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OVERVIEW OF COMMERCIAL LAW IN PRE-WAR IRAQ

THE FOLLOWING PAPER DESCRIBES THE COMMERCIAL LEGAL ENVIRONMENT IN IRAQ AT THE END OF THE SADDAM HUSSEIN REGIME. IT IS PRESENTED IN DRAFT FORM AND IS BASED ON PUBLIC SOURCES AVAILABLE IN ENGLISH. THE PAPER WAS PREPARED WITHOUT THE BENEFIT OF ADVICE FROM COUNSEL QUALIFIED TO PRACTICE LAW IN IRAQ, OR WHO OTHERWISE HAVE EXPERIENCE WORKING IN PRIVATE OR GOVERNMENT LEGAL PRACTICE IN IRAQ DURING THE LAST DECADE.

ACCORDINGLY, THE INFORMATION IN THIS PAPER DOES NOT CONSTITUTE LEGAL ADVICE, AND IT IS NOT INTENDED, NOR SHOULD IT BE USED, AS A SUBSTITUTE FOR SPECIFIC LEGAL ADVICE FROM QUALIFIED LEGAL COUNSEL. THE U.S. GOVERNMENT DOES NOT WARRANT THE ACCURACY OF THE INFORMATION IN THIS PAPER, AND URGES THOSE INTENDING TO DO BUSINESS IN IRAQ TO CONSULT WITH QUALIFIED LEGAL COUNSEL.

NONETHELESS, GIVEN THE LACK OF INFORMATION ON COMMERCIAL LAWS IN PRE-WAR IRAQ, WE ARE MAKING THIS DRAFT PAPER AVAILABLE TO THE PUBLIC AS A SERVICE TO THE U.S. AND INTERNATIONAL BUSINESS AND LEGAL COMMUNITIES.

THIS PAPER WAS PREPARED BY THE OFFICE OF THE CHIEF COUNSEL FOR INTERNATIONAL COMMERCE IN THE OFFICE OF GENERAL COUNSEL AT THE U.S. DEPARTMENT OF COMMERCE. THE PUBLIC SOURCES ON WHICH THE PAPER RELIES ARE LISTED IN FOOTNOTES. THE DEPARTMENT OF COMMERCE WOULD LIKE TO THANK THOSE READERS WHO PROVIDED COMMENTS ON THE JUNE 12, 2003 EDITION OF THIS PAPER.

SUBJECTS COVERED BY THIS PAPER HAVE BEEN SIGNIFICANTLY AFFECTED BY ORDERS, REGULATIONS AND OTHER ISSUANCES OF THE COALITION PROVISIONAL AUTHORITY (CPA). READERS ARE URGED TO REFER TO THE CPA'S WEBSITE FOR INFORMATION CONCERNING LEGAL CHANGES SINCE THE FALL OF THE SADDAM HUSSEIN REGIME: [HTTP://WWW.CPA-IRAQ.ORG](http://www.cpa-iraq.org).

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I. EXECUTIVE SUMMARY

Iraq has a long and distinguished history as a center of Islamic jurisprudence. Its Civil Code, which was enacted in 1951 and became effective in 1953, is still the core of its commercial legal system. This Code is a sophisticated mixture of Islamic and European legal concepts. In fact, its basic contract provisions should be recognizable and usable by any company doing business in the Middle East today. However, Iraqi law at the end of the Saddam Hussein regime contained a number of elements which may create problems for traders and investors. The brief list below is supplemented by more detailed discussion in Parts II and III of this paper.

- A. The Iraqi Constitution prohibits private ownership of natural resources and the “basic means of production.”
- B. The Iraqi Constitution prohibits foreign ownership of immovable (real) property.
- C. The Iraqi Companies Law prohibits investment in, and establishment of, companies in Iraq by foreigners who are not resident citizens of Arab countries.
- D. The Iraqi Commercial Agency Law requires that anyone representing another person or company in a commercial transaction must be of Iraqi nationality and be “fully loyal to his homeland.” Resolution of disputes and termination of agents may be difficult under Iraqi agency law.
- E. Several Iraqi laws and regulations contain elaborate and probably time-consuming registration and/or licensing requirements for commercial companies, agents, distributors, branches, representative offices, and intellectual property rights. These requirements may include “loyalty” oaths and “Arab Boycott of Israel” certifications.
- F. Iraqi regulations require that the government license and inspect all goods coming into and leaving the country.
- G. U. S. copyright owners have no access to Iraqi copyright protection since the United States and Iraq are not members of any of the same copyright treaties.
- H. Iraq has no antitrust or competition law.
- I. Iraqi law does not require the recognition or enforcement of court judgments or arbitral awards from non-Arab countries.
- J. Iraq has no public system for recording liens or other security interests in movable or personal property.

II. OVERALL STRUCTURE OF CIVIL LAW IN IRAQ

A. Constitutions

Since World War I, Iraq has seen several constitution-type laws. First, there was the Iraqi Basic Law in 1925, which was amended once before a major revision was enacted in 1943. In 1958 there was a short-lived Constitution of the Arab Federal State (with Jordan). National constitutions were adopted in 1958 and 1964. A provisional or interim constitution was adopted in 1970.¹ Most recently, a 1990 draft or interim constitution, though apparently never formally adopted, was sometimes labeled by the Saddam Hussein regime as the currently effective constitution.² (Since the article numbers and content of both the 1970 and 1990 constitutions are the same with respect to topics of concern in this paper, the terms “Interim Constitution” or “Iraqi Constitution” will be used in this paper to reference both documents until more complete information can be obtained.)

Article 1 of the Interim Constitution proclaims the promotion of a socialist system as one of the basic goals of the State. Article 12 gives responsibility to the government for planning, directing, and steering the national economy toward this purpose. Article 13 provides that “natural resources” and the “basic means of production” are owned by “the People”. (We invite comment on what is intended by the term “basic means of production.”) Article 16 allows for private ownership of property when it is not “incompatible with economic and general planning” by the government. Article 16 also contains the requirement that private property may not be expropriated “except for considerations of public interest and for just compensation in accordance with the law.” Article 18 prohibits foreign ownership of immovable property except as otherwise provided by law. (We understand “immovable property” to mean land, buildings, and other permanent structures or fixtures.)

Article 64, paragraph (a), of the Interim Constitution states that laws are effective the date of publication, unless otherwise provided. Paragraph (b) of that Article provides: “Laws have no retroactive effect, unless otherwise stipulated. This exception does not include penal laws, tax laws, and fiscal fees.” Most laws and regulations seem to have been available to the public through publication in the Iraqi Official Gazette: *Alwaqai Aliraqiya*.

1 The historical summary comes from Munther Al Fadhil, International Counsellor-at-Law, *available at* <http://www.eatlaf.com/inside/studies%20on%20the%20futur.htm>. Our text of the 1970 constitution came from CONSTITUTIONS OF THE COUNTRIES OF THE WORLD: IRAQ 9 (Albert P. Blaustein & Gisbert H. Flanz eds., Oceana Publications, Inc., 1990).

2 Any claim to the validity of the 1990 Constitution is indirect, implied by the October 15, 1995, referendum amending provisions of this Constitution to establish Saddam Hussein as President of Iraq. International Constitutional Law, *available at* http://www.oefre.unibe.ch/law/icl/iz_indx.html. The text of the 1990 constitution (without changes apparently made in 1995) is available at http://www.oefre.unibe.ch/law/icl/iz00000_.html.

B. Civil Code

During the 1930s, at the suggestion of the prominent Egyptian jurist Abd al-Razzaq al-Sanhuri, a committee was formed to draft a civil code for Iraq based on Islamic and European (primarily French) legal principles. By the time the committee neared the end of its work in the mid 1940s, it had access to an additional source of law, the draft of the new Egyptian Civil Code (also by Sanhuri).³ The Iraqi Civil Code ("Civil Code"),⁴ was completed in 1946, enacted as Law No. 40 in 1951, and became effective in 1953.⁵ The Civil Code is the main source of Iraqi commercial law, particularly with respect to the formation, discharge, and dissolution of contracts.⁶ Some provisions of the Civil Code have been changed by later laws, several of which are discussed below.

C. Commercial Code

The Iraqi Commercial Code ("Commercial Code") was promulgated in the Law of Commerce No. 30 of 1984. It regulates commercial matters pertinent to businesses including trade names; company registration; company books and accounts; negotiable instruments, commercial mortgages, letters of credit, and other financial transactions; as well as carriage and delivery terms for international sales transactions.⁷ The sections on international terms of sale appear to be similar to the *Incoterms* standards recommended by the International Chamber of Commerce at the time the Commercial Code was passed. We note that the Commercial Code (or any other Iraqi law) does not provide for a public system for recording security interests in movable or personal property. Some provisions of the Commercial Code have been changed by later laws, several of which are discussed below.

D. Statutes, Regulations, Etc.

In the last few decades, the Iraqi government has passed or issued a number of statutes, regulations, decrees and resolutions which impact commercial matters. Several are described in some detail below. We note that Iraq does not have any laws related to antitrust or competition issues.

3 Zuhair E. Jwaideh, *The New Civil Code of Iraq*, 22 GEO. WASH. L. REV. 176, 179-180 (1953-1954). The civil codes of seven other Arab states—Algeria, Jordan, Kuwait, Libya, Syria, Sudan, and the U.A.E.—are also based to varying extents on the Egyptian Civil Code of 1949.

4 Our text of the Civil Code comes from NICOLA H. KARAM, *BUSINESS LAWS OF IRAQ*, (Middle East Business Law Series, Graham & Trotman eds., 1990).

5 See Jwaideh, *supra* note 3, at 180.

6 Khalid Issa Taha & Howard L. Stovall, *Looking Again At Iraq: Commercial Law Issues*, MIDDLE E. EXECUTIVE REP. 9 (February 1997).

7 The Law of Commerce No. 30 of 1984 replaced Law No.149 of 1970 (as amended), except Part VI (on bankruptcy) which remained in effect. Our text comes from KARAM, *supra* note 4.

III. SELECTED TOPICS IN IRAQI COMMERCIAL LAW

A. Contracts

Many basic elements of Iraqi contract law are similar to those found in Western legal systems. However, there are some important differences such as the following:⁸

1. Mutual consideration in the Western sense is sometimes not required for a valid contract as long as a lawful subject matter and a reason to be bound exist. For example, under Iraqi law, certain gratuitous promises may create binding obligations.⁹
2. There are more legislative and judicial restrictions on the charging of interest than might be expected under Western law. However, unlike some Muslim countries, Iraqi law allows interest to be charged in commercial and banking transactions subject to some restrictions on compound interest and total interest exceeding the amount of the principle.¹⁰
3. The primary remedy for breach of contract is specific performance. Compensatory damages are allowed when specific performance is unavailable or inappropriate.¹¹
4. The statute of limitations for contract claims in Iraq may be as long as fifteen years.¹²

Contracts could be a valuable tool to help foreign businesspersons deal with issues in Iraqi law, such as the inability of foreigners to own real estate in Iraq and the inability of non-Arab foreigners to own interests in Iraqi companies (discussed further below). However, differences between Iraqi and Western contract law such as those listed above highlight the importance of consulting with local legal counsel before entering into contractual arrangements in Iraq.

B. Iraqi Companies

1. The Registration of Companies Department

The Registration of Companies Department of the Iraqi Ministry of Trade (Registrar) administers

⁸ Descriptions of Iraqi commercial contract law including comparisons with Western contract law can be found in S. H. AMIN, *THE LEGAL SYSTEM OF IRAQ* (1989), esp. at 110-160, and NAYLA COMAIR-OBEID, *THE LAW OF BUSINESS CONTRACTS IN THE ARAB MIDDLE EAST* (1996), esp. at 135-144.

⁹ Civil Code, Article 184-185.

¹⁰ *Id.*, Article 171-176. Note that Article 225 appears to indicate banks are not covered by the listed restrictions.

¹¹ *Id.*, Articles 168, 246, 248, 253 & 254.

¹² *Id.*, Article 429-433. See also statute of limitations for negotiable instruments in the Commercial Code, *supra* note 7, Articles 132, 135, 162 & 175.

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the provisions of several Iraqi commercial laws and regulations, including the Companies Law, the State Companies Law, the Arab Investment Law, the Commercial Agency Law and Regulation No. 5 (branches and representative offices), all discussed further below. The responsibilities of the Registrar include registering all business entities, approving incorporation and other establishment documents, monitoring and keeping records of company activities, inspecting company accounts and records, directing company dissolution where appropriate, and providing the government with requested information about any of the registered entities.¹³

2. The Private Sector

The Companies Law No. 21 of 1997 amended the Iraqi Civil and Commercial Codes and currently governs the types of companies allowed in Iraq, as well as their formation, management, and dissolution.¹⁴ Article 6 authorizes four main types of companies:¹⁵

- i. joint stock: five or more shareholders permitting public participation; the liability of each is limited to the nominal value of his share
- ii. limited liability company: two to twenty-five shareholders; the liability of each is limited to the nominal value of his share
- iii. collective partnership: two to ten natural persons with unlimited “joint and personal” liability
- iv. individual enterprise: a single person with unlimited liability

Under Article 12, all founders, shareholders, or partners of Iraqi companies must be Iraqi nationals or the resident citizens of other Arab countries who are treated as Iraqis for purposes of this law.¹⁶

3. The Public Sector

The State Companies Law No. 22 of 1997 outlines the requirements for establishing and operating state owned enterprises: companies that are wholly owned by the government but have a financial and legal structure focused on carrying out economic (rather than governmental)

13 Regulation No. 7 of 1989 (Organization of the Ministry of Trade), Article 4. The English text of these regulations was originally provided by the Iraqi Ministry of Trade at <http://www.uruklink.net/trade/english/elaw.htm>. Since this website is currently not operational, requests for a copy of this translation may be made to OCCIC@DOC.GOV. *See also*, references to the detailed functions of the Registrar throughout the five laws cited in the text of the paragraph.

14 The Companies Law No. 21 of 1997 replaced the earlier Companies Law No. 36 of 1983, although no changes were made on points of key concern in this paper. This law was translated into English for the U.S. Government by the Foreign Broadcast Information Service (FBIS). Requests for a copy of this translation may be made to OCCIC@DOC.GOV. *See also* Basil Yousif, *Iraq*, LEGAL ASPECTS OF DOING BUSINESS IN THE MIDDLE EAST (Dennis Campbell, ed., Kluwer Law International Business Series, March 2002).

15 Companies Law No. 21 of 1997, Article 6. *See also* *Doing Business in Iraq*, Trade Partners UK [hereinafter Trade Partners UK], at

http://www.tradepartners.gov.uk/iraq/doingbusiness/07_regulations/localrepresentation.shtml.

16 Companies Law of 1997, Article 12.

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activities.¹⁷ As of May 1999, the Iraqi Official Gazette had announced the registration of 133 publicly owned companies under this law. These companies were principally attached to the Ministries of Industry, Trade, Housing, Transport, Oil, Irrigation and Finance.¹⁸ Companies which have a "mixed" ownership (that is, partly government owned and partly privately owned) are governed by the provisions of the Companies Law rather than the State Companies Law.¹⁹

C. Foreign Companies

1. Arab Companies

As noted above, the Companies Law of 1997 treats resident citizens of Arab countries as Iraqis for the purpose of establishing, operating or simply owning shares in an Iraqi business.²⁰ In addition, Iraq has had at least two laws granting many special exemptions and privileges (such as tax holidays) to Arabs who invested in approved projects. The first such law was the Arab Investment Law No. 46 of 1988.²¹ It appears this law has been replaced by the Arab Investment Law No. 62 of 2002 which contains even more favorable provisions for Arab investors.²²

2. Joint Ventures

Foreign nationals from both Arab and non-Arab countries may participate in joint ventures (JVs) with Iraqi companies on a contractual basis for the completion of a specific project as long as they do not obtain any equity capital of the Iraqi company.²³ In Iraq, a JV has no legal personality and is not itself covered under the Companies Law (although both domestic and foreign companies are governed under this law). The JV may neither acquire nor issue shares to non-contracting parties. Maintaining their original legal identities, the partners to the JV are nonetheless held jointly and severally liable to third parties.²⁴

3. Branch and Representative Offices

Under the Companies Law of 1997 and Regulation No. 5 of 1989 for Branches and Offices of

17 The State Companies Law No. 22 of 1997 was translated into English for the U.S. Government by the Foreign Broadcast Information Service (FBIS). Requests for a copy of this translation may be made to OCCIC@DOC.GOV.

18 Sabah Al-Mukhtar, *Iraq*, in YEARBOOK OF ISLAMIC AND MIDDLE EASTERN LAW 1998-1999 (Eugene Cotran & Chibli Mallat, eds.), at 216.

19 Companies Law of 1997, Article 3.

20 *Id.*, Article 12.

21 A translation of this law was provided to the U.S. Government by Citigroup. Requests for a copy of this translation may be made to OCCIC@DOC.GOV.

22 An informal translation of this law was obtained by the U.S. Department of Treasury in Iraq. We are still seeking a good English translation and/or an official version in Arabic.

23 Taha & Stovall, *supra* note 6, at 14.

24 Trade Partners UK, *supra* note 15.

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Foreign Economic Establishments (Regulations), foreign companies carrying out activities in Iraq as a result of an agreement with an Iraqi government agency or with certain companies wholly or partly owned by government entities are permitted to establish branch and representative offices in Iraq.²⁵ A local branch office may conduct business activities within the scope of approved contracts.²⁶ Representative offices are not allowed to carry out any business activity except that involved in acting “as liaisons to collect information, purchase tender documents, and contact clients.”²⁷

All companies permanently doing business in Iraq or having a contract to perform a specific activity (other than mere supply contracts) must submit written notice to the Registration of Companies Department in the Iraqi Ministry of Trade (Registrar) as soon as the contract is signed. The Registrar, in conjunction with other “concerned departments,” defines the criteria for determining whether a license will be required for each registered activity.²⁸ If a license is required, the foreign company must submit a number of documents including an application form, articles of association, registration certificate, latest financial statements and board of directors’ reports, certificates of compliance with the Arab Boycott of Israel, and any other documents requested by the Registrar.²⁹ The Registrar has 60 days in which to approve or disapprove the application with a possible extension of 30 days, and must publish any approval. The license is supposed to be issued within 15 days of publication, upon issuance of which the branch or office acquires the status of legal person.³⁰ Any changes in operations must be submitted to the Registrar for notice and approval.³¹

Each branch or representative office must keep regular corporate and accounting records in Arabic.³² Liquidation procedures, to be completed within 60 days of termination of the contract, also require notice and approval by the Registrar and other concerned authorities, and are covered by Articles 15 and 16 of the Regulations.³³ Penalties provided in the Companies Law of 1997 for failure to keep or provide accurate records of various types apply to branches and representative offices covered by the Regulations.³⁴

25 Companies Law of 1997, Article 211 FIRST; Regulation No. 5 of 1989, Article 1, *FIRSTLY*. The English text of this law was originally provided by Iraqi Ministry of Trade at <http://www.uruklink.net/trade/english/elaw.htm>. Since this website is currently not operational, requests for a copy of this translation may be made to OCCIC@DOC.GOV.

26 Saleh Majid, *Commercial Agencies and Distribution in Iraq*, MIDDLE E. EXECUTIVE REP. 7 (September 2001). See also Regulation No. 5 of 1989 at Articles 2, 3.

27 Majid, *supra* note 26. See also Regulation No. 5 of 1989 at Article 1 and Trade Partners UK, *supra* note 15.

28 Regulation No. 5 of 1989 at Article 3. We have no further information concerning the criteria which determine whether a license is required.

29 N.B.: it is against U.S. law to provide any information about business relationships in response to a boycott request. See 50 U.S.C. app. § 2407 and 15 C.F.R. pt 760.

30 Regulation No. 5 of 1989 at Article 5.

31 *Id.* at Article 6. See *id.* at Articles 11-14, 18, 20 for further reporting requirements.

32 *Id.* at Article 8. See also *id.* at Article 10 for auditing requirements.

33 *Id.* at Articles 15, 16. See also Companies Law No. 21 of 1997, Article 21 on penalties for delay.

34 Companies Law of 1997, Article 211 SECOND; Regulation No. 5 of 1989, Article 22.

Iraqi law requires foreign companies wishing to establish branches or offices in Iraq to use the “Provisions and Rules for Opening Branches and Offices of Foreign Companies” (Rules).³⁵ In addressing the terms for a branch opening, the Rules stipulate that the contracting period be for 90 days or more (excluding a “maintenance period”), the contracts be worth at least 80,000 Iraqi Dinars (“ID”), at least one of the minimum two permanent employees be of Iraqi nationality, and branch expenses be paid for with foreign currency from abroad if not officially provided for in the contract, among other requirements.³⁶

In addressing the terms for the opening of a representative office, the Rules stipulate confirmation by an Iraqi Commercial Bank of an amount no less than 15,000 ID per annum of transferred foreign currency to cover registration and operation expenses and provision of a guarantee of 10,000 ID to the Registrar in case of additional financial obligations, among other requirements. The Rules also provide for the continuation of legal entity status upon the foreign company’s obtaining a contract for which a branch does not have to be established.³⁷

D. Agents and Distributors

1. Civil Code Provisions on Agency

The Iraqi Civil Code includes some basic provisions on general agency law.³⁸ Under the Civil Code, an agent’s authority is generally limited by the terms of the agency agreement.³⁹ The principal is liable for an agent exceeding this authority only if the principal gave the agent permission to do so.⁴⁰ An agent is required to account regularly to the principal, and may not appoint a substitute agent without express permission of the principal.⁴¹ Furthermore, the agent must act in the name of the principal when negotiating and concluding a contract in order that the principal and the third party have a direct, enforceable relationship. If the agent concludes a contract without disclosing his relationship with the principal and the principal does not subsequently approve of the transaction, the third party has no direct recourse to the principal.⁴²

35 Provisions and Rules for Opening Branches and Offices of Foreign Companies. The English text of these Rules were originally provided by Iraqi Ministry of Trade at <http://www.uruklink.net/trade/english/edalel.htm>. Since this website is currently not operational, requests for copies of this translation may be made to OCCIC@DOC.GOV.

36 *See id.* at *FIRSTLY*.

37 *See id.* at *SECONDLY*.

38 Civil Code, Articles 927-949. Because Iraqi agency law seems to apply to all types of commercial agencies, references to agents and agencies also cover distributors (including so-called independent distributors) even if not explicitly mentioned in the text of this paper. See Iraqi Civil Code, Article 927. See also Majid, *supra* note 26.

39 Civil Code, Article 933.

40 *Id.* at Articles 944, 945.

41 *Id.* at Articles 936, 939.

42 *Id.* at Articles 942-944. See also Majid, *supra* note 26.

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The agent, if receiving fees or commissions, has a legal duty to exercise care at least equal to that of an ordinary person. If the agent will receive no remuneration, the applicable legal standard of care is that which the agent exercises in his own affairs or that of an “ordinary person,” whichever is less.⁴³

An agreement of agency may terminate upon a number of occurrences, including the completion of a project specifically contracted for, the end of a contracted-for term, and the death or forfeiture of the legal capacity of either the principal or agent.⁴⁴ While neither the Iraqi Civil Code nor the Agency Law (below) provides an agent with a general right to claim compensation upon termination, the Iraqi Civil Code does allow an agent in an agency for remuneration the right to claim compensation if he is terminated “at an inopportune time and without acceptable excuse,” and if he suffers damages as a result.⁴⁵ Although “inopportune time” is not defined, it has been interpreted to mean termination before the period of agency is over, or termination prior to completion of the terms or purpose of the agency.⁴⁶

2. Commercial Agency Law Provisions

These Iraqi Civil Code provisions are supplemented by the Commercial Agency Law No. 51 of 2000 (“Agency Law”).⁴⁷ The Agency Law regulates the operations of commercial agencies as well as relations between government entities and Arab or other foreign suppliers.⁴⁸ Specifically, the law requires commercial agencies to be licensed, registered in a special register, and supervised.⁴⁹ Commercial agencies are defined as every business which is practiced in Iraq by an agent on behalf of a natural person or a corporate body abroad no matter whether it is a commercial agency, a commission agency or any other commercial agency provided for by the laws of commerce, companies and transportation.⁵⁰ The Registrar is further authorized to consider “any commercial activity” as an agency.⁵¹

The Agency Law further requires a party interested in appointing an agent to apply to the Registration of Companies Department (Registrar), the department designated to supervise the

43 Civil Code, Article 934.

44 *Id.* at Article 946.

45 *Id.* at Article 947.

46 See Majid, *supra* note 26.

47 The Commercial Agency Law No. 51 of 2000 [Agency Law], Article 22. The English text of this law (which replaced the Commercial Agency Law No. 26 of 1994) was originally provided by Iraqi Ministry of Trade at <http://www.uruklink.net/trade/english/elaw.htm>. Since this website is currently not operational, requests for copies of this translation may be made to OCCIC@DOC.GOV.

48 Some issues covered by neither the Agency Law nor the Civil Code appear to be left to the discretion of the parties, such as exclusivity. See Majid, *supra* note 26.

49 Agency Law at Article 2. See also Sabah M. Ali Mahmoud, *Middle Eastern Commercial Law*, INT’L LAW. (prepared by Jim Phipps and Christopher H. Johnson) (2002).

50 Agency Law at Article 3:1.

51 *Id.* at Article 8.

application of the law.⁵² To obtain a license, agents should be of Iraqi nationality, reside in Iraq, be legally competent and at least 25 years old, have not been convicted of an “honor-violating” felony, have a commercial office in Iraq, be enrolled in one of the chambers of commerce in Iraq and have a trade name, be “fully loyal to his homeland,” and not be a government official or have interests in the public service.⁵³ No more than three agencies per agent or corporate body may be registered.⁵⁴ The Registrar must make a decision on an application within 30 days, which may be appealed to the Ministry of Trade, whose decision is final.⁵⁵ Licenses are subject to a two-year renewal requirement, and ledgers are to be submitted yearly to the Registrar.⁵⁶

Iraqi government entities generally are prohibited from dealing with commercial agents. However, if dealing directly with foreign suppliers is not possible, Iraqi government entities may request approval to deal with or through an authorized agent.⁵⁷ Violators of this law may be subject to penalties, including fines and jail sentences.⁵⁸

E. Trade⁵⁹

1. Importing

The import policies and programs of Iraq are controlled by the Ministry of Trade. All imports by the private sector are required to be licensed, except for some basic products for certain development projects. Imports financed by foreign exchange obtained by non-resident Iraqis require special licenses. Documents needed for imports include a commercial invoice (of no specific form, but entailing a detailed description of the product, country of origin, and name and address of the manufacturer), two copies of a packing list, and three copies of the bill of lading. A separate certificate of origin is generally not required, but the statement of origin on the commercial invoice may be subject to certification by a recognized chamber of commerce.

Certain documents are required of exporters of goods bound for Iraq, including a certificate of analysis in Arabic and English for imports of products involving antibiotics, “compounds”, and

⁵² *Id.* at Article 13.

⁵³ *Id.* at Article 4.

⁵⁴ *Id.*

⁵⁵ *Id.* at Article 5:2.

⁵⁶ *See id.* at Articles 6, 10.

⁵⁷ *Id.* at Article 14.

⁵⁸ *See id.* Articles 6, 15-21.

⁵⁹ Unless noted, all information in this section was obtained from MuslimTrade Network, at <http://www.muslimtrade.net/tradeguideline/iraq/index.html>. *See also* 2002 *Index of Economic Freedom*, The Heritage Foundation, available at <http://cf.heritage.org/index/country.cfm?ID=69.0>. Note: The U.S. Government has received informal information from private sector companies and law firms that goods coming into Iraq had to be accompanied by "Arab Boycott of Israel" certifications. We do not have copies of statutes, regulations or administrative issuances which contain such requirements. This may be connected to the "blacklist" discussed in the text. *See also, supra* note 29.

other “preparations.” In addition, a “blacklist” certificate issued by an Iraqi consular officer is required stating the ship carrying the goods is not on the government’s “blacklist.”

Customs duties were imposed through a single-column import tariff based on the Customs Cooperation Council Nomenclature. Most duties were applied on an ad valorem (value) basis, although others are applied on a specific (fixed amount per unit) basis. In calculating ad valorem duties, the goods may be assessed duties based on their estimated value at the time of the transaction. Generally, the net weight of a product was used to evaluate specific duties, although the gross weight was also used for some items.⁶⁰

2. Exporting

Exports of certain goods are prohibited. All exports must be licensed through the “General Company for Exhibitions and Trading Services” in the Ministry of Trade. Exporters of products manufactured by state owned enterprises are required to repatriate 60 percent of their foreign exchange proceeds at specified government owned banks.

3. Product Standards

Product standards in Iraq are controlled by the Central Organization for Standardization and Quality Control (COSQC), an independent government agency, which was established by Law No. 54 of 1979.⁶¹ The COSQC licenses all imported goods and also reviews domestic goods for health, safety and quality factors. It acts as a consultant on quality control issues for other government ministries and state owned enterprises. In addition, the COSQC maintains relationships with international standards organizations and provides technical assistance to the offices responsible for patent and other intellectual property rights matters. Iraq currently has approximately 3000 product standards which are still being translated into English.⁶²

60 Note that under Order Number 12 issued by the Coalition Provisional Authority on June 8, 2003, the following are suspended until December 31, 2003: "all tariffs, customs duties, import taxes, licensing fees and similar surcharges for goods entering or leaving Iraq, and all other trade restrictions that may apply to such goods...." The last published information we have on Iraq's pre-war tariff schedule indicates that in 1997 duties on goods from non-Arab countries ranged between 10% for books and children's clothes to 200% on fresh fruits and soft drinks. Sabah Al-Mukhtar, *Iraq*, in YEARBOOK OF ISLAMIC AND MIDDLE EASTERN LAW 1997-1998 (Eugene Cotran & Chibli Mallat, eds.) at 273.

61 Sabah Al-Mukhtar, *Iraq*, in YEARBOOK OF ISLAMIC AND MIDDLE EASTERN LAW 1998-1999 (Eugene Cotran & Chibli Mallat, eds.) at 215. This source also mentions that the Planning Board of Iraq published Statutory Instructions No. 16 of 1998 which define in detail Iraqi product standards, quality control criteria, and markings as well as license and inspection procedures. We do not have copies of the COSQC statute or these Statutory Instructions.

62 The information in the last four sentences of this paragraph was provided by Susan Hamrock, a U.S. Department of Commerce employee on detail to the Coalition Provisional Authority, Baghdad, Iraq.

4. Free Trade Agreements

Iraq is a member of the Arab Free Trade Agreement which was signed in 1997 and which has substantially reduced tariffs on manufactured products in trade between its members with a goal of reaching a zero-tariff free trade zone by the end of 2007 or earlier.⁶³

Iraq has also signed agreements with Egypt and Syria providing for the liberalization of trade through the elimination of restrictions and the granting of tariff and tax exemptions. Trade in goods and products covered by these agreements is considered domestic trade rather than foreign trade for local tax purposes.⁶⁴

F. Free Zones and Industrial Development

Law No. 3 of 1998 created the Free Zones Authority, an independent legal entity under the supervision of the Ministry of Finance to promote so-called free zones and regulate enterprises which operate within them. Income and capital gains from investments in the free zones are exempt from all Iraqi taxes and fees, as are the incomes of non-Iraqi employees working in the zones. Fifty percent of the incomes of Iraqis working within the zones are also exempt from income tax. Imports and exports are exempt from tariffs and other taxes unless they move into the Iraqi domestic market. Foreign currencies may move in and out of the zones without any restrictions. Although both Iraqi and foreign persons and companies can apply to operate in a free zone, foreigners must provide an "Arab Boycott of Israel" certification. It appears that at least three free zones have been established under the law.⁶⁵

Law No. 20 of 1998 created the General Directorate for Industrial Development, an independent legal entity under the supervision of the Ministry of Industry and Minerals to promote investment in industrial projects in both the private and "mixed" (part private and part government ownership) sectors. Projects licensed under the law can receive up to a ten-year tax holiday depending on the nature and location of the project. State owned property may be made available to the projects on special terms. Only Iraqi persons and companies can apply for a

63 Iraq reduced its tariffs to members of the Arab Free Trade Agreement 40% in the three years ending in 2001 according to Sabah Al-Mukhtar, *Iraq*, in YEARBOOK OF ISLAMIC AND MIDDLE EASTERN LAW 2000-2001 (Eugene Cotran, ed.) at 223. See also, Rana Awwad, *No Hitches to Concluding an FTA with Iraq*, JORDAN TIMES, January 28, 2001, available at <http://www.jordanembassyus.org/01282001004.htm> (hereinafter JORDAN TIMES).

64 Mahmoud, *supra* note 49. See also JORDAN TIMES *supra* note 63.

65 Translations of the Free Zone Authority Law No. 3 of 1998 and the related Statutory Instructions No. 4 of 1999 and certain free zones publicity materials were provided to the U.S. Government by the U.K Foreign and Commercial Office. Translations of the law alone were also provided by the Foreign Broadcast Information Service (FBIS) and the law firm of Clifford Chance. Requests for copies of one or more of these translations may be made to OCCIC@DOC.GOV. See also, Yousif, *supra* note 14, at 3-4 and *supra* note 29.

license to operate under this law.⁶⁶

G. Intellectual Property Rights⁶⁷

1. Trademark Law

The Trademarks and Indications Law No. 21 of 1957 established the current trademark registration system in Iraq.⁶⁸ In 2001, service marks also became registerable under the system. A trademark registration may be applied for by “anyone”⁶⁹ and is valid for fifteen years beginning on the date of application, with the option of renewal. There are a number of categories of marks which are not registrable including those which the Iraqi Office of Israel Boycott decides are identical to or resemble Israeli marks, emblems or symbols.⁷⁰ In order to be enforceable against third parties, the trademark must be published in the Official Gazette and entered into the records of the Trademark Office. A trademark becomes the transferable property of the person who registered it, whose proprietorship may not be challenged after five consecutive years of use.⁷¹ Although use of the trademark is not a requirement for filing an application or for maintaining its validity, a court may cancel the registration upon request of a third party if it is proven that the trademark has not been effectively used for a period of two years, and if no reasonable cause for the nonuse is found to exist. A trademark entered unlawfully or in bad faith may also be subject to court cancellation. Infringement or unauthorized use of a registered trademark is punishable by law.

2. Patent and Industrial Design Law

Patents and industrial designs are regulated by Law No. 65 of 1970.⁷² It typically takes at least two to three years once an application has been filed for a patent to be issued. A patent is valid

66 Translations of the Industrial Investment Law No. 20 of 1998 were provided to the U. S. Government by the Foreign Broadcast Information Service (FBIS) and the law firm of Clifford Chance. Requests for copies of one or both of these translations may be made to OCCIC@DOC.GOV.

67 Unless otherwise noted, all intellectual property rights materials are based on information provided by Abu-Ghazaleh Intellectual Property, at <http://www.agip.com>. For additional summaries of laws and fees, see ST&P Attorneys and Agents, <http://www.stplegal.com>. Note: The U.S. Government has received informal information from private sector companies and law firms that applications to register all types of intellectual property in Iraq generally had to be accompanied by "Arab Boycott of Israel" certifications. The only IPR statute which mentions Israel at all is the Trademark Law as discussed in the text. We do not have reliable copies of the regulations or other administrative issuances which may contain these requirements. See also, *supra* note 29.

68 According to the introduction in this 1957 Law, its provisions are identical to those of Egyptian, Libyan, and Kuwaiti trademark laws. Trademarks & Indications Law No. 21 of 1957 with amendments available at <http://www.agip.com>.

69 *Id.* at Article 4.

70 *Id.* at Article 5.

71 *Id.* at Articles 3, 18.

72 Patents and Industrial Designs Law No. 65 of 1970, Article 48, available at <http://www.agip.com>.

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for 20 years after completion of the application, subject to the annual payment of prescribed fees and the satisfaction of compulsory working requirements. The transfer or assignment of patent rights must be in writing and published in the Official Gazette.

Industrial design laws are similar to those of patents. Additionally required, however, is the submittal of two miniature design models made of plastic or metal. Upon annual payment of prescribed fees, a design registration is valid for seven years, with no provision for renewal. Unauthorized use or imitation of registered patents and industrial designs is punishable by law.

3. Copyright Law

Copyright protection is governed by Law No. 3 of 1971.⁷³ Generally, this law applies to any type of literary, artistic, or scientific work presented in Iraq or by an Iraqi, in the name of the author (i.e., the person publishing the work), but not to pseudonyms.⁷⁴ Works of foreign authors presented for the first time in a foreign country are covered by this law based on reciprocity.⁷⁵ The author enjoys exclusive publishing rights and rights to receive benefits from the work. However, the author may transfer the rights for financial exploitation in writing.⁷⁶ Furthermore, upon death of the author, all rights succeed to the author's heirs or legatees.⁷⁷ Copyrights expire 25 years after the death of the author, provided that the protection period lasts at least 50 years from the date of publication. In the case of commercial entities, copyrights expire after 30 years from the date of publication.⁷⁸ Copyright infringements are punishable by law.⁷⁹

H. Dispute Settlement

1. The Court System⁸⁰

Under Article 60 of the Interim Constitution, the judiciary is declared independent and subject to no other authority save that of the law.[@] However, Law No. 160 of 1979, which organizes the structure and functioning of the judiciary, provides that the judiciary is supervised by the Ministry of Justice and the Supreme Judicial Council (presided over by the President of the

⁷³ Copyright Law No. 3 of 1971 available at <http://www.agip.com>. Iraq has also ratified the Arab Agreement for the Protection of Copyright, in Law No. 41 of 1985. According to Article 33 of that Agreement, its provisions will supercede national legislation only where such legislation does not provide "more extensive privileges" than the Agreement.

⁷⁴ Copyright Law No. 3 of 1971, Articles 1, 21, 49.

⁷⁵ *Id.*, at Article 49.

⁷⁶ *See id.* at Articles 7, 38, 41, 42.

⁷⁷ *See id.* at Articles 18, 19, 23.

⁷⁸ *See id.* at Article 20.

⁷⁹ *See id.* at Articles 44, 45.

⁸⁰ Unless otherwise noted, all court system information is based on the *Country Profile* provided by the Programme on Governance in the Arab Region, United Nations Development Programme (hereinafter UNDP-POGAR), available at <http://www.undp-pogar.org/countries/iraq/judiciary.html>.

Court of Cassation).

The judicial system is composed of the Civil Courts, Courts of Personal Status, and Criminal Courts. Civil Courts have jurisdiction over all cases involving civil and commercial matters, and matters of the personal status of non-Muslims. Courts of Personal Status have jurisdiction over matters relating to the personal status of Muslims, including matters of family and inheritance. In addition to these courts, there are some non-commercial courts of specialized jurisdiction, supervised by executive organs other than the Ministry of Justice.

The three Court jurisdictions supervised by the Ministry of Justice are each further divided into a hierarchal system of Courts of First Instance, Courts of Appeal, and a Court of Cassation. Cases of first instance are presided over by a single judge and may be appealed. The Courts of Appeals are divided into seven districts and are composed of three judges, presided over by the President of the Court of Appeal. Appellate decisions of civil and criminal matters may be appealed to the Court of Cassation located in Baghdad. The Court of Cassation, with a minimum of 15 judges, is presided over by a president and several vice presidents. It has three specialized chambers, and the full bench is the highest judicial authority in Iraq.

The Ministry of Justice usually appoints, assigns, promotes, and transfers judges in Iraq. The President of the Republic may also appoint judges. Appointees are usually recent law school graduates, who first serve as clerks and officers of the court before becoming judges.⁸¹ Lawyers in Iraq must be members of the Iraqi Lawyers' Association and have graduated from an Iraqi law school or from another recognized school and have passed an Iraqi Lawyers' Association exam. They are generally allowed to practice in any Iraqi court after an initial training period.

2. Civil Procedure

The Civil Procedure Code or the Law of Civil Actions No. 83 of 1969 covers judicial proceedings in civil matters.⁸² It provides that any person, whether Iraqi or foreign, may bring suit in Iraq and may hire an Iraqi lawyer. Lawyers who are members of the Arab Lawyers' Association may be permitted to plead cases in Iraq on the basis of reciprocity and with approval by the Head of the Iraqi Lawyers' Association.⁸³ Where there are parties of "different domiciles" and as long as it is not contrary to public order or morality in Iraq, an Iraqi court generally must apply the law of the state within which the contract was concluded unless the parties provide otherwise in the contract.⁸⁴

The Enforcement or Execution Law No. 45 of 1980 regulates the enforcement of foreign judicial awards. As provided by Article 3 of that Law, such awards are enforceable only pursuant to Law

81 *Id.*

82 Yousif, *supra* note 14, at 4.

83 *Id.* citing Attorney Law No. 173 of 1965, Article 3. *See also* UNDP-POGAR, *supra* note 80.

84 Iraqi Civil Code, Articles 25, 32.

No. 30 of 1928.⁸⁵ Law No. 30 of 1928 applies to judgments entered in countries maintaining a bilateral agreement with Iraq, if named by Iraqi government-issued rules, and subject to a condition of reciprocity. Furthermore, if these qualifications are met, someone seeking to enforce a foreign judicial award must then obtain court approval based on numerous other restrictive conditions relating to notice, jurisdiction, finality of the judgment, and public policy concerns of the home country before it will be enforced.⁸⁶

3. Arbitration

While Iraq is not a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), it is a member of the Permanent Court of Arbitration at the Peace Palace, The Hague, Netherlands (1899). Iraq also has ratified the Geneva Protocol on Arbitration Clauses (1923, ratified by Iraq in 1926)⁸⁷ and entered into several bilateral agreements and Arab League conventions on the enforcement of judicial and arbitral awards, including the Riyadh Convention for Judicial Cooperation (1983) and the Arab Convention on Commercial Arbitration (1987).⁸⁸

Article 37 of the Riyadh Convention, with a few exceptions, requires member states to recognize and enforce arbitral awards issued in other member states without looking at the merits of the case.⁸⁹ The Arab Convention applies to commercial disputes between any natural or juristic person, regardless of nationality, that is connected by means of commerce with any contracting government.⁹⁰ Its provisions recognize the right of parties to agree to commercial arbitration through the placement of such clauses in contracts or after a dispute has arisen, and the courts of each member country must enforce any award made by the stipulated Arab Centre for Commercial Arbitration, unless “contrary to public order.”⁹¹ However, as of yet, the Arab Centre has not yet been established, limiting the present usefulness of the Arab Convention.

Iraq has no domestic law requiring the enforcement of foreign arbitral awards. While the Civil Procedure Code deals with Iraqi arbitration in general, it does not mention enforcement of

85 Saleh Majid, *Enforcement of Foreign Judicial and Arbitral Awards in Iraq*, MIDDLE E. EXECUTIVE REP. 8 (September 1995). According to this source, Article 12 of Law No. 45 of 1980 provides that the enforcement of a foreign judicial decision by an Iraqi court may also be required pursuant to an applicable international agreement.

86 *Id.* See this article for further details of the Iraqi laws on the enforcement of foreign judicial awards.

87 The Geneva Protocol, to which the U.S. is not a party, recognizes the validity and effectiveness of an agreement to arbitrate between citizens of member states. Geneva Protocol on Arbitration Clauses, Article 1. In the opinion of Saleh Majid, Iraqi Legal Consultant and Advocate, Iraq, by its adherence to this Protocol, among other reasons, has forfeited the defense of sovereign immunity in an arbitration proceeding instituted under an agreement between the government and a foreign party of a member state. See Majid, *supra* note 85, at 17.

88 The text of the latter convention is available from Jurist International, at http://www.jurisint.org/pub/01/en/doc/155_1.htm.

89 Majid, *supra* note 85, at 17.

90 Arab Convention on Commercial Arbitration (1987), Article 2.

91 *Id.* at Articles 3, 35.

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foreign awards.⁹² Thus, companies wishing to have a foreign arbitral award enforced in Iraq may first need to get a judgment from a domestic court and then go through the process of enforcing that court decision through the Iraqi procedures for the enforcement of domestic judicial awards.⁹³

I. Banking and Finance

The Iraqi government officially controls all financial transactions. The Central Bank of Iraq, having been delegated responsibility for the country's monetary policy, issues and manages currency, establishes and maintains bank controls, and governs exchanges of foreign currency.⁹⁴ RCC Decree No. 98 of 1999 authorizes the circulation of, and opening of bank accounts with, foreign currency owned by both Iraqis and non-Iraqis, under the supervision of the Central Bank.⁹⁵ Non-residents may be permitted to take foreign currency, with added bank interest, out of the country. However, there appear to have been many convertibility restrictions.⁹⁶ The Iraqi government also owns two of the approximately twenty commercial banks which existed in Iraq before early 2003: the Rafidain Bank (which acts for the government in functions not undertaken by the Central Bank) and the Rasheed Bank.⁹⁷

J. The Baghdad Stock Exchange

The Baghdad Stock Exchange (BSE), which is supervised by the Ministry of Finance, was created by the Baghdad Stock Exchange Law No. 24 of 1991 and its related regulations of 1992 and 1997.⁹⁸ Trading began on the BSE in 1992 and, as of early 2003, it listed approximately 100 Iraqi private and mixed public/private companies.⁹⁹ Approximately fifty brokers were permitted

92 Majid, *supra* note 85, at 8.

93 We have found one source of the opinion that Iraq may in fact have allowed for the acknowledgement of certain foreign arbitral awards since 1991: Kilian Bälz, *Wiederaufbau Irak: Die rechtlichen Rahmenbedingungen [Iraq Reconstruction: The Basic Legal Conditions]*, at 3 (June 2003), available at <http://www.gleisslutz.com/cgi-bin/tree/data/241.pdf>.

94 Economic Intelligence Unit, *Iraq Country Profile 2002*, available at <http://www.eiu.com> and Global Investment House, *Iraq-Economic Review and Prospects (April 2003)* available at <http://globalinv.net>.

95 "Law and Regulations," Iraqi News Agency, available at <http://www.uruklink.net/iraqnews/elaw.htm>.

96 See Institute for Economic Policy, University of Cologne, available at <http://www.uni-koeln.de/wiso-fak/iwp/datenb/centralb.htm>.

97 Economic Intelligence Unit, *supra* note 94. See also UNDP-POGAR *supra* note 80.

98 Al-Mukhtar, *supra* note 60, at 272-272.

99 Middle East Media Research Institute (MEMRI), available at http://www.memri.de/uebersetzungen_analysen/temen/oekonomie/meer_12_12_02.html (December 12, 2002). A listing of companies traded by name and sector may be found in Global Investment House, *supra* note 98. Although it appears that non-Iraqi companies could trade on the BSE with special approvals, we found no information any foreign companies have ever received such approvals.

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to trade on behalf of individual investors.¹⁰⁰ The exchange was open on Mondays, Wednesdays, and Saturdays from 9:30 a.m. to noon. It was not run electronically, but rather used markers and white boards hung on walls.¹⁰¹ Trade volume typically approached US\$50,000 on most days,¹⁰² with a total market capitalization of US\$137 million.¹⁰³ In past years, prices on the market have greatly fluctuated, rising 45 percent in 2000 and dropping 35 percent in 2001, before again increasing 24 percent late in 2002. As of March 7, 2003, the index for the BSE had gained 31 percent since the beginning of the year.¹⁰⁴

K. Public Officials

While no evidence has been found of a comprehensive Iraqi code of ethics or rules on financial disclosure for government officials, Article 30 of the Interim Constitution provides that “public office is a sacred confidence” and calls for “honest and conscious obligations...in accordance with the rules of the constitution and the laws.” Articles 45 and 55 make each member of the Revolutionary Command Council (RCC) and the National Assembly, including the President of the RCC (i.e., the President of Iraq), answerable only to the RCC for violating the Constitution, breaking a constitutional oath, or behaving disgracefully in disrespect of his position.

Bribery of public officials is dealt with in Article II of RCC Resolution No. 160 of 1983 (as amended by Resolutions No. 703 of 1983 and No. 813 of 1986).¹⁰⁵ According to that law, public service employees who ask for or accept gifts, benefits, privileges, or promises of such on behalf of themselves or a third party are subject to fines and imprisonment. If committed during war, penalties for these crimes include life imprisonment and the seizure of assets. Those who offer unaccepted bribes are also subject to imprisonment. RCC Decree No. 120 of 1994 further provides for the punishment of persons convicted of embezzling government funds.¹⁰⁶

The enforcement of the above laws by legal departments, however, is restricted by State Consultative Council Law No. 106 of 1989, which bans the administrative judiciary from hearing all appeals based on “acts of sovereignty,” as found in presidential and RCC orders, decrees, and in actions of agencies based on presidential instructions.¹⁰⁷ Moreover, according to Article 40 of the Interim Constitution, RCC members, including the President of the RCC, have

100 BLOOMBERG, “Baghdad Stocks Climb on Optimism,” TAIPEI TIMES 12 (March 7, 2003).

101 *Id.*

102 David Blair, “Prospect of War Boosts Stocks in Baghdad,” LONDON DAILY TELEGRAPH, *reprinted in* THE WASH. TIMES (March 3, 2003).

103 MEMRI, *supra* note 99.

104 David Blair, *supra* note 102.

105 Karam, *supra* note 4.

106 Provided by the Intelligence Resource Program of the Federation of American Scientists, *available at* <http://www.fas.org/irp/world/iraq/docs/index.html>.

107 Tariq Ali Al-Saleh, *Transnational Justice--Basis for Democratic Iraq*, THE JURIST (Iraqi Jurist’s Association, 2002: “last issue”), *available at* <http://www.ija2.co.uk>.

“full” immunity, and no measures can be taken against them without prior permission by the RCC. Under Article 38(d) and (f), the RCC may accuse, prosecute, and dismiss any member of the RCC, minister, or vice president.

National Assembly members, under Article 49, are immune from censure and prosecution while they are in session, unless expressly authorized by the RCC and except when caught in the act of committing a crime. National Assembly members are responsible to the Assembly for violating the Constitution, breaking an oath, or “behaving disgracefully.” Upon Presidential request, the National Assembly investigates affairs of the prime minister, ministers, and other public employees, and may interrogate, dismiss from duty, retire, or refer them for trial as members see fit.¹⁰⁸

The Commercial Agency Law No. 51 of 2000 discussed above also addresses, albeit indirectly, anti-corruption safeguards in business law. Intended to organize the business of commercial agencies in Iraq in a way that will help avoid exploitation and corrupt practices, this law requires commercial agents to be licensed, registered in a special register, and supervised. It also generally requires government agencies to deal directly with principals rather than commercial agents.

L. International Agreements on Trade and Investment

1. Iraq is a party to the Following International Commercial Organizations, Conventions, and Agreements:

Arab Agreement for the Protection of Copyright (Baghdad, 1984)
Arab Convention on Commercial Arbitration (Amman, 1987)
Arab Free Trade Agreement (1997)
Arab Fund for Economic and Social Development
Arab League Convention on Judicial Cooperation (Riyadh, 1984)
Arab Monetary Fund (AMF)
Commercial, Economic and Technical Cooperation Agreement Between the Government of the United States of America and the Government of the Republic of Iraq (signed on August 26, 1987; entered into force on October 27, 1987)
Council of Arab Economic Unity
Geneva Protocol on Arbitration Clauses
Global System of Trade Preferences
Inmarsat (global mobile satellite communications operator)
Intelsat (commercial satellite communications services provider of International Telecommunications Satellite Organization (ITSO))
International Labor Organization (ILO)

¹⁰⁸ UNDP-POGAR, *supra* note 80. *See also*, Interim Constitution at Article 54.

International Monetary Fund (IMF)
International Standards Organization (ISO)
Paris Convention for the Protection of Industrial Property (1967 Act) (1976)
Permanent Court of Arbitration (Hague)
Riyadh Convention for Judicial Cooperation
Treaty of Commerce and Navigation Between the United States of America and the
Kingdom of Iraq (54 Stat. 1790; 9 Bevans 7 (1940))
World Customs Organization (WCO) (accession/ratification 1990)
WCO Technical Committee on the Rules of Origin (Observer)
World Intellectual Property Organization (WIPO)
United Nations
United Nations Convention on Contracts for the International Sale of Goods (CISG);
(entered into force for Iraq 1991)

2. Iraq is **NOT** a Party to the Following Important Commercial Conventions and Agreements

Berne Convention for the Protection of Literary and Artistic Works
(Paris, 1971, as amended 1979)
Convention for the Protection of Producers of Phonograms Against Unauthorized
Duplication of Their Phonograms (Geneva, 1971)
Convention on the Limitation Period in the International Sale of Goods
(New York, 1974; amended by the Protocol of April 11, 1980)
Convention on the Recognition and Enforcement of Foreign Arbitral Awards
(New York, 1958)
Convention on the Settlement of International Disputes between States and Nationals of
Other States (ICSID) (Washington, 1966)
Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or
Commercial Matters (The Hague, 1965)
Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (The
Hague, 1970)
International Convention for the Protection of New Varieties of Plants (UPOV
Convention, 1991)
International Convention on the Simplification and Harmonization of Customs
Procedures (Kyoto, 1974)
Patent Cooperation Treaty (PCT) (Washington, 1970, as amended 1979, and modified
1984 and 2001)
Protocol Relating to the Madrid Agreement Concerning the International Registration of
Marks (Madrid, 1989)
United Nations Convention on International Bills of Exchange and International
Promissory Notes (New York, 1988)
WIPO Copyright Treaty (Geneva, 1996)

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WIPO Performances and Phonograms Treaty (Geneva, 1996)
World Trade Organization (WTO)