

Iraq's Resurgence: The Last 25 Years

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These conditions, by their very nature, necessitated that new laws and regulations be introduced in order to adapt and amend the Iraqi legal framework as per the requirements of the changing regimes. The focus of this article shall be on the most significant legislative initiatives and enactments issued in the last two decades, namely the Iraqi Constitution, certain legislation geared towards developing Iraq's economy, and other noteworthy changes to the laws of Iraq.

The Iraqi Constitution

In line with the change of regime in 2003, the Iraqi Interim Constitution of 1970, originally enacted by the Revolutionary Command Council, ceased to be valid on 9 April 2003. It was replaced by the Law of Administration for the State of Iraq for the Transitional Period of 2004, and remained in force until the issuance of the new Constitution on 20 May 2006.

The adoption of a unified Iraqi Constitution in 2006 represented a new beginning for the state of Iraq. It is considered by many to be the first legal instrument in Iraq's recent history (going back as early as 1924) to be drafted and concluded by the Constituent Assembly in accordance with due process. In many respects, therefore, the Constitution marked the sovereignty of the new Republic of Iraq.

One of the key features of the newly enacted Iraqi Constitution is that it provides for both a federal and decentralized system of Government, recognizing federal and regional authorities.

Legal Changes to the Economic Sector

Significant changes have been made to laws and regulations affecting the economic sector. Our focus shall be on the enactment of the various laws regulating companies, bank operations, and investment operations generally in Iraq, as follows:

1. Companies Laws

In the years prior to 2003, the private and public sectors were regulated by the Companies Law No. 21 of 1997 and by the General Corporate Law No. 22 of 1997. These laws regulated the establishment, management and liquidation of private and public companies through the use of financial and administrative provisions, principles and guidelines with the aim of achieving the highest levels of productivity and growth, and achieve self-sufficiency

In 2003, once the regime had changed, several amendments were made to these legislative provisions to allow the law to remain relevant in light of the changes to the economic situation, and in order to encourage continued investments in Iraq.

This was accomplished through the 2004 amendment to the Companies Law, which was adopted as a law regulating the establishment and operations of companies in the private sector, as per the new economic policy, which aimed to transform Iraq into a free market economy. Further, the said amendment provided, for the first time, the possibility of adopting a system of online registration for companies.

As regards the public sector, several amendments to the Companies Law were adopted. Some of the most significant changes include the First Amendment in 2000, the Second Amendment No. 9 in 2002, the Third Amendment No. 14 in 2002, the Fourth Amendment No. 73 in 2012, and the changes brought about by Section 5 of CPA Order No. 76 which relate to the merger of public companies. These changes resulted in the grant of wider powers to the Board of Directors of state-owned companies in resolving the company's administrative, financial and strategic decisions. It further allowed for state-owned companies to be transformed into private or public shareholding companies. Furthermore, Article 15 stipulated that state-owned companies shall have the right to cooperate with (effectively, form joint ventures with) foreign companies for the purposes of implementing the state-owned company's activities and objectives in Iraq.

2. Investment Laws

In line with the newly adopted Iraqi Constitution of 2005, the Iraqi Government looked towards creating a better platform for investments in Iraq. In this regard, the Iraqi Constitution provides a responsibility on the state to promote and do all that is necessary to encourage investment in the various sectors of the economy. In furtherance of said goals, the Iraqi Investment Law No. 13 of 2006 grants a number of benefits and guarantees to investors; some of these include exemptions from custom fees and duties, protection against confiscation of goods, the possibility of applying for an Investment License, the right to participate in certain commercial activities and/or to establish branches and commercial offices, as well as the unfettered right to transfer any profits generated from the project abroad.

Further amendments have since been made to the Investment Law to better suit the Government's investment objectives. The latest such amendments came in 2015, which provide for the right of qualified Iraqi and foreign investors alike to own land allocated for residential and industrial projects belonging to the state or owned by the public sector. It further permitted Iraqi and foreign investors to purchase land or real estate belonging to the private sector for the sole purpose of setting up housing projects.

3. Further Protections to Traders:

Amendments have been made to the Trademark Law No. 21 of 1975 by the Coalition Provisional Authority in 2004, as a remedy to the fact that the old law was not consistent with established international standards of protection, and as a result of the need to ensure compliance with such international standards in order to revitalize and improve the economic situation in Iraq, and convert it from a centralized economy into a free market economy.

4. Sector Specific Laws

Banking Laws

The period between 1991 to 9 April 2003

The first major change occurred with the introduction of Amending Law No. 12 of 1991, which was issued as an amendment to the Central Bank of Iraq Law No. 64 of 1976. This allowed for shareholding companies, duly registered under the Companies Act No. 36 of 1983, to engage in comprehensive banking activities subject to certain licensing conditions.

As a direct result of this, a number of new banks were established in Iraq, including Bank of Baghdad, the Trade Bank, Middle East Bank, the Iraqi Investment Bank, the Private Bank of Al Basra, the Iraqi Islamic Bank, the United Bank for Investment, Dar Es Salaam Bank, Credit Bank, Babylon Bank, Gulf Bank, Al Warka Bank, Sumer Bank, Economy Bank, Mosul Bank and Al Barka Bank.

The Coalition Provisional Authority (the years 2003 / 2004)

The Coalition Provisional Authority (CPA) issued Order No. 20 of 2003, providing for the establishment of the Trade Bank of Iraq, with a capital of one hundred million US Dollars in order to facilitate the

importation and exportation of goods and services, with the aim of encouraging trade and revitalizing Iraq's economy. To that end, the Trade Bank of Iraq is often engaged to issue Letters of Credit (L/Cs) on behalf of the Iraqi Government and its institutions.

The CPA also issued Order No.18 of 2003 declaring the independence of the Central Bank of Iraq (CBI), and recognizing the CBI as the lead regulating authority for monetary and credit policies of Iraq, free from any political influence.

In 2004, the CPA further issued a number of laws regulating the workings of the CBI, the operation and regulations of "banks" incorporated in Iraq, the manner for dealing with money laundering undertakings, and laws relating to the establishment of an Iraq Stock Exchange, as follows:

- The Central Bank of Iraq Law No. 56 of 2004's main objective was to achieve stability in local currency and work towards preserving a stable financial system founded on a free competitive market through the workings of the Central Bank of Iraq. In that regard, the CBI is granted the authority to formulate and adopt monetary policy, license banks in Iraq (including branches of foreign banks), issue the related regulations and circulars, and the like.
- In 2004, the Banking Law No. 94 of 2004 was issued to create a better regulated banking system, with the aim of ensuring that trust in the banking system is restored through greater transparency requirements and the provision of additional protection to depositors. The Banking Law also delineated the activities reserved exclusively to licensed banks, and conversely, listed certain activities prohibited to banks, as well as providing the requirements applicable to obtaining licenses in this field. Additionally, the law sought to eradicate financial crimes including, but not limited to, fraud, money-laundering and funding terrorism. This was further supported by the introduction of the Anti-Money Laundering Law, in accordance with CPA Order No. 93, in the same year.
- The Anti-Money Laundering Law incriminates a number of financial crimes, and obliges all financial institutions operating in Iraq to adhere to a myriad of Know-Your-Client requirements and reporting obligations. The said Anti-Money Laundering Law has since been replaced by a new Anti-Money Laundering No. 39 of 2015.
- Moving towards the Iraqi Stock Exchange, the same is governed by the provision of the Interim Law of the Iraqi Stock Market No. 74 of 2004, and which has, since 2009, adopted a system of electronic dealings and settlement in collaboration with NASDAQ-OMX. The said Iraqi Stock Exchange operates under the supervision of the Iraqi Securities Commission, an independent entity established under the auspices of the aforesaid Interim Law of 2004.

Post-2004 to date

Since its enactment, the CBI has issued various regulations and circulars governing the operations of banks incorporated in Iraq. Importantly, in 2010, the CBI issued a series of regulations collectively known as the "Regulations Facilitating the Implementation of the Banking Law No. 94 of 2004". These regulations detail the requirements and formalities for granting licenses and permits to banks and financial institutions, as well as providing information on the process and procedures of merging banks, and of the voluntary and compulsory liquidation of banks. The said Regulations also detail the credit, liquidity, economic concentration and risk controls generally applicable to banks.

Following this, in 2011, the CBI further issued the Importing Foreign Currencies for Licensed Banks Regulation No. 4 of 2011. Said regulation grants licensed banks the right to import foreign currency to Iraq, conditioned on the consent of the CBI and in accordance with its requirements and procedures which have been set out in the Regulation.

In 2014 and pursuant to the CBI Law No. 56 of 2004 and the Banking Law No. 94 of 2004, the CBI issued the Electronic Payment System No. 3 of 2014. The Law regulates the procedures for registering E-Payment companies, and the related operational conditions applicable to such companies and systems.

In furtherance to the E-Payment Law, the CBI also issued the Exchanging Credit Information Regulation of

2004, which aims to regulate the relationships between the parties involved in the Credit Information Exchange System including the CBI, the beneficiaries, the information providers, the users, the clients and any other parties so specified by the CBI. It also provides for the establishment of a comprehensive credit record and central database to gather information, check, organize and issue credit reports and to generally make use of said information gathering exercises centrally.

A final noteworthy development in the Banking sector is the introduction of the Islamic Banking Law No. 43 of 2015, which deals exclusively with Islamic banks (separately from conventional banking requirements). This Law regulates the operations of Islamic Banks and illustrates the procedures for setting up an Islamic Bank in Iraq including the requirements for obtaining a license from the CBI.

The said Islamic Banking Law and related regulations stipulate the activities that can be conducted by Islamic banks, including but not limited to, financing arrangements through Musharaka, Mudarabah, Salam, Istissna'a, Ijara, and certain bargaining. They further entitle Islamic banks to incorporate companies for these purposes, conclude various undertaking with a shareholding not to exceed 20% of the capital, own movable and immovable assets necessary for their investments or for leasing, fund internal and external trading activities, and participate in agricultural, industrial, and architectural projects. These laws and regulations also provide for the establishment of Sharia Boards, in that they obligate Islamic banks and Islamic windows at conventional banks to have a Sharia Board which shall carry out the responsibility of providing a Sharia opinion on the operations of the bank in order to ensure its compliance with Sharia law. One of the most significant provisions of the Islamic Banking Law is that it excludes Islamic banks and branches from taxes and fees arising from such dealings and from those relating to the contracts of sale or leasing of estate, lands, and cars, thereby allowing Islamic banks greater flexibility in structuring Islamic financing products.

Oil and Gas Laws

Though to date Iraq has yet to adopt a specific oil and gas law (with drafts continuing to be considered by Parliament) significant developments have, nonetheless, marked the development of the oil and gas sector in Iraq.

Importantly, the Private Investment Law for the Refining of Crude Oil No. 64 of 2007 (the "Private Refinery Law") was amended in 2008 to permit private companies (both local and international) to establish private refineries in Iraq. Pursuant to the Private Refinery Law, such projects would enjoy the benefits offered by companies established within the free zone.

In addition, the Private Refinery Law provides that the Iraqi Government shall sell crude oil to qualifying investors with reference to the price sold by the Government, and in return the investor shall arrange for the refining of the oil, with the freedom to set its price for future sales in line with international markets.

The practical application of this Law remains to be seen, and won't be known until investors look to develop and operate private refineries in Iraq.

Insurance

The Iraqi Law Regulating the Insurance Business No. 10 of 2005 governs the operations of public and private companies (whether local or foreign) that engage in Iraq insurance or reinsurance activities. The said Law divides insurance activities into two main types: Life Insurance and General Insurance.

In line with the requirements of a "safe" insurance market, the Insurance Law further protects the rights of beneficiaries, by monitoring the financial capability of insurers to provide adequate insurance coverage.

5. Laws relating to the Conclusion of Governmental Contracts

Developments in this field include:

CPA Order No. 87 of 2004, issued to regulate the tendering requirements applicable to governmental contracting in line with international standards of transparency, as well as to establish mechanisms to resolve disputes arising in connection with such governmental contracts.

Pursuant to the above mentioned Order, the Implementing Governmental Contracts Regulation No. 1 of 2008 further details the conditions applicable to contracts executed between Iraqi Governmental entities and Iraqi or non-Iraqi corporations, particularly as regards the supply of goods or services (including consultancy services) to said Governmental entities. The Regulation also stipulates the authority/department responsible for opening bids, reviewing the same, and awarding a contract as a result thereof. In addition, the Regulation depicts the mechanisms for challenging decisions of the authorized governmental bodies. The said Regulation has since been amended by the Implementing Governmental Contracts Regulation No.2 of 2014.

6. Labor Laws

Most recently, the Iraqi Parliament has issued a new Iraqi Labour Law No. 37 of 2015, which entered into force on 7 February 2016. This Law replaces the preceding Labour Law No. 71 of 1987.

Discussions regarding the new Iraqi Labour Law had taken place over a number of years (since 2005 to 2010) before a draft acceptable to all involved parties was finally submitted to the State Council.

The adoption of the new Iraqi Labour Law was particularly necessary due to the significant changes that occurred over to Iraq's economy over the last thirty years, including importantly, the transformation of the Iraqi economy from a state-driven economy to an open market, and with regards especially to the entry of foreign expats to Iraq.

Concluding Remarks

Iraq is on the right track to establish the required legal framework to attract foreign and local investors, and to rebuild the country's economy. Since 2003, the abovementioned legal developments and many others have to a considerable extent contributed to the regulation of Iraq's economy and to the setting up of realistic strategies to develop a free and competitive market in Iraq. Despite all the difficulties, Iraq remains a promising investment market.