

OVERVIEW OF CPA ORDERS AFFECTING IRAQI COMMERCIAL LAW

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CPA Order No. 39 (Foreign Investment) (as amended by CPA Order No. 46) allows foreign direct investment in Iraq. Foreign individuals or entities may own up to 100% of the equity in an Iraqi business, and may make debt investments in Iraqi businesses. However, foreign investors may not own an interest in Iraqi real estate, either directly or through an entity that owns Iraqi real estate. Order No. 39 also provides that, except as otherwise provided in the Order, foreign investors are to receive equal treatment with domestic investors. Furthermore, Order No. 39 included a provision stating that all investors, foreign and Iraqi, shall be treated equally under the law, except as otherwise provided in the Order.

CPA Order No. 64 (Amendment to Company Law No. 21 of 1997) eliminates the most restrictive barriers to forming companies, amends the law to allow foreign shareholders, and removes most vestiges of the centrally planned economy. Order No. 64 also provides greater flexibility for private companies with regard to share ownership and membership on the board of directors, and allows for mixed companies to become private companies through sales of government shares.

Among its notable changes to Company Law No. 21 of 1997, Order No. 64:

- permits individuals to form single-member limited liability companies;
- permits Iraqi companies to have foreign companies as shareholders;
- eliminates conformity with state planning goals as a condition for approval under the company law;
- streamlines the company registration process;
- eliminates the requirement to have trade union representatives on the board of private companies;
- prohibits the decapitalization of a company in anticipation of insolvency; and
- strengthens conflict of interest provisions applicable to company officials.

CPA Order No. 76 (Amendment to State Companies Law No. 22 of 1997) allowed the consolidation of wholly state-owned enterprises (SOEs) into Iraqi ministries. In addition, the Order permitted the merger of two or more wholly state-owned enterprises into a single state-owned enterprise, provided they engage in a similar or integrated activity. Note that Law No. 22 as amended by Order No. 76 does not treat ministries as shareholder of SOEs. Rather the SOEs are owned by the state, and each SOE is associated with a ministry that is responsible for overseeing the operations of the SOE.

CPA Orders Nos. 38, 54, and 70 deal with trade liberalization and the reconstruction levy.

Order No. 38 imposes a 5% reconstruction levy on the “taxable value” of most imports, although significant exemptions apply to certain categories of importers and to goods that are imported for certain purposes. The taxable value is to be assessed in accordance with “international practice” (further explained in Order No. 54). The revenues collected as a result of the reconstruction levy are to be used to assist the Iraqi people and to support the reconstruction of Iraq. Goods that are “to be delivered as humanitarian assistance to the

people of Iraq” or that are to be used “in support of the reconstruction of Iraq” are exempt from the levy. Additionally, goods imported by the United Nations, other international organizations, not-for-profit organizations, or foreign governments to be used or distributed for the public benefit are exempt from the levy. Furthermore, the reconstruction levy does not apply to Multi-National Force-Iraq (MNF-I), its contractors and sub-contractors, forces of countries acting in coordination with MNF-I and their contractors, agencies of foreign governments, their contractors, and subcontractors that are providing technical, material, financial, and humanitarian assistance to Iraq. Goods imported under Oil for Food contracts are also exempt.

Order No. 54 provides that all customs, tariffs, duties, and import taxes (except the reconstruction levy) are suspended until the sovereign Iraqi government imposes such charges. It also provides a list of prohibited and restricted imports and exports. Order No. 54 also further implements the reconstruction levy by defining “public benefit” and “international organization,” and by clarifying the exemptions for contractors and subcontractors. Order No. 54 also provides that the pre-existing (but never implemented) Iraqi free zone legislation does not apply to the reconstruction levy. Furthermore, the reconstruction levy is not refunded as a drawback when goods are re-exported. However, the reconstruction levy is not imposed when goods are merely in transit through Iraq to a destination outside Iraq. Order No. 70 set the date on which the Reconstruction Levy would begin to apply as April 15, 2004.

CPA Order No. 49 imposes an income tax of 15% on corporations and individuals (including nonresident individuals). Foreign employees and foreign contractors and subcontractors are not liable “to pay any tax on income or similar charges on income from foreign sources” or on income paid from or on behalf of MNF-I or foreign governments. MNF-I, foreign governments, international organizations, and Non-governmental Organizations registered pursuant to CPA Order No. 45 are also exempt from the income tax. CPA Order No. 84 extends the 15% tax rate to expatriated dividends. Order No. 49 also suspends the 25% levy on company profits. Most other taxes are suspended. However, the hotel tax, the real property transfer tax, the car sale fee, and the petrol excise tax remain in force. Order No. 49 also subjects state employees, including employees of SOEs, to tax, but these individuals are exempt from tax for 2004.

CPA Order No. 51 suspends the exclusive right of the State Company for Water Transportation to act as the maritime agent in Iraqi ports. This Order therefore allows other entities to act as maritime agents.

CPA Order No. 56 sets forth the law governing the Central Bank of Iraq (the CBI), which provides, among other things, that foreign currency obligations may be enforced according to their terms. The Order also authorizes the CBI to issue licenses or permits to private sector banks and to regulate and supervise such banks.

CPA Order No. 74 establishes the Iraq Stock Exchange as a *sui generis* independent non-profit organization. It also establishes an Iraq Securities Commission and an Iraq

Depository. The Order provides an interim set of rules for the Iraq Stock Exchange and the Iraq Securities Commission that serve as a bridge between Iraq's former state-owned stock exchange and a new independent exchange.

CPA Order No. 78 modernizes Iraq's bankruptcy law by amending Iraq's 1970 Code of Commerce provisions relating to bankruptcy. These amendments give companies and individuals greater opportunities to reorganize financially troubled businesses and reduce debts. The amendments establish a regime to implement these procedures by allowing the Council of Judges to appoint bankruptcy judges and the Ministry of Justice to license bankruptcy trustees. The new rules assist foreign businesses as they include rules addressing relief that may be sought by trustees subject to bankruptcy proceedings in a foreign state by a foreign business that has a branch in Iraq.

CPA Order No. 80 amends Iraq's trademark law. The amendments establish a publicly available registry for all marks in Iraq, and permits any natural person or legal entity, Iraqi or foreign, to register trademarks in Iraq. The amendments permit the owner of a registered trademark to have the exclusive right to prevent third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services when such use would result in a likelihood of confusion with a registered trademark. The amendments also permit the owner of well-known trademarks to enjoy the protection of Iraqi law even if the mark is not registered in Iraq. The amendments provide legal protections for all registered marks for a period of ten years subject to renewal for another ten years.

CPA Order No. 81 amends Iraq's patent and industrial design law to protect new ideas in any field of technology that relates to a product or manufacturing processes. The amendments permit companies in Iraq, or in countries that are members of a relevant treaty to which Iraq is a party, to register patents in Iraq. The amendments grant the patent owner the right to prevent any person who has not obtained the owner's authorization from exploiting the patented product or process for twenty years from the date of the patent's registration in Iraq. The amendments also allow individuals and companies to register industrial designs.

CPA Order No. 83 amends Iraq's copyright law. The amendments modernize Iraq's copyright law and grant an author copyright protection for the lifetime of the author plus a period of fifty years from the date of the author's death, and grant legal entities copyright protection for a period of fifty years.

CPA Order No. 87 establishes a law governing the award of public contracts. The Order provides a set of public procurement guidelines and creates an Office of Government Public Contract Policy within the Ministry of Planning and Development Cooperation to oversee the implementation of the guidelines. The Order also tasks that Office with coordination of government public contract policy; establishment and adoption of rules for an independent administrative tribunal to have jurisdiction over complaints and disputes arising under or relating to the award of public contracts; recommendations for amendments to the Order and related Iraqi laws, regulations and administrative

DRAFT 10/28/04

instructions; development and adoption of standard government public contract provisions; and training of government public contracting personnel.

CPA Order No. 94 promulgated Iraq's new banking law. This law allows, among other things, the establishment of private sector banks in Iraq that are wholly owned by foreign banks. Foreign branches and domestic subsidiaries of foreign banks must be given treatment equal to that of domestic banks, except as otherwise stated in the Order.