indicate Iraq’s labor flexibility scores relative to a number of other countries. Figure 2.1 illustrates the

Figure 2.3: Difficulty of Firing



country’s overall employment rigidity score. The employment index is an average of three sub-indices, including the difficulty of hiring index, the rigidity of hours index, and the difficulty of firing index. The World Bank measures rigidity of employment on a scale of 1-100, with 1 being the least rigid: Iraq scored nearly 70. By comparison, the World

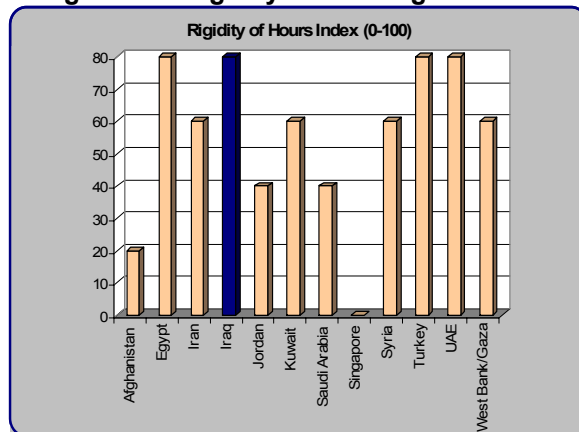
<sup>2</sup> RCC Resolution No. 1097 of 15/9/1985.

<sup>3</sup> The World Bank and the International Financial Corporation (IFC) *Doing Business in 2006: Creating Jobs*. Washington DC, 2005.

Bank study ranked New Zealand first for overall ease of doing business, and the country scored 7 on the rigidity of employment index. Figure 2.2 indicates that Iraq has a particularly inflexible hiring regime. The difficulty of hiring index measures three factors, including 1) whether term contracts can be used only for temporary tasks, 2) the maximum duration of term contracts, and 3) the ratio of the mandated minimum wage to the average value added per worker.

Figure 2.3 indicates the difficulty of firing in Iraq. The difficulty of firing index is based on the following components: 1) whether redundancy is not considered fair grounds for dismissal; 2) whether the employer needs to notify the labor union or the labor ministry to fire one redundant worker; 3) whether the employer needs to notify the labor union or the labor ministry for group dismissals; 4) whether the employer needs approval from the labor union or the labor ministry for firing one redundant worker; 5) whether the employer needs approval from the labor union or the labor ministry for group dismissals; 6) whether the law mandates training or replacement before dismissal; 7) whether priority rules apply for dismissals; and, 8) Whether priority rules apply for reemployment.

**Figure 2.4: Rigidity of Working Hours**



Iraq scored nearly 80 in the rigidity of hours index (Figure 2.4), higher than Afghanistan, Iran, and Syria. The World Bank judges rigidity of hours based on five components, including 1) whether night work is unrestricted;<sup>4</sup> 2) whether weekend work is allowed; 3) whether the workweek can consist of 5.5 days; 4) whether the workday can extend to 12 hours or more (including overtime); and, 5) whether the annual paid vacation days are 21 or fewer.

**Labor Law does not address the needs of a modern business environment.** Iraq's current labor law, passed in 1984 and amended in 1987, requires updating. Private sector critics suggest that the laws are vague in some regards and not compatible with a modern market economy. Critics find the following areas particularly vague:

- Inadequate benefits clauses
- Unclear conditions for foreign expatriate workers
- Unclear rules governing working hours

<sup>4</sup> For instance, women in Iraq may not work during the night unless they are employed in certain fields.

### Box 2.1: The World Trade Organization and Labor Standards

While joining the WTO requires that member states adopt certain rules and norms, labor standards are neither compulsory nor directly covered by any WTO rules. Within the WTO and beyond, the issue of labor standards has been contentious. Proponents of labor rights within the WTO have argued that worker rights should be addressed by the WTO, which is considered one of the more powerful international organizations. Some developing country members have argued against including labor issues among those addressed directly by the global trade body due to fears that developed countries would use the issue to protect domestic markets from imports made in lower wage countries, and others have suggested that better working conditions necessarily arise from, and should not precede, general economic growth.

Nonetheless, the WTO defers to the International Labor Organization (ILO) on such issues and the body affirmed a commitment to core labor standards at its first Ministerial meeting in Singapore in 1996, stating “We renew our commitment to the observance of internationally recognized core labor standards. The ILO is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them.” As such, the WTO supports the following core standards developed by the ILO:

- Freedom of association;
- Right to collective bargaining;
- Elimination of forced or compulsory labor;
- Abolition of child labor; and
- Elimination of discrimination in employment.

At the ILO’s International Labor Conference in Geneva in 1998, participants – which included not only countries but also trade unions and employer organizations – voted 273-0 to support a declaration supporting these core standards, with 43 abstentions. Kuwait and all other Gulf Cooperation Council countries abstained, as did Egypt, Guatemala, Indonesia, Iran, Jordan, Lebanon, Mauritania, Mexico, Myanmar, Pakistan, Peru, Singapore, Sudan, Syria, and Vietnam.

Source: WTO, ILO, and U.S. Information Service.

As box 2.1 suggests, to adapt to international standards, Iraq should consider some of the principles endorsed by the World Trade Organization (WTO) and International Labor Organization (ILO).

#### Employer requirements unclear.

While Iraqi law does not currently require employers to provide facilities such as cafeterias, nurseries, employee lounges, and transportation to and from work private sector representatives indicated that such requirements were made in the past and there is concern they might be required in the future. These facilities and additional allowances, such as transportation, could considerably raise the cost to employers of doing business in Iraq.

#### Recommendations

**Liberalize employment environment.** While international best practice recognizes the importance of protecting employees from unsafe working conditions and unfair treatment, governments must reach a balance between good labor policy for workers and a flexible employment environment for business. The Iraqi Government should reconsider unnecessarily restrictive existing employment policies.

**Update labor law.** While increasing flexibility in the employment environment, the government should also improve

other aspects of labor law cited as troublesome by the private sector. The government should establish clear working hour rules, and clarify conditions for expatriate workers, for instance. Private sector input will be valuable as the government considers revisions to the labor laws. Businesspeople have informed opinions about their own needs, and can contribute meaningfully to the discussion of future policies.

**Clarify employer requirements regarding work site facilities and transportation allowances.** While the government should encourage employers to provide facilities that increase employee comfort and boost morale, such as a cafeteria and an employee lounge, the government should not require such facilities. The government should ensure that employers provide a safe work environment for employees; however, it should clarify that additional facilities are not presently required nor will they be under new laws.

## 2.4 Obtaining a Visa

Iraq requires all foreigners entering the country to possess entry visas. In most cases visitors must obtain the relevant visa prior to entering the country. The Department of Immigration, under the Ministry of Interior, issues visas in accordance with the following legislation:

- Iraqi immigration Law No. 118 of 1978 (Foreign Residence Law)
- MoFA Instructions No. 8/4/72046 of June 29, 2004
- RCC<sup>5</sup> No. 102 of 22/6, 1999.
- CPA/ORD No. 17, June 27, 2004 (revised)

The Iraqi Immigration Department is not linked electronically to international security institutions such as Interpol; however, the department does cooperate with such international organizations. The Immigration Department completes a security check on all entry visa applicants prior to granting entry visa approval. The department also photographs successful applicants at their point of entry. Currently, Iraqi officials use an eye laser photograph for arrivals at the international airport; the government is building a database of these photographs. The department only operates this system at the Baghdad International Airport.

The Immigration Department maintains offices in Baghdad and in the provincial centers. Iraqi Embassies and Consulates issue entry visas in foreign countries. The government does not currently maintain a data on the number of entry visas issued.

### A. Visa Options

The Iraqi Government currently offers seven different types of entry visas to enter the country. According to law<sup>6</sup>, all entry visa applicants must have a sponsor in Iraq. The law defines sponsors as individuals with certain rights and status in Iraq: an employer in Iraq could sponsor a entry visa applicant, for instance. All entry visa applicants must have a passport that is valid for at least six months following application.<sup>7</sup>

The Iraqi Government currently offers the following types of entry visas:

- **Ordinary Visa.** Ordinary visa holders may enter Iraq once within three months of visa issuance. The visa permits the traveler to remain in Iraq for a period not exceeding three months after entry. Individuals who enter Iraq for employment do so on an Ordinary Visa and either obtain a preliminary work permit along with the Ordinary visa prior to entering Iraq, or obtain a work permit once in Iraq.

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<sup>5</sup> According to the "Law of Administration of Iraq during the Transitional Phase" all legislation, orders, and resolutions enacted during the previous regime remain in force unless specifically repealed via a new law.

<sup>6</sup> Foreign Residence Law No. 118, 1978; and MoFA Ministerial Instructions No. 8/4/72046 of June 29, 2004

<sup>7</sup> Law No. 118 of 1978 states that the applicant must have a "valid passport." MoFA instructions require a passport "valid for at least 6 months."

- **Tourist/Visit Visa.** Tourist/visit visa holders may enter Iraq once within three months of visa issuance. The tourist visa permits the traveler to remain in Iraq for a period of one month. The government will grant 15-day tourist visas for religious and pilgrimage purposes, including for visits to holy shrines. Typically the government will grant tourist visas within seven days of application.
- **Transit Visa.** Transit visas are intended for individuals, such as airline and ship's crew, who will not remain in Iraq for an extended period. The government issues transit visas on arrival at Iraqi seaports and airports. Transit visas are valid for a maximum seven days; however, immigration officials typically issue them for a 48 hour period. If a traveler is not an airline or ship's employee, he must provide proof of onward travel.
- **Non-stop Transit Visa.** The government issues non-stop transit visas to travelers who will cross Iraq without stopping in Iraqi territory.
- **Political Visa.** The Minister of Foreign Affairs issues political visas on a reciprocal basis with other countries. Iraqi embassy political sections, rather than consular sections, issue political visas to high level foreign dignitaries and diplomats.
- **Service Visa.** The government issues service visas to non-diplomatic individuals employed by foreign embassies in Iraq, including cooks and drivers. The government issues service visas on a reciprocal basis, in accordance with Ministry of Foreign Affairs instructions.
- **Emergency Visa.** Immigration officers at points of entry may grant emergency visas to foreigners who arrive without a valid visa. Officers grant emergency visas if satisfied with the traveler's reasons for not having obtained a visa prior to traveling.

Although Iraqi law does not mention business visas, the current MoFA instructions state that "Iraqi diplomatic missions and consulates may grant foreign businesspeople from all over the world an entry visa provided they have an invitation letter from an official Iraqi body or a letter from the foreign ministry of the applicant's country and similar letter from the chamber of commerce of his/her country confirming his or her status as a businessperson."<sup>8</sup> Under the law there is no specific business visa; however, government representatives sometimes use the term. In practice, individuals wishing to enter Iraq to explore business activity apply for an Ordinary Visa.

## **B. Application Requirements**

To obtain any type of entry visa, the applicant must submit an application form in Arabic or English and a passport valid for at least six months after the date of application. The Iraqi Embassy in Washington DC processes Ordinary Visas for business exploration purposes within in 3-5 business days. The embassy processes Tourist Visas within 10 days of application. The Iraqi Government indicates that it will issue an Ordinary Visa to prospective employees within 15-20 business days of initial application by the employer.

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<sup>8</sup> Iraqi legislation uses the word businessperson to refer to an existing or prospective investor. The roadmap report refers to such individuals as investors.

## 1. Ordinary Visa to Enter Iraq for Business Exploration

According to the Entry Visa Regulations from the MoFA/Consular Section published by the Iraqi Embassy in Washington DC “Iraqi missions in the following countries are authorized at the present to issue Entry Visas: HK of Jordan, Arab Syrian Republic, Lebanon, Egypt Arab Republic, Turkey, Islamic Republic of Iran, United Arab Emirates, Kingdom of Bahrain, and France.”

Individuals who wish to visit Iraq to explore business opportunities must complete the following steps:

**Step 1) Complete and submit application.** The investor must complete an Ordinary Visa application form, which is available on the website of the Iraqi Embassy in Washington DC. The application requests the following information:

- Full name and surname
- Religion
- Sex
- Original nationality
- Present nationality
- Country of birth
- Date of birth
- Present occupation
- Previous occupation
- Languages spoken or read
- Wife or husband’s name
- Wife or husband’s nationality
- Wife or husband’s occupation
- Wife or husband’s place and date of birth
- Place of wife or husband’s work
- Passport number
- Issuing country
- Date of issue
- Expiration date
- Persons accompanying applicant
- Profession
- Certificate
- Place of issuing certificate
- Date of issuing certificate
- Place of issuing visa
- Visa number
- Place proceeded from
- Date of issuing
- Place of entering
- Date of entering
- Purpose of entering Iraq
- Expected time of residence in Iraq
- Full address in Iraq
- Full address for place of work
- Address of residence in home country



- Name of contracting party in Iraq

The investor must submit the following documents with his application form:

- An official invitation from Iraqi authorities or an introduction from the applicant's Ministry of Foreign Affairs
- A letter from the investor's home country chamber of commerce
- A passport size photo

Upon application submission the investor pays a US\$40.00 processing fee.

**Step 2) Retrieve visa from embassy.** The investor returns to the embassy to retrieve his passport complete with Ordinary Visa stamp. The Iraqi Embassy in Washington DC indicates that it processes such visas for businesspeople within 3-5 business days.

## 2. Ordinary Visa to Enter Iraq to Work in the Private Sector

An investor who is already located in Iraq must complete the following steps to obtain an Ordinary Visa on behalf of his non-Iraqi employee who has not yet entered Iraq. While the employer commences the application process in Iraq, the prospective employee obtains a visa from the Iraqi Embassy in his/her home country.

**Step 1) Submit visa request letter.** The investor submits a letter to the Ministry of Labour and Social Affairs requesting permission for an employee to enter Iraq. The investor's application letter must include the following details:

- Information on the employee's qualifications, such as relevant training, licenses, and educational certificates
- Employee's name
- Employee's nationality
- Type of work employee will undertake
- Duration of employment
- Business owner's name

In addition the investor must submit a copy of his company's employment contract with the prospective employee.

MoLSA reviews the employment contract and checks with the Employment Bureau to determine whether or not there are qualified Iraqi citizens who could fill the position. MoLSA will also assess the project's overall foreign labor needs, which might include a site inspection of the investor's business. If MoLSA is satisfied that the foreigner uniquely fits the position description, the agency drafts a letter granting preliminary visa approval to the prospective employee. MoLSA addresses the letter to the Immigration Office, but issues it to the investor.

**Step 2) Submit MoLSA approval and supporting documents to Immigration Office.** The investor, on behalf of the prospective employee, submits the following documents to the Immigration Office in Iraq:

- MoLSA letter of approval
- Completed Ordinary Visa application form
- Two copies of the prospective employee's passport information page
- Three recent color passport photos of the prospective employee



- Name and full address of the employer
- A letter of support from the employer, which includes the prospective employee's name, address, intended date of entry into Iraq and, if applicable, intended departure dates; and an explanation of the employee's prospective position in the company.
- A letter certifying that the employer's company is registered with the Companies Registrar under the relevant Ministry or organization, such as the Ministry of Trade, the Chamber of Commerce, The Federation of Iraqi Industries, the Contractors Union, or the Ministry of Industry and Mineral's Department of Industrial Development.

At the time of application submission the investor pays an application fee of US\$0.70 to the Immigration Office.

The Immigration Office reviews the investor's application and either approves or rejects it. If the Immigration Office approves the application it directs the Iraqi Embassy in the prospective employee's country to issue an Ordinary Visa.

The prospective employee will visit the Iraqi Embassy to pick up his Ordinary Visa. At this time the prospective employee will pay a service fee of US\$40 to the embassy.<sup>9</sup> The prospective employee may now legally enter Iraq to work. Upon entry he will present his passport, complete with Ordinary Visa stamp, to Iraqi Immigration. Once the prospective employee arrives in Iraq he will apply for a work permit.

### **3. Ordinary Visa to Enter Iraq for Public Sector Work**

The process by which a prospective employee obtains an Ordinary Visa to enter Iraq for public sector employment differs from the process to enter for private sector employment. While in the latter the investor commences the process on behalf of his prospective employee, in the former the prospective employee himself completes the entire process.

**Step 1) Completes and submit Ordinary Visa application.** The prospective employee submits his application to the Iraqi Embassy in his home country. The application includes the following documents:

- A letter indicating work approval issued by the employing government department with an authorized signature
- A completed Ordinary Visa request form
- Two copies of the applicant's passport information page
- Three recent color passport size photos

The embassy forwards the visa application to the Immigration Office in Iraq. The Immigration Office reviews the application, approves it, and directs the relevant embassy to issue the prospective employee an Ordinary Visa.

**Step 2) Retrieve Ordinary Visa from relevant embassy.** The prospective employee visits the Iraqi Embassy to retrieve his visa.

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<sup>9</sup> While the prospective employee must visit the relevant embassy to obtain his visa, this does not represent a process step on the part of the investor. Therefore, it is not indicated as a separate step.

Applicants who seek an Ordinary Visa to enter Iraq for public sector work do not pay the application or service fees.<sup>10</sup>

#### **4. Reporting to Local Immigration upon Entering Iraq**

All foreigners who enter Iraq on any visa but a Non-stop Transit Visa must register with the local immigration office within 48 hours of entry. Foreigners must complete an “affidavit of entry” at the Immigration Office. If a foreigner is staying in a hotel, or the home of an Iraqi, the hotel or individual host is responsible for reporting the visitor’s presence to the local immigration office.

Visitors must provide detailed personal information in completing the Arab & Foreigners Arrivals Card. The form requests the following information:

- Number Exit Card
- Full Name
- Religion
- Birth Date
- Sex
- Birth Country
- Original Nationality
- Previous Nationality
- Present Occupation
- Previous Occupation
- Passport Number
- Issuing Country
- Date of Issue
- EXP Passport
- Certificate and Profession
- Place of Issuing Certificate
- Issuing Nationality
- Visa Number
- Date and Issuing Country
- Purpose of Entry into Iraq
- Expected Duration of Stay
- Full Address in Iraq
- Home Address
- Name of the Party, and whether it is Public, Mixed, or Private
- Wife or Husband Name
- Wife or Husband Nationality
- Wife or Husband Profession
- Place of Wife or Husband’s Work
- Wife or Husband Certificate
- Place of Issuing Certificate
- Date and Place of Entry
- Number of Previous Entries into Iraq
- Date of the Latest Entry into Iraq
- Place of Previous Residence in Iraq

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<sup>10</sup> According to RCC Resolution No. 102 of 22/6/1999

- Previous Occupation in Iraq
- Is the Residence in the Country Legal or Illegal?
- Was your Entering the Country Legal or Illegal?
- Name of Children, Age, Occupation, and Birth Date
- Work history, including date and country name
- Four references, their address, nationality, and telephone number

Visitors do not pay a fee for completing this mandatory registration. The Immigration Office does not issue the visitor with any certification once he has completed the registration process.

## 5. Visa Fees

Iraq's visa fees vary depending on the country of origin, according to reciprocity agreements. Many of Iraq's former reciprocity agreements are under review or inactive. MoFA exempts a number of categories of visitors from visa fees, including diplomats, those on official business, official delegations, political and religious figures, and officially invited sports figures.

Expatriates employed in the public or private sectors wishing to sponsor other family members, such as siblings and parents, pay Ordinary Visa fees. The Immigration Office charges negligible fees for applications and approvals. Iraqi Embassies and MoFA charge fees for visas. The established visa fees for citizens from countries without a reciprocal agreement are listed in Table 2.1 below.

**Table 2.1: Iraqi Visa Fees**

Visa Type	Immigration Office Fee (Approvals and Applications)	MoFA/Embassies (Visas)
Ordinary Visa <sup>(11)</sup>	ID 1,000 (US \$0.70) for visa entry request	\$40 <sup>(12)</sup>
Tourist/Visit Visa	ID 1,000 (US \$0.70)	\$30
Transit Visa	ID 1,000 (US \$0.68) for visa entry request	\$40
Non-stop Transit Visa	ID 10,000 (US \$6.80)	\$40
Political Visa	None. Issued by MoFA instructions on a reciprocal basis <sup>(13)</sup>	None
Service Visa	Granted to persons who carry service passports according to MoFA instructions and the consent of MoI <sup>(14)</sup>	None
Emergency Visa	\$80 <sup>(15)</sup>	Not issued by an Embassy
Multiple Entry Visa	None	\$100 <sup>(16)</sup>

A number of individuals are exempt from visa application and service fees including the following:<sup>17</sup>

<sup>11</sup> According to RCC Instruction No. 102 of 22/6/1999.

<sup>12</sup> Ministry of Foreign Affairs Instructions No. 72210 in 8/7/2004.

<sup>13</sup> Article (4), Para (4) of Law of Foreign Residence No. (118) of 1978.

<sup>14</sup> Article (4), Para (5) of Law of Foreign Residence No. (118) of 1978.

<sup>15</sup> According to RCC Instruction No. 102 of 22/6/1999.

<sup>16</sup> MoFA Instruction No. 72210 in 8/7/2004.

<sup>17</sup> According to Foreign Residence Law No. 118 of 1987, Article 23.

- Foreign students at schools and higher education institutions in Iraq
- Foreign staff recruited to work for the Iraqi government on special contracts
- Foreign journalists on a reciprocal basis
- Persons exempted by Ministerial decision

In addition Ministry of Foreign Affairs instructions No. 72210 of 8/7/2004 exempts the following persons from entry visa fees to Iraq:

- Nationals of coalition states and nationals of any state that has 500 or more soldiers in Iraq
- Persons who carry diplomatic or service passports
- Contractors involved in the rebuilding of Iraq as certified by the relevant national embassy
- Expatriates of Iraqi origin (only in the month of July)

As noted above, RCC resolution No. 102 of 22/6/1999 exempts individuals invited to work in the public sector from visa application or service fees.

### **C. Medical Clearance**

Iraqi law states that individuals entering the country must obtain a medical clearance from a designated Baghdad hospital within five days of entering the country. However, this law is enforced on a sporadic, inconsistent and ad hoc basis. According to RRC Resolution No. 204 of September 24, 2002 “every Iraqi, Arab, or foreigner entering Iraq should present himself to a designated AIDS center in Baghdad or another governorate to be examined and ascertained free of AIDS.” Foreigners entering Iraq are directed to report to the testing center nearest their residence in the country. The government exempts Iraqis and foreigners who present a health certificate from an official health institution outside Iraq indicating that the individual is free of AIDS and HIV. Individuals who enter Iraq with a valid HIV negative certificate present this document at the port of entry. The health institution must be verified as authentic by the Iraqi representative in the country of origin.

The government subjects individuals who come from areas that have been infected by cholera, yellow fever, pestilence, small pox, typhoid, and other diseases to certain additional medical requirements. Individuals who come from such countries must present proof of relevant vaccinations to immigration authorities at their port of entry. If the individual does not provide this proof he is subject to quarantine. Iraqi immigration officials record medical clearance in the individual’s passport upon entry.

Individuals who enter Iraq without a valid HIV negative medical certificate must undergo testing at an Iraqi medical institution. In Baghdad individuals report to the HIV Center and complete a blood test. Outside Baghdad individuals report to a certified medical center. The government immediately deports foreigners found to be infected with HIV.

Iraqis and foreigners who enter the country without a valid HIV negative certificate, and without proof of inoculations where relevant, must complete the following steps to comply with Iraq’s medical clearance requirement.

**Step 1) Visit HIV Center/medical center, submit required documents, pay fees, undergo medical tests.** The Iraqi or foreigner submits the following documents to the HIV Center or medical center.

- A copy of his passport information page, which includes his visa stamp if he is a foreigner
- Two passport size photos

The individual pays the HIV Center or the medical center a testing and results processing fee at the time of visit. Iraqis and Arab League country citizens pay ID 3,000 (US \$2.04). All others pay a fee of ID 25,000 (US \$17.00).

A week may elapse before lab test results are ready. During this time the foreigner is presumably free to move around the country.

**Step 2) Return to HIV Center/medical center for results.** After approximately a week the individual returns to the testing center to retrieve his HIV results. While authorities indicate that all foreigners caught without an appropriate medical certification may be fined 125 Euros (US \$150.00),<sup>18</sup> it is unclear who actually gives the certification to the individual and whether or not it is stamped into his passport. It is likewise unclear what penalty Iraqis without a medical certification face, since they must also undergo HIV testing upon entry into Iraq.

## 2.4 Analysis

### Issues

**Poor coordination between MoFA and Immigration Office.** Visa issuing procedures are ill-defined and unpredictable and there are several discrepancies between the procedure for issuing visas as practiced by the Immigration Office and as practiced by MoFA. In addition, while the Washington DC Iraqi Embassy issues guidelines and forms for visa application, its instructions do not list the US as a country in which the Iraqi Embassy may issue visas. According to *Entry Visa Regulations* from MoFa/consular section “Iraqi missions in the following countries are authorized at the present to issue Entry Visas: HK of Jordan, Arab Syrian Republic, Lebanon, Egypt Arab Republic, Turkey, Islamic Republic of Iran, United Arab Emirates, Kingdom of Bahrain, and France.” The degree of information sharing between the Immigration Office and MoFA is unclear.

**Discrepancies between law and procedure and among laws.** There are discrepancies between the law and bureaucratic practice. Moreover, various immigration process laws are in conflict. The Immigration Office describes a visa application process that differs from that outlined in the implementing regulations, which are Ministry of Foreign Affairs Resolution 72046 of June 29, 2004. For instance, Law 118, 1978 amended indicates that visas are valid for three months and does not make provision for renewal. However, the implementing regulations indicate that government issues one-month visas renewable for up to three months.

**Considerable confusion between visa procedures and work permit procedures.** It is unclear what tangible difference in outcome there is between two processes described by Iraqi officials: “Ordinary Visa to Enter Iraq to Work in the Private Sector” and “Work Permit Application Process for Expatriates outside Iraq.” In both processes the investor has offered the expatriate a position in Iraq; and in both cases the expatriate is not currently in Iraq. In the first process, however, the investor must initiate the process from Iraq on behalf of the expatriate employee. At the end of the process the expatriate employee obtains an Ordinary Visa to enter the country. The expatriate employee does not obtain a preliminary work

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<sup>18</sup> At the current conversion rate of US \$1.246 = EUR 1.

permit, though the investor is required to submit details on the work contract. Presumably the expatriate employee would therefore enter the country as a visitor on an Ordinary Visa and then the investor would have to complete steps as outlined under “Work Permit Application Process for Expatriates inside Iraq” to obtain a work permit for the employee.

On the other hand, under the process “Work Permit Application Process for Expatriates outside Iraq” the expatriate employee himself completes the steps; and, he ends up with both an Ordinary Visa to enter the country legally and a preliminary work permit that he finalizes once in country. This is a much shorter process, and seems more efficient from the investor’s point of view. However, there is insufficient clarity regarding what processes are actually required: For instance, should an expatriate employee enter Iraq without a preliminary work permit; does the embassy actually provide both an Ordinary Visa for entry and a preliminary work permit? This type of confusion increases the burden an investor faces in employing expatriates.

**Visa issuance times can vary.** The apparent unpredictability of the length of time necessary to obtain a visa frustrates business planning and can delay projects. Moreover, some visa processing times are lengthy. While officials might issue Ordinary Visas for business exploration in 3-5 days, prospective employees wait 15-20 days for an Ordinary Visa. Tourists receive their visas in approximately 10 days.

**Visa types do not facilitate inward travel to explore business.** Iraq’s existing visa options do not encourage business exploration travel. Presumably, anyone interested in exploring commercial activities in Iraq would have to apply for an Ordinary Visa; however, current legislation does not make this explicit. If the government requires businesspeople to obtain an Ordinary Visa, it must ease the process for securing multiple entries and renewals. Moreover, investors and other business people may well need to be in Iraq for longer than 30 days to investigate market opportunities, negotiate contracts, establish operations, or any of a number of other legitimate reasons. While the law and implementing regulations are inconsistent on visa length – as noted above -- the current regime requires visitors on an Ordinary Visa to leave the country after one month or to file an extension request in country. Both options use the investor’s valuable time unnecessarily. Iraq has a variety of bilateral visa agreements, which allow longer visa validity for certain nationalities, including Americans. This should be extended to other countries.

**Multiple visa types confusing.** Iraq currently offers seven different visa types, including an ordinary visa, a tourist/visit visa, a transit visa, a non-stop transit visa, a service visa, and an emergency visa. Multiple visa types could be confusing for both visitors and immigration officials. For instance, it is unclear why Iraq has two different types of transit visa; and the service visa is confusing. Fewer visa types might speed up processing.

**Restrictions for different nationalities are unpredictable and change often.** A company may find that a request to bring a customer or staff member to Iraq is denied based arbitrarily on national origin or on other grounds. This results in considerable unpredictability and frustration on the part of potential investors. The authorities do not appear to understand the poor image such policies convey to potential investors.

**Sponsorship requirements for business people are unnecessary.** According to international best practice, countries should accept un-sponsored visa requests for short-term stays, particularly for tourism and short term business travel. This is especially true in countries that promote tourism and inward investment. Increasingly, international best practice suggests that border police and entry officials simply ask the purpose of a visit and

request in-country contact information. Governments concerned about illegal immigration often establish additional requirements, such as proof of outward or onward travel, and develop risk based screening methods to assess visitors.

**Chamber registration requirement is unnecessary.** To obtain certain visas on behalf of a foreigner the sponsor might need to present a certificate from the Iraqi Chamber of Commerce or the appropriate local authority. This may be in addition to commercial or industrial licenses issued by the Ministry of Industry. While many countries require companies to register with a chamber, in some liberal economies chamber registration and membership is voluntary. It appears designed to stop individual entrepreneurs from engaging in business, which is not a good image for the country. If the government aims to prevent fraud, chamber registration is not the appropriate mechanism.

**Medical check is of questionable value.** This requirement is highly unusual and many will find it intrusive. Individuals who obtain an HIV negative certificate prior to travel face a costly procedure. Iraqi citizens are also required to enter with a current HIV-negative certification or submit to testing at the HIV Center, a particularly onerous and costly requirement for Iraqi businesspeople who might travel frequently to and from the country. Moreover, it is unclear what medical officials do with the information they obtain through testing and whether or not individuals receive some type of medical compliance stamp in their passports, or are required to carry a medical certification everywhere in country. Since it is unclear what proof the individual receives that he completes testing and how that information is relayed to relevant government authorities, the degree of compliance and even of government enforcement is questionable.

At present, information on medical status is not checked or requested at ports of entry or during entry procedures due to the generally weak regulatory enforcement. From time to time, however, health officials may be interested in screening visitors based on current outbreaks of contagious diseases. It is standard practice to require that visitors have a health reporting log issued by the World Health Organization (WHO) to indicate recent vaccinations and illnesses.

**Security screening of visitors is unsystematic.** Unlike in many other countries, the Iraqi Immigration Department is not linked electronically to international security institutions such as Interpol. Apparently immigration officers complete a security check on individuals whose picture is taken at the point of entry, but the efficacy of this check is unclear. Further, it is not clear how Iraqi security officials obtain information on the backgrounds of individuals who may be security or criminal threats.

**Submission requirements for visas are unnecessarily excessive.** International best practice suggests that government forms be designed to be comprehensive and clear, and to request only essential decision-making information. Designing forms this way reduces additional submission requirements and therefore eases the application process. In the case of Iraqi visa procedures, applicants are required to submit a request form and a separate letter with information about the sponsor. In addition, the application forms ask numerous questions that should have little relation to the entry visa approval, and are time consuming for the applicant and for processing. For instance, the following information requested on the Ordinary Visa application form is of questionable value, and some of the requests are unclear: religion; previous occupation; languages spoken or read; wife or husband's name, nationality, occupation, and place of work; certificate, place of certificate, date of certificate. It is unclear why the government needs to know a potential investor's religion, foreign language capacity, and educational background.



**Reporting to Immigration Office once in country is unnecessary.** Foreigners enter Iraq on a valid visa obtained prior to traveling; therefore, the additional “affidavit of entrance” requirement is unnecessary and burdensome. The process is especially troublesome because foreigners must visit the Immigration Office within 48 hours of arriving in country. Moreover, the form foreigners are currently asked to complete in this process is long and asks numerous unnecessary questions, including the foreigner’s religion, previous occupation, wife or husband’s name, etc. The form also asks for four references, which is excessive for the applicant and time consuming for immigration officials if they actually call all of them.

## Recommendations

**Eliminate discrepancies in visa process and options.** The Ministry of Foreign Affairs and the Immigration Department should convene a meeting with senior decision-makers to rationalize the procedures for issuing visas. The discrepancies in such things as fees and submission requirements must be eliminated. Once the procedures are harmonized, the MoFA and Immigration Department should provide current information on the visa procedures through commercial attachés and branch offices. As is the practice in most countries the Ministry of Foreign Affairs should maintain a web site in several languages, including Arabic and English, with current visa procedures, costs, and timeframes along with downloadable forms.

**Harmonize the legal regime governing visas.** As part of the government’s effort to harmonize Immigration Office and MoFA procedures, legal conflicts should also be eliminated. In particular, the government should rectify discrepancies between visa validity periods and amend relevant regulations and instructions.

**Clarify rules and procedures for visas to enter the country for work and preliminary work permits.** While the government overhauls the visa process as recommended above, it should also clarify procedures that appear to overlap with preliminary work permit processes. If it is possible for an expatriate employee to obtain an Ordinary Visa and a preliminary work permit from outside the country there is little reason for the investor to be involved in the visa process as per the steps outlined in “Ordinary Visa to Enter Iraq to Work in the Private Sector.”

### Box 2.3: European Union Visa Regime

The European Union’s Schengen Convention recognizes three types of alien visas:

*Travel visa* – “valid for one or more entries, provided that neither the length of the continuous visit nor the total length of the successive visits may exceed three months in any half-year as from the date of first entry;”\*

*Transit visa* – allows a traveler to pass through a Member State once, twice or more times in exceptional circumstances, in order to get to a third state so long as the transit lasts no longer than five days; and

*National visa* – issued by a member state to an expatriate for any reason for stays of more than three months.

\* European Parliament, *Free Movement of Persons in the European Union: Specific Issues*, pg. 16.

**Ensure visas are issued in a short timeframe consistently.** Good government service is characterized by quick and predictable approvals. In regard to visas, both the Ministry of Foreign Affairs and the Immigration Office should consider evaluating how much time is required for internal application processing and establish and announce processing timeframe goals. These agencies should also develop an internal tracking system to monitor

application status and record progress in meeting timeframe goals. International best practice suggests that if an applicant submits all required information, immigration officials should grant a visa within one week. This time delay includes an Interpol criminal database name search.

**Extend the validity period for visas for business travelers and allow for easy extensions and multiple entry visas.** By extending the standard visa period and allowing for easy extensions and multiple entry visas the government can ease and business travel and reduce business costs. Investors waste time and money leaving the country to file for an extension. Many countries allow business visitors to remain in country more than three months. Moreover, best practice recommends that governments allow business visitors to easily renew or extend visas in country, and/or to purchase multiple entry visas at the time of application. Business visitors are likely to visit Iraq more than once to explore investment opportunities; therefore, the government should reduce visa red tape by allowing unlimited entries for the duration of visa validity.

**Rationalize visa types.** Many countries issue visas for five purposes only, usually for business, study, transit, diplomats, and non-work related travel. The broad category of non-work related travel visas often includes visiting family members, tourism, and seeking medical treatment. Iraq should condense and simplify its existing seven visa categories. The government should, for instance, merge the two transit categories into one. Moreover, the government should consider abolishing the service visa. Immigration authorities could also eliminate the emergency visa in favor of establishing a process to care for and register refugees as needed. Box 2.3 illustrates the European Union's simple visa regime, which has a mere three categories.

**Standardize restrictions.** Very few countries still maintain restrictive or discriminatory entry policies by nationality. Modern screening methods, including linking with Interpol to obtain an international police check on individuals, can reduce potential security or economic risks. The Ministry of Interior, in coordination with the Ministry of Foreign Affairs, should develop more screening and intelligence capabilities to ease the entry of legitimate foreign visitors while enhancing government's ability to protect national security.

**Eliminate sponsorship requirement for investors.** While it may be appropriate for an employer to sponsor a prospective expatriate worker, it is not clear why legitimate business visitors or tourists require sponsorship merely to enter Iraq. Assuming that appropriate security and immigration controls are in place, such practices can only dissuade investors from considering Iraq and discourage otherwise potentially lucrative tourist traffic.

**Eliminate Chamber registration requirement for sponsors.** If the sponsorship requirement is maintained, the government should cease requiring sponsors to register with a local Chamber of Commerce. It is not clear what extra surety this requirement provides; it is likely that criminals could easily establish an illegitimate business and register with a Chamber. As it is, this represents another step in an already convoluted process.

**Eliminate health inspection at Iraqi hospitals.** While the Iraqi state needs to ensure that public health is protected, requiring that visitors physically undergo a health inspection in local hospitals is excessive. A more sensitive health inspection system should be put in place. The elements of this inspection system might include establishing a formal relationship with the WHO to identify countries with current contagious outbreaks that may require special measures, identifying what vaccinations are required for entrance into the country, and requiring that entrants have an updated travel medical log.

**Improve security screening for visitors.** Given Iraq’s unique security situation, the government should prioritize improving its border control capacity. Part of this effort should involve establishing efficient border security mechanisms for travelers. While security scrutiny should not deter tourism and other travel to Iraq, it must be effective. The government should immediately link Iraq’s security clearance with international security agencies. Immigration officials should institutionalize an Interpol database search as the first internal step in the visa granting process.

**Redesign visa application.** The government should redesign visa application forms to request only necessary information. Currently the Ordinary Visa form requests standard information including name, nationality, profession, purpose or visit, passport number, etc. However the form also requests considerable superfluous information, including the applicant’s religion; previous occupation; spouse name; spouse nationality; spouse occupation; spouse work address; and spouse birth place/date. It is not clear why the government requires detailed spouse information. It is also unclear why the government requires the applicant’s religion and previous occupation. Moreover, a lengthy application form often increases completion time on the part of the investor and processing time on the part of the government.

**Eliminate “Affidavit of Entrance” at Immigration Office requirement.** The government should cease requiring foreigners who have entered the country on a valid visa to visit the Immigration Office within 48 hours of arrival. Immigration authorities can request necessary information from visitors at their point of entry, via an immigration card, as many countries currently do. Immigration authorities should shorten the form, and request only necessary information, which does not include religion, visitor’s spouse name, and former occupation.

## **2.5 Acquiring a Work Permit**

The following legislation governs work permits for expatriate employees:

- Foreign Workers in Iraq Law
- Ministerial Resolution (implementing regulations) No. 18, 1987
- RCC resolution 806 of 1989
- Foreign Residence Law No. 118, 1978

The Ministry of Labor and Social Affairs approves or rejects expatriate work permit applications. The ministry grants work permits for a maximum of six years; however, the employer must renew the employee’s permit at the end of each year for the following year. The government may cancel a foreigner’s work permit if he leaves the country for more than two months in a year without reasonable excuse. Exceptions include study, medical treatment, or work related reasons.

Investors may hire expatriates who are located inside Iraq or overseas. The procedures for gaining a work permit for those who are already in Iraq differ from the procedures for expatriates not in Iraq. If the investor wishes to employ expatriates already located in Iraq he must complete the work permit application process on behalf of the employee. These process steps are detailed below in the section “Work Permit Application Process for Expatriates inside Iraq.”

If the investor wishes to employ an individual who is located outside Iraq, he provides the prospective employee with an employment contract, but the employee must complete the

application process by himself. For prospective employees located outside of Iraq the work permit application process occurs in tandem with the process for obtaining an Ordinary Visa to enter the country. It appears, in fact, that the Embassy grants an Ordinary Visa that includes a preliminary work permit when the individual applies for a work permit from outside Iraq. The process is detailed below under the section “Work Permit Application Process for Expatriate outside Iraq.”

### **A. Work Permit Application Process for Expatriates inside Iraq**

If an expatriate is already in Iraq and seeks employment, his prospective employer – the investor -- must complete the following work permit application procedures on his behalf. In the process of gaining a work permit for a prospective employee the investor must obtain an expatriate quota from MoLSA.

**Step 1) Complete application for an expatriate employee quota, submit to MoLSA.** The investor must obtain an expatriate employee quota from MoLSA as the first step in obtaining a work permit on behalf of an expatriate employee. The investor submits the following documents to MoLSA:

- A copy of the investor’s company registration certificate
- A copy of the lease contract or proof of property ownership

MoLSA subsequently inspects the investor’s business site to assess the project’s employment needs. The ministry bases the investor’s expatriate quota on an assessment of the project’s need for foreign labor, and also the economy’s overall need for non-Iraqi labor. According to Iraqi citizens the assessment criteria for an expatriate quota is a hold over from the previous regime’s central planning focus. Expatriate approval criteria and an investor’s expatriate quota determination remain ill defined in 2005.

MoLSA completes the quota process within 7-10 days of investor application. Once the ministry gives the investor a specific expatriate employee quota the investor may apply for work permits on behalf of prospective non-Iraqi employees.

**Step 2) Complete work permit application on behalf of a prospective employee, submit to MoLSA, pay processing fee.** The investor submits an application that includes the following information:

- Information on employee’s educational and technical qualifications, including copies of university degrees, training certificates, licenses, etc.
- Employee’s name
- Employee’s nationality
- Type of work the employee will do in Iraq
- Work contract duration
- Prospective employee’s passport information page, including a valid entry visa
- Employer’s name and address
- A copy of the employer’s Chamber of Commerce or Federation of Iraqi Industries registration

At the time of application the investor pays MoLSA a US\$1.00 processing fee. MoLSA issues the investor a receipt immediately.

MoLSA's Directorate of Labor and Vocational Training subsequently reviews the application. The directorate consults Iraq's Employment Bureau to determine the country's employment needs and to ascertain whether or not a qualified Iraqi exists to fill the position for which the prospective employee has requested a work permit. MoLSA also considers the investor's expatriate quota. In some cases MoLSA may ask other ministries and/or agencies to validate a prospective employee's credentials. For instance, the Ministry of Health may review health care professional certifications; the Ministry of Education may review teacher certifications, etc.

If no qualified Iraqi exists to fill the position MoLSA approves the work permit, and informs the Immigration Office to grant an entry visa.

**Step 3) Retrieve work permit from the Immigration Office on the employee's behalf.** The investor checks periodically with the Immigration Office, and once the work permit is ready the investor may retrieve it on his employee's behalf.

MoLSA officials indicate that there is no average processing time. Investors indicated a time processing delay of 10-15 days for Immigration Office issuance of work permit for applicants within Iraq.

## **B. Work Permit Application Process for Expatriates outside Iraq**

All process steps are completed by the prospective expatriate employee, first from outside the country to gain entry, and then once he enters Iraq. In this process the prospective employee first gains a preliminary work permit and upon entry to Iraq he finalizes the work permit process. When a prospective employee applies for a work permit from outside Iraq the Immigration Office processes an Ordinary Visa on his behalf to enter the country.

**Step 1) Submit a work permit application to the Iraqi Embassy in home country.** The employee submits an application that includes the following information:

- Information on prospective employee's educational and technical qualifications, including copies of university degrees, training certificates, licenses, etc.
- Employee's name
- Employee's nationality
- Type of work the employee will do in Iraq
- Work contract duration
- Employer's name and address
- Passport information page

The embassy forwards the prospective employee's application to MoLSA in Iraq.

MoLSA's Directorate of Labor and Vocational Training subsequently reviews the application. MoLSA verifies the employer's expatriate quota. The ministry also consults Iraq's Employment Bureau to determine the country's employment needs and to ascertain whether or not a qualified Iraqi exists to fill the position for which the prospective employee has requested a work permit.

If no such Iraqi exists MoLSA approves the work permit, and informs the Immigration Office to grant an entry visa. The Immigration Office also processes an Ordinary Visa for the prospective employee, which includes completing a security clearance via the Intelligence

Services. The Immigration Office subsequently instructs the relevant embassy or consulate to grant the employee a preliminary work permit concurrently with an Ordinary Visa.

**Step 2) Enter Iraq and finalize work permit with MoLSA’s Directorate of Labor and Vocational Training.** Once the prospective employee enters Iraq on a preliminary work permit and Ordinary Visa he must visit MoLSA within seven business days to convert his preliminary work permit into a work permit.

- a) **Purchase application form.** Once in country the employee must visit MoLSA to purchase an application form for converting his preliminary work permit into a work permit. The form costs ID 500.
- b) **Complete and submit application.** The employee completes the application form and submits it to MoLSA. He attaches the following documents to his application:
  - Passport copy
  - Passport sized photo

In addition, the employee must submit a personal guarantee letter. In the letter the employee must assure MoLSA that he will return the work permit to his employer when he leaves the post. He also must guarantee to MoLSA that he will train a sufficient number of Iraqi workers to do the work he has come to Iraq to undertake.

- c) **Retrieve work permit.** The employee returns to MoLSA to retrieve his work permit with in one week of application.

### C. Work Permit Validity

An employee’s contract includes requirements for changing employers. If an expatriate wishes to end a work contract he must give 30 day’s notice. According to Article 36 of Labor Law No. 71 of 1987, if an employee does not give 30 days notice prior to leaving his position he must compensate the employer: For instance, if the employee gives 15 days notice he must compensate the employer for the other 15 days. If the employer and the employee reach a compromise settlement for the employee to change employers the expatriate has the right to obtain a new work permit.

#### Box 2.4: Labor Mobility in the European Union

One of the central elements of the European Union’s success as an economic entity is the free movement of labor. Proponents of creating a common market noted early in their planning that one of the strengths of the U.S. economy was equilibrium in the labor market. As certain regions and industries went through cycles of growth and decline, workers moved freely to where firms were hiring thereby satisfying the human resource requirements of the national economy. As enshrined in the Treaty of Amsterdam, 1998, individual workers have “the right, subject to limitations justified on grounds of public policy, public security or public health, to:

- Accept firm offers of employment;
- Move freely within the territory of Member States for that purpose;
- Stay in a Member State in order to be employed there under the same conditions as nationals of that State; and
- Remain there after such employment.”\*

This labor regime not only seeks to address labor market needs at the national and regional level but also among individual firms. By securing the right of workers to accept offers of employment unencumbered by such restrictions as sponsorship, the Treaty of Amsterdam allows for individual firms to hire individual workers at a negotiated wage without administrative or other restrictions that create a distortion labor market.

\* European Parliament, *Free Movement of Persons in the European Union: Specific Issues*, pg. 31-32.



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## 2.6 Analysis

### Issues

**Sponsorship system limits labor mobility and creates opportunities for abuse.** If an expatriate's contract expires or he changes employers, he must obtain a release from the original employer. If the sponsor refuses to issue a release, the expatriate must leave Iraq and apply for a visa and a new work permit, including completing medical tests once again. It is not clear, however, that such inflexibility exists in the labor law. This imposes unnecessary costs and delays in hiring workers and slows investment. In best practice market economies, governments balance the supply and demand for labor by direct and free negotiations between employers and employees. If an investor can freely hire foreign workers already located in an economy he reduces his administrative burdens and hidden personnel costs. Box 2.4 discusses the experience of labor mobility in the European Union.

**Difficulties regarding rules about expatriate women employees.** There is some confusion as to whether or not expatriate women, 21 years and older, may enter Iraq for work. The law prohibits discrimination that would prevent women over 18 from working in Iraq, but some investors have experienced difficulties obtaining permits for women under 30. Although there are no such provisions in the law as such, in reality some instances of gender discrimination have been reported.

**Use of expatriate employment quotas is crude and the criteria to determine the quota number are unclear.** The government does not appear to have any written guidelines for determining a company's expatriate quota. Anecdotally, it appears that factors such as the size of the workplace and the number of workstations or machines are considered. The ratio of expatriate to Iraqi workers needed in a pharmaceutical company is likely to be very different than from a construction company, so applying a simple quota does not allow for sufficient sensitivity to investors. It should be noted that the majority of foreign companies would rationally prefer to hire Iraqis in Iraq if they are qualified, thereby saving considerable costs associated with hiring expatriates. Especially in Iraq, the wages paid to foreign workers is increased by security-related income supplements. In addition, expatriates working in a foreign country often incur costs that indigenous employees would not for such things as housing, a bonus for moving abroad, and travel home. Therefore, companies have a large financial incentive to hire local workers over foreign ones if they can find appropriately skilled and experienced individuals in the local labor market. The lack of clear and sensible criteria not only frustrates investor personnel planning, it also creates opportunities for corruption.

**Expatriate Work Permit revocation rules are unclear.** MoLSA may revoke work permits if the ministry deems that a worker is competing with Iraqi nationals with the same qualifications, or for bad conduct. Article 9 allows for work permit revocation in the following cases:

- If the information on the application has been proved to be false or incorrect;
- If the presence of the foreign worker becomes detrimental to the public interest, as determined by the Intelligence Services
- If the employer terminates the contract of an Iraqi employee and replaces him with a foreigner with the same qualifications and work experience.

Without clear criteria for these stipulations, the threat of work permit cancellation creates considerable uncertainty for employers and foreign workers.



**Excessive procedures to finalize work permit.** If an employee commences the application process from outside Iraq the government issues him a preliminary work permit and an Ordinary Visa to enter the country. Once in country the employee has seven business days to convert his preliminary work permit into a work permit. The additional process steps and costs seem unnecessary and largely redundant. Since the government does not require employees who apply for a work permit from within Iraq to complete the additional application process it is unclear what purpose work permit finalization serves. There seems to be significant incongruity between the two processes, which should be fairly similar since they both result in a work permit for an expatriate employee.

**Letter of guarantee for work permit finalization excessive.** In the process noted above, whereby the employee applying from outside Iraq must finalize his work permit in country, the application includes a letter of guarantee. In the letter the employee must guarantee that he will return the work permit to his employer when he leaves – presumably when his contract terminates, he quits, or he is dismissed. Moreover, the employee must guarantee that during his stay in Iraq he will train a specified number of Iraqis to do the type of work he has come to Iraq to complete. The process is biased since only employees who apply for a work permit from outside Iraq must provide a letter of guarantee. The first part of the guarantee letter indicates that the work permit actually belongs to the employer and not the employee. The second part is more troublesome: It is unclear who specifies the number of Iraqis to be trained, how they will be trained, and how the government enforces compliance. The letter of guarantee is an onerous requirement that the government should consider terminating.

## **Recommendations**

**Allow for the direct sponsoring of workers.** In many countries, companies are allowed to sponsor their own workers and work permits are linked to a specific job. Many countries also offer expatriates the chance to obtain some form of residency after working in a country for a period of years. This allows individuals to remain in a country while planning new investments without having to be employed by someone else. Erecting rules that interfere with hiring needed workers, including expatriates, creates inefficiencies in the labor market.

Liberalized labor markets are usually efficient labor markets. While sponsors of expatriate workers in Iraq incur some unique costs, including travel, labor contracts in most modern economies do not empower employers to limit the mobility of workers or their right to take on new employment, assuming that no contractual obligations have been violated. Foreign workers should not need permission from their employer to end the employment. If the foreign worker is offered another job, he or she should be able to apply for a new work permit without having to leave the country.

**Clarify and properly enforce rules about expatriate women employees.** From a purely economic point of view, it is not clear why expatriate women 18 years and older would be denied employment in Iraq. The government should consider clarifying rules and legislation regarding female employment and issuing appropriate instructions to MoLSA, the Immigration Office, other agencies, and the private sector.

**Consider eliminating the application of expatriate employment quotas.** While it is understandable and fair that the Iraqi Government's employment policy focus on increasing employment for Iraqi citizens, enforcing a quota for expatriate workers is not the best mechanism. Rather than using quotas, the government might consider requests for work permits individually with the knowledge that personnel policy is an important part of

investment decisions. To review work permit requests, the government needs to have an accurate sense of what skills do and do not exist in Iraq and what types of Iraqi workers are available at the level of international standards.

**Clarify expatriate Work Permit revocation rules.** The current regime governing Work Permits affords considerable uncertainty and seems open to abuse. In more liberalized countries, work permits are generally not revoked unless the individual has been convicted of a crime. If there are other legitimate reasons why the Iraqi government would want to expel foreign workers, these criteria should be clearly articulated. In addition, it is recommended that an appeals process be established to protect foreign workers from frivolous charges that they are somehow undermining national interest. Without clear criteria for these stipulations, the threat of work permit cancellation creates considerable uncertainty for employers and foreign workers. More precise definitions of standards of conduct, and clear information about the rules governing appeals would assist investors in managing their labor affairs more effectively.

**Reevaluate the work permit finalization process.** The government should reevaluate the rationale for the existing work permit finalization process, in particular accessing why the procedures for applying from outside Iraq and within Iraq differ considerably. As well confusion between work permit and residency visa requirements should be eliminated. If there is no clear reason for the process it should be terminated, or the process should be simplified. As is the process creates another set of steps and documentation submission. Moreover, an additional approval process increases uncertainty on the part of the employee, after he has already spent considerable time and money traveling to Iraq for a particular employment position.

**Terminate guarantee letter.** If the government seeks to improve Iraqi skill levels, insisting that a work permit holder train Iraqis is not the most appropriate mechanism. In most cases training and professional advancement of citizens would fall to employers and the government. It is highly unusual that an expatriate employee be required to train citizens in exchange for a work permit. The government should abolish this practice and consider wholly terminating the guarantee letter.

## **2.7 Residency Permit**

### **A. Individual Residency Permit**

Once an expatriate has accepted an offer of employment, passed the health and security checks, and received a work permit, the government converts his entry visa into a residency permit. The term of the residency permit corresponds to the period of the work permit. According to Iraqi law, an expatriate with a valid work permit must convert his work permit into a residency permit within 15 days of arriving in Iraq or within 15 days of receiving his work permit if he is already in Iraq.

According to immigration officials, the residency permit process is a fairly routine process for several categories of individuals, including the following:

- Those with a MoLSA work permit
- Those employed by the government
- Minors joining a parent or legal guardian.

In all other cases the applicant must complete medical clearances through a Ministry of Health medical center prior to obtaining a residency permit. The employee and/or investor must complete the following steps to obtain an individual residency permit.

**Step 1) Investor completes and submits application form.** The investor completes an application form and submits it to the Immigration Office. The investor must attach the following documents to his application form:

- 3 color passport size photos
- Valid passport
- Passport copy
- Letter from the municipality council where investor lives, attesting that he lives there

**Step 2) Retrieve residency permit.** The investor returns to the Immigration Office within 3-4 days to retrieve his residency permit.

## **B. Family Residency Permit**

An expatriate worker with a valid residency permit who wishes to bring his or her family into Iraq can apply for their entry visas at Iraq's Immigration Office or through the Iraqi embassy in the family's resident country. The government issues Ordinary and Tourist Visas for one to three months. Such visas are valid for three months from date of issue. Applicants may renew these visas for up to a year. Renewal requires departure from Iraq and reentry.

An expatriate with a valid Work Permit and Residency Permit may apply for a Family Residency Permit once his family is in Iraq. Proof of the family relationship such as marriage and birth certificate is required.

A resident foreigner, either the individual with the work permit or one of his dependents, may renew his residency permit if he has a legitimate professional or personal reason to remain in Iraq. Legitimate professional reasons include continued employment. Legitimate personal reasons include being a dependent of a work permit holder, study or health reasons.

An expatriate residency permit holder must complete the following steps to obtain a family residency permit.

**Step 1) Complete application and submit to the Immigration Office.** The expatriate residency permit holder completes a family residency permit application on behalf of his dependents and submits it to the Immigration Office. The application includes the following information:

- Current residency holder's passport
- Passports of all dependents for whom applicant is requesting a family residency permit
- Valid work permit
- Copy of applicant's employment contract, signed by employer

The Immigration Office processes the application and either approves or rejects it.

**Step 2) Applicant retrieves Residency Permit from the Immigration Office.** The applicant retrieves his family residency permit within 3-4 days.

## C. Nationality Requirements

Citizenship applicants must meet certain criteria and have the recommendation of the Ministry of Interior. A non-Iraqi may obtain nationality by fulfilling the following conditions, as articulated in Article 6 of the proposed Iraqi Nationality Law, No. 26 of 2006<sup>19</sup>:

- S3Has lived legally in Iraq for ten successive years prior to application;
- Has a legal way to make a living in Iraq;
- Is free of contagious diseases and mental disabilities;
- Must be 18 years of age or older; and
- Must be of good conduct and reputation, having never been convicted of a felony or activities that demean honor, as determined by the Intelligence Services

The government may confer Iraqi citizenship on non-Iraqis married to Iraqi women provided the applicant meets the above mentioned criteria and has lived in the country for a minimum of three years.<sup>20</sup> Children born to foreigners living in Iraq may also obtain Iraqi citizenship if they apply within two years of their eighteenth birthday.

## 2.8 Analysis

### Issues

**Medical examination can be time-consuming.** The medical examination process takes between seven and fourteen days. As noted previously, this medical examination is intrusive by international standards: most investors will prefer to be examined by their own doctors if necessary. Moreover, it is unclear why an individual who has already undergone a medical checkup for HIV prior to entering the country or upon entering the country must undergo another checkup to obtain a residency permit.

### Recommendations

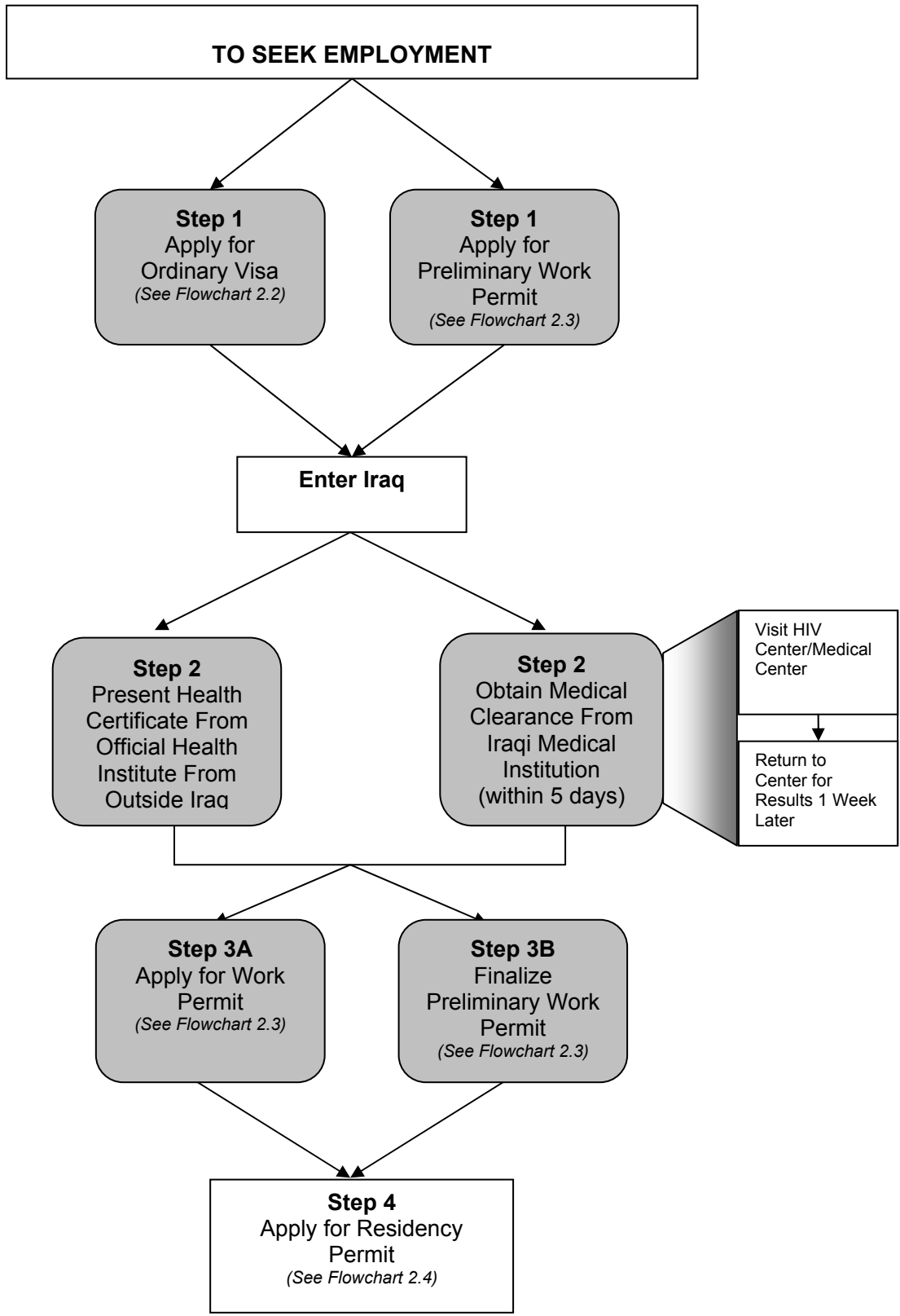
**Eliminate in-country medical examinations.** If the government requires a medical check for residency permit it should consider allowing this check up to take place in the applicant's home country. Since the government currently allows visitors to complete an HIV test prior to entering Iraq, it seems plausible that additional medical tests could be done overseas as well.

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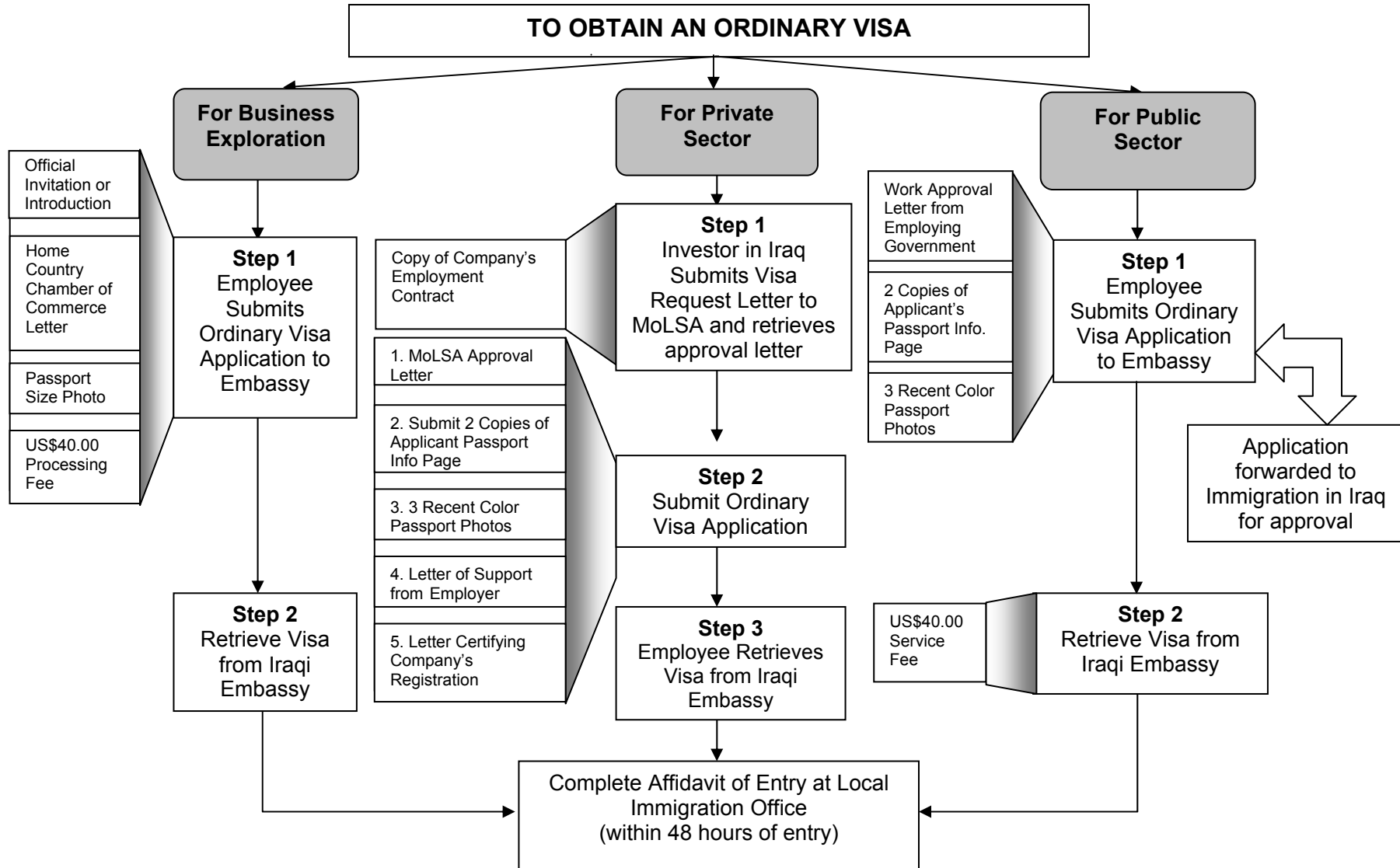
<sup>19</sup> The Iraqi National Assembly recently approved the Nationality Law.

<sup>20</sup> Iraqi Nationality Law, no.26/2006, Article 7.

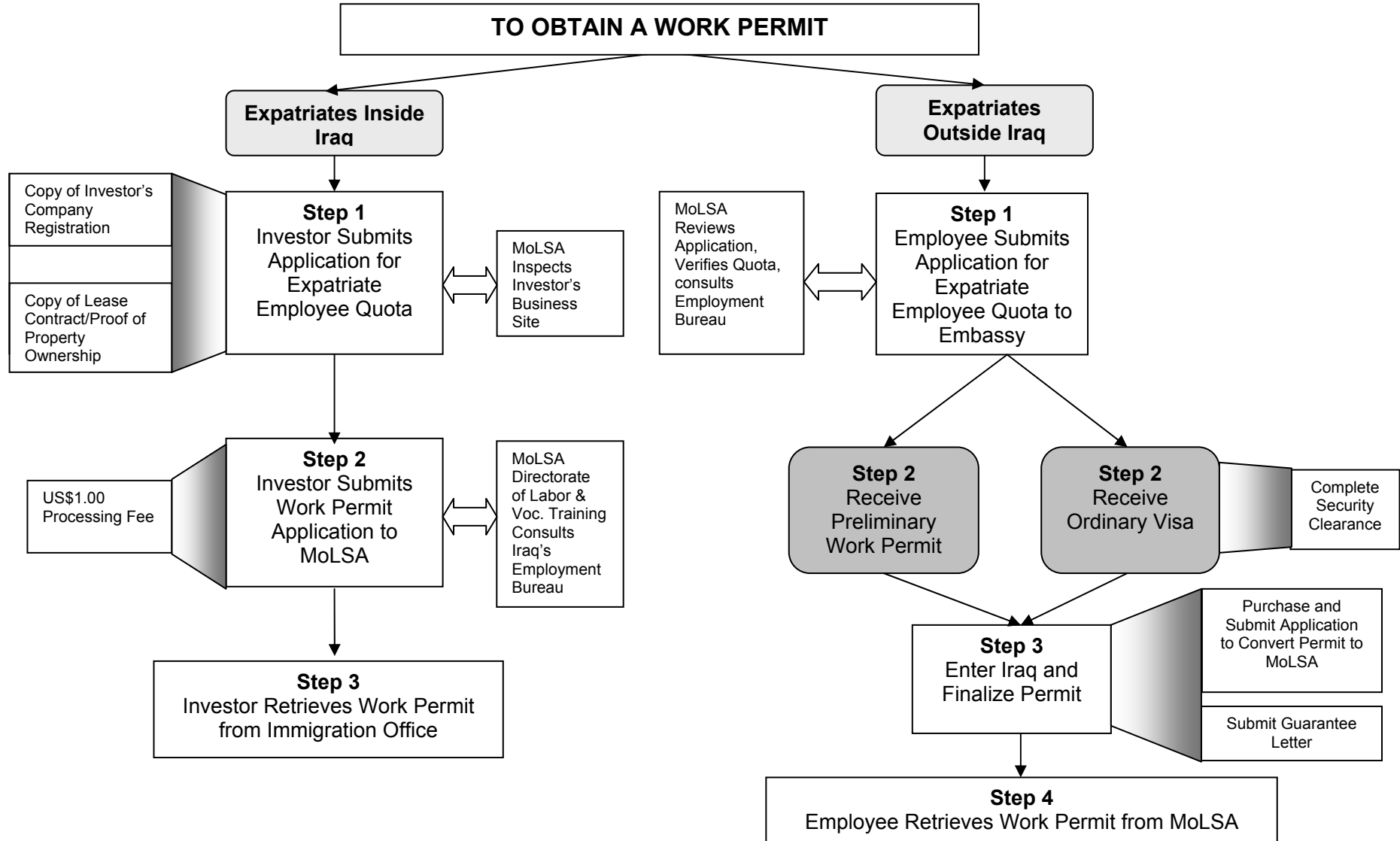
**Flowchart 2.1: Employment Procedures**



**Flowchart 2.2: Procedures for Obtaining an Ordinary Visa**

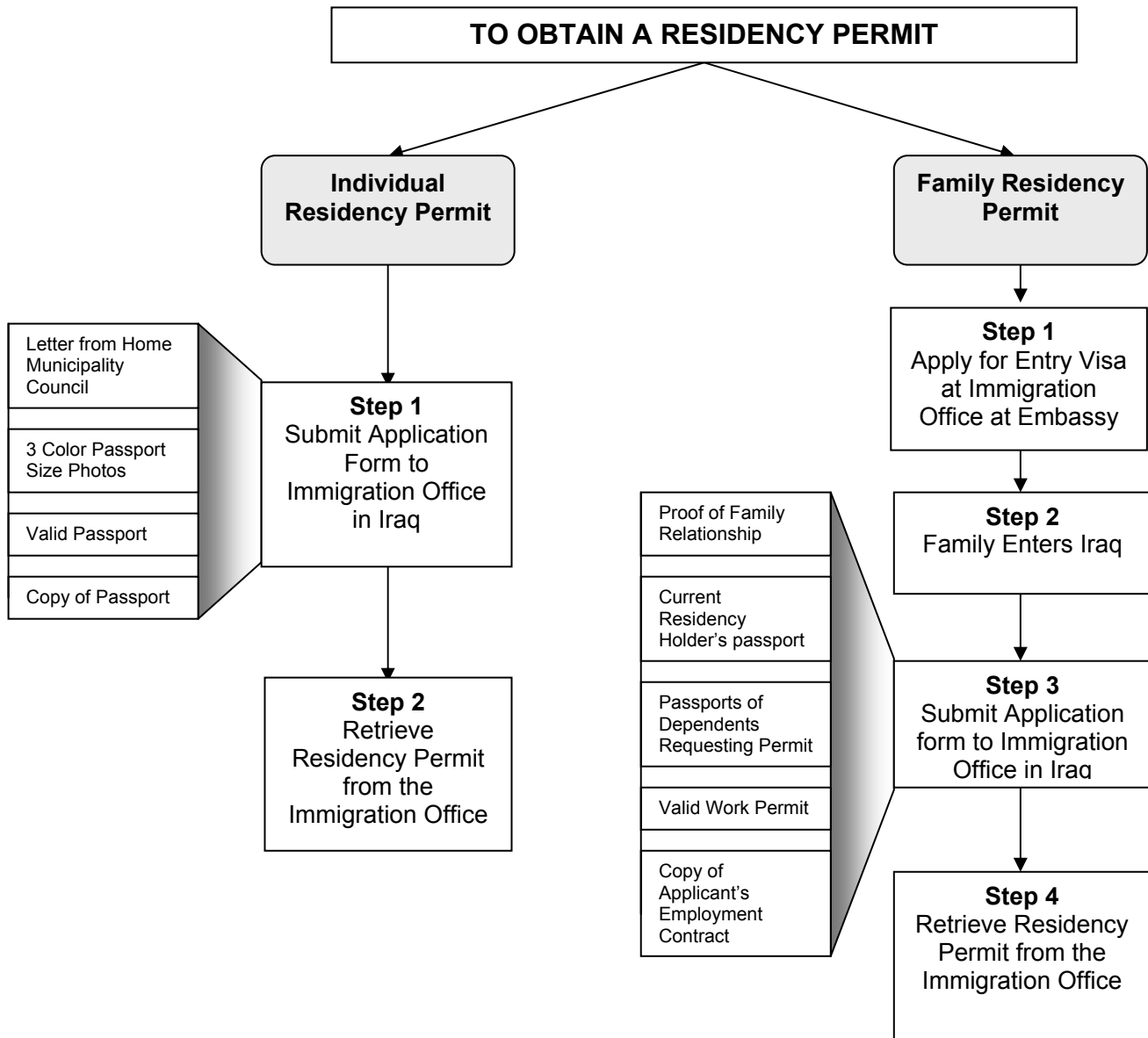


**Flowchart 2.3: Procedures to Obtain a Work Permit**





Flowchart 2.4: Procedures to Obtain a Residency Permit





## Chapter Three: Reporting



Abbasid Palace— Baghdad



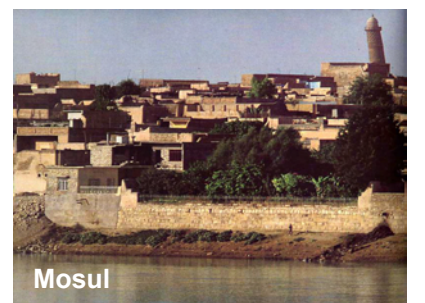
Parthian-style temple— Hatra



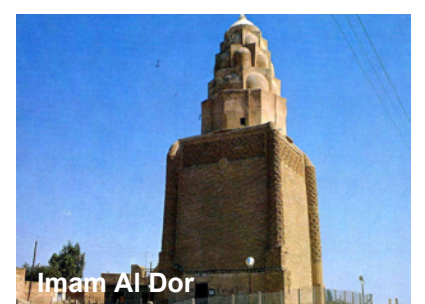
Mosul & city wall of Nineveh



Khan Mirjan— Baghdad



Mosul



Imam Al Dor

### 3.1 Introduction

This chapter discusses the current reporting processes necessary to establish a business in Iraq. These processes affect investors' perceptions of Iraq as an investment location. The business start-up rules have a direct impact on domestic and foreign investment flows into a country. Countries with streamlined and transparent procedures for establishing and operating a business have a greater chance of attracting foreign and domestic investments than those with complicated and unclear procedures.

The legal and regulatory requirements necessary to start a business in Iraq are the primary sources of information for understanding existing reporting processes. Discussions and interviews with private sector actors and local consultants confirmed our findings which were based on the legal reviews and guided our analysis of the current situation. The recommended interventions -necessary to enhance domestic and foreign investments in Iraq- are based on TSG's experience and knowledge of regional and international best practices.

The team benchmarked a number of indicators relevant to starting a business and dealing with licenses in Iraq. Benchmarked locations include potential regional competitors; conflict/post-conflict countries, and regional and international best practices— as shown in box 3.1.

#### Box 3.1: Benchmarked Locations

- Regional competitors: Jordan, Syria, Kuwait, Saudi Arabia, Turkey, Egypt, Iran
- Conflict/Post-Conflict countries: West Bank and Gaza, Afghanistan
- Regional and International best Practices: The UAE, Ireland, Singapore

The World Bank's Doing Business in 2006 ranks Iraq within the bottom 30% in terms of the ease of doing business. It is more difficult to do business in Iraq than in most of its regional competitors (Iran, Jordan, Kuwait, Saudi Arabia, Turkey and the UAE). However, Iraq ranks better than other conflict/post-conflict countries reviewed (Afghanistan and West Bank/Gaza). The ease of doing business rankings are detailed in Table 3.1 to the right<sup>1</sup>.

**Table 3.1: Ease of Doing Business**

Location	Ranking (1-155)
Afghanistan	122
Egypt	141
Iran	108
<b>Iraq</b>	<b>114</b>
Ireland	11
Jordan	74
Kuwait	47
Saudi Arabia	38
Singapore	2
Syria	121
Turkey	93
UAE	69
West Bank/Gaza	125

In an effort to secure greater foreign and domestic investment, the Coalition Provisional Authority (CPA) produced a number of CPA Orders<sup>2</sup> that addressed main weaknesses of the investment environment in Iraq. These Orders are currently implemented by the Government of Iraq. In February and March 2004 the Iraqi Ministry of Trade issued preliminary instructions— including Instruction No. 149 and 196 for registering branches and bureaus of foreign companies and for registering national companies, respectively. The government should continue developing the necessary implementing regulations and instructions to ensure the efficient implementation of all relevant Orders, e.g., CPA Order No. 39.

<sup>1</sup> Source: Doing Business in 2006, World Bank

<sup>2</sup> CPA Order No.39 (issued on the 19<sup>th</sup> of September 2003). CPA Order No. 64 (issued on the 29<sup>th</sup> of February 2004), which amends the Companies Law No. 21 of 1997

The Government of Iraq should amend all unnecessary administrative barriers to investment in order to realize larger investment levels in the country. These administrative barriers are identified and analyzed in this report. Recommendations for change are also presented. However, it should be noted that the existing security situation is the single largest factor negatively affecting the investment environment in Iraq. Parallel to implementing the recommended solutions for administrative barriers, the Government of Iraq must address security issues as they related to investors— informing them of the situation and of ways to deal with these difficulties.

This chapter is divided in three main sections: Establishing a business; acquiring investment incentives; and intellectual property rights. Each section describes the reporting processes, analyzes weaknesses that may hinder new domestic and foreign investments, and recommends solutions and future interventions in a phased approach.

## **3.2 Establishing a Business**

### **A. 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 Iraq's Commercial Law No. 30 of 1984
- Legal trader— A legal entity or company. Legal traders' activities, i.e. companies', are governed by Iraq's Companies Law No. 21 of 1997 as amended by CPA Order No. 64 which was issued in February 2004

### **B. Forms of Business**

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

- **Joint stock companies— mixed or private.** 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.

Iraqi law requires insurance, re-insurance, and financial investment firms to be joint stock companies (Article 10 of the Companies Law No. 21 of 1997). Founding shareholders must post an incorporation deposit (Article 28 of the Companies Law No. 21 of 1997) in a bank authorized to operate in Iraq.

Financial investment companies operate as financial intermediaries investing in financial securities. They are governed by the Companies Law as any other joint

stock company. Their operations, however, are supervised by the Central Bank of Iraq in accordance with the Iraqi Central Bank Law and CPA Order No. 56 of 2003.

- **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-mixed or private.** The Companies Law stipulates that limited companies can be established by no less than two and no more than twenty five 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. The vast majority of registered enterprises in Iraq are limited companies.
- **Limited liability companies.** Limited liability companies may also be established by a single natural or legal person.

There are approximately 25,000 registered companies in Iraq. The most common economic activities are retail sales and services. The most common types of companies are limited companies. Table 3.2 to the right shows the number of registered companies in Iraq, by type of company, as of end of May 2005<sup>3</sup>.

Type of Registered Company	Number
Joint stock companies— mixed	46
Joint stock companies— private	109
Sole proprietorships	546
Joint liability companies	226
Simple companies	1,320
Limited companies mixed or private	21,365
Limited liability companies	1,478
<b>Total Registered Companies</b>	<b>25,090</b>

<sup>3</sup> Source: Office of Companies Registration / Ministry of Trade, 2005

## **C. Establishing a Company**

### **C.1 Background on Registering Foreign Companies in Iraq**

Prior to April 2003, the government barred foreign investment except to citizens of Arab countries— members of the League of Arab States. Several new laws -including CPA Order No. 39 (issued on September 19, 2003) on foreign investment and CPA Order No. 64 (issued on February 29, 2004)- have significantly altered Iraq's business environment for Foreign Direct Investment (FDI). Foreigners may now own 100 percent of an Iraqi company and manage it exclusively. The law does, however, disallow foreign ownership in the natural resource sector, which includes the oil production sub-sector. The law also limits foreign ownership in insurance companies. CPA Order No. 39 of 2003 provides for equal treatment of foreign investors to Iraqi investors— including the establishment of foreign trade representation offices and branch offices of a foreign company, methods of investment, and dispute settlement. The same Order includes a requirement for foreign investors involved in retail sales— that is depositing US \$100,000 in an authorized bank in Iraq for the duration of the retail activity.

It is noteworthy that the KRG have also enacted a foreign investment law that incorporates a very progressive and equitable treatment of foreign investors.

According to the Office of Companies Registration (OCR), foreigners may invest, register companies and trade representation offices/branches, and operate in Iraq under the Companies Law 21 of 1997, CPA Order No. 39 of 2003, and the existing instructions set out by the MOT. The MOT relevant Instructions are 1) No. 196 of 2004 regarding the registration of national companies (which also covers a foreign investor as a partner in a local company) and 2) No. 149 of 2004 regarding the registration of branches and offices of trade representing foreign companies. Specifically, these Instructions include the following relevant provisions:

- Foreign investors are entitled to equal treatment with Iraqi investors
- The amount and proportion of an investment is unlimited unless otherwise governed or restricted by the law
- Branch offices and trade representation offices of foreign companies must register with the OCR at the MOT
- Foreign investment is allowed in all sectors except for direct or indirect ownership of natural resources and land. Banks and insurance companies are exempt from this restriction<sup>4</sup>
- Foreign investors are allowed to invest anywhere in the country

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 registration
- Obtaining a certificate of authorization from the MOT

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<sup>4</sup> Section 6 of CPA Order No. 39 specifies that "Foreign investment may take place with respect to all economic sectors in Iraq, except that foreign direct and indirect ownership of the natural resources sector involving primary extraction and initial processing remains prohibited. In addition, this Order does not apply to banks and insurance companies."



The foreign retailer may apply to the OCR who in turn provides the investor 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.

The most recent regulation of FDI and the required registration process dates from December 20, 2003. It calls on the MOT, in consultation with CPA, to issue regulations implementing a more liberal policy, in consultation with the Minister of Finance and the Minister of Planning. The result was the issuance of Instructions No. 149 (issued on the 25<sup>th</sup> of February 2004) and No. 196 (issued on the 15<sup>th</sup> of March 2004)— the former covering “Registration of Branches and Trade Representation Offices by Foreign Companies” and the latter “Registration of Companies”.

It is worth noting here that any natural or legal person has the right to purchase shares, in any form, of domestic or foreign companies unless the person is legally banned from such activity. This is true of Iraqi residents, Iraqis who live abroad, and foreigners.

Foreign investors wishing to conduct business in Iraq may now enter the market in any of the following manners:

- Establishing a wholly foreign-owned business entity or subsidiary in Iraq
- Establishing a business entity jointly with an Iraqi investor
- Establishing a branch office and registering it with the OCR
- Directly acquiring or investing in an existing Iraqi company

The Iraqi law allows foreign investors to undertake the following actions:

- Possess, use, and dispose their investment
- Manage or participate in the management of a business entity
- Transfer rights and obligations to other persons
- Transfer abroad all funds associated with their foreign investment, including:
  - Shares, profits, and dividends
  - Any and all proceeds from the sale of a business or its assets
  - Interest, royalties, management fees, and other contracted fees and payments
  - Other transfers approved by the MOT

In addition to registering trade names with the local Chambers of Commerce and registering the company with the Ministry of Trade –processes of which are detailed in the following sections, foreign companies and individuals must also register foreign industrial projects with the Ministry of Industry and Minerals.

## **C.2 Registration of a Local or a Foreign Company**

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

Domestic and foreign investors must register with the OCR prior to commencing business activities. Investors must also meet other requirements and licensing procedures (as detailed in the following section) prior to starting their economic activities. Investors may



choose to complete all procedures by themselves, or alternatively they may chose to do so, through a designated lawyer authorized by general proxy.

Iraq is one of the more difficult investment locations to start a business— in comparison to the reviewed locations<sup>5</sup>. The MOT should

address these weaknesses in a well designed, phased-approach as outlined in the analysis section below in order to increase Iraq’s competitiveness to attract domestic and foreign investment. While investors are required to go through 11 procedures to start a business in Iraq, only 1 procedure is necessary to a start a business in Afghanistan, as demonstrated in Figure 3.1 to the right. With the exception of the West Bank and Gaza, it takes longer to start a business in Iraq than in any other reviewed location as illustrated in Figure 3.2 to the right. In terms of cost associated with starting a business, which is defined as official fees, Iraq ranks favorably or comparable to most other benchmarked locations with the exception of Singapore, Kuwait, Ireland, and Iran (see Figure 3.3 to the right).

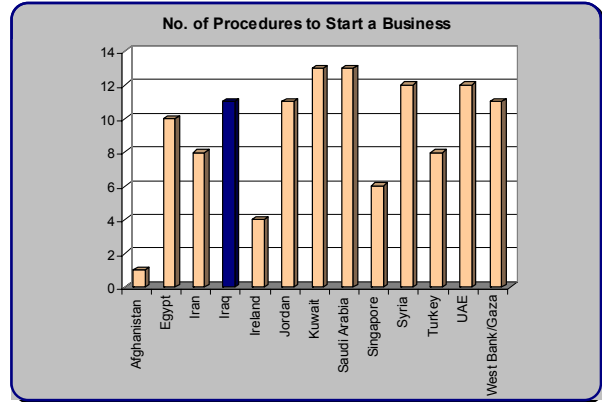
The steps required by the Iraqi laws to register a company in Iraq are presented below. A new web site registration portal ([www.br-iraq.com](http://www.br-iraq.com)) has recently made some of this process more transparent but full registration on-line is currently not available.

**Step 1) Investor files a request for a name search at the local Chamber of Commerce.** As a first step of registering a company in Iraq, the investor is expected to submit a request at the local Chamber of Commerce containing:

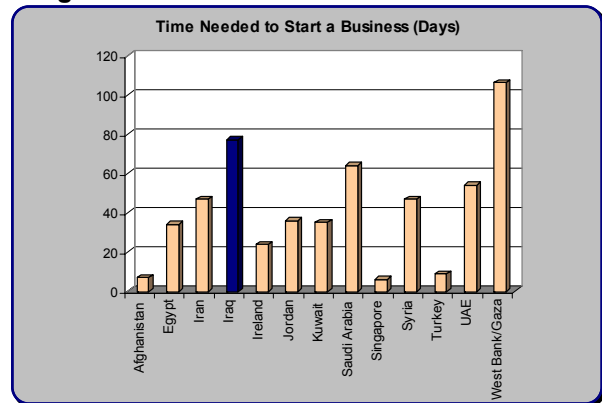
- Proposed name of the company
- Type of business
- Names and nationalities of founders

The Chamber of Commerce then checks if the proposed name has been registered by any other company using a computerized database of registered names within that particular Chamber.

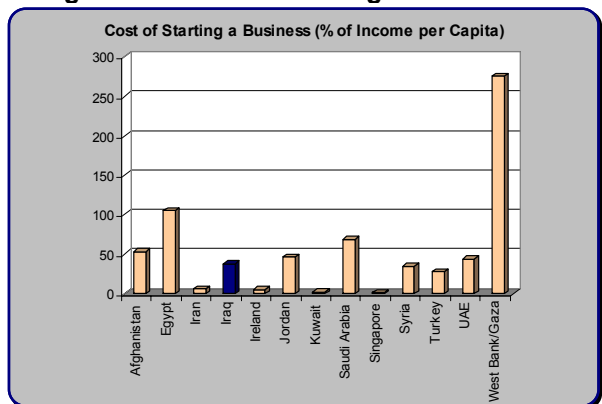
**Figure 3.1: No of Procedures to Start a Business**



**Figure 3.2: Time Needed to Start a Business**



**Figure 3.3: Cost of Starting a Business**



<sup>5</sup> Source: Doing Business in 2006, World Bank. Although the procedures (as well as other indicators) identified in the World Bank document may or may not exactly match the steps listed in this document, the team believes that these data serve as a good benchmarking tool

**Step 2) Investor pays registration fees.** The investor is then required to pay a registration fee of US \$71 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 issues a letter certifying that the requested name belongs to the investor.

**Step 5) The investor obtains the relevant sectoral approval.** The investor is required to obtain a letter from the relevant ministry based on the project's economic activity approving his/her project before going through all of the following steps of registering a company. The sectoral approvals processes are detailed in section D. Additional Reporting Requirements below.

**Step 6) Investor deposits capital in an authorized bank in Iraq.** The investor is required to deposit the company's capital as a surety in an authorized bank in Iraq. The bank would in turn provide the investor with a bank statement, addressed to the OCR, indicating that the capital has been deposited in the bank, in order to process the following 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 (US \$1,360)
- Limited company— the minimum capital is ID 1 million (US \$680)
- Other types of companies— the minimum capital is ID 500,000 (US \$340)

Minimum capital requirements necessary to register a business in Iraq are estimated at 32% of income per capita— making Iraq rank favorably in comparison with regional competitors, namely Egypt, Jordan, Kuwait, Saudi Arabia, Syria, the UAE, and the West Bank and Gaza. These comparisons are shown in Table 3.3 to the right<sup>6</sup>. It is worth noting that no minimum capital is required to establish a business in Afghanistan, Ireland, and Singapore.

**Table 3.3: Minimum Capital Requirement**

Location	Minimum Capital (% of income per capita)
Afghanistan	0%
Egypt	740%
Iran	1.7%
<b>Iraq</b>	<b>32%</b>
Ireland	0%
Jordan	1012%
Kuwait	134%
Saudi Arabia	1237%
Singapore	0%
Syria	5112%
Turkey	21%
UAE	417%
West Bank/Gaza	1410%

<sup>6</sup> Source: Doing Business in 2006, World Bank

**Step 7) Investor drafts a Memorandum of Association.** The law requires that company founders create and sign a Memorandum of Association 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
- 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 divided in quotas or shares
- For joint liability companies: The method of distributing profits and losses
- For private joint stock companies: The number of elected members 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) Investor pays for the application processing at OCR.** The investor is required to pay a fee for processing the application to register the company at the OCR. The fee is US \$30 to be paid in cash at the OCR.

**Step 9) Investor submits the OCR application form and its attachments.** After receiving the letter from the Union of Chambers of Commerce and depositing the required capital, the investor then fills out an application form provided by the OCR at a minimal fee, and submits the completed form to the OCR. The investor 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 of the founders and of the company's legal representative, or their personal Iraqi identification card
- Receipt on payment of fees for processing the application (US \$30)

**Step 10) OCR accepts or rejects application.** The OCR must accept or decline the investor's application within ten days of submission. The OCR publishes application approvals in the Companies Bulletin of OCR, and in a major local newspaper. OCR issues a preliminary registration certificate.

**Step 11) Investor holds a founding meeting.** If the OCR approves the application, the investor must convene a company initial meeting within 30 days of OCR's approval. The law states: 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) Investor pays fees for OCR to issue the authenticated Registration Certificate.** The investor must pay a fee of US \$14 to the OCR to issue the Registration Certificate. Fees are paid in cash at the OCR.

**Step 13) Investor submits a letter to issue an authenticated registration certificate.**

The investor must then submit a letter to the OCR in order to obtain an authenticated registration certificate. The investor needs 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 fees paid (US \$14)

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

**Step 14) Investor registers in the Commercial Record.** Once the investor has finalized the registration procedures with the OCR he/she must register the company 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 investor 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
- Establishment date
- Address of the company's headquarters and other branches, whether in Iraq or abroad
- Explanation of the company's commercial activity

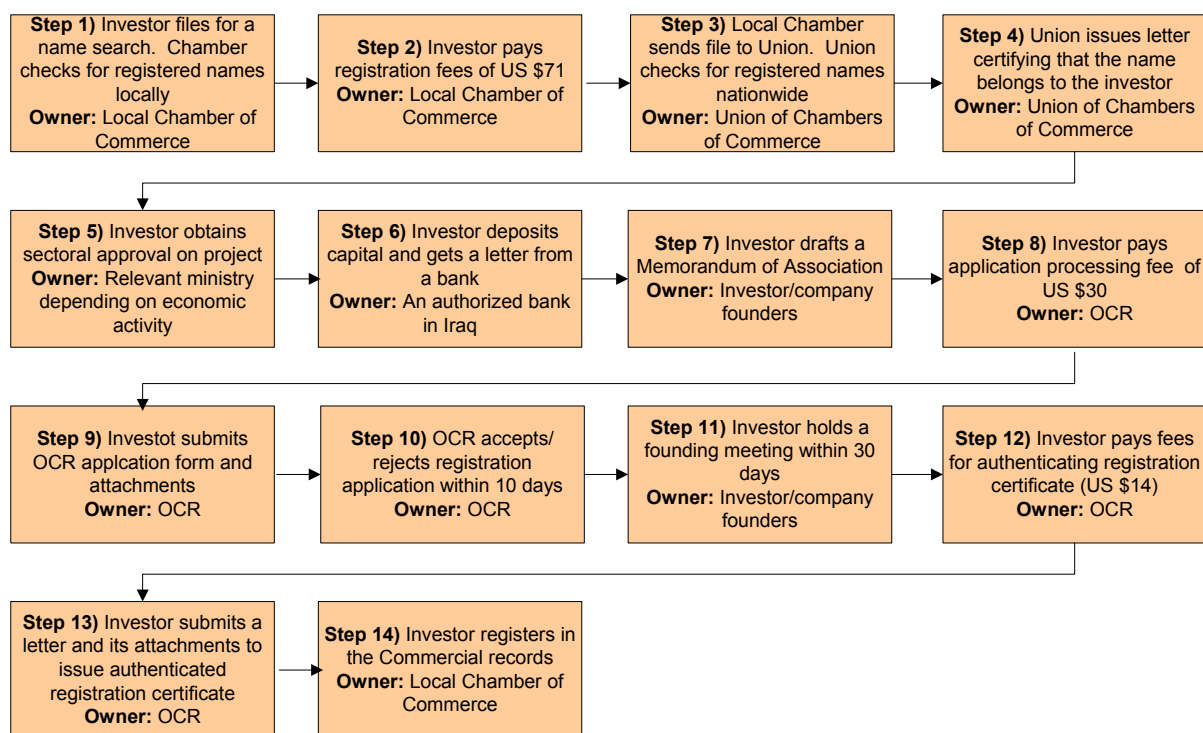
Any decision of the Commercial Record Registrar such as approval, denial, transferring of ownership or amendment and omission of a commercial name can be appealed with the competent court of first instance within 30 days following notification of those concerned.

**Needed time.** The time that the investor needs to complete all steps detailed above is estimated to be:

- Approximately two months for a joint stock company
- Approximately 20-25 days for all other company types

The following chart summarizes the above detailed steps to register a company in Iraq.

Figure 3.4: Summary of steps of registering a company in Iraq



**Investor appeal process in case of application rejection.** If the OCR refuses an investor's application to establish a business (obtain a registration certificate), the investor may appeal his/her case to the Minister of Trade within 30 days of application rejection. The investor must submit a letter to the Minister detailing the reasons their application was rejected and also the response and/or actions to correct their status. If the Minister of Trade rejects the appeal, the investor may then appeal to the relevant court of first instance within 30 days of notification.

### C.3 Registration of a Trade Representation Office or a Branch of a Foreign Company

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) Investor submits an application.** The investor starts the process of registering a trade representation/branch office in Iraq by filing and submitting a registration application form to the OCR. The investor 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 investor as proof of submission.

The application form contains the following information:

- Legal name
- Trade name to be acquired from the local Chamber of Commerce
- Type of economic activity
- Company address in Iraq

- Name, address, and contact information of three key company personnel. All three must be residents in Iraq:
  - In-country manager
  - Legal representative for service
  - The agent or authorized representative to the OCR
- 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

The investor must attach the following documents to the application form:

- Sworn statement that the information provided is accurate
- Authenticated certificate of registration from the country of origin
- Copy of articles of incorporation or comparable document in the country of origin
- Copy of the trade name registration obtained from the Chamber of Commerce
- Letter from the CEO or an authorized corporate officer verifying the information contained in the application, and the identity and mandate of its legal representative in Iraq
- Financial statement of the company for the last financial period
- For retail activity in Iraq, a bank statement showing a surety deposit of US \$100,000 has been deposited in a non-interest-bearing account in a authorized bank in Iraq
- Copy of the passport information page of the company representative. For Iraqi citizens, a copy of the civilian identification card suffices

The investor must submit all documents in both Arabic and English.

**Step 2) Investor pays part of registration fee.** The investor 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 (US \$136). 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 investor with a receipt and control (tracking) number.

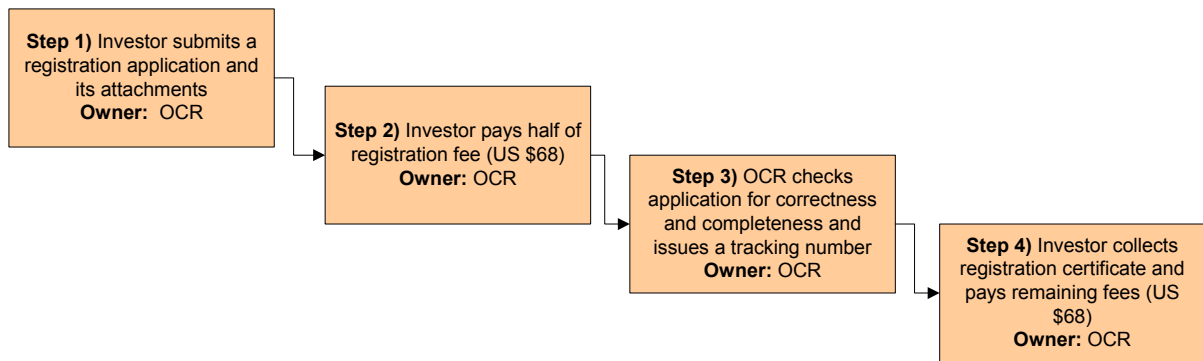
**Step 4) Investor collects registration certificate and pays remaining fees.** The investor returns to the OCR after the application has been processed in order to obtain the registration certificate and pay the remaining 50% of the registration fee, which is ID 100,000 (US \$68). Again, payment is 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 investor can submit them later to the General Taxation Commission of the Ministry of Finance, the Ministry of Planning and Development Cooperation, 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.

**Needed time.** The time needed to process the investor’s application for a registration certificate for a trade representation/branch office by the OCR is estimated at ten days. The whole process is estimated to take approximately 15 days.

**Figure 3.5: Summary of steps of registering a trade representation/branch office of a foreign company in Iraq**



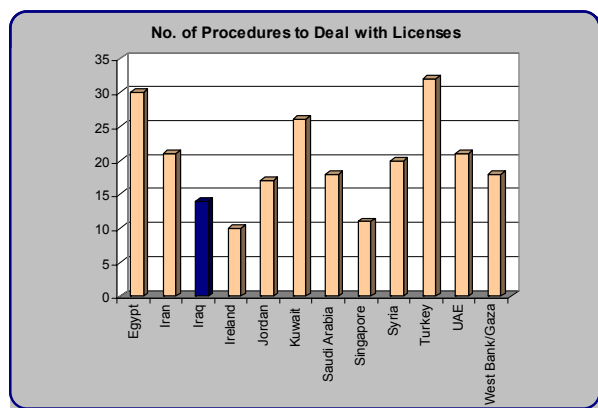
**Investor appeal process in case of application rejection.** If the OCR refuses an investor’s application for a registration certificate for a trade representation/branch office of a foreign company, the investor may appeal to the Minister of Trade within 30 days of his/her application rejection. The Minister must review the applicant’s appeal within 30 days of submission. If the Minister of Trade rejects the appeal, the investor may appeal to the relevant court of first instance within 30 days of notification.

**D. 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 and Social Affairs, Social Security Organization, and Ministry of Interior. 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.

Dealing with the licenses necessary to start a business is also a cumbersome undertaking in Iraq, especially in terms of how long it takes<sup>7</sup>. Iraq ranks favorably against regional competitors in terms of the number of license procedures. However, it does take longer to do so in Iraq than in most other locations reviewed. This is illustrated in Figures 3.6 above and Figure 3.7 on the following page. Another criterion used to measure the ease of dealing with licenses

**Figure 3.6: Procedures to deal with licensing**



<sup>7</sup> Source: Doing Business in 2006, World Bank. Again, although the procedures (as well as other indicators) identified in the World Bank document may or may not exactly match the licenses and/or the steps identified in this document, the team believes that these data serve as a good tool for benchmarking purposes



necessary to start a business is the associated cost, which is calculated as a percentage of income per capita. Cost is defined as the official fees. Iraq ranks better than most of its regional competitors with the exception of Saudi Arabia, and is comparable to its neighbor, Kuwait. On the other hand, there is much room for improvement when compared to regional and international best practices, i.e., the UAE, Ireland, and Singapore. See Figure 3.8 below.

### D.1 Sectoral Approvals

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

This approval process can be summarized as follows:

**Step 1) OCR provides a letter.** The OCR provides the investor with a letter detailing the economic activity of interest.

**Step 2) Investor submits letter to relevant ministry.** The investor then submits the OCR letter to the relevant ministry based on the economic activity.

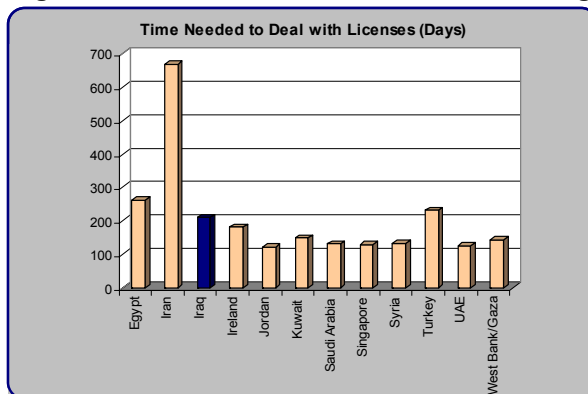
**Step 3) Ministry examines request.** The ministry then examines the request and grants an approval letter to the investor.

**Step 4) Investor submits letter to OCR.** The investor then submits the ministry's letter to the OCR in order to finalize the registration process.

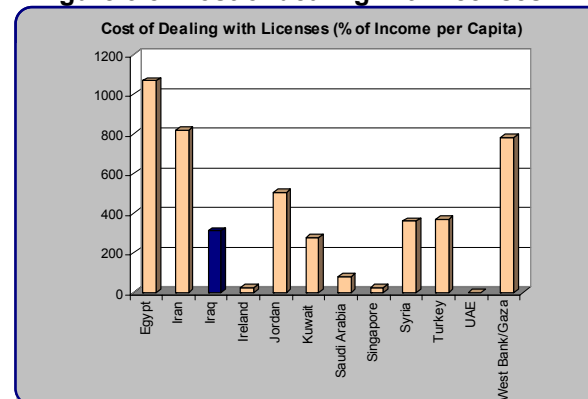
### D.2 Ministry of Labor and Worker's Pensions and Social Security Organization

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.

**Figure 3.7: Time needed to deal with licensing**



**Figure 3.8: Cost of dealing with licenses**



### **D.3 Special Requirements for Certain Types of Businesses and Public Subscription of Capital**

Only joint stock companies, mixed or private, can issue publicly traded stock. 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 hold at least 20% of the initial capital, and offer the remaining shares through an initial public offering within 30 days of company approval. Private joint stock companies issue 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 of establishing the company
- The contracts and agreements which the founders have undertaken in the interest of the company
- The report of the evaluation committee in case of a property in-kind offered as a share

Companies must follow specific requirements in offering public shares and managing unsold shares. For instance, according to Article 43 of the Companies Law No. 21 of 1997, amended by CPA Order No. 64 "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 decreased nominal capital, unless the founders cancel the establishment of the company. The founders shall inform the OCR of such a decision."

When an individual purchases shares in a joint stock company, he/she must immediately make full payment for the number of shares purchased, in order for the paid capital to be equal to the nominal capital. Unpaid shares already outstanding under previous law shall be governed by Article 48 of the Companies Law No. 21 of 1997, amended by CPA Order No. 64.

Similarly, for joint stock companies, limited liability companies, and sole proprietorships, the capital 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 with valuing the company before the OCR can register paid in capital. The OCR forms this independent technical committee, 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)<sup>8</sup> within thirty days of receiving the committee's report. The BSA endorses the committee's findings. Rejected evaluations may be returned to the committee for reconsideration. The committee will reevaluate. BSA will 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.

The Iraqi laws have addressed the matter of transferring 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 or the price a buyer has offered. Proper documentation must support the buyer's offer
- 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 the shareholders 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 subscription, 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 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 value of the shares, and a verification by the buyer that he/she approves

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<sup>8</sup> 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)

of this contract. The transaction contract shall be recorded in the company's register for transferred shares, along with the signatures of the buyer(s) and seller(s) and the representative of the company. Any transaction that is concluded outside these parameters 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.

## **E. Analysis**

The investment environment in Iraq has improved significantly in the past two years, especially in terms of allowing foreign investors to register companies and conduct business in Iraq. Following the regime change in 2003, the government amended a number of laws and regulations to increase transparency and hence encourage domestic and foreign investment and facilitate stock market growth. Iraq's current business regulatory framework is considered reasonably open to FDI, though some limitations remain such as restrictions on foreign direct and indirect ownership in the natural resources sector (primary extraction and initial processing).

The government of Iraq has been discussing further improvements to the country's FDI regime. One proposal for instance suggests that the OCR of the MOT and the ministry responsible for the sector approval -e.g. petroleum, agriculture, tourism, and industry- closely coordinate the issuance of registration certificates in an investor-friendly environment. This proposal, as well as others, has not been implemented yet.

The overall process of registering a company in Iraq is long and convoluted with too many steps. The investor is expected to follow up on his/her own application and hand carry it from one government body to another. The existing process necessitates dealing with a number of government bodies and revisiting organizations such as the local Chamber of Commerce and the OCR more than once. Company registration takes a minimum of 20 days. Moreover, the processes are not very clear. On the other hand the official fees associated with registering a company are reasonable, amounting to US \$115. Payments though are done three times throughout the process.

The overall process for registering a trade representation office or a branch office of a foreign company is simpler and less time consuming than registering a company. There is, however, room for improvement.

## **Issues**

**Lack of information provided to the private sector.** It appears that the process of registering companies in Iraq is not transparent. Registration processes are not well

documented and they are not publicly available. It is not easy to know what are the exact steps necessary to register a company and in what sequence they should be undertaken.

**Inconsistent interpretation of the company registration laws by the implementing staff.** Processes of registering companies, as stipulated by the Iraqi laws, are not always correctly interpreted by the implementing staff. This is especially true for registering foreign companies.

**Requirement to provide the OCR with a feasibility study for the proposed project.** The OCR at the MOT requires that the investor submits a feasibility study for his/her project if the company to be registered is a mixed joint stock company. This requirement does not serve a good purpose and is not in accordance with best practices. Additionally, the OCR personnel generally lack the technical expertise to examine these feasibility studies and assess the risk associated with establishing business.

**Requirement for a US \$100,000 surety deposit for retailers.** The law demands that investors wishing to register a company or trade representation/branch office in the retail business deposit US \$100,000 at a non-interest-bearing bank account. This requirement may serve the purpose of discouraging vulnerable investors, however, it does certainly discourage many other potential investors who may be interested in conducting business in Iraq and have sound businesses.

**Restriction on foreign direct and indirect ownership in the natural resources sector.** The existing Iraqi law prohibits foreign investment in the area of primary extraction and initial processing of natural resources. This restriction presents serious constraints on the growth of one of the most promising industry sectors in Iraq.

**Limitations on repatriation of profits and proceeds.** The existing Iraqi laws allow for repatriation of profits and proceeds. However, old laws that limit profits and proceeds repatriation are being implemented at the moment, which presents a serious drawback to the FDI environment.

**There are no OCR regional branches.** Business registration activities with the OCR are all centralized in Baghdad. Investors from other governorates are expected to travel to Baghdad, more than once, in order to process their transactions and obtain their registration certificates.

**Lack of coordination amongst authorities involved.** The investor currently assumes the responsibility of ‘coordinating’ his/her business registration application in Iraq. Involved authorities such as local Chambers of Commerce, the OCR at the MOT, and ministries that are responsible for sectoral approvals do not coordinate business registration activities. They each view their part of the registration process as a separate process altogether.

**Most of the business registration processes are not computerized.** The processes of business registration, tracking application status, and record keeping are mostly manually conducted. Although record keeping at some authorities is computerized, the majority of these are not. Equally important, none of the involved authorities are electronically connected to each other or even to their regional counterparts, e.g. local Chambers of Commerce. Additionally, communication and coordination is entirely done ‘manually’ by having the investor physically move his application from one authority to the other. This increases margins of error, does not allow for proper accountability, and lengthens the time needed to register a business.

## **Recommendations**

**Produce an Investor Guide and make it easily available to the private sector.** The Iraqi Investment Promotion Agency (IIPA), in coordination with the OCR, should prepare an Investor Guide detailing business registration procedures, requested fees, sequencing of steps, and all needed supporting documents. The Guide would also include other important information related to investing in Iraq such as a comparison of operating costs in Iraq and its regional competitors. The Guide should be made available to investors and potential investors via conventional methods, e.g. hard copies at the OCR, IIPA, and Iraqi embassies abroad, and other methods such as the IraqInvest web portal and a promotional CD-ROM. It is recommended that the Investor Guide be produced in Arabic, English, and other languages spoken in countries identified in Iraq's investor targeting strategy.

**Produce standard operating procedures and train staff.** The OCR and all other government bodies that are involved in the registration process are advised to produce comprehensive standard operating procedures for company and trade representation/branch office registration in order to standardize procedures and make sure relevant laws are consistently correctly interpreted. These should be periodically reviewed and amended if needed. It is also recommended to hold training sessions for relevant staff and possibly invite a few businesspeople from the private sector to those training sessions to make sure that the relevant personnel understand the process from an investor perspective.

**Eliminate the requirement of providing a feasibility study.** Assessing the investment risk and financial viability of a project should be the responsibility of the investor. It is recommended that the Government of Iraq reconsiders the necessity of this requirement and study its elimination.

**Eliminate (or amend) the requirement of depositing US \$100,000 for investors in the retail business.** It is recommended that the Government of Iraq eliminate this requirement in order to enhance Iraq's business environment. If the Government of Iraq chooses to keep this requirement, which is unadvisable, it is recommended to amend the relevant law. Amendment should include reducing the amount of surety and allowing investors to deposit this amount in an interest bearing bank account.

**Allow foreign ownership in the natural resources sector.** It is recommended that the Government of Iraq reconsider prohibiting foreign ownership in this sector after assessing the associated risks and benefits. This adjustment is expected to have a positive impact on Iraq's economic development.

**Enforce laws allowing for free repatriation of profits and proceeds.** The Government of Iraq must enforce the freedom of profit and proceeds repatriation to encourage foreign investment. This can be achieved by producing implementing regulations and training the implementing staff.

**Open OCR branches in all governorates.** The Government of Iraq should promote regional economic development and better facilitate investments in all governorates in Iraq. It is recommended that the Ministry of Trade opens an OCR branch (or a small representative office) in each governorate. This recommendation should be implemented in phases based on the feasibility of this recommendation. It may be cost effective and is certainly easier for investors from a process point of view if the OCR branches are located at the local Chambers of Commerce.

**Establish a one-stop-shop.** The Government of Iraq should jumpstart the establishment of an investor one-stop-shop as soon as possible. As a first step, it is recommended to streamline business registration processes— cutting down the number of procedures, the number of visits that investor has to pay to government bodies, and the time needed to obtain a registration certificate, and making involved authorities' procedures time-bound. The IIPA, in coordination with the OCR, should spearhead the efforts of establishing communication systems and mechanisms between all involved authorities. An important recommendation necessary to facilitate communication between all relevant authorities is to create a single, unique tracking number for investors when they first submit their applications and also to create a single company ID number once a company is registered. The team is well aware of the Government of Iraq plans and USAID's support for establishing regional offices for the IIPA. It is recommended that each regional IIPA office acts as Iraq's one-stop-shop in that particular region. This of course needs to be very well coordinated with regional OCR branches.

### Box 3.2: Investors' One-Stop-Shop in Aqaba, Jordan

The Investor Services Directorate at the Aqaba Special Economic Zone Authority (ASEZA) acts as ASEZA's one-stop-shop for all Jordanian and foreign investors. Since 2003, the Investor Services Directorate facilitates all investor services necessary to establish and operate a business in Aqaba through dealing with a single Investor Services Officer at a single location. Investor services range from registering a company to obtaining operational permits, environmental clearances, zoning approvals, public health and security certificates, and compliance issues. All these services are streamlined and time-bound by law— offering investors an enabling business environment. The Investor Services Directorate has also electronically enabled all these processes enhancing internal and external communication. Investors are able to submit and track the process of their applications on line. See [www.aqabazone.com](http://www.aqabazone.com)

**Electronically enable business registration processes.** As the implementer of the one-stop-shop initiative, the IIPA should lead the efforts of electronically enabling business registration processes in Iraq. A new web based business registration site ([www.br-iraq.com](http://www.br-iraq.com)) is a step in the right direction but it is currently not possible to fully register on the web. A process-based system needs to be designed, developed, and deployed allowing for e-registration of business and also keeping record of all registered companies in Iraq in one place. The one-stop-shop authority will own this system and manage it and at the same time

### Box 3.3: Utilization of Computer Technology

**The Irish Companies Registration Office** offers on its website information about the general procedure, to download application forms, and to perform a company name search. Company registration costs EUR 60 (+1% of issued shares). It also offers updated records that contain basic information for all companies on the register. See [www.cro.ie](http://www.cro.ie)

Company registration in the United Kingdom (U.K.) was privatized in the 1980s. **The U.K. Companies House**, which is located in Cardiff, and which has local offices, registers all companies in Wales and England. Scotland has its own private Companies House. The Companies Houses are supervised and regulated by the government to ensure proper service, data protection, and appropriate fees. Registering a company in the U.K., no matter what type, takes about three business days and costs a flat fee of 20 Pounds. An optional same day service costs 100 Pounds. The Companies Houses maintain their own database for company names. Anyone can check whether a company name is available via the Companies House's website. This service is free of charge.



will grant all other involved authorities restricted access to it in order to electronically facilitate the whole process. The system will serve as a management tool for monitoring and evaluating business registration activities and will also produce statistical reports necessary for policy-makers in Iraq. It is recommended to ‘pilot’ this effort, e.g., start the implementation in Baghdad and then replicate it in all other governorates. On the longer term, the Government of Iraq should consider web-enabling this system allowing investors to submit and track the status of their applications on line.

### **3.3 Acquiring Investment Incentives**

This section presents the current investment incentives that are offered to both domestic and foreign investors in Iraq; how does an investor qualify for these incentives; and the procedures needed to enjoy those incentives. It also analyses weakness/issues pertaining to investment incentives and recommendations to improve on the existing investment regime.

The Government of Iraq offers a number of investment incentives, including tax and customs duty holidays. Investment incentives in Iraq are given based on the type of economic activity, e.g., industrial projects, agricultural projects. Initially, under the laws of the old regime, these investment incentives were granted to Iraqi businesspeople only, whereas foreign investors were not even allowed to conduct business in Iraq. As discussed earlier in this chapter, the new laws -particularly CPA Order No. 39 of 2003<sup>9</sup> and CPA Order No. 64 of 2004- have, to a certain extent, created an investment environment for foreigners equivalent to that offered to local entrepreneurs, making investment incentives previously offered to Iraqis available to foreigners as well.

#### **A. Existing Investment Incentives**

Investment incentives that are offered to investors in the manufacturing sector are:

- Exemption from income tax and other taxes for five years starting from the date of the registration certificate
- Exemption from custom duties<sup>10</sup> on raw materials and machinery for five years starting from the date of the registration certificate
- Provision of raw materials at subsidized prices if available and owned by the Government of Iraq
- Allocation of land, according to the investor’s needs, at subsidized lease rates
- Supply of electricity, fuel, water, and sewage system services at subsidized rates
- Credit facilitation if needed

These incentives are automatically offered to investors once they obtain their registration certificates, which are contingent to the sectoral approval granted by the relevant ministry, i.e., the investor does not have to go through separate processes with the objective of acquiring these investment incentives.

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<sup>9</sup> Section 4 of CPA Order No. 39 indicates that “A foreign investor shall be entitled to make foreign investments in Iraq on terms no less favorable than those applicable to an Iraqi investor, unless otherwise provided herein.” Section 13 of CPA Order No. 39 on Treatment of Investors says that “No legal text that impedes the operation of this Order shall hold and all investors, foreign and Iraqi, shall be treated equally under the law, except as otherwise specifically provided in this Order.”

<sup>10</sup> Existing laws (Orders) drafted by the CPA indicate that imports to Iraq are not subject to custom duties— a reconstruction levy of 5% is imposed instead. This makes the custom duties exemption incentive irrelevant at the moment

If the investor faces problems with any authority in attaining the above listed incentives, the investor would request a letter from the General Directorate of Industrial Development (GDID) explaining he/she is entitled to these incentives. The letter is provided at a minimal fee. The investor would then present this letter to the relevant authority.

Regional laws within Iraq create a lack of clarity for foreign investors and differing incentives. While investment is not expressly mentioned as a federal exclusive authority under the constitution, the federal government has exclusive authority to regulate commercial policy across boundaries. Separate investment law can be confusing for companies that want to be compliant with both KRG and Iraq central government laws.

## **B. Analysis**

The current process of acquiring investment incentives in Iraq, as stipulated by the law, is very simple. There are practically no procedures necessary to do so and incentives are supposed to be granted automatically. Both domestic and foreign investors qualify for these incentives equally as per the new laws drafted by the CPA. It appears though that these laws are not fully implemented and that dealing with foreign investors is discretionary to a large extent. Additionally, some of these incentives (e.g. subsidizing raw material prices) create market distortions and are not in accordance with international best practices.

### **Issues**

**Inconsistent application/implementation of investment incentives.** Although investment incentives are fairly clear as per the prevailing laws in Iraq, the implementation of incentives allocation seems to be highly discretionary. In practice, these incentives are often not granted to foreign investors.

**Lack of a modern, consistent incentives policy.** The existing laws governing investment incentives in Iraq are many and have not been revised recently. There is no one single comprehensive market-oriented incentives policy that helps Iraq attract domestic and foreign investment. A number of the currently offered incentives create market distortions.

### **Recommendations**

**Build capacity of implementing staff and produce Standard Operating Procedures (SOPs).** The Government of Iraq should ensure the consistency of allocating investment incentives to all entrepreneurs wishing to conduct business in Iraq. This can be achieved through a series of actions including the following:

- Holding training sessions for the implementing staff constantly. In addition to procedural and legal issues, training should also cover aspects such as FDI's role in economic development and creating jobs for Iraqis
- Draft comprehensive standard operating procedures and make them available to all implementing staff
- Increase public awareness of these incentives

**Design an incentives policy.** The Government of Iraq should initiate a study, including cost-benefit analyses, to determine what economic activities should receive incentives and what kind of incentives should be offered, in order to design an effective incentives policy. Any such policy must be WTO compliant and should avoid subsidies on utilities, land, raw

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materials, and other inputs. The policy should build upon the work already undertaken by the Government, USAID, and other donors, including legal reviews on the investment environment, the industry sectors and competitiveness analyses, and regional development plans. The policy should be publicly available to the private sector— the IIPA could post it on the IraqInvest web portal.

### 3.4 Intellectual Property Rights (IPRs)

This section of the report discusses the processes needed to register patents, trademarks, industrial designs, and copyrights. It also analyzes weaknesses and proposes recommendations to improve on the existing situation.

#### A. Patents

Iraq's patent law and procedures are similar to trademark registration procedures. The government grants and registers patents according to local law and WTO guidelines.

The Ministry of Industry administers the country's patents law— "Patents, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law."<sup>11</sup> This law covers Inventions and innovative ideas in technology, products, and manufacturing processes;

- Patents may be granted for new products, new industrial methods, or new applications of known industrial methods
- Patents are not granted for the following items:
  - Publicly developed applications completed within or outside Iraq
  - Applications for which there has been a published or publicly available description or drawing, in or outside Iraq, that would enable the application to be exploited
  - Items which have already been granted patents for the application or part thereof to a person other than the inventor, if the rights have already been assigned, or if others have already applied for the same patent, or part thereof

Disclosure of the invention to the public will not be taken into account in determining patentability if it occurred twelve months before the filing date and was done by a predecessor to the applicant. Iraq allows individuals who have, in good faith, used or made significant changes to a technique or device, prior to another individual's patent application for the same device, to continue to use that technique or device.

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 that owns it.

Patent owners have the following rights according to the law.

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<sup>11</sup> 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. However, this proposal has also not been implemented

- If the owner holds a patent on a product he/she may prevent any person who has not obtained their prior authorization from exploiting, using, selling or importing that product
- If the owner holds a patent on an industrial process, he/she may prevent any person who has not obtained the owner's prior authorization from using the process, making products through the process, and/or selling or importing products made with that process

The government grants patents for a twenty-year period from the application date.

The investor's patent application must disclose the invention in a manner sufficiently clear and complete for it to be applied by a person skilled in the relevant product area. The investor must also provide information concerning any foreign patent applications and any existing patents on the product in other countries.

Iraq's amended patent law enables the Patent Registrar at the Ministry of Industry and Minerals to grant a license to third parties to use the patented product without the patentee's consent in the following instances:

- If the use of the patent by the state authorities or licensed third parties is a necessity for national defense, an emergency, or used as a noncommercial public good. In such cases the government must notify the patentee as soon as possible
- If the patentee does not exploit the patent, or exploit it insufficiently, within four years of application, or three years of patent granting. The Patent Registrar may, however, grant the patentee an additional grace period if it had been determined that the patentee has not exploited his/her patent for reasons beyond their control
- Without prejudice to the provisions of relevant International Conventions, the importation of a patented good into Iraq is deemed utilization of the patent
- If the patent holder exercises his/her right in such a way as to prevent others from competing fairly

When compulsory licenses are granted to others:

- Each application for a license shall be decided separately on its merits
- An applicant must first try to obtain a license from the patent holder and offer reasonable royalties
- The terms, objective and duration of the license must be limited to the purpose for which it is granted
- If a license application relates to semiconductor technology, it shall only be granted for noncommercial public good or to rectify practices deemed anticompetitive by a competent judicial or administrative authority.
- If granted, the license to exploit shall not be exclusive
- The license shall not be assignable to third parties
- The license shall be granted only to meet local demand where practices have been deemed anticompetitive by a competent judicial or administrative authority
- The patentee shall receive a reasonable royalty which takes into consideration the economic value of the patent

The Patent Registry Office may cancel a compulsory license of its own accord or upon the determination of the patent holder that its justification is no longer sustainable. The cancellation shall, however, preserve the rights of those involved, including persons or the government party to the patent, other than patent holder in the compulsory license.

A compulsory license decision may be appealed to the Ministry of Industry and Minerals within 60 days of notification.

Patent rights are not affected by the exploitation of the technique on land, sea, air or any means of transport belonging to any of the countries that are members of the Paris Convention for the Protection of Industrial Property or the World Trade Organization or that treat Iraq on a reciprocal basis during their temporary or accidental existence in Iraq. The patent holder cannot object to the exploitation by these parties of the patent, i.e., there is no restriction or any of the penalties mentioned above on the use of this patent by them.

### **A.1. Variants**

**1) 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 should the Ministry take the necessary precautions to guarantee unclassified commercial use of such data.

**2) Integrated Circuit Designs.** Integrated circuit designs shall be 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. Applicants must handwrite information regarding any relevant certificates issued for the integrated circuit designs, and provide information about: a) any transfer, acquisition, assignment, or licensing to third parties; and b) any mortgage, lien, seizure, levy or any constraint in utilizing the design.

In addition to the original, handwritten registry, the ministry may also record registered designs and related information in a computerized database. The government considers the handwritten copy as the original certifying document. Individuals may register a design in the following cases: if: a) it results from the designer's own intellectual effort and was not commonplace in the industry at the time of development; and b) the application is filed within two years of its first commercial exploitation anywhere worldwide.

If the Registrar deems an application incomplete it will give the applicant additional time to amend his/her application. In addition, the Registrar may determine that an applicant has abandoned their application. The applicant may appeal in the Court of Appeals within 60 days of notification.

Upon submitting a complete application, the applicant pays a fee (details of fees below). The Registrar subsequently publishes the individual's application in the Official Gazette. A third party may object to the application within 90 days of Gazette publication. If the Registrar receives no objection, it approves the application, collects fees, and issues a certificate.

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.

**3) 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, including the following:

- the plant name
- the names and addresses of breeders or producers
- information about any transfer, assignment of title, or licensing to third parties for use
- mortgage, lien, or limitation on its usage

The Registrar grants applicants provisional protection from the date of registration of the variety through application publication in the Official Gazette. The applicant may use the plant, and is entitled to reasonable royalties during this period, unless an objection is filed against registration of the variety, or the objection against the registration is filed before the final registration of new plant variety is completed.

**Table 3.4: Fees associated with plant variety registration**

Item	Fee
Iraqi researcher	ID 1,000,000 (US \$680)
Arab companies	US \$10,000
Foreign companies	US \$15,000
Test fees per hybrid	US \$2,500
Fees Per non hybrid variety	US \$2,000

After registering a plant variety only the breeder or producer may authorize the following activities:

- production or reproduction (multiplication)
- conditioning for the purpose of propagation
- sales
- marketing
- exporting
- importing
- stocking for any of the aforementioned purpose

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. Transfers, mortgages, liens, license, and other legal changes are to be determined by Instruction to be issued by the Minister and published in the Official Gazette. A transfer of the title may be considered as evidence against a third party.

**4) 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

## A.2. Patent Infringement

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

## B. Trademarks

Iraq enacted its first trademark law in the 1931. The subsequent Iraqi Trademark Law No. 21 of 1957 remained in force until April 2003. The new 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. However, some remnants of this enforcement problem remain and have hindered trademark registration in some cases.

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 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 (US \$34,000-68,000), or both.

**Table 3.5: Fees associated with trademark registration**

Item	Fee
Per application for registration	ID 300,000 (US \$204)
Publication	ID 300,000 (US \$204)
Certification of registration	ID 150,000 (US \$102)
Renewal of Registration	ID 400,000 (US \$272)
Change name or address of Trademark owner	ID 250,000 (US \$170)
Transfer of ownership	ID 300,000 (US \$204)
One item included in the Application form	ID 50,000 (US \$34)
Up to four items	ID 30,000 (US \$20)
Five items and above	ID 20,000 (US \$14)

An investor may transfer a registered trademark. He/she may also license a trademark. Iraqi law protects registered trademarks for ten years, renewable 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.



## C. Industrial Designs

Approvals pertaining to industrial designs or models shall be granted where the design or model is new or original. 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 that 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.

## D. Copyrights

Iraqi copyright laws are intended to meet the current internationally recognized standards of protection and incorporate World Trade Organization standards<sup>12</sup>. The Commission on Intellectual Property at the Ministry of Culture is responsible for copyright registration.

**Table 3.6: Fees associated with patents and Industrial design registration**

Item	Fee
<b>For Iraqis</b>	
Filing fee	ID 100 (US\$ 0.07)
Stamp	ID 100 (US \$ 0.07)
Patent examination	ID 1,000 (US \$ 0.70)
Industrial Design examination	ID 2,000 (US \$1.4)
Grant of patent	ID 5,000 (US \$3) + stamp of ID100 (US \$0.07)
Publication	ID 500 (US \$0.34)
Issuing of original certificate card	ID 4,000 (US \$2.72)
True copy of original	ID 5,000 (US \$3)
<b>For Foreigners</b>	
Filing fee	ID 3,150 (US \$2)
Stamp	ID 100 (US \$0.07)
Patent examination	US \$50
Design examination	US \$25
Grant of patent	ID 200 (US \$0.14) + stamp of ID 100 (US \$0.07)
Publication	ID 500 (US \$0.34)
Issuing of original certificate card	ID 20,000 (US \$14)
True copy of original	ID 10,000 (US \$7)

The current rules protect authors of original literary, artistic, and scientific works.

<sup>12</sup> CPA Order No. 83— issued on the 1<sup>st</sup> of May 2004

The person in whose name the work is published is considered the author. Protection includes works in writing, sound, drawing, painting, and movement. 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 50 years after death.

New legal provisions (CPA Order No. 83) also protect performers, broadcasters, and innovative forms of communication in accordance with internationally accepted standards.

Any contravention is considered by the law an act of piracy punishable by a fine of ID 5,000,000 to 10,000,000 (US \$3400-6800).

There are no fees associated with registering copyrights in Iraq.

## **E. Analysis**

The existing Iraqi laws on Intellectual Property Rights are quite progressive and conducive to conducting business in Iraq. In particular, the CPA Order is drafted to conform with many of the current best practices in IPR protection. Nonetheless, the Government of Iraq (GoI) needs to address a number of issues related to the proper implementation of these laws and particularly the Government's dissemination and enforcement of them.

### **Issues**

**Government capacity to enforce IPRs is weak.** As is the case in most developing countries, Iraq's main challenge with regards to IPRs is the Government's capacity to enforce them. GoI will need to devote significant resources to enforcement of IPR rules including both personnel and resources.

**No implementing regulations and SOPs.** There are no regulations and standard operating procedures that guide the government staff to implement IPRs as set out in the laws. These are a critical step for the IPR regime to be successfully administered.

**Old laws are not in compliance with the WTO TRIPs and relevant WIPO conventions.** While the relevant CPA Order is in line with the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), it appears that Iraqi IPRs laws from the old regime are not in compliance with TRIPs and the relevant conventions of the World Intellectual Property Organization (WIPO).

**Lack of IPRs information to the private sector.** Information on IPRs is not widely available to the private sector. Making IPR rules transparent and widely known is important both to attracting high technology and other types of non-traditional investment but also in many traditional areas such as oil extraction as well. Similarly, broad private sector awareness inside Iraq will be essential to compliance and enforcement of the IPR regime.

### **Recommendations**

**Build capacity to enforce IPRs in Iraq.** It is recommended to design and implement a capacity building program for all involved authorities as well as judges and the court system. Accordingly, it will be necessary to build capacity amongst the relevant officials both inside

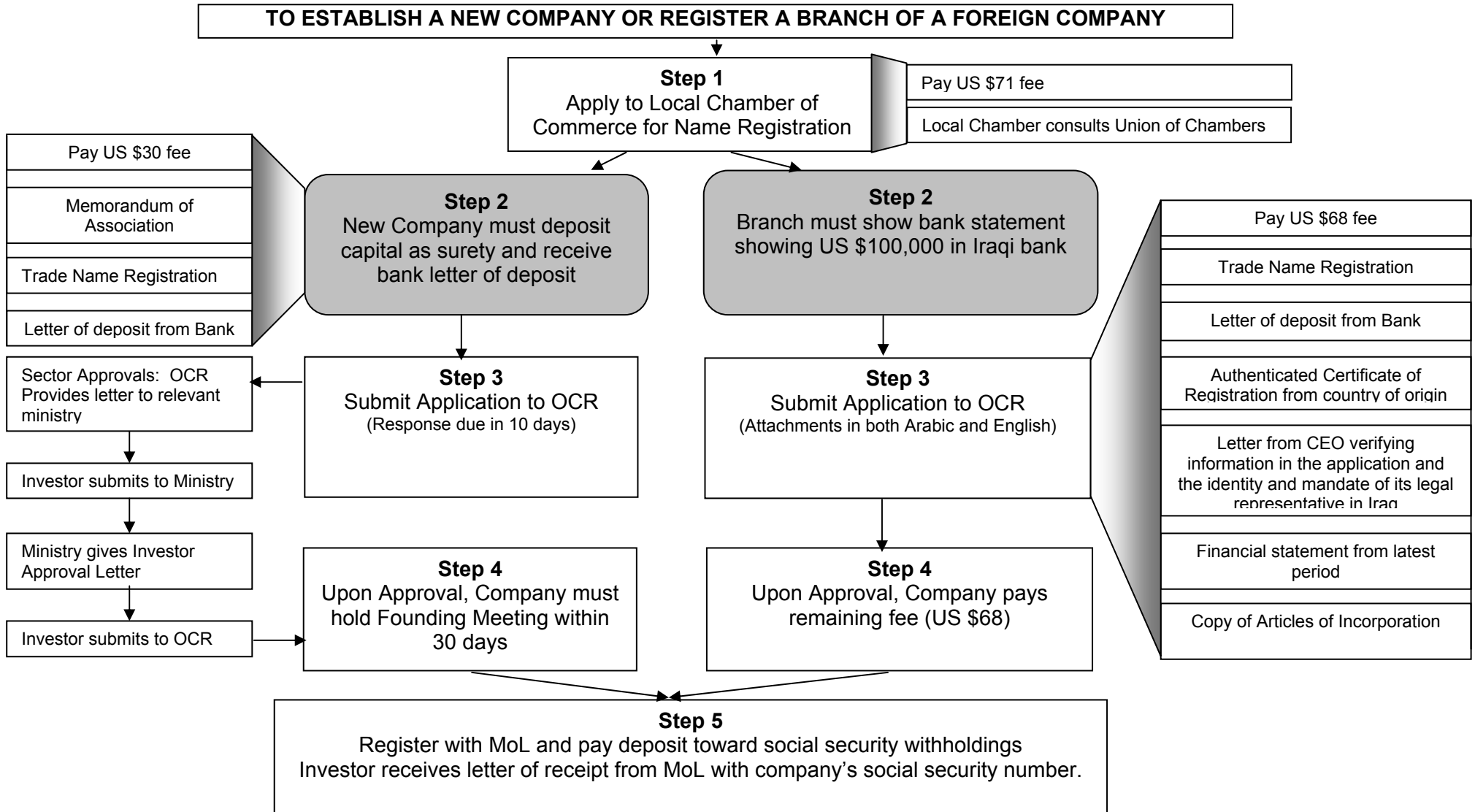
and outside the IPR department. Training and possible technical assistance will enhance both the speed and the quality of this process. Education efforts will also be necessary on the private sector to enhance knowledge and compliance with IPR rules. The Government of Iraq officials should also be trained in enforcement mechanisms and procedures.

**Draft implementing regulations and SOPs.** New regulations will need to be written to ensure proper operation of the rules. As an initial step, the Government of Iraq should draft implementing regulations for the existing IPRs laws. Following that the government should draft standard operating procedures to guide the implementing staff and assure the consistent, transparent implementation and enforcement of IPRs.

**Undertake a legal review of old IPRs laws and amend them accordingly.** It is recommended that the Government of Iraq initiates a comprehensive legal review of all IPR laws in order to assess their compliance with WTO TRIPs and relevant WIPO conventions. Necessary amendments should be drafted and enacted based on this review. A new IPR law or laws should be prepared in order to consolidate the existing rules.

**Assign a single authority to disseminate information on IPRs to the private sector.** International and regional best practices, as well as WTO rules, indicate that it is necessary to assign a single authority within the Government of Iraq to disseminate IPR information to the private sector and foreign investors. This authority should be housed within the IPR department and be tasked with improving transparency in IPR rules. The Government of Iraq should also include an investor-friendly interpretation of the relevant laws and regulations in an Investor Guide to be produced both in Arabic and English— at minimum. As discussed earlier in this chapter, the Investor Guide should be widely distributed in hard copies and electronically.

**Flowchart 3.1: Procedures to Establish a New Company or Register a Branch of a Foreign Company**





## Chapter Four: Locating



Abbasid Palace— Baghdad



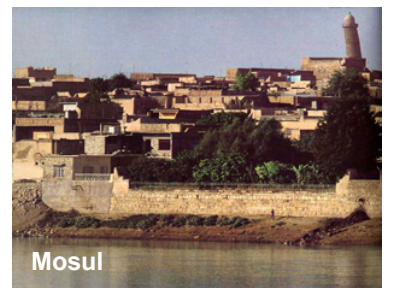
Parthian-style temple— Hatra



Mosul & city wall of Nineveh



Khan Mirjan— Baghdad



Mosul



Imam Al Dor

## 4.1 Introduction

This chapter analyzes the procedures that an Iraqi or foreign investor in Iraq encounters when acquiring a property, developing a property, connecting to utility networks, and complying with environmental standards and regulations. In addition to providing a procedural outline the chapter analyzes the main issues investors face in acquiring and developing land, and provides recommendations to decrease administrative and procedural barriers.

Investors face a number of obstacles to locating in Iraq. For foreign investors, the most significant roadblock is the uncertainty regarding foreigner property ownership. Currently foreigners may not purchase public land, and there is considerable legal confusion regarding the right of foreigners to purchase private property. Since the government controls over 80 percent of Iraqi land, and the other 20 percent in private hands is largely residential, foreign investors face limited options even if they are allowed to purchase property. Moreover, both Iraqi and foreign investors face an uncertain state land lease process: while the steps are clearly defined, potential investors must invest considerable time and deposit substantial money with no guarantee of obtaining a lease. Non-existent or poor infrastructure also stymies investors. Iraq has no solid waste treatment or removal system, water and sewerage systems are severely deteriorated, and telecommunication and power capacity are limited. None of Baghdad's industrial estates provide sewerage or telecommunications service, and all nine are in poor condition.

Iraq's principal cities include the capital, Baghdad, as well as Basra and Mosul. Iraq's total size is 434,924 km<sup>2</sup>. The country is administratively divided into 18 governorates (Mouhafadhat). Table 4.1 provides the area of each Mouhafadha and the number of Districts (Qadha) and sub-districts (Nahiya) in each Mouhafadha as reported by the Central Statistics Office in 2001.

The government owns more than 80 percent of Iraqi land. According to the Unification of the State Land Categories Law No. 53, 1976 "all Miri Sif (state-owned) lands authorized by Tapu,<sup>1</sup> granted by Lazma<sup>2</sup> or endowed as true Waqf,<sup>3</sup> and abandoned lands, which includes land such as mountains and deserts, shall be considered state-owned land and shall be registered in the name of the Ministry of Finance and its registrar, and title deeds shall be amended automatically on the basis of this fact with the General Directorate of Real Estate Registration (GDRER) without taking any other measures." The remaining 20 percent, mostly residential and agricultural property, is privately owned.

According to Law No. 43 of 1971, "Real Estate Registration," Article 81, the government distinguishes real estate units by number and block. According to RCC Resolution No. 222 of July 3, 1977<sup>4</sup> the government may divide and zone land for various uses, including agriculture, non-agriculture, and grove fields. In Iraq land is zoned for one of seven uses: industrial, agricultural, commercial, tourism, religions, archaeological, and residential.

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<sup>1</sup> "Tapu" refers to state land registered with the General Directorate of Real Estate Registration (Tapu is a Turkish word that means an owned estate).

<sup>2</sup> Lazma refers to agriculture land that was confiscated by the state from big land owners after the overthrow of the royal regime in 1958. Some of this land was returned to owners and registered with GDRER.

<sup>3</sup> Waqf land is private land endowed for charitable or religious purposes, which is government supervised. If the owner sells this property he must give 10 percent of the land to the government.

<sup>4</sup> While the RCC is defunct, many of the resolutions it passed, including this one, remain in effect unless specifically repealed by new laws.

**Table 4.1: Governorate, Number of Nahias and Qadhas as of December 31, 2001<sup>5</sup>**

Governorate	Number of Nahias	Number of Qadhas	Land %	Area Sq. km.
Nineveh	26	9	8.6	37,323
Salah Al-Deen	17	9	5.7	24,363
Ta meem	11	4	2.2	9,679
Diala	21	6	4.4	17,685
Baghdad	30	9	0.2	4,555
Anbar	20	8	31.8	137,808
Babylon	16	4	1.5	51,119
Kerbela	7	3	1.2	5,034
Najaf	10	3	6.6	28,824
Qadisiya	15	4	1.9	8,153
Muthanna	11	4	11.9	51,740
Thi-Qar	20	5	3	12,900
Wasit	16	6	3.9	17,153
Maysan	14	6	3.7	16,072
Basrah	16	8	4.4	19,070
Autonomous Region:				
D hok	9	4	1.5	6,553
Arbil	15	4	3.4	15,074
Sulaimaniya	16	8	3.9	17,023
<b>Total</b>	<b>290</b>	<b>104</b>	<b>99.8</b>	<b>434,128</b>

According to Public Road Law No. 35, 2002, the government retains certain land for highways, public roads, major roads, airports, interchanges, tunnels, and bridges. This law restricts development of land allocated for dams, rivers, cliffs, and lakes. Law No. 55 of 2002 and Endowment Law No. 64 of 1966 restrict development in archaeological and religious sites.

Various ministries, governorate authorities, and municipal governments own and control state land in Iraq. Line ministries each own and control land: For instance, the Ministry of Agriculture owns land zoned for agricultural use; the Ministry of Tourism owns land zoned for tourist projects; and the Ministry of Industry and Mines owns land zoned for industrial projects, including a number of industrial estates. In addition, governorate authorities and municipal governments own land within their boundaries, including industrial estates. The Ministry of Finance owns and controls all state land that is not otherwise owned by another ministry, governorate authority, or municipal government.

The Ministry of Justice's General Directorate of Real Estate Registration controls title deed registration for all public and private land in Iraq.<sup>6</sup> This agency maintains the country's registry and issues title for all property.

## 4.2 Land Acquisition

The following legislation governs land acquisition in Iraq:

- Law No. 43 of 1971, Real Estate Registration

<sup>5</sup> In the Arab land tenure system, Nahias and Qadhas are sub-districts.  
Source: Central Office Statistics and Information Technology (COSIT)

<sup>6</sup> Law No. 43 of 1971



- RCC Resolution No. 222, July 3, 1977
- Law No. 35, 2002, Law of Public Roads
- Law. No. 55, 2002
- Law No. 64, 1966, Law of Endowments
- Law No. 76, 1987
- Law No.165 of 1964, Law of Municipalities Administration
- Law No. 40 of 1951, which includes provisions that regulate purchase and lease contracts
- Law No. 115 of 1980 related to appropriation, acquisition, and lease of agrarian reform lands
- 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 Mixed<sup>7</sup> Sectors, which regulates the lease of state land for industrial projects producing consumer and capital goods
- RCC resolution No. 849, 1979
- Law No. 91, 1988, Organizing Mineral Investment and implementing regulation No. 1, 1989
- Law No. 117, 1970, Agrarian Reform.
- Law No. 32, 1986, Selling and Leasing State Properties
- Law of Appropriation No.12, 1988, as amended
- Law No. 87, 1979, Estate Lease, which applies to buildings situated within the limits of Amanat Al-Asima (Baghdad Mayoralty) and municipalities
- The following legislations amends Law No. 87: Law No. 25 of 1996; Law No. 56 of 2002; and CPA/ORD 29 of 2003

## **A. Identifying Land**

Investors have several choices with respect to locating 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 government 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 private property market, there is considerable uncertainty regarding foreigners' right to purchase private property.

### **1. Government Land**

#### **1a. 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.

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<sup>7</sup> Mixed enterprises are those in which the state has a 25% or greater stake.

- Ministry of Industry and Minerals (MoIM), through its General Directorate of Industrial Development (GDID) and General Establishment of Geological Exploration for mining and quarrying
- Ministry of Labor and Social Affairs, through its Directorate of Labor and Social Security, which is responsible for industrial services projects
- Amanat Baghdad (Mayorality) and governorates and municipal governments, which are responsible for utilities such as water and sewerage and licenses for site development within the country's industrial estates.

These ministries and the provincial and local authorities may defer to line ministries and the Ministers Council in cases outside their delegated authority. For example, according to the Organization of the Industrial Services Law No. 30 of 2000<sup>8</sup> "the Minister of MoLSA or whoever he so authorizes" may terminate a project located in an industrial estate managed by a municipality or governorate if land use changes contradict the investor's business license, or if the project is non-operational.

The table below provides some information on Baghdad's industrial estates.

**Table 4.2: Industrial Estates in Baghdad**

Name	Nahrawan	Awereej	Bob Al Sham	Jurf Al-Nadaf	Wazereyah	Hy Al Salam	Kamalyah	Jamilah	Zafarnyah
Location	SE Baghdad	S. Baghdad	NE Baghdad	S. Baghdad	Mid Baghdad	Mid Baghdad	E Baghdad	Mid Baghdad	S. Baghdad
Supervisor	GDID	*	*	*	*	*	*	*	*
Size	4000 donam <sup>9</sup>	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Infrastructure Availability <sup>10</sup>	Available	Available	Available	Available	Available	Available	Available	Available	Available
Lease Rate	**	**	**	**	**	**	**	**	**

The government sets land lease rates in industrial estates on a square meter basis per annum, which varies according to the project's nature, location, and required plot size. GDID grants land leases for the duration of the investor's project license.<sup>11</sup> None of Baghdad's industrial estates have shells available for lease.

### Illustrative Industrial Estate Lease Rates

According to GDID all Iraqi industrial estates have pre-established lease rates. The following rates offer an example of lease rates in Iraq's industrial estates. These rates are not exhaustive and are subject to change.

- GDID leases industrial estate land in its control for ID 75 (US \$0.05)/m<sup>2</sup> per annum for brick factories and ID 150 (US\$.10)/m<sup>2</sup> for leather tanning factories.
- Governorates and municipal governments lease land in industrial estates under their control for ID 1,000-1,500 (US \$0.75-1.00)/m<sup>2</sup> per annum.

<sup>8</sup> Chapter Six, "Abolition and Closing" of the project, Article 13.

<sup>9</sup> One Donam equals 2,500 m<sup>2</sup>.

\* There is no single supervisory agency for Iraq's industrial estates. Depending on the services provided a state department, such as Amaant Baghdad, will supervise roads, sewage, and water services in Baghdad Governate.

<sup>10</sup> Excluding telephone service and sewerage service

<sup>11</sup> According to Article 9, Industrial Investment for the Private and Mixed Sectors Law No 20 of 1998; Regulation of Industrial Services Law No. 30 of 2000; and CPA Order no. 39 of 2003

\*\* If the land belongs to the Ministry of Industry the lease rate is ID 75-100/m<sup>2</sup>/annum. If the land belongs to Amaant Baghdad or the municipalities the lease rate is ID 1000-1500/m<sup>2</sup>/annum.

The Ministry of Industry and Mines approves all industrial projects. Typically an investor will approach MoIM for location information and will submit an application to the ministry. MoIM will review the investor's project and tell him the most appropriate industrial estates in which to locate, according to the relevant master plan. Since the government does not auction industrial land – either for lease or sale – investors can only locate industrial projects in one of the country's industrial estates. Once MoIM has chosen the appropriate industrial estate the ministry will forward the investor's application to the appropriate governorate or municipal authority for industrial estate plot allocation. The investor will pay the governorate or municipal authority rental fees. If MoIM chooses one of the industrial estates it owns the investor will pay lease fees directly to the ministry.

An investor must complete the following process steps to establish an industrial project in one of Iraq's industrial estates. Investors must locate industrial projects within one of the country's industrial estates. The investor must have a valid business license for his project prior to requesting an industrial estate lease.

**Step 1) Complete and submit lease request, pay application fee.** The investor submits an application to MoIM's GDID requesting a rental space in one of Iraq's industrial estates. Apparently the investor writes a formal letter requesting a space. He attaches a copy of his valid business license to the letter. Upon submission the investor also pays a processing fee.

GDID reviews the application and approves it. GDID subsequently either allocates a plot in one of MoIM's industrial estates or refers the application to the relevant industrial estate, and asks the governorate authority or municipal government to allocate a plot.

**Step 2) Sign lease.** The investor signs a lease agreement with the authority that controls the industrial estate: GDID, a governorate authority, or a municipal government. The lease is always valid for the duration of the investor's business license.

### **1b. Leasing Government Land outside of Industrial Estates and Free Zones**

Investors 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 of this land. Iraqi and foreign investors may lease government land outside industrial estates.

The government leases and sells all state owned land, including that belonging to the Ministry of Finance's State Real Estate Department, Awqaf,<sup>12</sup> or the Ministry of Agriculture, through public auctions. Investors may use public land leased through the auction process for commercial projects. Industrial land is excluded from the auction process; as noted above, Iraqi and foreign investors with industrial projects must lease land in an industrial estate.

Each ministry that owns land has a sale and lease committee that manages the auction process. When a ministry is ready to lease a particular plot it announces the property's availability via a public announcement in a relevant local newspaper, and sets an auction date. The public announcement provides pertinent information, including a site description, the date and venue for the auction, and rules for participating in the auction, including how to

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<sup>12</sup> Plural of waqf land, which is government-supervised private land endowed for charitable or religious purposes.

pay the required deposit. The government must advertise the auction in a local newspaper for 15-30 days prior to the auction.

A foreign or Iraqi investor who wishes to lease government owned land outside of the country's industrial estates must complete the following process steps.

**Step 1) Submit auction participation request and deposit.** The investor submits a request to the relevant sale and lease committee indicating his desire to participate in the auction. The investor must also submit a deposit via a certified check not less than 20% of the property's assessed value

**Step 2) Attend auction and bid.** The investor or his legal representative attends the auction and bids to lease the property. The government opens the bidding at a price not less than 70 percent of the property's assessed value. The auction committee manages the auction process, offering the property to the highest bidder if there is no higher bid for a period of five minutes.

**Step 3) Pay lease and other fees.** The investor pays the rent and all other fees within 30 days of the auction date. He pays the Ministry of Finance via a certified check.

**Step 4) Sign lease contract.** The investor signs a lease contract for the property with the relevant ministry. According to Civil Law No. 40 of 1951, state land lease contracts include the following details:

- Land registration number
- Block number
- Parcel
- Name of the lessee
- Name of the land owner
- Size of parcel
- Rent rate per annum
- Number of years the land is to be leased
- Intent of use
- General terms of the lease
- Exit conditions
- Payment terms
- Law applicable
- Date and authorizing signatures

### **1c. 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 auctions. 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 relevant ministry tasks its assessment committee<sup>13</sup> with determining the land value. The

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<sup>13</sup> Each ministry that owns land has an assessment committee consisting of the following representatives: Three directors or other high level property officials from the relevant ministry, 1 representative from the Ministry of Finance, and 1 real estate agent.

assessment committee subsequently sends an assessment report to the relevant minister and he tasks the sale and lease committee with selling the property.

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.

An Iraqi investor must complete the following steps to purchase government-owned land outside of the country's industrial estates.

**Step 1) Submit auction participation request and deposit.** The investor submits a participation request to the relevant sale and lease committee indicating his desire to participate in the auction. The investor must also submit a deposit via a certified check for between 10-20% of the property's value. The deposit, which is refundable, is required to illustrate the investor's seriousness.

**Step 2) Attend auction and bid.** The investor or his legal representative attends the auction. The government opens the bidding at a price not less than 70 percent of the property's assessed value. The auction committee manages the auction process, offering the property to the highest bidder if there is no higher bid for a period of five minutes.

**Step 3) Pay purchase price.** The investor pays the assessment committee or the financial department of the relevant ministry the full price of the land, minus the deposit amount. The relevant ministry subsequently provides a letter to the investor, addressed to the Directorate of Estates Registration certifying the sale and requesting a release of title to the investor.

#### **1d. 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. Permitted free zone activities include the following:

- Storage, re-export, and trading operations
- Industrial activities, including assembly, installation, sorting and refilling
- Service and storage
- Transport
- Banking, insurance, and reinsurance activities
- Supplementary and auxiliary professional and service activities

The government prohibits the following activities in Iraq's free trade zones: weapons manufacture, environmentally polluting industries, and contraband activities.

The Free Zone Law establishes a free zones management and investment authority, the Free Zones Authority, which operates under the Free Zone Management Instructions and Investors' Business Regulation No. 4, 1999. Under the Free Zones Law, goods imported into and exported from the zone are exempt from all taxes and duties, unless imported into Iraqi territory. This exemption does not apply, however, to the Reconstruction Levy CPA/Ord. 54 Section 5(4). Also, according to the needs of the project, investors enjoy the privilege of temporary entry for their vehicles. Capital, profits, and investment income from projects in the zone are exempt from all taxes and fees throughout the life of the project, including the foundation and construction phases.

Iraq has the following free zones:

- Basra/Khor Al-Zubair Free Zone. This 1 million sq. m. zone is located 40 kilometers southwest of Basra, on the Arab Gulf at the Khor Al-Zubair seaport. The government established this zone in June 2004.
- Nineveh/Falafel Free Zone. This 400,000 sq. m. zone is located in the north, near roads and railways that reach Turkey, Syria, Jordan and the Basra ports.
- Sulaimaniya free zone. This zone is located in northern Iraq, in the Kurdistan region.
- Al-Qayem Free Zone. This zone, located near the Iraqi-Syrian border, has two phases: The first phase is 70,000 m<sup>2</sup> and the second phase is 200,000 m<sup>2</sup>. This zone is close to roads and railway that reach Turkey, Basra, and Jordan. The zone's first phase is limited to commercial and service activities.

An Iraqi or foreign investor must complete the following steps to lease property in one of the country's free zones.

**Step 1) Submit application and pay fee.** The investor submits an application form that includes a project description to the Free Zone Authority. At submission the investor pays a non-refundable US\$100 processing fee.

The Free Zone Authority reviews the investor's application and either approves or rejects his request to lease space in a particular free zone. If the Free Zone Authority approves the investor's application it notifies him of the approval and draws up a lease agreement.

**Step 2) Sign lease.** The investor must sign a lease within 30 days of lease approval.

## **2. Private Property Market**

### **2a. Purchasing or Leasing Land from the Private Property Market**

Iraqi and foreign investors may lease property from the private real estate market for residential, commercial, or agricultural use. 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 an initial period not to exceed 40 years. After the initial period foreigners may renew the lease for an additional 40 years.<sup>14</sup> Iraq does not yet host large international real estate companies; however, there are numerous small real estate agents in the country. Iraqi laws regarding foreign purchase of private property are conflicting; therefore it is uncertain whether or not a foreigner may actually purchase land in the country.

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<sup>14</sup> CPA/ORD No. 39 of 2003 (Section 8.2)

**Step 1) Identify property via real estate agent.** The investor visits any of Iraq's real estate agents to identify property for lease or sale. As in many other countries, the estate agent will assist the investor in locating the best properties for his needs. The investor may visit a number of properties as he investigates the market.

**Step 2) Negotiate property purchase/lease price.** The investor and the seller, via the estate agent, negotiate a price for the property. In the case of a sale, after the investor and the seller reach a preliminary agreement on price, the real estate agent or the investor will arrange for a site inspector to formally inspect the property.

**Step 3) Sign contract, pay lease or down payment.** In the case of a lease the investor signs a lease and pays the negotiated lease amount. In the case of a sale, if the site inspection concludes favorably the investor will sign a purchase contract and make a down payment. Investors must typically make a down payment of between 20-25% of the full purchase price. There is no legal requirement for the amount of down payment; rather, the seller and buyer negotiate this amount.

**Step 4) Initiate title transfer.** In the case of a sale, once the buyer has signed the contract and made a down payment, he accompanies the seller and the estate agent to the Ministry of Justice's General Directorate of Real Estate Registration (GDRER) to initiate title transfer. The parties first open a file at GDRER. The file includes the following information:

- Property description
- Property registration number

The seller and the buyer sign the file, indicating their desire to initiate the title transfer process.

GDRER inspects the property to assess its value. GDRER subsequently sends the file, including the property assessment, to the relevant municipality's tax department. The tax department determines ownership transfer fees and property tax based on the assessed value. The tax department also confirms that there are no outstanding claims on the property or fee delinquencies. The tax department stamps the file and returns it to GDRER.

GDRER reviews the file and calculates the ownership transfer tax as 3% of the property's assessed value.

**Step 5) Pay relevant fees.** The investor pays the title deed registration and ownership transfer fees to GDRER. Ownership transfer tax is 3% of the property's assessed value.

**Step 6) Pay for property in full.** The investor pays the seller in full for the property. The investor must pay cash for the property.

**Step 7) Sign and record sale, receive temporary title.** The investor and the seller return to GDRER to sign the record of sale. The GDRER issues the investor with a temporary title deed.

**Step 8) Retrieve permanent title.** The investor must return to GDRER a final time to retrieve the permanent title deed for his property.



The following are typical real estate fees that an investor pays an agent for facilitating property purchase from the private property market in Iraq:

- The investor pays 2% of the transaction cost for the first ID 10,000 (US \$6.80).
- The investor pays an additional 1% of the transaction cost for property value in excess of ID 10,000

In Baghdad's Mansour neighborhood commercial property leases run between US\$4.00 – US\$8.00/m<sup>2</sup> per month.

### **4.3 Analysis**

Some of Iraq's site acquisition processes appear fairly straightforward from the process steps outlined above. For instance, the lease and sale auction processes appear to provide clear, transparent steps by which an investor can acquire land. However, since the government provides no information on these processes -- including details regarding who attended the auction, who bid, and who won -- it is difficult to judge how fair the auction process really is.

Unfortunately, land access limitations are one of the most significant investment barriers for foreign investors. The government currently prohibits foreigners from purchasing public property, which is particularly troubling to Iraq's privatization process. Moreover, the current legal regime, which includes a mixture of former and new laws, does not provide sufficient clarity regarding foreign ownership of private property. CPA Order 39 codifies a prohibition on all land sales to foreigners; however, the government has not yet drafted implementing regulations to this effect. Anecdotal evidence suggests that, in practice, a prohibition on land sales to foreigners existed pre-April 2003 and continues today.

Iraqi and foreign investors also face potential title disputes. While the Iraqi Claims Commission did process a number of land claims – resulting in clean and clear titles for these disputed properties – it ceased accepting claims several months ago. Investors cannot be certain that Iraqis will not bring additional claims to the judicial system in the future.

### **Issues**

**Government control over majority of Iraq's land restricts easy, market-based access to land for investment.** The government owns more than 80 percent of the country's land. The government could use its real estate assets more effectively by releasing land into the private sector. Presumably the government is doing this through its sale auction process; however it is not clear that Iraq has a country-wide development plan that includes policies aimed at generating economic growth and government revenue through effective land asset management.

**Limiting foreigners access to land is a strong investment deterrent.** It is unclear why the government prohibits foreigners from purchasing public property, and also appears to prohibit foreigners from purchasing private property. The government might be concerned about land speculation, especially as it invites foreign investment in. However, an absolute prohibition on foreigners buying land is not the most effective way to counter land speculation, especially since Iraqis are equally capable of speculative buying. The current prohibition sends a negative message to potential foreign investors, and is especially problematic for state-owned enterprise reform. In practice, foreign investors are limited to leasing state owned land, for commercial, industrial, agricultural, and residential purposes.

**Lack of market information increases site acquisition difficulty.** Iraq has no centralized information source on available property to lease or purchase, either in the public or private sector. While the government will soon launch its investment promotion agency website, which will hopefully provide site acquisition information, currently there is no single document that details the ministries and agencies involved in site acquisition and the options available to investors. None of Iraq's real estate agents appear to have websites or other published information listing available property.

**Multiplicity of laws governing land acquisition increases investor confusion.** There are too many laws that govern land acquisition in Iraq, and little clarity regarding the breadth of site acquisition possibilities in the country. Fifteen major pieces of legislation govern various aspects of the site acquisition process, poignantly illustrating Iraq's state-dominated economy tradition. It appears that a number of ministries own and control land, but it is not clear how they lease to investors and sell to Iraqis. While it is clear that Iraqi and foreign investors with industrial projects can lease land from the government in one of the country's industrial estates, it is unclear how an investor leases land for agricultural or commercial purposes. Is there land zoned for these purposes? If so, to which ministry does the investor apply and what is the approval process?

**Numerous landlords decrease transparency in public land acquisition process.** There are a number of ministries and governments involved in the state land lease process, and in some cases the role seems inappropriate. For instance, MoLSA's Minister may terminate a project located in an industrial estate owned by a governorate or municipal government in the case of land use changes or if the project is not operational. It is unclear why MoLSA should have the authority to terminate projects and evict industrial estate clients. In fact, it is unclear why the ministry would be involved in industrial estates at all.

**Flat country-wide industrial estate lease rates might limit government revenue.** Industrial estate lease rates apply throughout the country and are fixed at US\$0.75 – US\$1.00/m<sup>2</sup> per annum. Since private sector industrial land lease rates are not available it is difficult to determine whether or not the government is subsidizing all industrial estate leases. However, since the country-wide nearly flat rate ignores each estate's special features and locations, it is fair to guess that the existing rates are lower than market rates in some areas of the country. While lease subsidies often provide useful incentives for investors, the government should reassess whether or not a nearly flat lease rate across the country makes sense relative to market rates in various areas.

**Poor condition of industrial estates deters investment.** Iraqi industrial estates are in poor condition; they need significant investment and renovation. Iraq's newest industrial estates date from the 1970s, and since that time the government has not sufficiently developed them. Most of the country's industrial estates either lack or have insufficient access to basic infrastructure, including utility services. Roads within the estates and those leading to them are in poor condition; many are unpaved. Residential expansion has overtaken a number of Iraq's industrial estates, creating significant environmental concerns given the poor condition or absence of services.

**Government lease auction inconsistencies increase site acquisition confusion.** Iraqi and foreign investors may both participate in the lease auction to lease government property. In the lease auction process every bidder must provide a deposit of 20% of the property's assessed value. Moreover, at the auction bidding apparently starts no lower than 70% of the property's assessed value. It is unclear why an investor must provide a deposit based on

the property's value, rather than on an estimated lease rate. It is likewise unclear why bidding is based on the property's value rather than an estimated lease rate.

**Limited auction announcement publication decreases transparency.** When a ministry has land to lease or sell it announces a public auction in the relevant local newspaper. This is insufficient notification for investors, particularly those who might consider locating in a particular area of the country but do not have access to the local newspaper.

**Unclear rationale for lease auction process increases acquisition uncertainty.** It is unclear why the government holds an auction to lease state-owned property rather than establishing set lease rates and a lease approval process for all investors. The current auction system is administratively burdensome for both the government and the investor. Worse, since the investor is not even guaranteed a lease through the auction process, he has wasted considerable time.

**Manual land application processing and documentation increases processing time.** The ministries and governorate and municipal authorities involved in leasing space in the country's industrial estates and in the lease and sale auction processes complete all procedures manually. Relevant documents, including application forms, are transferred manually rather than electronically among the relevant bodies. This can slow the approval process and limits the investor's ability to track the approval process. Moreover, currently investors must obtain and submit paper forms. No application materials are available electronically.

**Unclear free zone lease approval process increases locating confusion.** Iraq has four free zones in which both Iraqi and foreign investors may lease space. While the country's Free Zone Authority approves or rejects lease applications, the process by which it does so is unclear. Lease rates, and an indication of whether or not they are significantly subsidized, are unknown.

## **Recommendations**

**Release land to private sector.** The government should consider creating and implementing a countrywide land use policy. The land use policy should include the sale of government land to the private market to encourage more productive use.

**Allow foreigners to purchase public and private property.** The government should reevaluate its prohibition on foreigners purchasing public property, and clarify the existing legal regime governing foreign ownership of private property. In both cases the government should prioritize drafting and implementing a land law that allows foreigners to purchase public and private property in Iraq. If the government hopes to avoid land speculation it can insist that all individuals purchase for a particular investment project. The government can subsequently ensure that the land is developed, rather than used speculatively, by establishing and enforcing time limits for development, and by assessing fines and additional taxes if purchasers do not respect time limits. Since speculative buying is not limited to foreigners, in any country, the government must be careful to apply land development criteria to all investors who purchase government land. The government could also consider long-term leases instead of outright sale to foreigners, especially in the short term. The text box below provides some examples of effective long-term lease policies.

#### **Box 4.1 The Structure of North American Long-term Ground Leases and their Applicability in Transitional Land Markets**

Long-term leases are often described as suitable alternatives to outright land ownership for foreign investors in countries where foreigners are excluded from real property ownership. In general, this is true if foreigners can conclude lease agreements that contain:

- *Sufficient lease terms*, usually between 30 and 99 years, with clear renewal conditions;
- *Transferability of leases* to third parties, including mortgage lenders;
- *Protection of lenders' rights*, including the right to foreclose;
- *Lessee's right to develop flexibly*, including market-driven design changes and sub-leases; and
- *Clear contract breach provisions* governing non-performance and termination.

The modern North American long-term ground lease model typically covers a period of 50 to 99 years and is most commonly used to develop transportation infrastructure (ports, airports) or to re-develop existing municipal property. Both municipal governments and developers tend to prefer land sales as the most appropriate vehicles for more generic development. In cases where outright government participation in a project is deemed desirable, public/private ventures are sometimes preferred to lease agreements.

Even though long-term leases may be less desirable than land sales for generic development, many transitional economies have adopted long-term lease regimes as pragmatic solutions to overcome political opposition to foreign land ownership. Especially in post-communist Central and Eastern Europe, long-term lease regimes have allowed policy makers to:

- *Provide land to foreign investors* to meet economic development objectives in a politically acceptable way;
- *Conclude contracts that are similar to the available in market economies* and with which international investors are already familiar;
- *Impose modern land use controls on specific properties*, in the absence of good planning controls in the rest of the economy;
- *Collect revenue from property* to develop related infrastructure, especially where property taxation is weak;
- *Participate in income from property appreciation*, especially in cases where public investment and participation helps to create increased property values;
- *Play a strong role in determining future land use*, especially in cases where planning controls have been weak or absent; and
- *Dispose of property in a flexible, low-risk manner* and postpone final sale until a stable property market is established.

*Sources:* TSG; David Dale-Johnson & W. Jan Brzeski, *Long-term Public Leaseholds in Poland: Implications of Contractual Incentives*, Lusk Center for Real Estate, University of Southern California, June 2000.

**Develop centralized site for market information.** The government should establish a central site for information on site acquisition in Iraq. At the very least this site should have details about government property, and explain the various processes by which an investor may acquire land in Iraq. The government should create a brochure, which details what government authorities own what land and the steps an investor must complete to lease or purchase various land. The government should also provide a range of fees for leasing and purchasing government property throughout the country. The Ministry of Industry should consider taking the lead in assembling information on all industrial estates and publishing this information on a central website or in paper form to interested investors. Ideally, a site acquisition brochure would also contain information on the country's private property market,

including information on market lease and sale rates, and details on some of the country's main real estate agents. Iraq's Investment Promotion Agency would be an ideal site acquisition information host.

**Condense land-related legislation.** The government should consider consolidating the country's numerous laws governing land acquisition. A much smaller number of laws could effectively govern all aspects of property acquisition and ownership in Iraq. In restructuring the land regime the government should formulate a clear land policy, preferably transferring a substantial amount of land currently under state control to the private sector to encourage productive usage.

**Reevaluate the role of all ministries and agencies involved in public land acquisition process, particularly MoLSA's role.** In addition to consolidating site acquisition laws in the country, the government should reevaluate the role of all agencies and ministries involved in the process. In the absence of a single industrial estate authority, a single ministry should control industrial estates that belong to the national government; and, each governorate or municipality that owns industrial estates should have the authority to terminate leases.

**Study revenue implications and necessity of subsidizing land leases.** The government should undertake a demand study to assess private sector demand for commercial and industrial land in the country. Concurrently, the government should study the revenue impact of leasing government land at the current flat rates instead of market rates. The government should subsequently either move to a full market rate lease system or at least move closer to the market rate.

**Evaluate industrial estate/free zone potential.** As part of a general investment promotion effort, the government should evaluate Iraq's existing industrial estates/free zones' potential. All industrial estates/zones must be consistent with WTO rules. The government should complete cost benefit analyses to determine the appropriate mix of state and private financing required to renovate the country's industrial estates/free zones. The government might also consider public-private partnerships in the development and management of all or some of these estates/free zones. If studies indicate there is sufficient existing and anticipated demand to locate in industrial estates/free zones the government should upgrade them with infrastructure improvements

#### Box 4.2 Industrial Property Development and FDI

Many developing countries have restrictive land ownership regimes, especially for foreigners. In addition, poor infrastructure networks and planning controls impede FDI inflows. As a result, many developing countries actively courting FDI have sought to promote the development of high-quality industrial property, often with liberalized land tenure regimes. In theory, this allows national FDI promotion agencies to market not just a country but a specific investment location as well.

Experience with these efforts has been mixed. In many cases, government-owned and developed industrial parks and free zones were established but did not provide service or infrastructure levels that were superior to the rest of the country. Many relied on incentive regimes to attract FDI to the project, and neglected demand-driven site selection and facilities design. Location of these projects was often motivated by political rather than economic considerations. As a result, countries as diverse as Saudi Arabia, Jordan, India, Lesotho, Nigeria, and Jamaica are now privatizing free zones and industrial parks in order to improve quality of service, conserve government resources, and compete more effectively for FDI.

In general, encouraging industrial property development contributes to FDI if it is

- Demand-driven and based on high-quality facilities, utilities, and service provision;
- Attractive on its own merits and not reliant on financial incentives;
- Comprised of a portfolio of several location choices open to investors;
- Efficiently managed, administered, and regulated; and
- Seamlessly integrated with the national investment promotion strategy.

Two small Latin American countries that have succeeded in integrating industrial property development into an overall FDI policy include:

- Costa Rica reformed an inefficient public sector free zone program designed as a regional development mechanism into one of the most modern industrial park and fee zone regimes in Latin America. Today, Costa Rica hosts a blend of public and private industrial parks, and relies on a modern customs administration that is based on post-audit verification and control – enabling industrial parks and single factory to operate as free zones without perimeter security. This modern regime has attracted over a billion dollars in investment.
- The Dominican Republic has been able to attract more than US \$1.3 billion of investment into the more than 50 free zones and industrial parks located throughout the country. The Free Trade Zone National Council, a joint public/private body rather than a government agency, administers the regime.

Source: TSG, Kuwait: Administrative Barriers to Investment, January, 2003, page 125.

**Reevaluate deposit and bidding amount for lease auctions.** The government should reevaluate the lease auction participation deposit amount and the level at which it

commences lease bidding. Currently the government requires participant applicants to provide a cash deposit of between 10-20% of the property's assessed value. Since the bid is for a lease on the property, rather than a sale, a deposit on the property's full value seems high. Instead, the government should require a deposit commensurate with the lease value. Likewise, the beginning bid level should be commensurate with the lease rate, not the property's full value.

**Announce state land auctions in additional publications.** To increase transparency, the government should require ministries to announce auctions in a number of local newspapers, a national level newspaper, and in the government gazette. In addition, the government should consider announcing auctions on a central website that contains all site acquisition information, as recommended above. The Iraqi Investment Promotion Agency might be an ideal host for such information, including electronic auction announcements.

**Reevaluate rationale of lease auction process.** In fact, the government should reevaluate the rationale for the lease auction process. While an auction makes sense for a land sale, it is less effective for leasing government land. Ministries with land to lease should rather establish lease rates that are based to some degree on market rates, and develop a system by which investors can apply for and obtain a lease without having to compete in an auction.

**Automate land lease and land registration application processing.** The government should automate the industrial estate lease application process, the land registration process, and the process by which an investor applies to participate in a lease or sale auction. At the very least the relevant ministries should post application forms on a central website. In the longer term the ministries should develop online systems by which investors may submit applications electronically and track application progress. In addition, ministries involved in the site acquisition process should develop internal automation so that, for instance, GDID could send an industrial estate application electronically to the relevant estate authority.

**Clarify and publish free zone approval process, criteria, lease rates.** The Free Zone Authority should clarify the lease application and approval process and ideally post this information on a central website. The authority should include information on the minimum requirements for an application form and attachments and detail lease rates. The authority should also provide information on free zone incentives, which should be WTO compliance.

#### **4.4 Site Development**

Once an investor has acquired land he must apply to the relevant municipal government to obtain a building permit to either construct a new structure or alter an existing one. The legislation regulating site development activities includes provisions designed to deter unregulated development. For example, the Municipalities Administration Law No. 13 of 2001 authorizes Amanat Baghdad's Director General to impose fines on those who construct without a valid license.

There are no building codes in Iraq. Instead, architects and building engineers develop site and building plans and construct according to technical principles in which they were trained.

The following legislation governs site development procedures in Iraq:

- Law No. 20, 1998
- Municipalities Law No. 130, 1963



- Municipalities Administration Law No. 165, 1964

## A. General Site Development Procedures

### 1. Site Development in Iraqi Municipalities

The following procedures, and subsequent analysis, are based on Baghdad municipality. According to Iraqi officials, the country's other municipalities have similar site development procedures.

#### 1a. Obtaining a Building Permit

An investor completes the following process steps to obtain a building permit to begin construction on new premises or to modify an existing structure.

**Step 1) Purchase application form.** The investor must visit the relevant municipal government offices to pick up and pay for a building permit application form. The form costs ID 500 (US\$0.34).

**Step 2) Complete and submit building permit application form.** The investor must submit the original application form and six copies to the municipal government's legal department. The additional copies are required to request permission for use of the road and sidewalk during construction.

The application form asks for the following information:

- Governorate in which the building permit is requested
- Commercial name of the project
- Project purpose
- Applicant's name
- Applicant's address
- Owner's (investor) identification information, including name, ID, birth date, address and telephone number

The applicant must attach the following documents to his building permit application:

- Six copies of the building plans, completed by a certified professional consulting firm or an architectural engineer
- One copy of the title deed or lease contract
- One copy of the investor's business license

The legal department confirms that the application form is accurately completed. The legal department sends the investor's application file to the municipal government's technical department, which reviews the building plans.

The technical department advises the Ministry of Industry and Mineral's GDID that the building plans conform to municipal requirements. The GDID grants preliminary approval for a building permit and sends the application file to the municipal government's planning and follow-up department.

The planning and follow-up department assigns a serial number to the plans and draws up the preliminary building permit. The municipal government's planning and follow-up department sends the preliminary building permit to the GDID. The GDID signs the preliminary permit and drafts facilitation letters for the investor for each utility connection his project requires. Each utility requires the GDID facilitation letter for connection.

**Step 3) Retrieve preliminary building permit and facilitation letters, pay facilitation letter fees.** The investor or his architect/contractor retrieves the preliminary building permit from the municipal government's licenses department. At the same time the investor pays the required building inspection fees, as determined by the municipal government's license department. The investor will also pay a deposit refundable when construction is completed and all construction waste is removed from the area. The investor also pays an ID 2,600 (US\$1.77) fee for each utility connection facilitation letter he receives.

**Step 4) Begin construction.** Once the investor has his building permit, he may commence construction. There are no sequenced inspections by relevant agencies such as the fire department or the municipal engineer; therefore, the investor may proceed until construction is complete. Instead, municipal committees make random inspections to all construction sites to determine if construction conforms to the investor's business project plan.

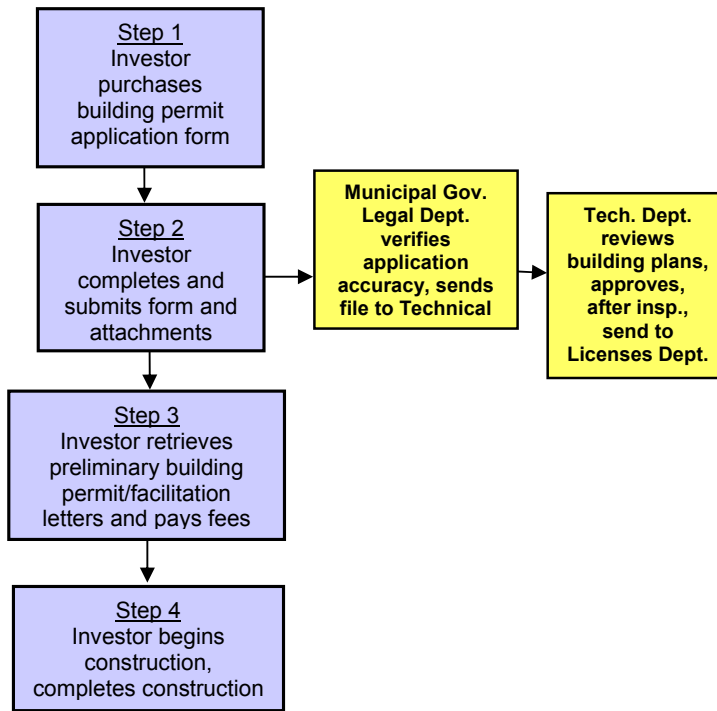
The table below indicates the fees the government charges in the site development process.

**Table 4.3: Site Development Fees**

Approval Category	Fees
Utility site inspection fees	ID 5,000 (US \$3.40)
Construction fees	Building area x ID 20 (US \$0.01)
Additional building fees	ID 200,000 (US \$136.05)
Stamp fee	ID 3,600 (US \$2.45)
Deposits	ID 15,000 (US \$10.20) refundable after building completion
Pavement use fee <sup>15</sup>	Area width x 12 x ID 500 (US \$0.34)
Road pavement fee	ID 2,450 (US \$1.67) per sq. m.
Sidewalk pavement fee	ID 700 (US \$0.48) per sq. m.

<sup>15</sup> This fee and the road pavement and sidewalk payment fee are assessed only if a road or sidewalk already exists.

**Figure 4.1: Process by which an investor obtains a building permit**



## **1b) Change in Building Use**

Municipal governments allow building use changes if the investor's business requires modification. GDID must approve the business project change prior to the investor applying for a building use change. To change a building's zoning designation, the investor completes the following steps. If an investor wants to change the use of an existing structure, he or she must obtain rezoning approval prior to requesting a construction permit.

**Step 1) Submit rezoning application, pay processing fees.** The investor must complete a re-zoning application form and submit it to the GDID. The investor attaches the following documents to the application form:

- Registration Certificate indicating preliminary project approval
- Site development feasibility study

Upon application submission the investor pays a 10,000 (US\$6.80) fee to GDID.

**Step 2) Seek and obtain approval from all relevant departments.** The investor takes his application to each relevant department, including those that focus on the environment, health, and civil defense. Each department in turn reviews the application and approves it.

**Step 3) Return to GDID with approvals, obtain permit.** The investor returns to GDID with approvals from all relevant departments. GDID issues a permit addressed to the relevant municipality. The relevant municipality will issue the investor a building permit as noted above.

## **4.5 Analysis**

### **Issues**

**Lack of building code, inspections, and occupancy permits creates potentially unsafe building environment.** Iraq does not have a building code. Therefore, while municipal authorities review and approve building and site development plans, they do so in the absence of specific building codes. Construction proceeds, therefore, in the absence of site inspections that would ordinarily determine whether or not building is proceeding according to code. Instead, architects and building engineers are responsible for drafting building plans and supervising construction according to an individual notion of technical soundness. Without inspections municipal governments also do not grant occupancy certificates, which would ordinarily certify construction to code. Without building codes and systematic inspections Iraq's construction industry is potentially unsafe.

**Lack of procedural guidelines increases application time.** Neither the national government nor the municipal governments have developed site development process guidelines. Investors cannot determine in advance how much time is required to obtain a building permit, and what fees are involved, or even what process steps they must complete. This is particularly troublesome for the "change in building use" process since the investor must apparently complete numerous steps as he carries his application file from department to department seeking approval. If an investor knows upfront what process steps he must complete he can calculate the time and effort required.

**Municipal committee inspection process is unclear and potentially intrusive.** The municipal committee random inspection process seems wholly unnecessary and even

potentially intrusive to investors. While an investor undergoes no technical inspections during construction, he might face a random inspection from a municipal committee that occasionally visits building sites to determine whether or not the building conforms to the investor's building plan. The criterion by which the municipal committee evaluates the investor's site and what the committee does if it deems the site *in violation* is unclear.

**Manual administration and processing is cumbersome.** Municipalities do not provide electronic versions of permit application forms. Nor do any municipalities transfer files between relevant departments electronically. Automating the application, review, and approval process would decrease time delays and enable the investor to track approval progress.

## Recommendations

**Establish and enforce building codes.** At present, there are no formal building codes in Iraq. Without building codes and construction inspections Iraq's building industry is potentially dangerously under-regulated. It appears that architects and building engineers are nearly solely responsible for safe and effective construction throughout the country. However, since it is not clear that Iraq licenses or regulates building professionals unqualified individuals might currently be responsible for construction projects.

The government should prioritize the development of countrywide building codes. Municipal governments should review permit applications. Building permit approval criteria, and a final occupancy permit, should be based on building code compliance. Concurrently the government should establish criteria for building professionals, ideally by drafting and implementing legislation that governs the licensing and registration of building professionals. While the country may not currently have the capacity to establish its own examination system for building professionals, the government could develop criteria for assessing professional qualifications from other countries.

While establishing building codes, the government should also develop a sequenced inspection system to better regulate the building industry. A municipal engineer could complete site inspections, or the government could outsource inspections to other licensed professionals. In the absence of sufficient inspectors, the government might also consider establishing significant failure to comply penalties for demonstration effect: A small number of inspectors assessing significant fines might persuade others to comply even if the chance of inspection is minimal.

In the medium term, when municipal governments have sufficient inspection capacity, the government should introduce an occupancy permit system through which it certifies a building completed to code and thereby habitable. Occupancy permits should be based on a physical site inspection.

**Boost Capacity of Municipal Government in Building Permits.** If the government feels that municipal governments are not sufficiently capable of evaluating building permit applications it should involve a more relevant ministry in the short term. In the long term the government should boost municipal government's technical capacity to review building permit applications and thereby remove ministries from the process.

**Develop information brochures and websites for the site development process.** Since the process steps are apparently the same or very similar across municipalities, The Ministry of Municipalities should develop uniform user guidelines. The Ministry should develop a

website that details permitting requirements, offers a process guideline, and hosts all relevant forms. Moreover, the Ministry should develop hard copy guidelines and forms for those who do not have internet access.

**Terminate municipal committee inspections.** Since municipal committee inspections do not appear to serve a valid technical purpose and since they are not completed systematically the national and/or municipal governments should abolish the process. Instead, municipal governments should consider initiating technical inspections by relevant departments and agencies.

**Initiate automated process.** Municipal governments should work to automate the internal building permit approval process. The investor's application file moves among a number of departments within the municipal government. Automating this process, so the file moves electronically, will likely decrease approval time. Moreover, while The Ministry of Municipalities is developing process and fee guidelines, the Ministry should develop electronic application forms that investors can download. In the medium term the Ministry should establish an electronic application submission system.

## 4.6 Utilities Connection

The cost and reliability of infrastructure services, and speed with which connections are obtained, influence an investor's decision to locate. This section examines the steps required to obtain water, power, sewage, solid waste, and telecommunications services in Iraq.

### A. Water Supply

In Baghdad, the Amanat Baghdad's Directorate of Water and Sewage is responsible for water supply. In the governorates, the local water and sewerage department is responsible for water supply. The Law of General Commission for Water and Sewage No. 27 of 1999 and related instructions, including No. 37 of 1999 regulates these authorities. The Iraqi Government has traditionally controlled water supply; however, the private sector may construct wells after obtaining approval from the relevant authorities. The competent authorities in this case include the Ministry of Irrigation, the Ministry of Environment, and the Ministry of Health pursuant to the Ministry of Irrigation's Instructions No.1 of 2000.

According to assessments undertaken by CARE and the United Nations International Children's Education Fund (UNICEF) in coordination with the International Committee of the Red Cross (ICRC), many Iraqi water and sewage treatment plants provide water that falls below international treatment standards. Of the 177 water treatment plants reviewed, 34 were classified as good, 98 as acceptable, and 45 as poor.

The government subsidizes residential water costs. Table 4.4 indicates the significant price difference between residential and industrial and commercial water use.

**Table 4.4: Water Tariff Rates in Baghdad Amanat**

Category	Rate per cubic meter
Residential	ID 2 (US \$0.001) to ID 60 (US \$0.04)/cubic meter
Industrial/Commercial	ID 60/cubic meter

An investor must complete the following steps to connect his project to the country's water supply. The following steps represent those required in Baghdad; however, the procedures are similar across municipalities.

**Step 1) Submit water service request, pay inspection fee.** The investor files a written request in the form of a letter to the municipal water and sewerage department. In the letter the investor must indicate his need for water connection and describe his business project. The investor must attach the following documents to his application letter:

- Business license
- Building permit
- Building plans
- GDID facilitation letter

When submitting his application the investor also pays an ID 5,000 inspection fee.

The municipal water and sewerage department sends the connection request to the maintenance crew in the project's area. The maintenance crew completes a site inspection to assess whether or not the investor's project is on an existing water line and to determine connection costs.

If the project is located far from an existing water line the investor must drill his own well. If the project is close to an existing water line the maintenance crew provides the investor with a list of charges to complete connection, including types of pipes, pump, and meter required. The maintenance crew provides an assessment within a week of the investor submitting a service request.

If the investor is located on an existing water line, the water and sewerage department will connect his water within several days of application.

**Step 2) Pay connection costs.** The investor pays for all construction and equipment costs required to connect his project to the country's water supply. He makes this payment directly to the municipal government's water and sewerage department.

The water and sewerage department will commence construction, including meter and pump installation. The time delay depends entirely on the project's distance from the existing water line.

The investor pays for water services on a monthly or bimonthly basis. An employee from the water and sewerage department physically visits the project site to collect payment. There is no formal billing system via an invoice sent through the post or electronically.

## **B. Power Supply**

In 1990, Iraq's total installed generating capacity was approximately 9,295 megawatts (MW) with a peak demand of about 5,100 MW. Approximately 87% of the population had access to electricity at that time. During the 1991 Gulf War, generation stations were among the most severely damaged infrastructure, reducing generation capacity to 2,325 MW. Several transmission lines were put out of service, and a number of substations were damaged. System repairs initiated in the early 2000s resulted in a capacity increase to 4,500 MW.



However, generating capacity again fell during Iraq's latest war -- to about 3,300 MW, which represents half of the total potential load of 6,500-7,000 MW. Due to supply shortages current per capita consumption is approximately 700 kWh per annum. By February 2004, the government restored average peak electricity production to 4,034 MW/day. Through several recent agreements neighboring countries have promised to supply Iraq with extra power. Iraq has considerable human resource capacity in the field of electricity generation and distribution but needs to upgrade technical knowledge and provide comprehensive training programs in all aspects of utility operations.

The newly created Ministry of Electricity is Iraq's energy policy and supply authority. The Ministry of Industry's 1988 Instructions outline power supply policy for the country. Currently, the state controls all power generation and distribution. However, the majority of industrial projects, particularly after the 1990 Gulf War, operated on individual power generator capacity. For taxation purposes investors must register generators, like other physical assets, with the Notary Public in accordance with Instructions No. 7 of 1999, "Machine Registration."

An investor must complete the following steps to connect to Iraq's power supply.

**Step 1) Submit request for power service, pay inspection fee.** The investor completes an application form and submits it to the relevant municipality's power department. The investor must attach the following documents to his application form:

- Copy of building permit
- GDID facilitation letter
- Business license
- Copy of an electrical bill from a project located close to the investor's project

When submitting his application the investor also pays an ID 5,000 inspection fee.

The power department completes a site inspection to determine the project's proximity to existing power lines. The inspection includes an assessment of any construction costs the investor will pay to connect his project to existing power infrastructure. The power department will notify the investor of the required costs.

If the investor's project is located on existing power lines the power department connects the investor's service within 7 business days.

**Step 2) Payment of connection construction costs.** The investor pays all construction and equipment expenses to connect his project site to the country's power lines.

The relevant municipality's power department completes required construction, installs equipment, and connects power.

The investor pays for power service on a monthly or bimonthly basis. An employee from the power department physically visits the project site to collect payment. There is no formal billing system via an invoice sent through the post or electronically.

**Table 4.5: Unit Electricity Price**

Price US cents KW/h	Price ID KW/h	Number of consumed units
<b>Residential</b>		
0.07	1.000	1-1500

0.27	4.000	1501-2100
0.47	7.000	2101-3000
1	15.000	3001-5100
2	30.000	5101
<b>Commercial</b>		
0.13	2.000	1-300
0.27	4.000	301-600
0.53	8.000	601-900
0.8	12.000	901-1500
0.13	20.000	1501-3000
1.66	25.000	3001
<b>Industrial</b>		
0.57	8.500	KV 0.4
0.2	3.000	KV 11
0.17	2.500	KV 33
0.13	2.000	KV 132
<b>Governmental</b>		
0.13	2.000	1-10000
0.17	2.500	10001-20000
0.2	3.000	20001-40000
0.27	4.000	40001-100000
0.33	5.000	10000
<b>Agricultural</b>		
0.33	5.000	

US\$ one = ID 1500

### C. Sewage Services

Iraq's sewerage collection and treatment system serves Baghdad and 9 percent of the urban population outside the capital city. None of Iraq's rural areas and none of the urban areas north of Baghdad have access to piped sewerage systems.

Amanat Baghdad's Water and Sewage Department provides sewerage service to the city. In other governorates similar municipal authorities provide sewerage service. Law No. 27 of 1999 and Instructions No. 37 of 1999 govern Iraq's sewerage services.

Investors complete the following steps to obtain sewerage services, where available, in Iraq.

**Step 1) Submit request for sewerage services, pay inspection fees.** The investor completes an application form and submits it to the local municipal sewage department. The investor must also submit the following documents with his application:

- Building permit
- Building plans
- Business license
- GDID facilitation letter

When submitting his application the investor also pays an ID 5,000 inspection fee.

The water and sewerage department processes the investor's application and schedules a site inspection to determine connection costs. The department will complete a site inspection within 3-7 days of application.

After completing the site inspection the department notifies the investor of the costs to connect his project site to the city's sewerage system. If the investor's project is located on

an existing sewerage line the investor only pays whatever costs are required in terms of construction and equipment to make the connection. If the project site is not located on the municipality's main sewerage line, the investor must dig his own septic tank.

**Step 2) Pay fees to offset connection costs.** If the investor's site is located on the main sewerage line he returns to the water and sewerage department to pay any construction and equipment costs.

The department subsequently connects the project site to the main sewerage line. The investor pays sewerage services on a monthly or bimonthly basis. An employee from the water and sewerage department physically visits the project site to collect payment. There is no formal billing system via an invoice sent through the post or electronically.

## **D. Solid Waste Treatment**

Iraq does not have a solid waste treatment system. Investors whose projects require solid waste treatment and/or removal must indicate this in initial project plans and subsequently complete an environmental compliance approval. No business is allowed to discharge waste into rivers or into the air without prior government consent.

## **E. Telecommunications**

Investors have access to land line and mobile telecommunications service in Iraq.

### **1. Obtaining Landline Services**

The Ministry of Communication's General Establishment for Communication (GEC) provides landline service in Iraq. Individuals must complete the following procedural steps to apply for and obtain landline telecommunication service in Iraq.

**Step 1) Complete and submit application form.** The investor completes an application form and submits it to GEC. The investor must submit the following documents with his application form:

- Business license
- GDID facilitation letter
- Copy of passport or other valid identification document

The GEC's local technical unit processes the investor's application. The local technical unit completes a site inspection to determine the costs to connect the investor's project to the existing landline system. If the investor's project requires no installation, he merely waits for line availability.

According to GEC an applicant can expedite land line connection by paying a US\$75 fee.

**Step 2) Pay installation down payment, or simple connection fee.** The investor returns to GEC to make a 5% down payment on installation costs or pay a simple connection fee. The investor pays the latter rather than the former if his project is on an existing landline. GEC charges ID 200,000 for Baghdad connections; ID 150,000 for connections in governorate centers; and ID 100,000 for connections in suburbs.

The local technical unit subsequently completes installation.

**Step 3) Pay final installation costs.** Once the investor's project is connected to the land line system the investor returns to GEC to pay the remaining 95% of installation costs.

Connection time varies depending on installation needs and line availability. Currently there are few lines available in Baghdad and anecdotal evidence suggests some applicants have been waiting years for land line service.

## **2. Obtaining Mobile Phone Services**

In April 2003, the following foreign companies entered Iraq's mobile telecommunications market:

- Egyptian company Orascom, which covers the Baghdad area
- Kuwaiti company MTC Atheer, which covers Iraq's southern and midland regions, including parts of Baghdad
- China's Asia Cell, which covers Iraq's northern region

Mobile users originally expected the three companies to coordinate coverage throughout the country by 2005; however, anecdotal evidence suggests current coordination – at the end of 2005 – remains poor and service is not guaranteed as one moves across the country. In fact, connectivity between the providers is essentially non-existent as a subscriber moves from one provider's region into another.

The mobile service providers have sales agents scattered throughout the country. The agent will typically ask to see the applicant's identification card -- driver's license, passport, residence card, or identity card. The applicant signs a service contract agreement and pays for a subscription. Subscription charges range from US\$25.00 to US\$55.00.

Local provider, Iraqna, charges the following costs:

- Local calls: US\$0.12/minute
- Message retrieval: US\$0.06/minute
- SMS: US\$0.08/minute

## **4.7 Analysis**

While the process steps for utilities connections in Iraq appear fairly straightforward and connection times seem quick, it is unclear the system operates quite so efficiently. The country has a limited sewerage system, and water treatment is both limited and poor. Anecdotal evidence suggests that landline connections are limited and that new applicants must wait until an existing subscriber cancels service. Moreover, Iraq continues to operate on less electricity than the country demands, particularly in urban centers. The official procedures for connecting to water, power, sewerage, and telecom, therefore, are unlikely borne out for either residential or commercial users on the ground. Industrial users likely face even bigger hurdles in connecting to utility services in Iraq. It is worth noting that none of Baghdad's nine industrial estates offer either landline telecommunications service or sewerage service.

## Issues

**Poor sanitation system presents environmental and health risks.** Iraq's sanitation system represents a serious environmental and health concern. According to recent reports, none of Iraq's sewage treatment plants are operational and raw sewage is discharged into rivers and waterways. Residential users contribute to the problem by illegally discharging septic sewerage into rivers and on land. In fact, estimates indicate that 50 percent of the country's wastewater is discharged into rivers and other waterways. Deteriorated sewer pipes are contaminating potable water networks and underground water.

**Lack of solid waste system represents environmental hazard.** Iraq does not have a solid waste treatment or disposal system. While industrial projects that generate solid waste must include a plan for disposing of this waste, the government's capacity to regulate compliance is unclear. As the country invites investment, and anticipates industrial development in particular, the absence of an effective solid waste system or regulatory capacity could create environmental hazards.

**Insufficient landline capacity represents business limitation.** As with the other utilities investors must pay installation and equipment costs to install landline telecommunication service if the business site is not located on an existing line. However, for businesses located on the existing line, anecdotal evidence suggests that year long delays are common because there are not enough lines to meet existing demand.

**Insufficiently automated application processes increase connection times.** Currently investors must visit utility providers to retrieve service application forms, and to obtain information on application procedures, fees, and service costs. Investors must return to the utility provider to submit an application form and required supporting documentation. Since the systems are not automated, investors cannot track the progress of their application and connection timeframe in any meaningful way. Moreover, none of the country's utility services except telecom provide billing invoices via the postal system or electronic mail. Instead, a representative from the service provider hand delivers an invoice and hand collects payment.

## Recommendations

**Prioritize sewerage system expansion and improvement.** In prioritizing infrastructure development and improvement, the government should place sewerage at the top of its list. At the very least the government should improve sewerage systems in Baghdad and other large municipal areas where discharge into rivers, streams, lakes, and onto land could create enormous health risks. The government should also prioritize establishing sewerage systems in the country's industrial estates.

**Introduce solid waste system and/or oversight capacity.** The government should consider introducing a solid waste system, particularly in areas of main industrial activity. In the short term the government should enforce solid waste disposal compliance.

**Continue efforts to repair landline telecommunications system.** In the short term the government should continue to repair, improve, and expand existing landline systems. The government should also establish landline telecommunications service in its industrial estates. In the medium term the government should consider privatizing the telecommunications sector. Competition in the telecom sector will encourage better and expanded service and lower costs.

**Automate utility application and tracking processes.** All utilities connection application processes should be automated to the extent possible. At the very least utility providers should make application forms available on their own website and/or a centralized government service website. Making forms, guidelines, and fee structures available electronically reduces the steps an investor must complete in connecting to various utility services.

## **4.8 Environmental Compliance**

The following legislation governs environmental compliance in Iraq:

- Environmental Improvement and Protection Law No. 3 of 1997

Established in April 2003, the Ministry of Environment 2003, is responsible for environmental compliance in Iraq. The ministry has four departments, each of which plays a role in compliance.

- The Directorate of Planning and Technical Follow-up (DPTF). The DPTF weighs in on the technical aspects of an industrial project's environmental compliance
- Directorate of Governorates Affairs (DGA). The DGA, through its branches in the governorates, supervises environmental compliance in each of Iraq's 18 governorates.
- Directorate of Baghdad Environment (DBE). DBE is responsible for environmental compliance within Baghdad.
- Center of Radiological Prevention (CRP). CRP is responsible for radiological issues affecting the environment.

Iraq is party to a single multilateral environmental agreement -- the Regional Organization for the Protection of Marine Environment (ROPME). Iraq lost membership in this Gulf state organization when it invaded Kuwait in 1990. The Ministry of Environment is currently working to restore the country's membership.

The Ministry of Environment's Department of Protecting and Improving the Environment reviews and monitors compliance during the site development stage. All investment projects must have a feasibility study that includes an environment impact assessment. This is equally true of a large industrial project and a small bakery. The Ministry of Environment's Department of Protecting and Improving the Environment categorizes all projects as A, B, or C depending on the project's potential environmental impact. In categorizing a project the department evaluates the business activities, the project's proximity to residential areas, and the project's provisions for waste treatment and/or removal. Category A projects are those with the greatest potential for environmental pollution. The department would rank a cement factory, for instance, as a category A project. Category B projects are those with some environmental pollution potential. Category C projects are those with little environmental pollution potential -- a bakery, for instance.

Investors must complete the following process steps to gain environmental compliance certification in Iraq.

**Step 1) Complete application and submit to the Ministry of Environment.** Once the relevant municipality's urban planning department has approved the investor's building permit application, the investor applies to the Ministry of Environment's Department of

Protecting and Improving the Environment for environmental compliance certification. The investor completes an environmental compliance application form and submits it with the following documents to the Department for Protecting and Improving the Environment.

- Indication of site acquisition (lease contract or title deed)
- Building permit
- Project feasibility study, with EIA

Every project feasibility study must include an analysis of the project's potential environmental impact. The investor hires one of Iraq's private environmental consulting firms to complete the environmental impact assessment component of the project feasibility study. The Department for Protecting and Improving the Environment requests the following information in each feasibility study:

- Project description
- Indication of project's proximity to residential areas
- Indication of site's proximity to neighboring projects
- Assessment of potential environmental impact
- Description of project's probable pollutants and proposed treatment systems for air, water, and waste pollutants
- Drawings of waste treatment stations and the use of recycling, ventilation, and filtering systems
- Other documents or laboratory tests required to prove compliance with Iraq's environmental protection standards

The Department for Protecting and Improving the Environment does not charge a fee to review the investor's environmental compliance application.

The department reviews the investor's application and typically within 2-3 weeks either approves or rejects environmental compliance certification. In some cases the department requires a site inspection or laboratory tests, which can delay the review process.

**Step 2) Retrieve environmental compliance certification.** The investor either visits or calls the Department for Protecting and Improving the Environment to determine if his application has been approved or rejected. If the department has granted environmental compliance approval, the investor retrieves a written certification. He may now proceed with building construction and/or commence business activities. The department carries out post-approval monitoring and expects compliance reports from the investor.

If the department rejects the investor's application it drafts a letter indicating the reasons for rejection. The investor may complete modifications as recommended by the department and resubmit his application.

The law indicates that investors who violate the country's environmental compliance regulations face fines of not less than ID 50,000 (US \$34.01) and not more than ID 500,000 (US \$340.14) per month. If the investor repeats the violation the government may imprison him for between 3-6 months and fine him ID 100,000-500,000 (US \$68.03-340.14). Violators may also be liable to pay compensation and remediation expenses.



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## 4.9 Analysis

### Issues

**Unclear certification process increases risk that projects are noncompliant.** Investors apply for environmental compliance certification after receiving a building permit but prior to commencing construction or any business activities. The building permit process, however, does not indicate that an investor must obtain environmental compliance certification prior to construction. Moreover, there are no phased construction inspections in Iraq to ensure building compliance or environmental compliance during construction. Therefore, it is unclear how the Ministry of Environment ensures that investors apply for environmental compliance certification.

**Requiring full EIA for all projects is unnecessary and increases locating time and cost.** Some investment projects present no environmental threat and should not be required to complete a full environmental impact assessment. An EIA can be a costly and time-consuming undertaking, especially for a small business such as a bakery. It is unclear, therefore, why the Ministry of Environment requires all project categories to complete an EIA when applying for an environmental compliance certification. Typically an initial screening would be completed to determine whether or not a proposal should be subject to an EIA and if so, at what level of detail. Then a scoping exercise would be carried out to identify the issues and impacts that are likely to be important and to establish specific terms of a reference for an EIA.

**Lack of process guidelines decreases process transparency.** The Ministry of Environment's Department of Protecting and Improving the Environment does not publish guidelines on its environmental compliance certification process. Investors would benefit in particular from a description of the three project categories and examples of projects in each category. Investors would also benefit from information on post-certification monitoring and reporting expectations – how often and in what manner, for instance, must they report compliance to the Ministry of Environment and how often must they renew compliance certificates.

### Recommendations

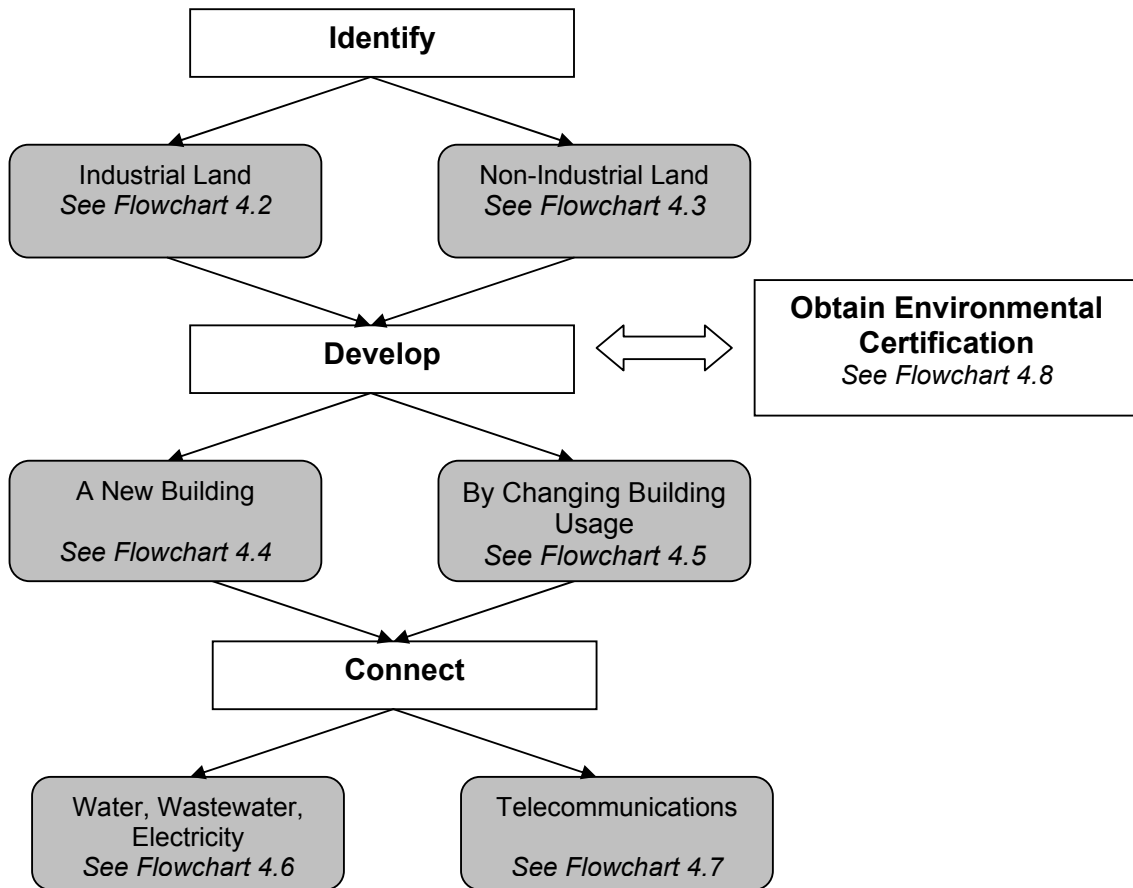
**Require environmental compliance application at another stage of locating process.** The Ministry of Environment should consider requiring investors to complete environmental compliance concurrent with or prior to building permit application. Investors could be required to provide proof of environmental compliance certification as an attachment to the building permit application. Or, the relevant municipal government could require the investor to submit his feasibility study with his building permit application; and the municipal government could pass the file to the Ministry of Environment for review during the building permit application process.

**Reevaluate EIA requirement for all projects.** The Ministry of Environment should consider requiring a full EIA for category A and B projects only. The ministry should require category C projects to present a feasibility study that details the project and its air, water, and sewerage use and waste disposal plan, but not a full EIA. Best practice in environmental compliance suggests that not all investment projects require the same level of impact study. Typically, the relevant agency provides lists of potential polluting activities to enable an investor to determine the likely category into which his project falls. The agency would subsequently screen projects that might have environmental impact, to determine whether or

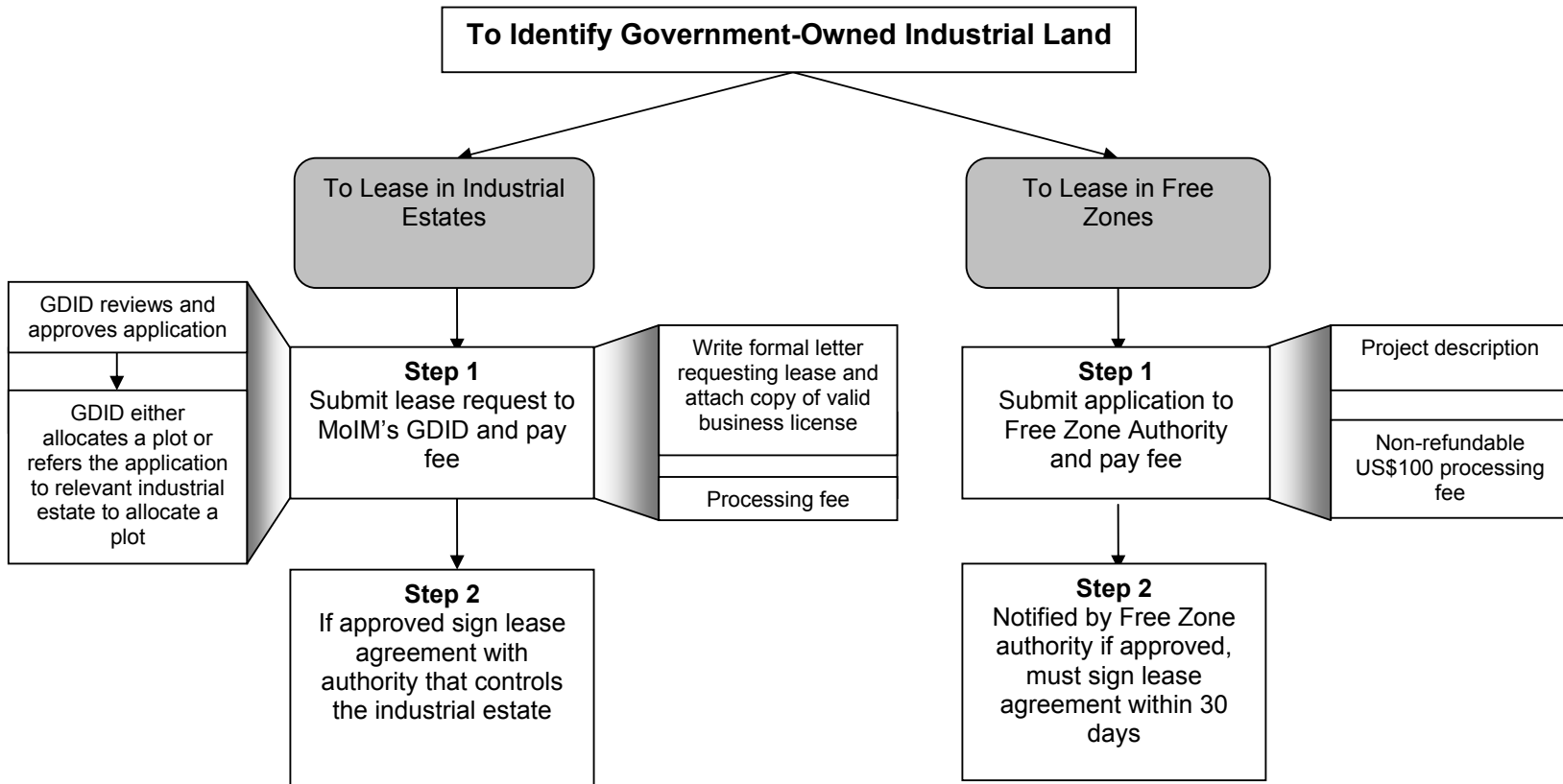
not a proposal should be subject to an EIA, and at what level of detail. If a project is required to complete an EIA the agency would require a scoping exercise to identify potentially important issues and impacts. Based on this scoping exercise the agency would establish a terms of reference for the project's EIA.

**Develop and publish process guidelines.** The Ministry of Environment should develop environmental compliance certification guidelines, which include information on the application and review process, the processing times, and any application fees. In addition, the guidelines should explain the three project categories and should give a description and examples of each category. The ministry should also consider publishing information on its inspection process and an investor's likely reporting requirements throughout the life of the project.

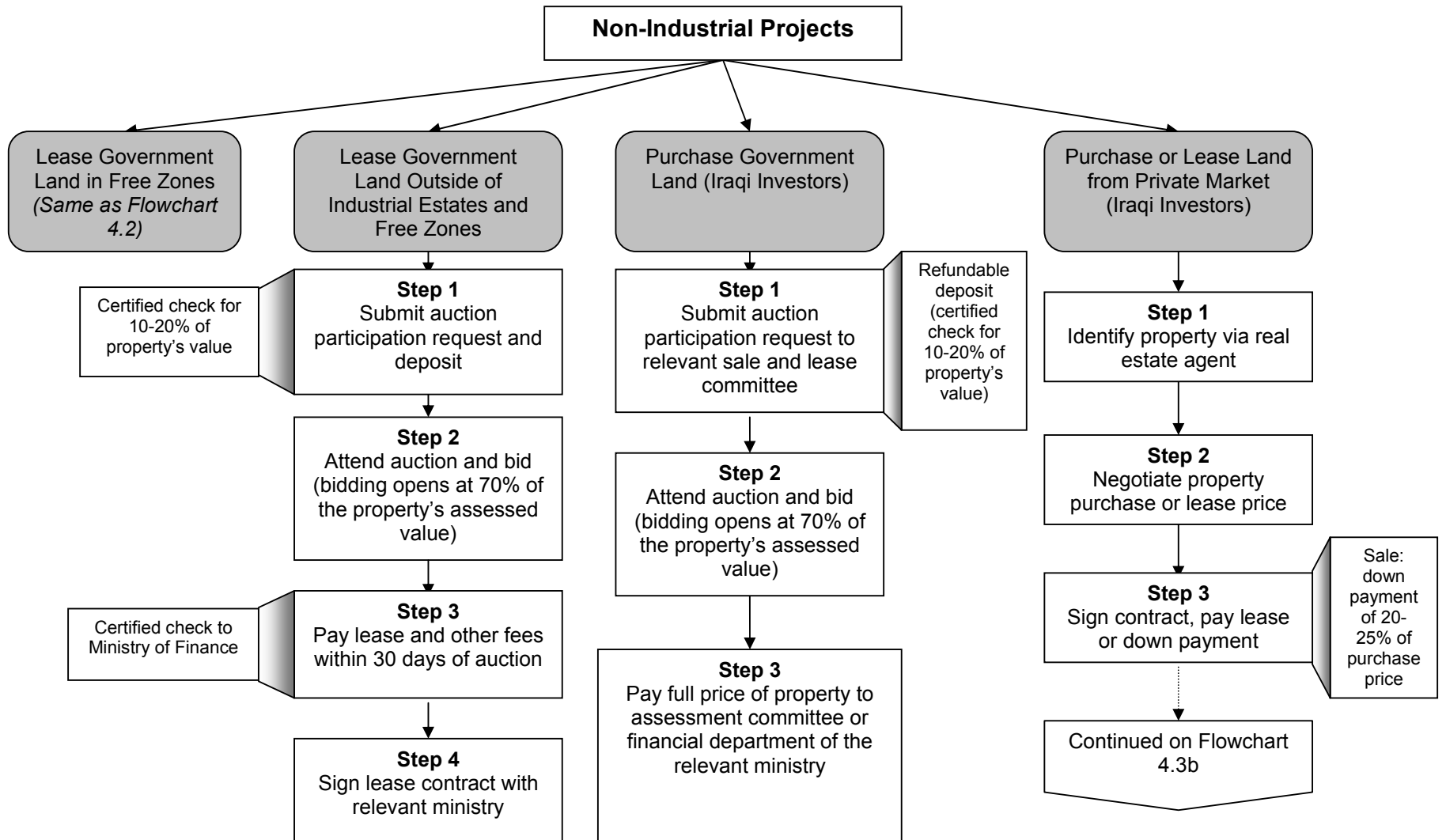
**Flowchart 4.1: Procedures for Land Identification, Site Development, Connecting Utilities, Obtaining Environmental Certification**



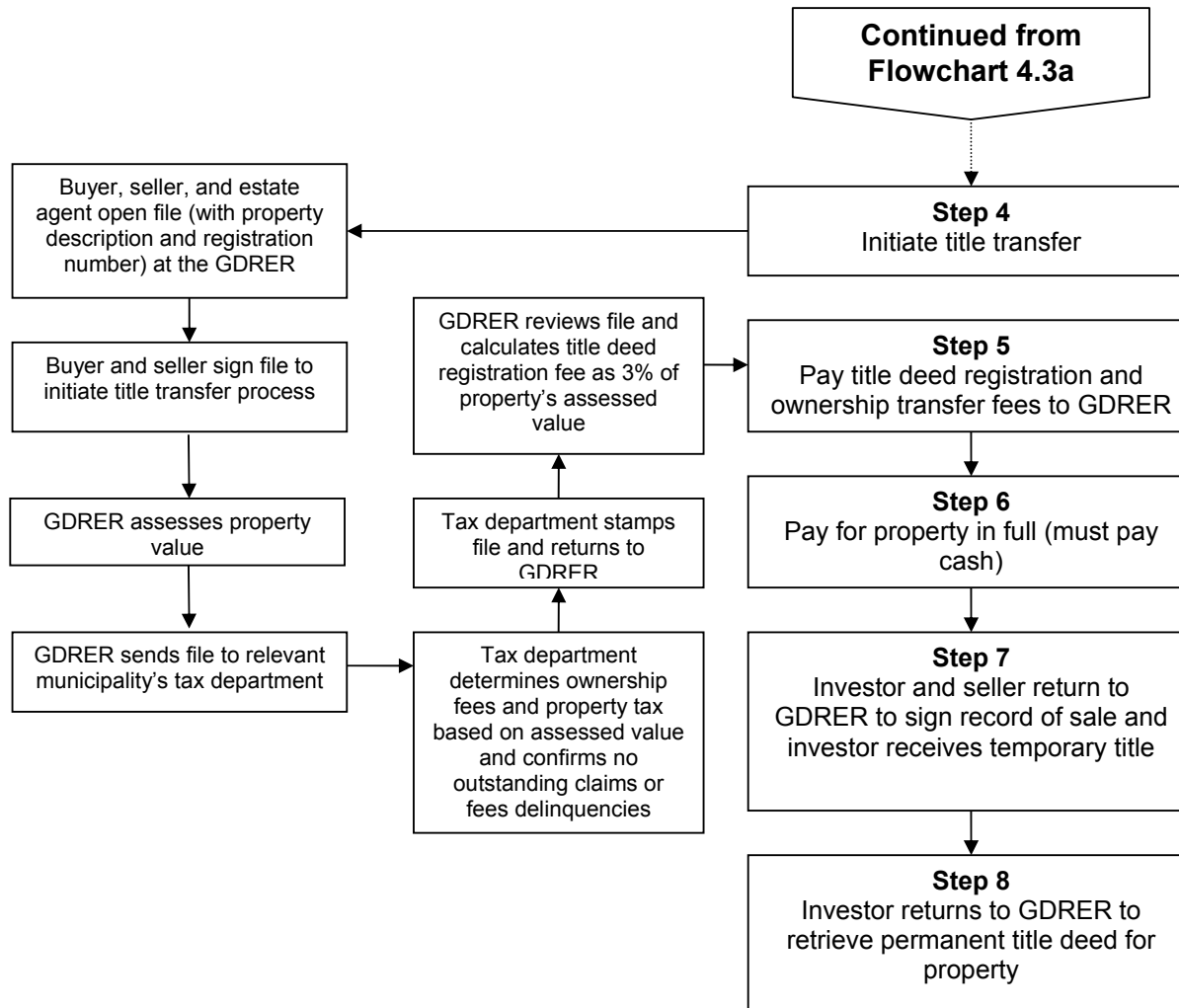
**Flowchart 4.2: Procedures for Identifying Government-Owned Industrial Land**



**Flowchart 4.3a: Procedures to Identify Land for Non-Industrial Projects**



**Flowchart 4.3b: Procedures to Identify Land for Non-Industrial Projects**





## Chapter Five: Operating



Abbasid Palace— Baghdad



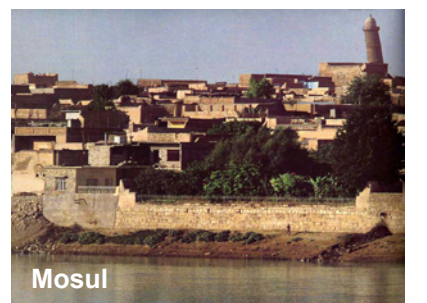
Parthian-style temple— Hatra



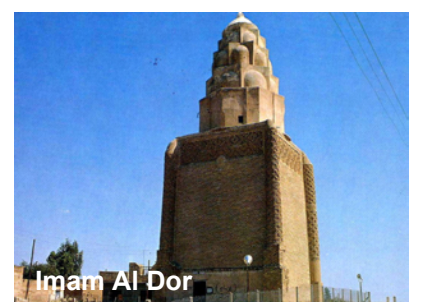
Mosul & city wall of Nineveh



Khan Mirjan— Baghdad



Mosul



Imam Al Dor



## **5.1 Introduction**

This chapter reviews the most important procedures that investors must complete on an on-going basis once operating in Iraq. Specifically, tax payment, import/export procedures, and complying with currency controls are discussed. As identified in this chapter there are significant issues in all three of these areas but by far the most important are those relating to import and export procedures. Iraq is far behind regional competitors in developing a healthy climate for the facilitation of international trade.

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).

## **5.2 Taxation**

### **A. The General Tax System**

The entire Iraqi tax structure was revised by CPA Order 49. CPA Order 49 reinstates income taxes that were suspended for the 2003 financial year by CPA Order 37 (Tax Strategy for 2003). CPA Order 37 suspended most taxes including corporate taxes and personal income taxes imposed on employees in the private sector, self-employed persons, professionals, and small enterprises (Income Tax Law 113 of 1982), taxes on rent for real estate (Law No. 162 of 1959), and all other taxes not specifically identified as continuing in Section 3 of the Order. The following taxes were retained:

- Quality and first class hotels and restaurants tax, in accordance with Revolutionary Command Council (RCC) Resolution Number 36 of 1997;
- Tax on the transfer of capital goods and real estate in accordance with RCC Resolution 120 of 2002;
- Car sales fee in accordance with RCC Resolution Number 80 of 1998;
- Petrol excise duties including those provided for in Law No. 9 of 1939, RCC Resolution No. 82 of 1996, and Order No. 66 of 1999 of the Economic Affairs Commission;

CPA Order 49 reintroduced corporate and personal income taxes as of April 1, 2004 at rates significantly reduced from those of the prior regime. For example, corporate tax rates are capped at 15%, compared to the maximum rate of 40% under the previous tax system.

In addition to the changes in rates, tax-free allowances were substantially increased. As a result of these changes the income tax burden on the average Iraqi family was either eliminated or substantially reduced. For example, beginning in 2005, the first full calendar year in which the new tax regime will be in effect, a one-earner family with four children will not pay tax on the first ID 5,300,000 (US \$3,605) of income (compared to ID 1,400,000 US \$952 under the previous law). Similarly, for a family with an income of ID 9,000,000 (US \$6,122), income tax will be reduced from ID 2,715,000 (US \$1,847) to ID 475,000 (US \$323), a reduction of over 80%. Tables 5.3 and 5.4 below set out the impact in 2005 of the new tax rate structure for families and single taxpayers. Similar reductions in taxes occurred in 2004 for the nine months the income tax was in effect (from April 1, 2004). In addition, new Instructions were issued by the Ministry on April 5, 2005 as well as a Tax Guide, both of which simplify and improve the transparency of tax collection procedures.

Under the new tax regime the basic personal exemptions not subject to tax were increased to the following levels:

- ID 2,500,000 (US \$1,700) for the male taxpayer himself;
- ID 2,000,000 (US \$1,361) if a woman is single (or not filing jointly with her husband);
- ID 2,000,000 for each wife, for married men beyond his personal deduction, if she has no income or if her income is added to his income (joint);
- ID 200,000 (US \$136) for each child, irrespective of their number;
- ID 3,200,000 (US \$2,177) for the widow or divorcee herself and ID 200,000 for every child lawfully maintained by her, regardless of the number;
- ID 300,000 (US \$204) for all taxpayers older than 63 years of age (plus other allowances);

For the year 2004 only all of these allowances were decreased by one-third (CPA Order No. 84 of 2004).

### **A.1. Tax Types**

There are four types of tax in Iraq: personal income tax; real estate tax; corporation 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 proceeding year on pre-printed returns to the taxation department in the area where his work or business activity is located.

### **A.2 Taxable Income Sources**

According to Article 2 of Income Tax Law No. 113 of 1982 the following income sources are subject to tax:

- Profits from commercial transactions or transactions of commercial nature, vocations and professions, including contracts, undertakings, obligations and compensation for non-fulfillment thereof (e.g., court awards);
- Interest, commissions, discounts and profits arising from trading in bonds and securities;
- Rental revenue from agricultural land;
- Salaries, pensions, bonuses, wages for specified work in a limited period of time; allowances and provisions, government offices, benefits in socialist and mixed sectors including the cash and estimated amounts allocated to the taxpayer against his services such as housing, food, and accommodation.
- Any other source that is not exempted by law and is liable to tax in Iraq, except that dividends shall not be income liable to tax, if a company has already paid tax on the profits from which the dividends are paid. However, dividends paid by limited liability companies, that are not exempted by the law for promoting and organizing industrial investment, must be taken into consideration as income for purposes of determining the graduated tax rates applicable on other income.

### **A.3. Registration to Pay Taxes**

The procedures for registering an individual, natural person or company for all taxes has been retained as set out in the Income Tax Law No. 113 of 1982.

## Procedures:

**Step 1)** The person should fill and present a basic tax return prepared and adopted by the General Tax Commission of the Ministry of Finance.<sup>1</sup> The form consists of information related to the taxpayer: type of work, estimated income, and marital status.

**Step 2)** A file for the taxpayer is opened at the General Taxation Commission (GTC).

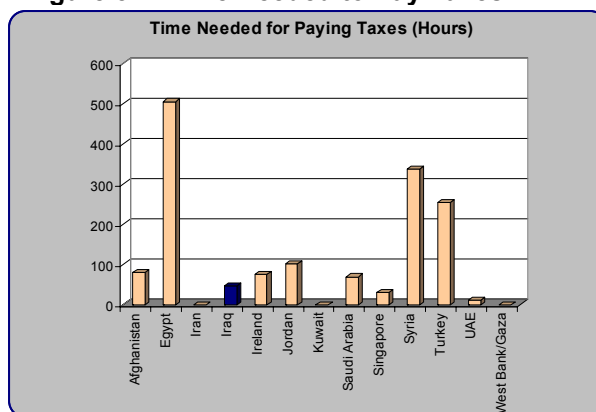
**Step 3)** A tentative computation of tax and allowances is calculated;

**Step 4)** The tax is assessed on the person or company in accordance with income tax law

**Step 5)** An electronic record is opened by the Tax Department after payment of tax.

Companies are issued a taxpayer ID number upon licensing by the Office of Companies Registration (See Chapter 3). Companies receive separate tax ID numbers for each tax. Tax registration normally must occur within one month of starting operations. Taxes are due 3 months after the close of the fiscal year.

**Figure 5.1: Time Needed to Pay Taxes**



According to a recent World Bank study<sup>2</sup> Iraq has a relatively speedy system for payment of taxes as illustrated in the chart above. The chart represents the number of hours per year required to prepare file and pay (or withhold) corporate income taxes. While Iraq does well versus regional competitors on this measure, it should be borne in mind that some of this result may be attributable to a relatively embryonic tax system, which may well be expanded in the future with attendant delay.

## B. Corporate Income Tax and Corporate Governance

The tax rate applied on the 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.

### B.1. Foreign Tax Credit

Under CPA Order 49 of 2004, any income tax paid by Iraqi or foreign firms in, or to, a foreign country on income earned in that country may be credited against tax paid to Iraq. The amount of the credit may not exceed the amount of tax generated in Iraq on the income earned in the foreign country at the rate in effect in Iraq. If taxes paid to a foreign country exceed the amount of this limitation then the excess taxes may be carried forward as a credit for five consecutive years subject to the limitation in those years. The taxes paid in the carry forward year will be credited first. If, during a taxation period, income is earned in more than one country, the credit allowed by this paragraph will be applied on an individual basis to the income earned in each foreign country. To be credited, the amount of foreign tax paid to the foreign country must be confirmed by either a copy of the tax paid receipt or a confirmation of the amount of tax paid from the tax collection agency of the foreign country.

<sup>1</sup> There are three different forms for payment depending on the type of taxpayer: monthly direct income tax deduction (employee), direct annual income tax (personal), and corporation tax.

<sup>2</sup> World Bank, Doing Business 2006

## **B.2. Treatment of Losses**

Article 11 of Income Tax Law Number 113 of 1982 allows for taxpayers to apply losses in excess of income against income earned from the same source in future years (“carry forward” of the unused loss) for up to five years. CPA Order No. 49 includes three modifications to Article 11 of Law No. 113. First, CPA Order No. 49 provides that income from financial year 2003 and the first three months of financial year 2004 shall not be considered in determining the income against which losses may be deducted. Second, CPA Order No. 49 provides that any unused losses as of 31 December 2002 may be carried forward for an additional year. Third, CPA Order No. 49 provides that losses incurred in financial year 2003 and in the first three months of financial year 2004 may not be carried forward under Article 11.

## **B.3. Depreciation Deductions**

Under Article 8 of Income Tax Law No. 113 of 1982 and the “System of Depreciation and Elimination for Private, Mixed and Cooperative Sectors No. 9 of 1994,” taxpayers are entitled to take deductions for depreciation of buildings and other tangible assets and for amortization of intangible assets.” CPA Order 49 modified the depreciation rules regarding computation of depreciation deductions in 2004. The Order contains the following modifications:

- No part of book value shall be considered to have been cancelled during financial year 2003 and the first three months of 2004. If the taxpayer used the straight line method of depreciation in 2002, the depreciation deduction in 2004 is computed by extending the useful life of depreciable property by one year and three months.
- With respect to depreciable property purchased in 2003, the useful life of such property will commence in 2004. If the taxpayer used the declining balance method of depreciation in 2002, the depreciation deduction for 2004 is computed by reconfiguring the opening balance of each group as of April 1, 2004.
- The opening balance of each group for 2004 is equal to the balance of the group at the end of 2002 increased by the cost of property purchased in the group and decreased by the fair market value of property sold from the group in 2003 and the first three months of 2004.

## **B.4. Revisions or Amendments of Company Tax Return**

In order to ease the compliance burden on companies and improve tax collection, the General Tax Commission will redesign the company tax return, simplifying the computation of tax liability. The new form will clearly explain how each element of the return should be computed and will require more detail on the income and deductions of the company so that its tax liability may be more easily determined. This change is currently being drafted. The new form should eliminate the requirement to furnish significant commercial information unrelated to the tax liability computation. The new form will reconcile financial statement information with the tax return and will facilitate the transcription of the information to a computerized tax database. A proposed draft form is in process and was to have been prepared by mid-2005 and made available for public comment. However, this has not been possible and it is likely it will be dealt with by the next constitutionally elected government during 2006. Meanwhile, the GTC continues to use the current existing form of “Corporation Income Tax Declaration.

## **B.5 CORPORATE GOVERNANCE**

### **B.5.1 Profit and Losses**

After its first year a company must reserve at least 5% of profit as compulsory reserve until the compulsory reserve reaches 50% of the paid capital. It is permissible to continue deducting for the compulsory reserves even if it exceeds 100% of the paid-up capital. The remainder of the profit, or part of it, shall be distributed among the owners, according to their quotas or shares.

Reserves shall be used for expanding and developing the business, and improving the conditions of its workers, participating in projects relevant to the business, contributing to the protection of the environment, and social welfare programs. They may not be used for payment of dividends, but may be used to repay debt, provided it does not exceed 50% of the reserve. Any increase over that limit shall be subject to the approval of the Office of Company Registration.

Losses amounting to more than 50% of capital must be reported to the OCR within 60 days of preparing the balance sheet. Losses greater than 75% of capital require that the company decrease the registered capital, or that the shareholders cover the losses personally. Alternatively, the company can increase the registered capital or liquidate the firm.

### **B.5.2 Dissolution of Business Entities**

Upon termination of operations and dissolution of a business entity with foreign participation, a foreign investor may transfer profits abroad from the sale or liquidation of the business provided that any outstanding obligations to the government and other creditors in Iraq are paid or settled. Investors must submit the resolution or other legal instrument showing proof of liquidation to the OCR.

### **B.5.3 Company Control**

Directors must establish an audit committee and a compensation committee for the board and top management. The members of these committees may not be officers or employees of the company, or shareholders with more than 10% holdings in the company's capital, nor their relatives, nor have any other personal or economic interest.

The audit committee shall meet privately with the company's external auditors and is responsible for ensuring the accuracy and reliability of the audit; audits shall correspond to international accounting standards. Neither a company chairman nor members of the board may have a direct or indirect interest in transactions with the company except by permission of the shareholders after full disclosure of the nature and extent of such interests. Officers and Directors may be held liable for any damage to the company that may arise from violating these conditions.

Companies must hold at least one meeting of shareholders per year. The Company Registration Office must be advised of the date and location of such meetings and may send a representative. All shareholders are entitled to a copy of the annual report.

### B.5.4 Financial Controls

The Board of Supreme Audit-(BSA) of the GoI governs mixed companies<sup>3</sup> accounts. A comptroller, 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.

### B.5.5 Inspections and Inspectors<sup>4</sup>

Upon receipt of any complaint about a company's operations, the Office of Company Registration may appoint an inspector to examine company activities. Its decision to appoint such inspectors may be challenged in court. Inspectors shall report their findings to the Office of Company Registration, and copies of any findings are sent to the company and the complainant.

A company may also have outside inspections or audits, and the company is required to comply and provide all books, documents, records, and other materials necessary, and to facilitate access to employees and others persons associated with the company.

**Table 5.1 Penalties and Fines (Articles 213-218)**

Type of transgression	Penalty or Fine (ID)	Comments
Company or branch w/o registration or liquidated as order no. 5 of 1989 stipulates	1,000/day(US\$0.70)	For FDI or Local business after 90 days of notice
Transgressions by FDI as order in the stipulations of CPA-ORD 39	1,000/day(US\$0.70)	after 90 days
Operating in the name of any company w/o registration	≤ 3'000,000(US\$2040)	No limited to the penalty
Any Company that does not keep records as stipulated in the law	≤ 10'000,000(US\$6800)	Depends on the severity of the violation
Any company No submission of statements at fixed times to GOI officials	<300,000/day(US\$200)	Depends on the severity of the violation
Company's officials that purposely supplies inaccurate information to GOI	≤ 12'000'000(US\$8150)	Depends on the severity of the violation <sup>5</sup>

Source: constructed from information: Chapter of Penalties provisions Law 21 of 1997

### C. Real Estate Tax

Real Estate had been taxed for many years in accordance with Income Tax No. 113 of 1982 and the Law of Real Estate Tax No. 162 for the year 1959. This practice has been amended as follows by CPA Order 49: "rent and income generated from real estate will be taxed at the rate of 10% of the annual revenue, excluding profits on the sale of property, subject to Resolution 120 of 27/6/2002."

<sup>3</sup> Part state owned and part privately owned

<sup>4</sup> Company Law 21/ 1997 & CPA-ORD 64/ 2004, art's 140 to 146

<sup>5</sup> Penalty of no less than 3 months to no more than one year imprisonment , or ID 12 000000 fine, or both.



Basic income tax is applied on income generated from the rent of real estate. This tax is collected in two equal parts:

- The first is due the first of January of the financial year; and
- The second is due the first of July of the financial year.

For financial year 2004, the whole amount was due on 1 July 2004. The taxpayer has the right to pay at the location of his residence, his work location, or in the governorate where most of his real estate is located.

All revenue (other than sales revenue) from real estate shall be combined for tax calculation purposes. A memo setting forth the calculation and the form should be submitted with the payment. This tax is considered to be a secured public debt and is guaranteed by the same real estate that is the object of the tax.

CPA Order 49 suspended the additional tax imposed on income generated from renting real estate in excess of ID 750,000 (US \$510).

#### **D. 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% and were suspended through the end of March 2004. 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 or non payment for the income taxes are as established in 1982 and remain in force.

The wage withholding system was changed in order to better assist employers to meet their obligations under the law. To this end the General Tax Commission has developed but apparently not implemented, a new comprehensive taxpayer identification number system that facilitates tracking and improved control over tax payments. The GTC also issued a new guide for employers, which contains withholding tables reflecting the new rate structure. In addition, GTC had simplified information returns and payment forms.

The personal income tax rates of individuals after granting the allowance(s) provided for in Article 12 of law 113 of 1982 as modified by CPA Order 49, (which increases the basic income exemptions from ID 600,000 (US \$408) to ID 2,500,000 (US\$ 1701) are set out in Table 5.2

**Table 5.2: Iraqi Personal Income Tax Rates**

<b>Annual Income (After allowances)</b>	<b>Rate</b>
Up to ID 250,000 (US \$170)	3%
Over ID 250,000 up to ID 500,000(US \$170-340)	5%
Over ID 500,000 up to ID 1,000,000 (US\$340-680)	10%
Over ID 1,000,000 (US \$680)	15%

#### **D.1. Impact of New Allowances in the Tax Rate Structure in 2005**

As noted in table 5.3 below, for a family with a single wage earner and four children, tax burden has been substantially reduced under the new system of allowances and rates.



**Table 5.3: Old and New Tax Allowances**

Income	Old Tax	New Tax	Amount of Change
ID 1,000,000 (US\$ 680)	ID 0 (US\$ 0)	ID 0 (US\$ 0)	ID 0 (US\$ 0)
ID 1,500,000 (US\$ 1,020)	ID 10,000 (US\$ 7)	ID (US\$ 0)	- ID 10,000 (- US\$ 7)
ID 2,000,000 (US\$ 1,360)	ID 95,000 (US\$ 65)	ID 0 (US\$ 0)	- ID 95,000 (- US\$ 67)
ID 3,000,000 (US\$ 2,041)	ID 355,000 (US\$ 241)	ID 0 (US\$ 0)	- ID 355,000 (- US\$ 241)
ID 5,000,000 (US\$ 3,401)	ID 1,115,000 (US\$ 759)	ID 0 (US\$ 0)	- ID 1,115,000 (- US\$ 759)
ID 6,000,000 (US\$ 4,082)	ID 1,515,000 (US\$ 1,031)	ID 40,000 (US\$ 27)	- ID 1,475,000 (- US\$ 1,003)
ID 9,000,000 (US\$ 6,122)	ID 2,715,000 (US\$ 1,847)	ID 475,000 (US\$ 323)	- ID 2,240,000 (-US\$ 1,524)

For a one-earner family with 2 children:

**Table 5.4**

Income		Old Tax		New Tax		Amount of Change	
ID	US\$	ID	US\$	ID	US\$	ID	US\$
1'000,000	680	0	0	0	0	0	0
1'500,000	1020	35,000	24	0	0	- 35,000	-24
2'000,000	1361	135'000	92	0	0	- 135,000	-92
3'000,000	2041	415,000	282	0	0	- 415,000	-282
5'000,000	3401	1'195,000	813	3,000	2	- 1'192,000	-131
6'000,000	4082	1'595,000	1085	85,000	58	- 1'510,000	-1027
9'000,000	6122	2'795,000	1901	535,000	364	- 2'260,000	-1537

Single Taxpayer with no dependents:

**Table 5.5**

Income		Old Taxes		New Tax		Amount of change	
ID	US\$	ID	US\$	ID	US\$	ID	US\$
600,000	408	0	0	0	0	0	0
700,000	476	10,000	7	0	0	- 10,000	-7
750,000	510	15,000	10	0	0	- 15,000	-10
800,000	544	20,000	14	0	0	- 20,000	-14
1'000,000	680	55,000	37	0	0	- 55,000	-37
1'500,000	1020	155,000	105	0	0	- 155,000	-105
2'000,000	1361	295,000	201	0	0	- 295,000	-201
3'000,000	2041	635,000	432	20,000	14	- 615,000	-418
5'000,000	3401	1'435,000	976	295,000	201	- 1'140,000	-776

Source: Constructed from Annex A of CPA Order No.49 of 2004

## D.2. Personal Taxes for Government and State-Owned Enterprise Employees

Since April 1st 2004, public and mixed sector employees have had to share the tax burden along with the rest of Iraqi society. The government asserts that this is necessary to ensure that sufficient tax revenues can be collected while not overburdening any segment of society with disproportionately high tax rates. To ensure that the tax on public and mixed sector employees is collected accurately and transparently, tax collection systems for those

employees have been developed<sup>6</sup>. Higher basic income tax exemptions were applied to public and mixed sector workers prior to January 1, 2005. These higher allowances effectively exempted many public and mixed sector workers from taxation. Since January 1, 2005, however, public, mixed, and private sector workers have all been allowed the same personal exemptions and taxed at the same rates.

### **D.3 Individual deduction of Tax from wages by employers**

The GTC has a general guide available in Arabic for direct tax deductions consisting of four monthly tables designed to help employers calculate taxable employee income. The GTC runs training workshops on the application of tax calculations and applying the tax table as well as two weekly seminars for public and mixed sector entities on the direct tax deduction. The GTC on May, 5, 2005 (effective as of 1/1/2005) issued new instructions on direct tax deductions in accordance with Article 61 of Income Tax Law No. 113 of 1982 and the two CPA Orders No. 49 and 84 of 2004. These replaced all previous instructions in this area and set out the procedures above as well as the method for calculation of direct tax deductions from wages. To process direct tax payments from wages, two forms are used:

- Application form “Monthly Declaration of Direct Tax Deduction” to be filled out by the employer; and
- Application form “Employees Subject to Direct Tax Deduction” to be filled out by the employee.

The Tax Commission has also begun to phase in computerization of the existing tax system during 2004 to facilitate the processing of tax returns and payments. In addition, the Tax Commission launched a comprehensive tax training program for tax officials, along with a program to educate companies and their accountants on the revised company tax return.

### **D.4. Exemptions to Income Tax**

The current tax regime provides for several exemptions from Iraqi taxation. These are listed below.

- CPA Order 49 states that foreign (non-Iraqi) employees and foreign (non-Iraqi) contractors and subcontractors of the CPA, Coalition Forces, forces of countries acting in coordination with Coalition Forces, and agencies of Coalition Forces’ governments that are providing technical, financial, logistical, administrative or other assistance to Iraq, and foreign employees of such contractors and subcontractors, shall not be liable to pay any tax on income or similar charge within the territory of Iraq on income from foreign sources or on income from or paid on behalf of the CPA, Coalition Forces, forces of countries acting in coordination with Coalition Forces, or departments or agencies of the governments of Coalition Forces.
- Governments and international organizations are not liable for any tax or similar charge within the territory of Iraq.
- CPA Order 45 & 49 states that foreign (non-Iraqi) employees and foreign (non-Iraqi) contractors and subcontractors of foreign (non-Iraqi) governments, international organizations, and non-governmental registered organizations that are providing

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<sup>6</sup> In accordance with the provisions of Article 61 of Income Tax Law No. 113 of 1982, as amended, and CPA Orders No. 49 and 84 of 2004, instructions were issued by the Ministry of Finance on the computation of income tax by the method of direct deduction for the year 2005.

technical, financial, logistical, administrative or other assistance to Iraq; shall not be liable to pay any tax on income or similar charge within the territory of Iraq on income from foreign sources or on income from or paid on behalf of such governments, international organizations, and non-governmental organizations.

- In addition to the foregoing, the following persons shall be exempt from payment of income tax:
  - members of foreign diplomatic missions to Iraq, as well as members of their households, if they are not citizens of Iraq;
  - members of consular offices, as well as members of their households, if they are not citizens of Iraq; and
  - Honorary consuls of foreign countries, but only for income received from the country that has appointed them honorary consul.

By an administrative decision issued by the Ministry of Finance, and in accordance with CPA Order No. 45, non-governmental registered organizations and non-profit organizations that are not required to register as non-governmental organizations are not liable for tax on income or similar charge within the territory of Iraq.

#### **D.5. Depreciation**

The procedures for depreciation for the private, mixed and cooperative sectors were modified by CPA Order 49 of 2004 (Section 9) to read as follows: “No part of book value shall be considered to have been cancelled during financial year 2003 and for the first three months of financial year 2004.”

A new item (5) was added to Article 3 to read as follows:

“A taxpayer that applied the decreased installment method during financial year 2002 will compute the depreciation deduction for financial year 2004 by reconfiguring the opening balance of each asset account as of April 1, 2004. The opening balance of each asset account as of April 1, 2004, is equal to the balance of the asset account at the end of 2002, increased by the cost of assets purchased in the asset account and decreased by the fair market value of assets sold from the asset account in financial year 2003 and during the first three months of financial year 2004.”

#### **E. Leased Land Tax**

The Leased Land Tax applies to “arasat”, or public, lands leased by taxpayers. This is an annual tax of 2% of the land value determined annually by a Valuation Committee of the Real Estate Department of the Ministry of Finance. Leased Land Tax is only payable for 15 years, after which no further payments of this tax are due. Lands of less than 800 square meters and agricultural lands are exempted from this tax. Lessees complete and submit a form at the Ministry of Finance indicating details of their land including its size and location. The Valuation Committee then values the land and reports to the Ministry, which informs the taxpayer of the amount of tax and the date due. Taxes may be paid by cash or certified check.

#### **F. Future Tax Proposals**

The GTC is preparing a number of drafts and new tax proposals, currently in the process of finalization before the competent governmental authorities. There are two proposals, the

first a detailed draft proposed by the GTC, while the second is proposed by an international consulting firm.

A guide has been prepared by the General Taxation Commission to assist taxpayers doing business in Iraq to obtain a Taxpayer Identification Number (TIN) allowing them to fulfill their obligations for all taxes administered by the GTC. All companies doing business in Iraq should register first with the Business Registry of the Ministry of Trade and then register with the GTC in order to obtain a TIN.

The TIN is a unique nine-digit indemnification number assigned to:

- Each individual doing business in Iraq (e.g. sole owner enterprise whether registered or not with the Business Registry of Ministry of Trade);
- Joint-stock or limited liability companies incorporated under the Law on Companies of 1997 as amended in 2004 or other laws where the place of management or control is in Iraq;
- Partnerships (Simple company or Joint Liability company) doing business in Iraq;
- Branch of foreign company doing business in Iraq;
- Non-governmental organizations hiring employees in Iraq;
- Governmental bodies hiring employees in Iraq; and
- State-owned enterprises hiring employees in Iraq.

The proposed TIN would replace separate tax numbers currently issued to the persons listed above for each specific tax administered by the GTC.

## **G. Analysis**

The tax regime of a country functions as a major incentive or disincentive to investment. The tax burden will have a direct effect on the investor's profits and the tax rate will be a fundamental criterion for the investment decision. Though the first look of any investor will be at the nominal corporate tax rate, a second look will be at the whole tax regime including the effective tax rate, the allowed deductions, the efficiency of the tax administration, the offered incentives and the reliability of the tax system. A stable and predictable tax regime with efficient tax administration and acceptable effective corporate tax rates will have an encouraging effect on investment activities. On the other hand, discretionary tax decisions, an unpredictable future tax burden, non-transparent tax rules and high effective corporate tax rates will deter foreign and domestic investors. The investor will either move to another country with a more suitable tax environment or, in some cases, end up in the gray market, evading tax payments all together.

The Iraqi Ministry of Finance has undertaken a comprehensive assessment of the tax system in order to identify means of: a) eliminating distortions that interfere with market activity; b) improving fairness by removing exemptions; and c) simplifying rules to improve compliance and ease administrative burdens on individual and corporate taxpayers.

Additional efforts are also being made to modernize the General Taxation Commission by: a) adopting a functional structure; b) computerizing processes and systems; and c) improving the training of tax officials. A formal consultation process with the taxpaying public will improve acceptance of these reforms and at the same time serve the needs of the Iraqi people and government. The introduction of Taxpayer Identification Number is an important part of the tax administration reform being undertaken by Iraq. The reform seeks to improve tax administration as well as encourage compliance.

## Issues

**Very early to assess efficacy of administration of the new tax regime.** Significant tax reform has been undertaken particularly under the CPA and the legislation in effect seems to be appropriately designed at a primary level to institute a relatively simple and moderate tax regime. This should encourage local and foreign investment. However, it is not clear how well the General Tax Commission is implementing the new rules and how well informed investors are of the new procedures. Capacity inside the GTC is not adequate to meet the need for tax reform implementation. Further, implementing rules and regulations, as well as interpretations, are inadequate. The recent publication of a Tax Guide will address some transparency issues for taxpayers.

**Computerization of Iraqi names creates problems related to numerous similar names.** All taxpayers have a computerized registration record but problems have been encountered with traditionally similar Iraqi names. Reliable tax administration, including collection and auditing, depend on a credible database of taxpayers; anything less compounds problems throughout the system.

**The budget relies heavily on the taxation of businesses.** One main characteristic of the tax regime in Iraq that differentiates it from many other countries is the lack of use of Value Added or Sales Tax. The main domestic revenues sources appear to be generated by taxation of businesses and individuals. While business tax rates are reasonable, the reliance on so few tax sources puts a disproportionate financial burden on business and may make the investment climate less attractive. Broad based consumption taxes, such as a VAT, spread the tax burden more equitably.

**Difficult for taxpayers to find comprehensive and reliable information on the general tax regime.** There is no central place in Iraq where complete and reliable information about the tax regime can be found. The publication of the Tax Guide will go some way to address this but the following ideas might also be considered:

- A comprehensive tax website with guidelines and tax forms that can be downloaded.
- Development of written administrative rules that provide interpretation guidelines or administrative practice in the application of the law by GTC.

**Tax legislation does not exist in a consolidated version.** Tax legislation is scattered throughout numerous pieces of law reflecting several different legal regimes. Therefore, the current body of laws makes it very difficult to stay updated on the law, even for experienced lawyers.

## Recommendations

**Increase computerization of tax records and numerical coding for tax registration.** The use of numerical codes instead of names can solve the problem of duplicate names, however this must be combined with more widespread computerization of electronic tax records in order to promote efficient tax enforcement and reliable compliance.

**Provide technical assistance and training for tax officials.** Iraqi tax officials will need extensive training in tax rules and enforcement under the new regime. Similarly extensive individual and business awareness will need to be fostered in order to ensure compliance and collection of adequate revenues for fiscal solvency.

**Consider the restructuring of GTC as a comprehensive revenue collection authority for the state.** Some of the problems identified above may be rooted in the institutional arrangements of the GTC. A comprehensive revenue authority would have the responsibility to collect and refund all taxes, customs duties, and other payments from taxpayers. Such an authority has several advantages that address issues problematic in Iraq such as central collection of information, combined auditing and inspection services and quicker information exchange between collecting units. Box 5.1 describes the functioning of a Revenue Authority and its added value.

#### **Box 5.1: Features of a Revenue Authority**

Efficient and effective revenue collection poses a challenge for many countries, especially with respect to collaboration and coordination among various parts of government. One possible response is the creation of a dedicated Revenue Authority. Recently, a large number of developing countries therefore have established such an authority (e.g. Kenya, Uganda, Rwanda, Tanzania, Malawi, Zambia) and newly industrialized countries such as Mauritius are also studying the option. But the problem is not limited to the developing world, forcing even some developed countries such as Canada or Australia to explore this possibility.

A Revenue Authority typically is a semi-autonomous organization, situated outside the civil service and headed by a Board of Directors (with both private and public sector members) and managed by a Chief Executive or Commissioner General. All line revenue departments (e.g. customs, tax, VAT) are collapsed into a single organizational structure of the Authority, with the Authority sharing common staff functions such as Finance and Administration, Revenue Planning and Accounting, Information Technology, Audit and Investigations, Internal Audit, Taxpayer Awareness and Education.

In addition to often introducing new administrative efficiencies, the creation of a Revenue Authority can lead to improved enforcement effectiveness especially through consolidating audit and investigation staff, as well as sharing IT systems and databases. Because most Revenue Authorities are allowed to retain a percentage of their collections, the Authority can ensure it has a sufficient operating budget to properly equip its operations and pay salaries that are competitive with those in the private sector. Being outside the constraints and bureaucracy associated with the civil service, the Board has more freedom to hire the most qualified staff; fire incompetent, non-performing or corrupt staff; maintain a distance from political interference; and, where appropriate contract-out certain services (e.g. specialized or complex audits; legal work). During the transition to the Authority, corrupt or incompetent and non-performing staff is not offered employment, and the remaining staff are placed in probationary positions for a period of time pending satisfactory performance appraisals.

Such a Revenue Authority may offer Iraq an opportunity to address the following constraints that are undermining the effectiveness of its customs and tax administrations, which are in turn negatively affecting the environment for attracting investment:

- Poor revenue collections;
- Lack of revenue data;
- Low remuneration scales;
- Poor organization structures in and communication lines between customs and tax departments;
- Lack of qualified audit and inspection staff.

Source: The Services Group, 2003



**Assess revenue sources and consider new sources of income.** On a general note, it appears inevitable that a review of the tax regime is necessary to identify the current revenue sources and explore ways to broaden the revenue base. This includes an assessment of actual tax evasion and arrears, the determination of the effective tax rate for

**Expand the tax base.** Decrease reliance on businesses as a source of public revenue, and expand the identification of new revenue sources such as the introduction of a Value Added Tax.

**Close tax loopholes and improve auditing capacity.** A thorough review of tax practices should be conducted to reveal opportunities for fiscal leakage. One way to avoid this is to improve auditing capacity. Another way is to close coordination of GTC tax data with information from the various social service and human resource related departments.

**Improve information provided to the public on the tax system and procedures.** The Ministry of Finance and GTC should make a combined effort to increase the transparency of the tax regime. All means of marketing and public information should be utilized to close the information gap. For example, leaflets might be a good model for such an effort. A regular newsletter with decisions by the Commissioner would also increase the certainty of taxpayers. The newsletter might be distributed in electronic form via email to interested parties. The Internet, of course, is also a good means to distribute information

**Consolidate the tax legislation as soon as possible.** The current form of the tax legislation makes acquiring accurate and complete information on the tax regime almost impossible. Scattered amendments should be incorporated into the main acts in a consolidated version to ensure updated information to the reader of the tax legislation. Consolidated versions of the tax legislation should also be made available on the Internet.

**Increase training of officials in dealing with the public.** Well performing government agencies are service providers and well-trained civil servants view the citizens as clients. It is important that officials understand this basic relationship. Citizens should be served in a timely and friendly manner. Officials should be trained to answer specific questions or to know to whom to refer a citizen. Simple things like returning calls in a timely manner and being available for an agreed appointment would make the life of taxpayers much easier. A first step would be to conduct a performance audit of the GTC and program corresponding customer service training sessions. In some cases, the lack of responsiveness may be due to inappropriate management systems and in others it could be poor performance of civil servants. The behavior of officials should be monitored by superiors and the performance should be part of salary structure.

## **5.3 Import and Export Procedures**

### **A. 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. Prior to the change of regime Iraq was a quasi-closed economy only open to trade with Arab countries. This trade was largely limited to those Arab countries with which there were special trade agreements and arrangements. With the advent of the Coalition Provisional Authority, the subsequent Interim



Government of Iraq and the present, transitional Gol, the policy and legal framework have been revised to facilitate a far more liberal and open economy:

- A Reconstruction Levy of 5% of the customs value of imports replaces all customs tariffs, duties, import taxes, and similar surcharges for goods entering or leaving Iraq. Duties and other charges are suspended but may be re-imposed by a sovereign Iraqi administration. (CPA Order 38 of 2003)
- Imports and/or exports of crude oil and all oil byproducts are to be made through the State Oil Marketing Organization SOMO.
- In all customs procedures international best practices have been mandated, including customs valuation as set out in accordance with the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (WTO Customs Valuation Agreement). Under this system customs valuation is to be determined by the FOB price actually paid plus certain adjustments as provided for in the Agreement. If the customs value cannot be determined on the basis of the transaction value, it will be determined using one of the following methods, as provided for in the Agreement, in hierarchical order:
  - The transaction value of identical goods;
  - The transaction value of similar goods;
  - The deductive value method;
  - The computed value method; and
  - The fall-back method.
- Certain personal customs exemptions have been put in place. With respect to an individual who is a resident of Iraq, this customs exemption will apply only where the total value of the goods entering Iraq with this individual is less than ID 500,000 (US \$340) for any 72-hour period outside the country. In no event will personal use exceed the amounts shown in Table 5.5 below:

#### Box 5.2

One of the key difficulties facing business people is the lack of clarity, enforcement and consistency in customs administration. One investor in the plastics business tells of making a multi-million dollar investment in machinery for bottle production after being told by a Ministry official in Baghdad that the machine would be exempt from duties. Upon checking with customs officials at the port however, they refused to consider the machine as duty exempt, resulting in a potential six figure duty assessment. The investor has not subsequently been able to obtain a definitive ruling on the duty due.

**Table 5.5: Iraqi Personal Customs Exemptions**

Items	Maximum Volume or Number
Cigarettes	200 units
Cigars	10 units
Cigarillos	25 units
Pipe Tobacco	250 grams
Beer	8 liters
Wine	2 liters
Spirits	1 liter
Fortified Wine	2 liters
Port/sherry	2 liters

Changes have also occurred regarding the licensing of sensitive U.S. exports and re-exports to Iraq. On July 30<sup>th</sup>, 2004 President Bush signed an Executive Order terminating the national emergency declared in Executive Order 12722. Among other things, it ends the U.S. Department of the Treasury's authority to maintain export controls mentioned in those

Executive Orders. Accordingly, export licensing jurisdiction has reverted from the Department of the Treasury's Office of Foreign Assets Control (OFAC) to the Iraqi Ministry of Trade's Bureau of Industry and Security (BIS). In July 2004, the BIS published a rule defining the new Licensing Policy and related requirements for Iraq.

## **B. Reconstruction Levy**

While the customs duties regime in Iraq has been suspended temporarily, the Special Levy for the Reconstruction of Iraq (5%) is applied to all imports. CPA Order No. 70 of April 3, 2004, amended CPA Order 38 as to the date of entry on which the Levy came into force to April, 15<sup>th</sup>, 2004. The Order expires two years from the date entered into force. Revenues from the Reconstruction Levy are only to be used "to assist the Iraqi people and support the reconstruction of Iraq."

On June 28, 2004 the CPA issued Order No. 100 "Transition of Laws, Regulations, Orders, and Directives Issued by the CPA" and clarified that the Reconstruction Levy does not apply to a) multinational forces and departments and agencies of multinational force governments; and b) foreign (non-Iraqi) employees and foreign (non-Iraqi) contractors and subcontractors of multinational force governments.

The Minister of Finance may issue policy guidance as necessary to implement the Reconstruction Levy. Consistent with this, the Minister of Interior, in consultation with the Senior Advisor for Interior, may issue administrative instructions and procedures for implementing the Reconstruction Levy.

Order 38 exempts certain imported goods from payment of the Reconstruction Levy:

- Goods for personal use by travelers, when those goods are not intended for sale;
- Goods imported by individuals who are not residents of Iraq for personal use irrespective of value of the goods provided that the goods are not intended for sale;
- Goods imported by non-profit organizations [see Order 54 s.4(4) for definition];
- Goods imported by health institutions and/or for health-related purposes, the prevention and relief of sickness, disease or of human suffering;
- Goods imported for educational purposes
- Goods imported for social and community welfare, which without limitation includes:
  - The prevention and relief of poverty;
  - The care, support, and protection of the aged, minors, vulnerable persons, and populations and people with a disability;
  - The care and support of members or former members of the armed services;
  - Religious purposes and/or institutions;
  - Cultural activities;
  - Ecological or environmental purposes; and
  - Other purposes beneficial to Iraq
- Goods imported by the United Nations, other international organizations, or foreign governments to be used or distributed for the public benefit

Iraqi Law, as well as the CPA Orders, has very specific definitions and allowances in relation to an "international organizations." Only organizations with recognized international legal registration that have an independent decision-making mechanism established under international laws or regulations or by international agreements or other formal constitutive documents, and which perform functions of a genuinely international character qualify. The term includes, but is not limited to, the United Nations (including its agencies), the Arab

League, the International Monetary Fund, the World Bank, and the Organization for the Prohibition of Chemical Weapons, the International Atomic Energy Agency, and the World Trade Organization.

Among organizations that meet the definitions of non-profit organizations and international organizations, both the CPA and the Gol, were and are, considered not-for-profit organizations or international organizations for purposes of these exemptions. All organizations are required to register with the Customs Department of the Ministry of Finance including, where applicable, registration as a non-governmental organization in accordance with CPA Order No. 45 (Non-Governmental Organizations). An organization that has not registered with the Customs Department prior to importation of goods will be required to pay the reconstruction levy at the time of importation. The levy will be refunded if the organization meets the applicable definition and registers with the Customs Department within 60 days of the date of importation.

Additionally, according to CPA Order No. 38 the reconstruction levy exemption also applies to forces of the Coalition countries and their contractors and sub-contractors to the extent these imports are used for activities that are in coordination with Coalition Forces and with respect to goods imported for such activities that are supplied to the Coalition Provisional Authority and/or Coalition Forces. Additionally the exemption covers contractors and sub-contractors of Coalition Forces' departments, agencies, governments, international organizations, and not-for-profit organizations, to the extent that the imported goods are for the provision of technical, material, financial and human resource assistance.

Any exemption provided by Iraqi free zones legislation will not apply to the reconstruction levy. The reconstruction levy will not be imposed on the value of any goods that entered Iraq if the property is destroyed before the levy is paid or is otherwise no longer usable.

For purposes of implementing the reconstruction levy, the Customs Law 23 of 1984 is applied with the following revisions:

- The Director General of Customs will determine the type of Reconstruction Levy Computation Form, number of copies, information that must be included on the form, documents to be attached and any exceptions to the stated requirements.
- Any Claims for repayment of overpayments of the reconstruction levy resulting from disputes of valuation may be submitted to the Customs Appeal Commission (composed of one judge, one customs representative and one representative of the Union of Chambers of Commerce) pursuant to Articles 74 to 77 of the Customs Law, regardless of whether or not the goods remain in the custody of the Customs Department.
- Drawback rules, for export or re-export of goods, will not be applied in the case of the Reconstruction Levy.
- The Reconstruction Levy will not be imposed on goods in transit, in accordance with Part 8 of the Customs Law.
- Fines imposed for offenses, as outlined in Part 15, Chapters 4, 5, and 7 of the Customs Law and amended by Decision 103 of 2001, also apply to the Reconstruction Levy. To account for inflation, the amount of fines listed in Iraqi Dinar in those chapters will be multiplied by 10.

### **C. Excise Tax on Alcohol and Tobacco**

The Custom's Administrator or his delegate may reinstate the Excise Tax on Alcohol and Tobacco products but has not yet done so.

### **D. Restricted and Prohibited Imports**

In general, there are limited restrictions as to the kind, origin or source of goods that may be imported into or exported from Iraq. The products discussed below are listed as prohibited or restricted.

As stipulated in CPA Order 54, the following items cannot be imported in any quantity unless the Ministry of Trade issues a license authorizing the import:

- Non-military explosives imported for industrial and commercial uses;
- Industrial materials that may be used in the manufacture of explosives, but that have a primary use unconnected to the manufacture of explosives, such as fertilizer; and
- Fowl or poultry products from countries known or suspected to have had outbreaks of pathogenic bird flu (avian influenza virus). These countries in mid-2005 were Cambodia, Japan, the Republic of Korea, Viet Nam, Indonesia, Laos, China and Thailand.

#### **D.1 Restricted Items**

Items and technologies listed in the following international nonproliferation regimes (that are not otherwise prohibited under United Nations Security Council Resolutions or CPA Orders) cannot be imported in any quantity unless the Ministry of Trade issues a license authorizing the import:

- Australia Group
- Missile Technology Control Regime
- Nuclear Suppliers Group
- Wassenaar Arrangement

#### **D.2 Prohibited Items**

- Magazines, films, videotapes and compact discs contrary to public norms
- Arms, ammunition, all explosives other than industrial and commercial explosives, and materials used in the manufacture of explosives that do not have a primary use unconnected to the manufacture of explosives (other than any such items required by, or for purposes of, the CPA (including contractor security personnel), Coalition Forces, and foreign liaison mission security personnel;
- Non-medical narcotics such as heroin, cocaine, and cannabis;
- Nuclear, chemical, biological materials or weapons; components of such systems; technologies and equipment for the development, manufacture, use or storage of such materials or systems; delivery systems for such weapons; components of delivery systems for such weapons; technologies and equipment for the development, manufacture, use or storage of such delivery systems; and
- Nuclear materials, except for radioisotopes for legitimate industrial, agricultural or medical purposes.

## **E. Restricted and Prohibited Exports**

### **E.1 Restricted Exports**

The following items cannot be exported in any quantity unless a license is issued by the Ministry of Trade authorizing the export:

- Non-military explosives imported for industrial or commercial use; and
- Industrial materials that may be used in the manufacture of explosives, but that have a primary use unconnected to the manufacture of explosives, such as fertilizer.

Items and technologies listed in the following international nonproliferation regimes (that are not otherwise prohibited under United Nations Security Council Resolutions or CPA Orders) cannot be exported in any quantity unless the Ministry of Trade issues a license authorizing the export:

- Australia Group
- Missile Technology Control Regime
- Nuclear Suppliers Group
- Wassenaar Arrangement

The following items in quantities in excess of personal use cannot be exported unless the Ministry of Trade issues a license authorizing the export:

- Sugar
- Tea
- Imported rice
- Wheat and wheat flour
- Imported vegetable oils and fats
- Lentils and chickpeas
- Dried beans
- Milk powder and infant formula
- Yellow corn for animal feed
- All animals (including fowl), excluding household pets
- Ferro-concrete, iron, iron reinforcing rods
- Galvanized iron plates, steel sheets and plates
- Wood of all kinds
- Mineral water pipes and their fittings
- Ceramic and other bathroom furnishings including taps and sinks
- Plain and colored window glass
- Metals of all kinds, including scrap
- Bar soap and detergents (in quantities that exceed personal use)
- Date palm seedlings and shoots

### **E.2 Prohibited Exports**

Certain items cannot be exported under any circumstances. Prohibited exports are listed below:

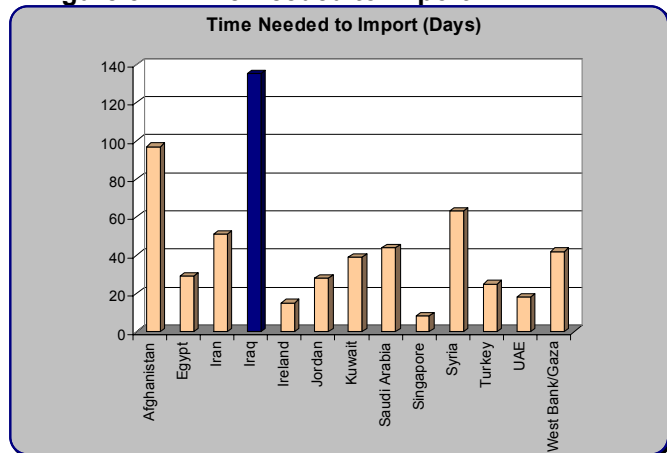
- Historical artifacts (excluding modern military artifacts and items not prohibited from export under existing Iraqi law);
- Magazines, films, videotapes, and compact discs contrary to public norms;
- Arms, ammunition, and all explosives other than industrial and commercial explosives and materials used in the manufacture of explosives that do not have a primary use unconnected to the manufacture of explosives (other than such items originally imported by, or required for historical or other purposes of, the CPA (including contractor security personnel), Coalition Forces, and foreign liaison mission security personnel)
- Non-medical narcotics such as heroin, cocaine, and cannabis;
- Nuclear, chemical, biological materials or weapons; components of such systems;
- Technologies and equipment for the development, manufacture, use or storage of such materials or systems; delivery systems for such weapons; components of delivery systems for such weapons; technologies and equipment for the development, manufacture, use or storage of such delivery systems. Except that such materials, components, systems may be delivered to Coalition authorities for disposition and elimination; and
- Nuclear materials, except for radioisotopes for legitimate industrial, agricultural or medical purposes, and nuclear materials delivered to Coalition authorities for disposition and elimination.

**F. Import Procedures**

Following the change of import regime, licenses and restrictions were suspended until 1/1/2006. Exempted from this were items listed above as restricted.

The chart to the right shows that Iraqi import procedures take twice the length of time required in regional competitors.<sup>7</sup>

**Figure 5.2: Time Needed to Import**



In accordance with Orders No. 38 and 54, as amended by Order No. 70 the government of Iraq collects the 5% reconstruction levy on the total taxable invoiced value of all goods imported into Iraq from all countries, effective April 15, 2004 for a period of two years. 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. Anecdotal information indicates that customs rules are currently being enforced at a minimal level at many border crossings, if at all.

<sup>7</sup> World Bank, Doing Business 2006

### G. Export Procedures

Exports must be by license issued by the Ministry of Trade, Department of Planning, Import-Export Section. Obtaining a license requires an exporters' ID, and proof of depositing a surety equivalent to the amount of the exported item with Central Bank of Iraq. Export ID must be renewed annually. Export licenses are required for each shipment. The chart on the right indicates that export times are far higher in Iraq than in regional competitors and even further below international best practice<sup>8</sup>.

Acquiring or renewing an exporters' ID requires the following:

1) any person who seeks to engage in export trading must be registered with the local Chamber of Commerce and holder of an ID thereof as discussed in Chapter 3.

2) Completion of a pre-printed application form that contains exporter's details and activities, which is attached with the Chamber of Commerce ID and submitted to the Export Department of the Ministry of Trade

3) The request is referred by the MoT to the Finance section for the payment of fees (about \$US50) by the exporter.

4) Issuance of Exporters ID within 2-3 days.

As shown in the Table 5.6 below import and export transactions to and from Iraq are cumbersome and require numerous documents and signatures which impede the movement of trade significantly.

Figure 5.3: Time Needed to Export

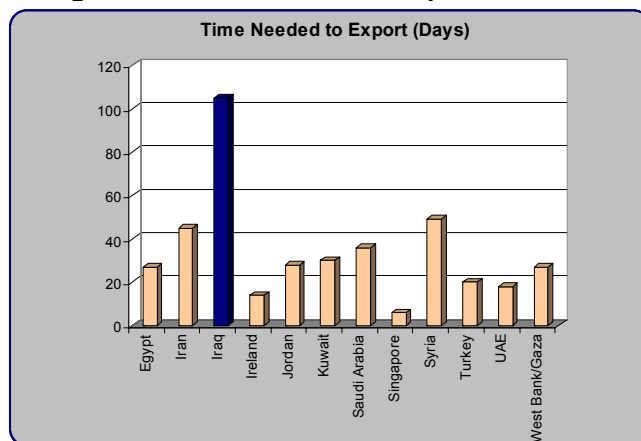


Table 5.6 Trading Across Borders

Location	Documents for Export (Number)	Signatures for Export (Number)	Time for Export (Days)	Documents for Import (Number)	Signatures for Import (Number)	Time for Import (Days)
Afghanistan	--	--	--	10	57	97
Egypt	8	11	27	9	8	29
Iran	11	30	45	11	45	51
<b>Iraq</b>	<b>10</b>	<b>70</b>	<b>105</b>	<b>19</b>	<b>75</b>	<b>135</b>
Ireland	5	5	14	4	5	15
Jordan	7	6	28	12	5	28
Kuwait	5	10	30	11	12	39
Saudi Arabia	5	12	36	9	18	44
Singapore	5	2	6	6	2	8
Syria	12	19	49	18	47	63
Turkey	9	10	20	13	20	25
UAE	6	3	18	6	3	18
West Bank/Gaza	6	10	27	9	18	42

<sup>8</sup> World Bank, Doing Business 2006



## **B. Analysis**

During the investigation process it was very evident that the customs and border security systems and procedures have many weaknesses. It was also clear that while the Iraqi trade regime features low tariff barriers it is rife with informal impediments to efficient importing and exporting. This is borne out by the extremely poor performance of Iraq in the trading across border measures set out in Table 5.6:

### **Issues**

**Export licensing regime is onerous and unnecessary.** Export licensing regimes restrict Iraqi exports, a primary potential source of revenue to the national economy. They also place Iraqi products and business at a competitive disadvantage in the international marketplace due to delay and additional cost.

**Lack of control of borders.** The borders are extensive and porous and have not yet generally been secured to a level to allow consistent customs collection of duties and the flow of goods to be controlled. Anecdotal evidence indicates that border enforcement varies depending on the border and the border station from virtually none to sporadic and inconsistent. Border problems also include terrorist infiltration, smuggling of petrol trucks, smuggling of archeological pieces, and a great number of expired goods entering Iraqi markets. This creates not only security concerns but also allows for market distortions arising from the smuggling of goods from abroad putting legitimate Iraqi producers at a disadvantage when competing with unregulated and untaxed competing imports. Unregulated imports may also pose a threat to the Iraqi consumer, since if health, safety, sanitary, and phytosanitary checks are not enforced substandard or unhealthy goods can enter the country. At present all of these activities as well as general custom documentation are very poorly enforced and highly subject to corruption.

**Lack of inspection standards.** Few international standards and guidelines are applicable and currently used to inspect shipments entering Iraq. Furthermore, the inspection process is hampered by the lack of testing capacities of different departments that are responsible to conduct checks for conformity. Insufficient inspections are currently implemented to check foods items, meat, and poultry. Lack of standards and testing capacities leaves the country susceptible to trade malpractices and receiving low quality imports.

**Unclear and conflicting information on liability of imports for Reconstruction Levy.** Anecdotal evidence indicates that importers of industrial goods have received conflicting advice as to the liability of imports to pay the Reconstruction Levy and that in some cases rulings from Baghdad have been overruled at the border by local officials.

**Potential problems of WTO compliance with import and export regimes rules.** Some of Iraq rules with respect to import and export as well as movement of goods will be in violation of WTO norms or will be sought as concessions in WTO accession negotiations. WTO accession will also require extensive capacity building in the Ministry of Trade on trade policy, law and negotiation issues and in other Ministry's on WTO compliance.

## Recommendations

**Eliminate Export/Import Licensing.** Export and import licensing restricts the movement of goods and imposes a burden on potential sources of foreign revenue. Proper recording of exports and imports can ensure security without restricting and delaying them. If export or import licenses are to be retained in any form, they should be flexible, imposed only on goods of extreme sensitivity for a defined time period and granted for extended periods (e.g. one year), not on a shipment by shipment basis.

**Increase computerization and apply the harmonized system to the ten-digit level.** Implementation of customs software for the computerization of many processes and documents would vastly speed and increase the efficiency of trade. The use of the Harmonized System at the ten-digit level allows for better and more differentiated assessment of tariffs when specific tariffs are reinitiated. .

According to the International Chamber of Commerce best practices are in place when customs departments:

1. Operate a nationwide automated system to provide electronic filing facilities for the trade community in respect of declaration data to be submitted at both import and export and for banks and corporate sureties in respect of duty and tax guarantees and surety bonds;
2. Are able to transmit and receive data, nationally and internationally, using appropriate international electronic data interchange (EDI) standards;
3. Provide automated systems for the payment of duties and other fees by electronic funds transfer;
4. Make tariff and related information/data available to the trading community from an automated system;
5. Establish and operate an automated enforcement information system, using risk assessment and other modern control techniques; and
6. Require, as a matter of routine, in automated systems, only those data items that can be clearly linked to significant gains in customs operational efficiency.

Other improvements would contribute to reducing clearance times and boost efficiency as well. For example, the customs service could: pre-process goods prior to their arrival so that administrative data are handled by post-clearance controls and use selectivity in inspections by applying a Risk Management System.

Procedures along ISO 9000 lines need to be developed for the Customs and Excise Division based on a systems analysis of current procedures. Writing down a set of procedures and guidelines based on best customs practices would enhance efficiency and help eliminate discretionary practices in Iraqi customs. Any customs reform should bring Iraq into conformity with the WTO Customs Valuation and Rules of Origin Agreements. The World Customs Organization regularly publishes best practices in cargo processing that could be of assistance to Iraqi customs authorities.

Box 5.3 on the following page illustrates various good practices that Iraq could adopt to enhance their efficiency and establish international best practices procedures.

**Box 5.3: Good Practice in Inward Cargo Processing**

The World Customs Organization recommends the following principles be adhered to in order to maximize efficiency in the clearing of goods:

- Relate physical control procedures to documentary control procedures, in such a way that essential control data are processed in advance of the arrival of the goods, while other, administrative data are handled by post-clearance controls;
- Give the declarant the option to secure immediate or rapid release by filing entry data in advance of the arrival of the goods;
- Give the declarant the option to enter data, either manually or electronically, and comply with essential control requirements, at a place different from the location of the goods;
- Establish control and release systems that enable the importer or agent to obtain the goods prior to the completion of administrative requirements and payment of duties, taxes and fees;
- Apply the WCO Express Guidelines for consignments for which immediate or expedited release or clearance is requested, regardless of weight, value, size, type of operator or carrier, or mode of transport;
- Apply a de-minimis regime whereby certain goods, including documents, private gift packages and trade samples, not exceeding a certain value or weight, are exempted from import duties and taxes and from formal declaration procedures;
- Review de-minimis levels regularly to take account of such factors as inflation;
- Give the importer the option to file entries himself or to use an authorized agent
- Release goods at carrier's point of arrival, without requiring their interim transfer to a government-operated or -designated warehouse;
- Use selectivity, based on automated compliance measurement and risk-assessment and profiling systems, to target suspect consignments and so minimize the incidence of physical examinations;
- Operate a corporate surety bonding system, or other appropriate means, such as a duty- and tax-deferral system, to protect the revenue and ensure compliance with customs laws without unnecessarily delaying the release of goods;
- Fix, in the absence of any evidence of fraud, a reasonable limit on the time during which it can demand additional duties and/or the re-delivery of the goods;
- Develop the use of non-intrusive examination techniques, such as X-ray;
- Develop and apply performance standards to check that its processing and release of goods are timely and meet reasonable business needs;
- Allow authorized importers to file single entries covering all their importations in a given period, e.g., monthly;
- Replace transaction-by-transaction treatment by account-based, post-entry procedures for importers with proven compliance histories and consistent import patterns (e.g., types of goods and origins);
- Have government authority to perform certain control functions, at the time of import, for other official agencies and link these agencies to customs automated systems and databases for targeting and risk-assessment purposes; and
- Adapt its working hours to ascertained commercial needs and operational requirements, and operate any necessary overtime or other exceptional service systems on transparent cost bases negotiated with business clients.

Source: World Customs Organization

**Develop a system of risk management to reduce the number of inspections.** To remove the responsibility on customs to inspect every shipment, inspections should be based on an analysis of the risk involved. Risk management selects certain transactions or movements for closer scrutiny, and screens out others as constituting nil or negligible risk.

Profiling a potential group of targets through the use of computerized information to develop a group of characteristics, information or risk indicators and targeting either cargo or people selectively as a result has significant benefits for customs operations. These include:

- The accurate selection of high-risk transactions;
- Maximizing the efficient allocation of resources to those result areas;
- Eliminating time and resource wastage;
- Fast-tracking international trade transactions; and
- Providing a sound basis for customs decision-making to meet accountability requirements.

While the development of a similar system may not be feasible immediately, the government of Iraq should consider the implementation of a similar practice once the automation process has been completed.

Box 5.4 illustrates the U.S. Customs Risk management process.

#### **Box 5.4: U.S. Customs Risk Management Principles**

The U.S. Customs Service applies risk management principles to limit physical cargo inspections and has developed a four-step model to establish its risk management system. This is as follows:

1. **Collect Data and Information:** This involves the systematic collection of data used to understand the risk universe, gain a historical perspective of the identified risk, and establishing a risk baseline.
2. **Analyze and Assess the Risk.** Analytical tools are used to determine the areas of greatest risk, and the scope of the problem in those areas.
3. **Prescribe Actions.** Initiate the design of a course of action, and assign appropriate resources to address the determined risk.
4. **Tracks and Report.** Results are compiled and reported back into the Risk Management Process for monitoring or future action.

Source: U.S Customs

**Develop guidelines for inspections and testing capacities.** The government should expedite the process of legislating mandatory standards. The government of Iraq should expedite the development of testing facilities for the standards certification and those agencies that are involved in inspections, including the Ministry of Agriculture and the Ministry of Health. The government should consider joint development of regional testing facilities to avoid duplication and enhance efficiency as well as mutual recognition agreements on standards and testing with other countries. Additionally, the government should consider the accreditation of private sector labs to do the necessary inspections,

The government of Iraq should also introduce guidelines for inspection procedures that are in line with international standards and best practices. For example, for plant health the International Plant Protection Convention could be a reference, for food safety the CODEX ALIMENTARIUS is recommended, and for animal health the Office of Epizootics and the WTO Agreement on Sanitary and Phytosanitary measures serve as a good model.

Computer programs for customs also have the capability to select food and drugs for testing based on their categorization into high, medium, and low risk. Under normal circumstances, high-risk products should be subject to 100% inspection, sampling, and testing. Fifty percent of products falling into the medium risk category should be inspected, with 25% being selected for sampling and testing. In the case of low-risk products, 75% should be passed without inspection, 25% inspected, and 10% of these sampled and tested.

**Continue to develop and implement a capacity building program in the area of Trade and Custom regime.** Customs personnel are not sufficiently knowledgeable or adequately trained in the regulations, permits, procedures, and other matters. Specific areas that require attention are: 1) the planning and strategy for the implementation of tariff commitments; 2) various areas of customs procedures, including automation, valuation techniques, risk management schemes and inspections; 3) the legislation of mandatory standards and conformity implementation; and 4) the development of guidelines and implementation of WTO Sanitary and Phytosanitary Agreement. Trade policy and negotiation skills should also be included in this training.

**Accelerate efforts to bring all existing trade-related rules into WTO compliance as well as efforts to negotiate WTO accession.** Iraq has begun the process of WTO accession and is in the process of bringing many of its rules within WTO norms. In preparation for negotiations more reforms should be initiated in order to pre-comply with WTO rules which will be required after accession. WTO accession negotiations should be a top priority as accession will provide Iraq with a wealth of improved market access opportunities as well as an opportunity to improve trade-related rules in Iraq to promote economic growth.

## **5.4 Complying with Currency Controls**

The central legislation in the area of currency controls is CPA Order No. 56 of 2004 (the Central Bank of Iraq Law), Banking law No. 94 of 2004, and foreign exchange directives No. 836 and 837 of November 3, 2003, issued by the Central Bank of Iraq (CBI).

CPA Order No. 56 of 2004 stipulates the following:

- In the pursuit of its objectives and performance of its tasks, the CBI shall be autonomous and accountable as provided in the CBI law. The CBI shall not take any instructions from any person or entity, including government entities. The autonomy of the Central Bank shall be respected and no person or entity shall seek improperly to influence any member of decision-making body of the CBI in the discharge of his duties towards the CBI or to interfere in the activities of the CBI.
- The primary objectives of the CBI shall be to achieve and maintain domestic price stability and to foster and maintain a stable and competitive market-based financial system. Subject to these objectives, the CBI shall also promote sustainable growth, employment, and prosperity in Iraq.

The functions of the CBI in achieving its objectives are as follows:

- Issue and manage Iraqi currency;
- Establish, oversee and promote sound and efficient payment systems;
- Issue licenses or permits to banks and regulate and supervise banks;
- Open and maintain accounts on its own books of foreign central banks and international organizations;

- The CBI may take whatever action is deemed necessary to:
  - Control money laundering and terrorist financing and,
  - Regulate and supervise land companies, micro-finance companies, and any other non-bank financial institutions.

The CBI shall have the exclusive authority to take all such actions as may be necessary, to license, regulate and supervise banks and their subsidiaries including the authority to conduct off-site surveillance and on-site examinations of licensees and their subsidiaries in the manner and at the times chosen by the CBI, to require banks and their subsidiaries to provide all such information as the CBI may request regarding the affairs of a bank, its subsidiaries and their customers and to take remedial action to enforce compliance by licensees and their subsidiaries with any regulations.

According to the Central Bank's Foreign Exchange Directive No. 836 of November 3, 2003:

- Banks are authorized to open accounts in foreign currencies for Iraqi, Arab, and foreign companies working in Iraq and to register income remittances in foreign currencies for their accounts with the right to withdraw from the said accounts according to the bank's rules in this respect.
- The owners of these accounts have the right to settle their obligations to persons or accounts inside Iraq with no conditions regardless of where the individual or account resides.
- All persons residing in Iraq have the right to receive their remittances from outside in cash through banks or deposits in bank accounts in accordance with the law. The banks are authorized to transfer amounts outside Iraq in foreign currency.

Directive No. 837 of November 3, 2003 relates to credits in foreign currency and provides that banks may open or accept credit to import and export goods permitted for import and export in accordance with the regulations.

## **A. Exchange Restrictions**

The currency of Iraq is the Dinar (ID, sometimes referred to as the New Iraqi Dinar NID since a new currency was introduced over the last quarter of 2003 and first months of 2004). Iraq's current exchange system is characterized as follows:

- Free foreign exchange system, with no restrictions on purchases or sales of foreign currencies. The Iraqi currency is fully convertible and can be exchanged freely with any other currency.
- Free movement of capital with no restrictions on capital inflows and outflows.
- A multi-currency system in which foreign currencies circulate in the market, which is accessible to all (as a result, checks are officially cleared at the CBI not only in Iraqi Dinar, but also in other major foreign currencies particularly the US\$).

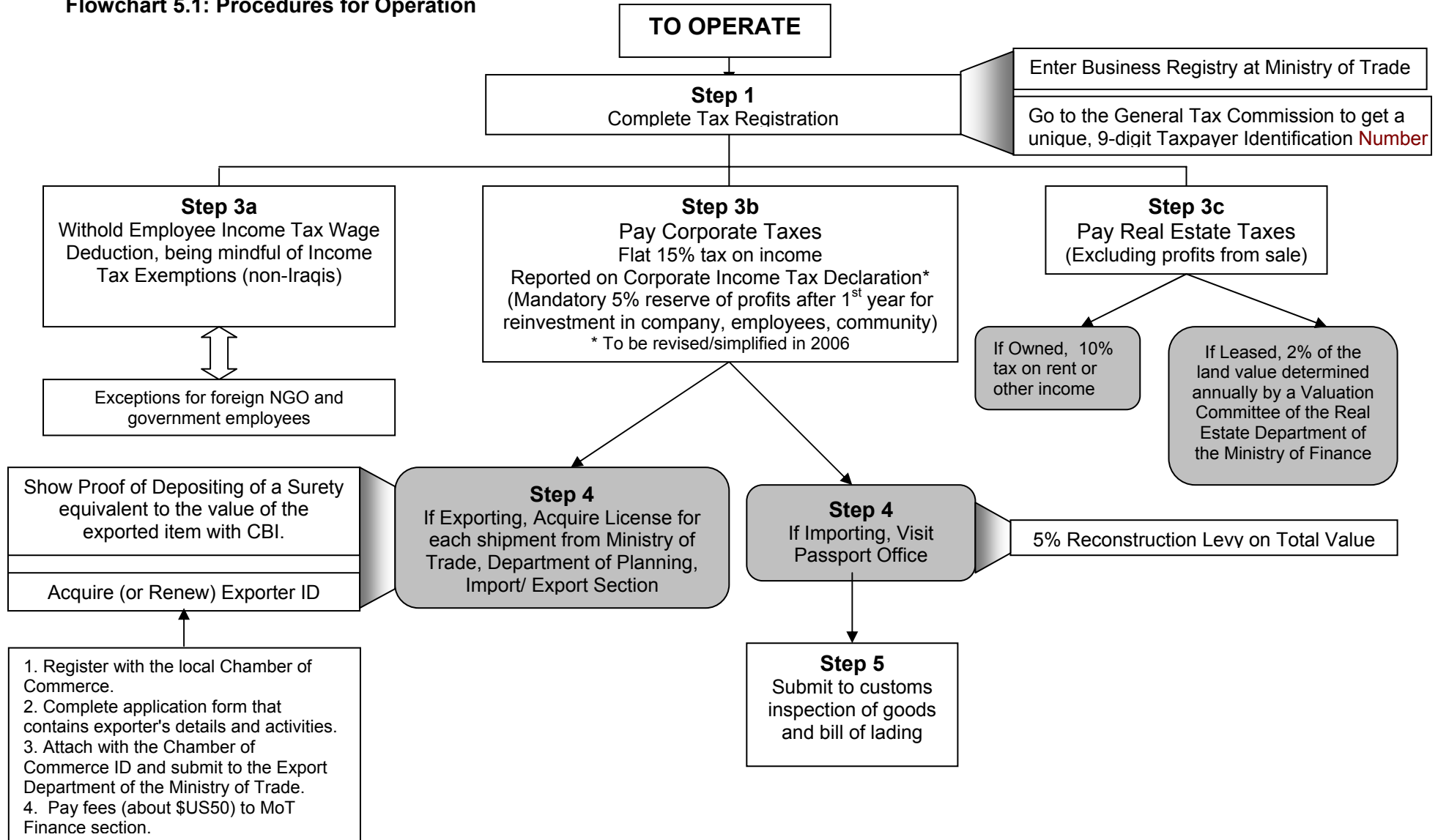
CBI Law No. 56 of 2004 includes no restrictions on foreign exchange or restrictions on exchange remittance. Bank customers can obtain foreign currency from Iraqi banks who purchase it at auction organized by the CBI.

There are in law no formal restrictions on foreign investors in transferring investment revenues. Paragraph 2-d, Section 7 of the Law of Foreign Investment (CPA Order No. 39 of 2003) provides that “a foreign investor” can transfer abroad without delay all funds associated with its foreign investment including:

- Shares or profits and dividends;
- Proceeds from the sale or other disposition of its foreign investment or a portion thereof;
- Interest, royalty payments, management fees, other fees and payments made under a contract; and
- Other transfers approved by the Ministry of Trade.



**Flowchart 5.1: Procedures for Operation**





## Annex One: Summary and Prioritization of Recommendations



Abbasid Palace— Baghdad



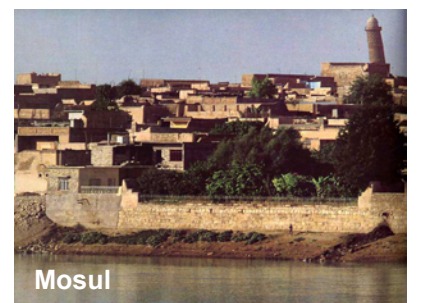
Parthian-style temple— Hatra



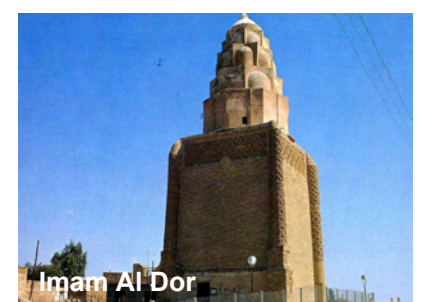
Mosul & city wall of Nineveh



Khan Mirjan— Baghdad



Mosul



Imam Al Dor

Process	Recommendation	Priority <sup>1</sup>	Implementation Timetable <sup>2</sup>	Responsibility
<b>EMPLOYING</b>				
<b>Labor Regime</b>	Liberalize employment environment	Medium	Medium to long-term	Ministry of Labor and Social Affairs
	Update labor law	Medium	Medium to long-term	Ministry of Labor and Social Affairs
	Clarify employer requirements regarding work site facilities and transport allowance	Medium	Immediate	Ministry of Labor and Social Affairs
<b>Entry Visa</b>	Eliminate discrepancies in visa process and options	High	Short to medium-term	Ministry of Foreign Affairs, Immigration Office
	Harmonize legal regime governing visas	High	Medium to long term	Ministry of Foreign Affairs, Immigration Office
	Clarify rules and procedures for entry visas and preliminary work permits	High	Short to medium-term	Ministry of Foreign Affairs, Immigration Office, Ministry of Labor and Social Affairs
	Ensure visas are issued in a timely manner	Medium	Short-term	Ministry of Foreign Affairs, Immigration Office
	Extend visa validity period for business travelers and allow easy extensions/renewals	Medium	Immediate	Immigration Office, embassies, consular offices
	Rationalize visa types	Medium	Immediate	Ministry of Foreign Affairs, Immigration Office
	Standardize restrictions	Medium	Immediate	Ministry of Foreign Affairs, Immigration Office
	Eliminate sponsorship requirement for investors	Medium	Immediate	Ministry of Foreign Affairs, Immigration Office
	Eliminate chamber registration for sponsors	Medium	Immediate	Ministry of Foreign Affairs, Immigration Office
	Eliminate health inspection at Iraqi hospitals	Medium	Immediate	Ministry of Foreign Affairs, Immigration Office
	Improve security screening for visitors	Medium	Short-term	Ministry of Foreign Affairs, Immigration Office
	Redesign visa application	Medium	Immediate	Ministry of Foreign Affairs,

<sup>1</sup> Priority is categorized as follows: High; Medium; and Low

<sup>2</sup> Immediate: 0-3 months

Short term: 3-6 months

Short to medium term: 6-12 months

Medium term: 12-18 months

Medium to long term: 18-24 months

Long term: 24 months or more

Process	Recommendation	Priority <sup>1</sup>	Implementation Timetable <sup>2</sup>	Responsibility
				Immigration Office
	Eliminate 'Affidavit of Entrance' at Immigration Office requirement	Medium	Short-term	Ministry of Foreign Affairs, Immigration Office
<b>Work &amp; Residency Permits</b>	Allow direct sponsoring of workers	Medium	Medium-term	Ministry of Labor and Social Affairs
	Clarify and enforce rules about expatriate women employees	Medium	Short-term	Ministry of Labor and Social Affairs
	Consider eliminating application for expatriate employment quotas	Medium	Medium-term	Ministry of Labor and Social Affairs,
	Clarify expatriate work permit revocation rules	Medium	Medium-term	Ministry of Labor and Social Affairs, Immigration Office
	Reevaluate work permit finalization process	Medium	Medium-term	Ministry of Labor and Social Affairs
	Terminate guarantee letter	Low	Immediate	Ministry of Labor and Social Affairs
	Eliminate in-country medical examination	Medium	Immediate	Ministry of Labor and Social Affairs, Ministry of Foreign Affairs, Immigration Office
REPORTING				
<b>Company Registration</b>	Produce and publish an Investor Guide	Medium	Immediate	IIPA
	Produce SOP and train staff	Medium	Immediate	OCR, IIPA, other relevant authorities
	Allow foreign ownership in the natural resources sector	High	Medium-term	Ministry of Industry and minerals, IIPA
	Enforce the freedom of profit expatriation	High	Short term	IIPA and relevant ministries
	Establish one-stop-shop	High	Short-medium term	IIPA, OCR
	Open OCR branches in governorates	High	Medium term	MOT/OCR
	Eliminate (or amend) the requirement of depositing US \$100,000 for retail activities	Medium	Immediate	OCR
	Electronically enable business registration processes	Medium	Long term	IIPA, OCR, other relevant authority
<b>Allocating Incentives</b>	Build capacity of implementing staff and produce SOPs	Medium	Short-medium term	Tax and customs departments, IIPA, other relevant authorities
	Design and incentives policy	Medium	Short-medium term	IIPA, other relevant authorities
<b>Intellectual Property</b>	Draft implementing regulations and SOPs	High	Short-medium term	MOPDC

Process	Recommendation	Priority <sup>1</sup>	Implementation Timetable <sup>2</sup>	Responsibility
<b>Rights Registration</b>				
	Build capacity to enforce IPRs	High	Medium term	MOPDC
	Assign a single authority to disseminate IPRs information	Medium	Medium term	MOPDC
	Review and amend old IPRs laws	Medium	Short – medium term	MOPDC
<b>LOCATING</b>				
<b>Site Acquisition</b>	Release land to private sector	High	Short-Medium-term	Ministry of Finance, Ministry of Industry and Minerals, other ministries that own land
	Allow foreign property ownership	High	Short-term	
	Establish centralized site for property market information	Medium	Medium-term	Ministry of Finance, Ministry of Industry and Minerals, Free Zones Authority, all ministries, governorates, and municipalities that own land
	Condense land-related legislation	Medium	Short to medium term	Ministry of Industry and Minerals, Ministry of Finance, Ministry of Labor and Social Affairs
	Reevaluate role of government bodies involved in public land acquisition	Medium	Short to medium term	Ministry of Industry and Minerals, Ministry of Labor and Social Affairs
	Study revenue implications of subsidizing land leases	Medium	Medium-term	Ministry of Industry and Minerals, governorates and municipalities that own industrial estates
	Evaluate industrial estate/free zone potential	High	Short - Medium to term	Ministry or Industry and Minerals, governorates and municipal governments that own industrial estates
	Reevaluate deposit and bidding amount for lease auctions	Low	Short-term	Ministry of Finance, Ministry of Agriculture, Ministry of Tourism, and all other ministries that own land and lease through auction
	Announce state land auctions in additional publications	Low	Immediate	All ministries that own land and lease or sell through auction
	Reevaluate lease auction rationale	Medium	Short-term	All ministries that own land and lease or sell through auction

Process	Recommendation	Priority <sup>1</sup>	Implementation Timetable <sup>2</sup>	Responsibility
	Automate land lease and land registration application process	Low	Medium to long term	Ministry of Industry and Minerals, governorates and municipal governments that own industrial estates; all ministries that lease land through auction
	Clarify and publish free zone information	Medium	Short- medium term	Free Zone Authority
<b>Site Development</b>	Establish and enforce building codes	High	Medium term	GDID, municipal urban planning departments
	Develop information for building permit process	Medium	Medium-term	GDID, municipal urban planning departments
	Boost Capacity of Municipalities in Building Permits	Medium	Short-term	Municipal urban planning departments
	Terminate municipal committee inspections	Low	Short-term	GDID, Municipal urban planning departments
	Initiate automated approval process	Low	Medium to long term	GDID, Municipal urban planning departments
<b>Utility Connections</b>	Expand and improve sewerage system	High	Long-term	Ministry of Irrigation, Ministry of Environment, Ministry of Health
	Introduce solid waste system	Medium	Medium-term	Ministry of Environment
	Continue efforts to repair/expand telephone system, privatize telecom	Medium	Medium term	Ministry of Communication
	Automate utility application process	Low	Long-term	Ministry of Communication, Ministry of Irrigation, Ministry of Electricity,
<b>Environmental Compliance</b>	Require compliance application during building permit process	High	Short to medium-term	Ministry of Environment,
	Reevaluate EIA requirement for all projects	Medium	Medium-term	Ministry of Environment
	Develop and publish guidelines	Medium	Medium-term	Ministry of Environment
<b>OPERATING</b>				
<b>Tax regime</b>	Increase computerization	Medium	Medium term	Ministry of Finance
	Provide TA and training to officials	Medium	Immediate	Ministry of finance
	Restructure GTC as revenue authority	High	Medium term	Ministry of Finance
	Assess revenue sources and expand	High	Short to medium term	Ministry of Finance
	Close tax loopholes	High	shortterm	Ministry of Finance
	Improve public information	medium	Short term	Ministry of Finance
	Consolidate tax legislation	Medium	Short to medium term	Ministry of Finance
	Train officials in client service	Medium	Immediate	Ministry fo Finance

<b>Process</b>	<b>Recommendation</b>	<b>Priority<sup>1</sup></b>	<b>Implementation Timetable<sup>2</sup></b>	<b>Responsibility</b>
<b>Import and Export</b>	Eliminate import/export licensing	High	Short term	Ministry of Finance GCIC, Ministry of Interior
	Increase technology use and HS system	Medium	Short to medium term	Ministry of Finance GCIC
	Develop and implement risk management system	Medium	Medium term	Ministry of Finance GCIC, Ministry of Interior
	Develop and implement guidelines for inspections	Medium	Short to medium term	Ministry of Finance GCIC
	Develop and implement capacity building programs	Medium	Immediate	Ministries of Finance and Trade
	Accelerate WTO compliance and accession	High	Immediate	Ministry of Trade