

February, 2009

## Some Legal Aspects of Investment in Iraq

- A. Introduction
- B. Foreign investment
  - 1. Iraq as an open market economy
  - 2. The Federal Investment Law of 2006
  - 3. Kurdistan's Investment Law
  - 4. Free Zones
  - 5. International treaties
- C. Trade, procurement, and agency
- D. Intellectual property
- E. Arbitration
- F. First results

Disclaimer: All information given and all views expressed in these materials are for general information purposes only and are in a condensed form. While good efforts have been taken to verify the accuracy of information, no responsibility or liability can be accepted for reliance by any person on the information provided in this article. It should not be regarded as a basis for ascertaining legal or regulatory liability or for a route of action in legal matters in any given case; rather, before acting on any such information, professional advice should always be taken.

# Börner

## A. Introduction

While the security aspects have still drawn the attention of the media, the Iraqi government has successfully consolidated its course to democracy<sup>1</sup> and the rule of law<sup>2</sup>. Despite serious efforts, there is a legal quagmire in some sectors<sup>3</sup>, which is in part due to necessary legislation by the Provisional Coalition Authority (CPA)<sup>4</sup> and its review by the Iraqi parliament exercising new sovereignty and democratic legitimacy, and the factual implementation of the laws requires further hard work<sup>5</sup>.

The government has considerable income (41 bn USD) from its increasing oil production (2.4 mn b/d; exports: 1.9 mn b/d)<sup>6</sup>, all numbers to increase in view of the recent crude oil price hike and the on-going process of considerable reinvestment into the oil and gas sectors, Iraq's reserves being among the largest of the world<sup>7</sup>. It is obviously quite difficult to reconcile the Law of the autonomous Kurdish Province on Oil and Gas with the forthcoming Federal Law<sup>8</sup>.

---

<sup>1</sup> Interview with Prime Minister al-Maliki "The Tenure of Coalition Troops in Iraq should be limited", Der Spiegel of July 19, 2008, [www.spiegel.de/international/world/0,1518,druck-566852,00.html](http://www.spiegel.de/international/world/0,1518,druck-566852,00.html) (called Sept. 2, 2008)

<sup>2</sup> for the scope of the efforts in the Department of Justice and the US-Iraq Rule of Law programme cf. A. Cucciniello, Iraq proves fertile ground for rule of law programs, March 18, 2008, [iraq.usembassy.gov/prt\\_news\\_03182008.html](http://iraq.usembassy.gov/prt_news_03182008.html) (called Sept. 2, 2008)

<sup>3</sup> for the latest legal situation under the Saddam Hussein regime see Office of the Chief Counsel for International Commerce in the Office of General Counsel, US Department of Commerce, Overview of Commercial Law in Pre-War Iraq, draft 9/12/2003, Washington D.C. 2003, 21 pp., [www.trade.gov/static/Iraq\\_prewarcommlaw.pdf](http://www.trade.gov/static/Iraq_prewarcommlaw.pdf) (called Sept. 4, 2008); for the actual situation see Rödl & Partner, Investitionsführer Golfstaaten 2008, Frankfurt (FAZ Institut) 2008, pp. 29-41

<sup>4</sup> for an overview see [www.cpa-iraq.org/regulations/index.html](http://www.cpa-iraq.org/regulations/index.html)

<sup>5</sup> see Annex IV. Joint Monitoring Matrix: Socio-Economic – 2008 and After, [www.iraqcompact.org/ici\\_document/Annex\\_IV\\_JMM\\_English2008.pdf](http://www.iraqcompact.org/ici_document/Annex_IV_JMM_English2008.pdf) (called Sept. 4, 2008)

<sup>6</sup> B. Lando, Oil Talks Resume in Iraq in June, UPI, May 30, 2008; B. Lando, Analysis: Iraqi oil law holdup political, [www.energy-daily.com/reports/Analysis\\_Iraq\\_il\\_law\\_jholdup\\_political\\_999.html](http://www.energy-daily.com/reports/Analysis_Iraq_il_law_jholdup_political_999.html) (called Sept. 2, 2008); see also at FN 21

<sup>7</sup> for a very critical view see I. Al-Chalabi, Iraq's Oil Industry: Five Years of Occupation, Middle East Economic Survey vol. 61, no. 15 of April 14, 2008; for a comprehensive analysis see C. Nakhle, Iraq's Oil Future: Finding the right framework Surrey Energy Economics Centre, Univ. of Surrey, Oct. 2008

<sup>8</sup> for the legal issues see J. Dargin, The Iraqi oil dispute: Who holds the power?, Oil & Gas Journal vol 106, no. 14 of April 14, 2008; H. el-Roubi, Government pushes forward with discussions on developing oil and gas fields, International Law Office, Energy & Natural Resources – Iraq, London 27.10.2008, [www.internationallawoffice.com/Newsletters](http://www.internationallawoffice.com/Newsletters) (called Oct. 28, 2008) sowie KRG Prime Minister and Irai Oil Minister agree on several oil issues, 26.11.2008, [www.krg.org/articles/detail.asp?anr=26730&rrnr=223&arenr=&smap=0201010100&lngnr=12](http://www.krg.org/articles/detail.asp?anr=26730&rrnr=223&arenr=&smap=0201010100&lngnr=12) (called Nov. 26, 2008)

## Börner

The necessity of reconstruction after years of wars and sanctions<sup>9</sup> and the financial liquidity in the country (despite old and new debt<sup>10</sup>) are the starting points for a rapid expansion of the Iraqi economy and promise an excellent and growing seller's market for materials and services<sup>11</sup>, be it sales to the government under procurement law, be it sales to private entrepreneurs and consumers under commercial law. There is room for regional cooperation e.g. with Egypt<sup>12</sup> and the GCC states<sup>13</sup> and room for sophisticated projects and equipment, which require investment and presence for the longer term<sup>14</sup>. According to the progress achieved by Iraq, the EC has lifted certain trade restrictions<sup>15</sup>. Naturally, the US<sup>16</sup> and the UK<sup>17</sup> are most involved. The relatively stable environment of semi-autonomous Kurdistan takes a hub function, more than 50 % of the 5.000 listed companies have foreign capital<sup>18</sup>.

Accordingly, two succinct guides to doing business and investing in Iraq have been published recently<sup>19</sup>, so that we can reduce our efforts to summarize some main and some additional points of interest.

- 
- <sup>9</sup> still highly useful as a road map: J. A. Baker III, L. H. Hamilton a.o., The Iraw Study Group Report, Washington D.C. Dec. 6, 2006, [www.usip.org/isg/iraq\\_study\\_group\\_report/report1206/iraq\\_study\\_group\\_report.pdf](http://www.usip.org/isg/iraq_study_group_report/report1206/iraq_study_group_report.pdf); for some legal problems of reconstruction under the CPA regulations see R. Dübber/J. Kartal, Wiederaufbau Irak: Ist der Ausschluss von Unternehmen aus Kriegsgegnerstaaten vereinbar mit dem WTO-Vergaberecht, *Recht der Internationalen Wirtschaft* (Heidelberg) 2004, 360-366; S. Puth, Der Wiederaufbau des Iraks auf dem Prüfstand des WTO-Rechts, *Europäische Zeitschrift für Wirtschaftsrecht* (Munich) 2004, 395-399
- <sup>10</sup> J. Kaiser/A. Queck, *Odious Debt – Odious Creditors ? International Claims on Iraq*, Friedrich Ebert Stiftung Occasional Papers 12, Berlin March 2004
- <sup>11</sup> T.J. Pritzker, W.H. Strong, S. R. Wilson, Investment opportunities in Iraq, *Chicago Tribune* Sept. 9, 2008, [hht://archives.chicagotribune.com/2008/sep/09/nation/chi-oped0909iraqsep09](http://archives.chicagotribune.com/2008/sep/09/nation/chi-oped0909iraqsep09) (called Jan. 20, 2009); BDI, Irak - Bilaterale Wirtschaftsbeziehungen können vom Wiederaufbau profitieren, Pressemitteilung vom 23.07.2008, [www.bdi.de/presse](http://www.bdi.de/presse) (called Sept. 2, 2008)
- <sup>12</sup> Investment and Business in Iraq discussed, Egyptian Investment Portal May 15, 2008, [www.investment.gov.eg/MOI\\_Portal/en-GB/Announcements/Business+and+Industry](http://www.investment.gov.eg/MOI_Portal/en-GB/Announcements/Business+and+Industry). (called Sept. 2, 2008)
- <sup>13</sup> see below FN 14
- <sup>14</sup> Investors flood new Iraq agency with project deals, *Budapest Business Journal* July 18, 2008, [www.bbj.hu/news/print\\_41751\\_investors+flood+new+iraq+agency+with+project+deals.html](http://www.bbj.hu/news/print_41751_investors+flood+new+iraq+agency+with+project+deals.html) (called Sept. 2, 2008); BBC News, Funds start to flow into Iraq, *London* Nov. 13, 2008, <http://newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/2/hi/business/7726368.stm> (called Jan. 20, 2009); for further news cf. [www.investorsiraq.com](http://www.investorsiraq.com) (called March 2, 2009)
- <sup>15</sup> Council Regulation (EC) No 195/2008 of March 3, 2008 amending Regulation (EC) No 1210/2003 concerning certain specific restrictions in the economic and financial relations with Iraq, *OJ (EC)* 2008 L 59, 1 of March 4, 2008
- <sup>16</sup> for first information see [www.uktradeinvest.gov.uk/ukti/appmanager/ukti/countries?\\_nfls=false&nfls=true&pageLabel=CountryType1&naviationPageID=/Iraq](http://www.uktradeinvest.gov.uk/ukti/appmanager/ukti/countries?_nfls=false&nfls=true&pageLabel=CountryType1&naviationPageID=/Iraq) (called Jan. 20, 2009)
- <sup>17</sup> see [www.tade.gov/Iraq/](http://www.tade.gov/Iraq/) (called Jan. 20, 2009)
- <sup>18</sup> Tim Webb, Iraq is "safer than Wall Street", *The Observer* Oct. 20, 2008, [www.guardian.co.uk/business/2008/oct/20/investing-iraq-kurdistan](http://www.guardian.co.uk/business/2008/oct/20/investing-iraq-kurdistan) (called Jan. 20, 2009)
- <sup>19</sup> a) World Bank, *Doing business 2008 Iraq*, Washington 2007, Report 42618, <http://go.worldbank.org/BUYIYXSR10> or [www.wds.worldbank.org/servlet/main?menuPK=64187510&pagePK=6419302](http://wds.worldbank.org/servlet/main?menuPK=64187510&pagePK=6419302) (called Sept. 4, 2008);

# Börner

## B. Foreign investment

### 1. Iraq as an open market economy

The Iraqi Constitution<sup>20</sup> is the supreme law of the Iraq (Art. 13).

Its Art. 23 deals with the concept of ownership:

Private property is recognized throughout Iraq. The owner of private property has the right to benefit, exploit and dispose of private property within the limits of the law; however, there are restriction for foreign ownership of land. Expropriation is not permissible except for the purposes of public benefit and for just compensation in return.

The recognition of private ownership rights, once acquired, is therefore not restricted to those held by Iraqi nationals.

Art. 25 is the basis for a market economy. The specialties of Islamic law do not hinder modern commerce, as this ultimate source of legislation is restricted (due to Sunnite, Schia and other schools and religions in Iraq) to its stated (universally acknowledged) principles, Art. 2.

Under Art. 107 the federal government formulates foreign sovereign economic and trade policy. Based on this competency, Iraq has adopted the Investment Law of 2006, which replaces CPA Order 39 and the much more restrictive legislation of the Saddam Hussein era, when only Arab foreign investment was allowed. The Investment Law of 2006 (Federal Investment Law, FIL) specifically excludes the petroleum sector, which will be governed by special legislation still to be enacted<sup>21</sup>, and the financial sector (banks, insurance companies)<sup>22</sup>.

The competency for federal legislation is not exclusive. The province of Kurdistan has enacted an investment law of July 2006<sup>23</sup>, which should prevail whenever exceeding the minimum standards of the federal law.

---

b) Office of Chief Counsel for International Commerce, US Department of Commerce, Legal Guide to Investing in Iraq, Washington June 20, 2008 ("Legal Guide 2008"), [www.trade.gov/iraq/LegalGuide2008.asp](http://www.trade.gov/iraq/LegalGuide2008.asp) (called Sept. 2, 2008)

<sup>20</sup> for its evolution see the – despite of its misleading title - useful document: H. Docena, How the US got its neoliberal way in Iraq, Asia Time, Sept. 1, 2005, [www.atime.com/atime/Middle\\_East/GI01AK01.html](http://www.atime.com/atime/Middle_East/GI01AK01.html)

<sup>21</sup> cf. Wikipedia, Iraq oil law (2007), [http://en.wikipedia.org/wiki/Iraq\\_oil\\_law\\_\(2007\)](http://en.wikipedia.org/wiki/Iraq_oil_law_(2007)) (called Sept. 2, 2008); see also FN 8

<sup>22</sup> CPA Orders 20 (Trade Bank of Iraq), 56 (Central Bank of Iraq)

<sup>23</sup> for a translation of the Kurdish law 4/2006 see [www.buyusa.gov/iraq/cn/investmentlawkurdistan.html](http://www.buyusa.gov/iraq/cn/investmentlawkurdistan.html) (called Sept. 2, 2008)

# Börner

## 2. The Federal Investment Law of 2006

The new investment law<sup>24</sup> gives valuable guarantees for investment projects approved by the competent investment commission<sup>25</sup>.

There is a federal commission (the National Commission for Investment)<sup>26</sup> consisting of nine highly qualified members, viz. a minister and a vice president, both approved by parliament for five years, four government and three the private sector representatives (Art. 4 FIL). The National Commission formulates the national investment policy and approves the federal projects (Art. 7 FIL). A first investment plan for refineries, petrochemical plants, cement, Education, health, tourism, housing, and agriculture is in the making<sup>27</sup>.

The regions and governorates have their own commissions consisting of seven members each; their heads are coupled with the regional prime ministers or, respectively, governors (Art. 5 FIL). These commissions will approve the regional projects and draw up the regional plans, which are supposed to be in accordance with the federal plans.

In case of conflicting decisions, the solution is not clear. On the one hand, the approved federal development plan should take prevalence, while on the other hand, Art. 111 of the Constitution says that in case of conflict in a field of shared power (as in Art. 110 of the Constitution: formulation of development and general planning policies), priority shall be given to the sub-federal unit.

The commissions have to facilitate licence applications and procedures. The National Commission has to deal with applications in 45 days. If the project volume exceeds 250 mn USD, the approval by the Council of Ministers is required additionally. (Artt. 6, 7, 9, 20 FIL)

The investor has to present economic and technical feasibility studies with all maps related to the project and further documentation, as requested (Art. 14 III FIL).

Being licensed, he has

- to inform the commission (a) after installation of the date of beginning of commercial activity (Art. 14 I FIL) and (b) upon request with feasibility studies and documentation (Art. 14 III FIL),
- to keep record of duty-free imported materials (Art. 14 IV FIL),

---

<sup>24</sup> Law 13/2006; for an overview see: [www.edinarfinancial.net/iraq-investment-law.php](http://www.edinarfinancial.net/iraq-investment-law.php) (called August 12, 2008)

<sup>25</sup> There is critique that the commissions should be more entrepreneurial by membership and procedure, cf. Iraqi businessmen calling to review the paragraphs of investment law, August 26, 2008, [www.iraqdirectory.com/DisplayNews.aspx?id=6760](http://www.iraqdirectory.com/DisplayNews.aspx?id=6760) (called September 2, 2008); M. T. Musa, Iraq: The private sector's take on the investment law, Arab Reform Bulletin vol. 6, no 6 (July 2008), [www.iraqupdates.com/p\\_articles.php\(article/35318](http://www.iraqupdates.com/p_articles.php(article/35318) (called September 2, 2008).

<sup>26</sup> with the website [www.ishtargate.org](http://www.ishtargate.org)

<sup>27</sup> INIC Babel plans to grant investment licences, Feb. 21, 2009, [www.iraqdirectory.com/DisplayNews.aspx?id=8541](http://www.iraqdirectory.com/DisplayNews.aspx?id=8541) (called March 2, 2009)

## Börner

- to maintain accurate book-keeping checked by an authorized accountant (Art. 14 II FIL),
- to protect the safety of the environment and adhere to the quality control systems in Iraq (Art. 14 V FIL),
- to comply with Iraqi labour law (Art. 14 VI FIL),
- to comply with the progress plan for the project in order to avoid penalties and loss of licence in case his being in arrears for more than 6 months (Art. 14 VII FIL);

though there are no quota for domestic staff, investors have to rely primarily on the local workforce (Art. 12 I and Art. 15 VIII FIL ) and are expected to help train Iraqi employees (art. 14 VIII FIL); outside the investment law there are special labour-related requirements for foreign companies with regard to the employment of Iraqi and foreign staff. For foreign employees income, there is a withholding tax to be paid by the employer. Income and corporate tax is flat at 15 %.

Being licensed, the investor can

- enter and leave Iraq freely and obtain residency for himself and staff (Art. 12 FIL),
  - lease the land needed for the project for a renewable period of 50 years (Artt. 11 III, 10 FIL), housing shall be turned over to Iraqis after finishing the project (Art. 10 FIL);
  - open and maintain accounts in Iraqi and foreign currency at banks in and outside Iraq (Art. 11 V FIL); the non-Iraqi staff is free to transfer salaries and indemnities abroad (Art. 12 IV FIL);
- these rights endorse the present situation, where the Iraqi Dinar is fully convertible without taxes or state charges, though banks may not deal forward the currency for speculative purposes<sup>28</sup>,
- insure the project with a resident or foreign insurance company (Art. 11 IV FIL),
  - deal with the Iraqi securities market (Art. 11 II FIL).

The term "investment" is defined in Art. 21 FIL. Usually, a project is carried out via a domestic purpose vehicle, viz. a limited liability or a joint stock company (Company Law, Law 21/1997). The investment is exempt from fees and taxes for a renewable period of 10 years, and in case of Iraqi majority of 15 years (Art. 17 I, III FIL). There are specific exemptions for imported fixtures of hotels, hospitals, educational and research facilities (Art. 17 IV FIL) as well as for project expansion and modernization materials (Art. 17 II FIL). Undue exemptions shall be corrected by payment (Art. 18 FIL).

The project may enjoy further benefits from multi- and bi-lateral investment agreements (Art. 22 FIL).

The successor in the project shall enjoy unchanged project status, but usually the commission has to be informed of the transfer in advance (Artt. 23 et seq. FIL).

The investment (Art. 21 FIL) may not be confiscated or nationalized, except for projects on which a final judicial judgment was issued (Art. 12 III FIL), and may not be subjected to retroactive

---

<sup>28</sup> US Department of State, Iraq, 2007 Investment climate, [www.state.gov/e/eeb/ifa/2007/80708.htm](http://www.state.gov/e/eeb/ifa/2007/80708.htm) (called August 12, 2008)

## Börner

effects regarding the rights given under the Investment Law (Art. 13 and Art. 26 FIL). The proceeds of the project (capital and profits) may be repatriated freely and in hard currency (Art. 11 I FIL), and fixed assets may be re-exported with the approval of the commission (Art. 24 III FIL).

If the investor breaches the licence or the Investment Law and has been warned accordingly without effect, the commission may decide to revoke the licence as of the time of the violation (Art. 28 FIL).

Further regulations by the Council of Ministers and instructions by the commissions are to be expected (Art. 30 and Art. 31 FIL).

### 3. Kurdistan's Investment Law

The Kurdish Investment Law of 2006 (KIL)<sup>29</sup> has been a forerunner of the Federal Investment Law and contains many similar provisions, so that we may concentrate on the deviations:

There is an Investment Board bound to set up a suitable environment for investments. It is supervised by a Supreme Investment Council, which includes the regional prime minister and other regional officials (Art. 14 KIL).

The KIL lists the sectors of the economy, to which it applies: manufacturing, agriculture, tourism, health and environment, research and information technology, transportation, telecommunications, banking, insurance, and other financial services, infrastructure, trade services, education and any other sector that the Supreme Investment Council decides to add.

The KIL allows foreigners to own land and gives them full status of nationals. Tax exemptions beyond the ten year period may be granted for projects in less developed areas.

The Supreme Investment Council may impose severe penalties (financial penalties and even loss of ownership) on an investor breaching the Kurdistan investment law or any agreement between the investor and the local authorities.

### 4. Free zones

The Free Zone Authority Law 3/1998 and the Regulation on Investor's Business 4/1999 are still in force. Capital, profits and investment income from projects in the free zones are exempt from all fees and taxes throughout the full life of the project. There are four free zones, one near Basrah, one near Baghdad, one in Kurdistan and one close to the Syrian border.<sup>30</sup>

---

<sup>29</sup> see above FN 23; for an actual general status assessment of Kurdistan cf. W.G. Lerch, *Stabil und (fast) unabhängig*, FAZ of February 26, 2009

<sup>30</sup> for further details cf. US Department of State, *Iraq, 2007 Investment climate*, [www.state.gov/e/eeb/ifd/2007/80708.htm](http://www.state.gov/e/eeb/ifd/2007/80708.htm) (called August 12, 2008)

# Börner

## 5. International treaties

Iraq maintains bi- and multilateral treaties with the Arab world including investment promotion and protection agreements and free trade area agreements, which include full faith and credit clauses as well as clauses rules on capital and profit repatriation, access to arbitration and dispute settlement, fair expropriation and loss compensation<sup>31</sup>.

The bilateral investment treaties with Turkey and the UK are notable. In (partial) replacement of existing agreements<sup>32</sup>, a new Trade and Investment Framework Agreement with the US has been signed on July 11, 2005<sup>33</sup>. Also a new Investment Protections Agreement with Germany has been paraphed on July 23, 2008<sup>34</sup> and shall be signed in late spring of 2009. However, these agreements are not yet in force. Moreover, while obliging to give fair and equitable treatment and full protection and security, they lack enforcement mechanisms as well as clauses submitting disputes to international arbitration<sup>35</sup>; rather, the Iraq wants to establish the rule of law firmly with national means and under national sovereignty and wants to obtain international confidence into the stability and aptness of its new system regardless of the fact that this way to international inverstors' confidence is difficult and tedious.

## C. Trade, procurement, and agency

Since 1991, Iraq is a member of the UN Convention on Contracts for the International Sale of Good (CISG); furthermore, the Iraqi Civil Code (Law 40/1951) acknowledges choice of law clauses for (commercial) contracts.<sup>36</sup> However, with the successful installation of the rule of law, the advice "to delocalise any agreement entered into with an Iraqi party to the extent possible" and to exclude the jurisdiction of Iraqi courts and the application of rules of Iraqi substantial law<sup>37</sup> is obsolescent.

---

<sup>31</sup> The agreement with Bahrain of March 11, 1975 has not been effective as of June 12, 2006, cf. [www.mofne.gov.bh/topiclist.asp?ctype=agree&id=106](http://www.mofne.gov.bh/topiclist.asp?ctype=agree&id=106) (called Sept. 4, 2008)

<sup>32</sup> see above FN 3, Overview of Commercial Law, p. 19 and 20

<sup>33</sup> Investment Incentive Agreement allowing for OPIC investment insurance; the agreement is available under [www.fdi.net](http://www.fdi.net) and [www.opic.gov](http://www.opic.gov).

<sup>34</sup> Bundesministerium für Wirtschaft und Technologie, Deutsch-irakischer Investitionsförderungs- und -schutzvertrag unterzeichnet, Pressemitteilung Berlin 23.07.2008, [www.bmwi.de/BMWi/Navigation/Presse/pressemitteilungen,did=258422.html](http://www.bmwi.de/BMWi/Navigation/Presse/pressemitteilungen,did=258422.html) (called Sept. 2, 2008); Reuters, Germany and Iraq sign investment accord, 7/23/2008, [www.iraqdirectory.com/DisplayNews.aspx?id=6579](http://www.iraqdirectory.com/DisplayNews.aspx?id=6579)

<sup>35</sup> Legal Guide 2008 (FN 16), chapters E. and F.

<sup>36</sup> see also C. Ule, Rahmenbedingungen für Lieferverträge mit dem Irak, [www.d-a-g.de/u/le25.07.03.htm](http://www.d-a-g.de/u/le25.07.03.htm)

<sup>37</sup> K. Bälz, Reconstruction of Iraq: Dealing with Legal uncertainty, International Bar News June 2003, pp. 2-5



## Börner

Public procurement<sup>38</sup> is governed by CPA Order 87 (Public contract) and CPA Memorandum 4 (Contract and grant procedures) as well as the UN Development Programme Procurement Manual. The codification of the rules of public procurement is among the projects for 2008 and after<sup>39</sup>. In principle, public entities may not deal with commercial agents.

Commercial agency is governed by the Artt. 927 to 949 of the Civil Code (Law 40/1951) on mandates, which are basically near the rules of the Code civil francais, while the Commercial Code (Law 30/1984) lacks rules on commercial agency. The validity of the Agency Law (Law 51/2000) is very questionable. CPA Order 39 on investments is said to vacate Law 51/2000 (cf. Ministerial Decree 149/2004). There was no directly repellent wording in Order 39, but it gave total freedom to foreign investors:

They shall stand like nationals (Sect. 4 para 1), may participate in practically any existing business (Sect. 4 para 2), and may open trade representation offices and branches (Sect. 5); foreign investment may take place with respect to all economic sectors in Iraq except those specifically mentioned in the Order (Sect. 6 para 1); the permission to engage in retail sales is conditioned on a prior deposit of 100,000 USD (Sect. 6 para 2).

This freedom was irreconcilable with the restrictions of the Agency Law (Law 51/2000), which reserved agency to Iraqi nationals (physical and moral persons) of sound standing and state loyalty (Art. 4 Law 51/2000), restricted the scope of the agency to three foreign enterprises (Art. 4 Law 51/2000), and required a registration and the issuance of a licence (Art. 2 Law 51/2000).<sup>40</sup> CPA Order 39 has now been replaced by the new Federal Investment Law (Law 13/2006), but this does neither revive Law 51/2000 automatically nor contain any language on renewal or novation of Law 51/2000. In consequence and in conformity with the public order, I think there is no special Agency Law in force in Iraq.<sup>41</sup>

---

<sup>38</sup> for an overview and further references cf.: B. Wengrowski, Transforming the procurement system of Iraq, Defense AR Journal Dec. 2006, [http://findarticles.com/p/articles/mi\\_mOSVI/is\\_2\\_13/ai\\_n18617329](http://findarticles.com/p/articles/mi_mOSVI/is_2_13/ai_n18617329) (called Sept. 4, 2008); S. Kavanagh, The legality of reconstruction contracts in post-war Iraq, 2004(2) Law, Social Justice & Global Development Journal (LDG) 2005, [www.2warwick.ac.uk/fac/soc/law/elj/lgd/2004\\_2/kavanagh](http://www.2warwick.ac.uk/fac/soc/law/elj/lgd/2004_2/kavanagh) (called Sept. 4, 2008)

<sup>39</sup> cf. FN 5

<sup>40</sup> for further details of Law 51/2000 cf. S. Jäger, Irak, in: S. Klaiber, Das Recht der Handelsvertreter und Vertragshändler in der MENA-Region, Köln (BFAI) 2007, S. 83-88

<sup>41</sup> S. Jäger, op.cit. (FN 40) does not share this opinion but rather votes for a continued validity of the Agency Law; with a similar result Gulf-Law, Iraq – Agency law, Newsletter August 2004, [www.gulf-law.com/iraq/0103\\_a.html](http://www.gulf-law.com/iraq/0103_a.html)

## Börner

### D. Intellectual property

Iraq is currently revising its protection of intellectual property to reach the TRIPS standards. The registries are spread to

- the Ministry of Planning and Development Cooperation for patent and industrial design: Patent Office;
- the Ministry of Industry and Minerals for trademarks: Iraqi Trademark Office;
- the Ministry of Culture for copyrights.

Registration of rights does not require the Israel boycott declaration any more.

Iraq is a member to the following conventions:

- Paris Convention for the Protection of Industrial Property, cf. Law 212/1975
- World Intellectual Property Organization, cf. Law 212/1975
- Arab Agreement for the Protection of Copyrights, cf. Law 41/1985

### E. Arbitration

Domestic arbitration has a longstanding history in Iraq and is provided for in Artt. 251-276 of the Iraqi Civil Procedure Code (Law 83/1969). These rules<sup>42</sup> do not distinguish between national and international arbitration and follow the Egyptian model: arbitration clause in writing; separate arbitration agreement for insurance contracts; basically all contractual and monetary matters are arbitrable; the arbitration clause stands by itself; one arbitrator or an uneven number of arbitrators appointed by the parties or, if they fail, by the court; disqualification of arbitrators for bias; interim measures are issued by the state courts, but normal court proceedings are staid if one party invokes the arbitration agreement; parties may choose the procedural and the substantive law; the award must be rendered in the contractually specified time or, if there is none, within six months of appointment; it must be in writing and with reasons; for enforcement the court has to approve the award by non-annulment; the annulment grounds are similar to those of the New York Convention, but are also found in case of lack of documentary evidence, essential error in the proceedings or the award, non-observance of compulsory rules of civil procedure, sufficient reason for re-hearing, contravening public order or public morality (the award of interest does not qualify so).

Art. 27 FIL subjects investment disputes to the jurisdiction of Iraq courts; however, domestic or international arbitration can be agreed, except for questions of labour and criminal law, for which there is exclusive Iraqi state court jurisdiction, and for disputes arising from the Investment Law itself, for which the parties may, at the time of the signing of the agreement, "agree on a mechanism to resolve disputes including arbitration pursuant to Iraqi law or any other internationally recognized entity".

---

<sup>42</sup> Recent overviews:

S. Majid, Iraq Arbitration Law, in: Middle East Legal Services,  
[www.mondaq.com/article.asp?articleid=45310](http://www.mondaq.com/article.asp?articleid=45310);

Al Tamimi and Company, Overview and prospects for Iraq arbitration, Dubai 2004,  
[www.iraqbusinesslaw.com/pdf/pdf04/IBLU%20 Sept04.pdf](http://www.iraqbusinesslaw.com/pdf/pdf04/IBLU%20Sept04.pdf)

## Börner

Under Art. 17 KIL, investment disputes are to be settled in accordance with the relevant contract, but may otherwise be submitted to arbitration in accordance with the applicable regional law or the dispute settlement rules of a relevant international agreement.

There are restrictions for arbitration on agency contracts and in public procurement. Agents are protected by the general rules on foreign court competency and foreign awards: Art. 37 of the Code of Civil Procedure (Law 83/1969) allows a choice amongst the local Iraqi courts only<sup>43</sup>. Art. 7 lit. f) of the Iraqi Law on the Enforcement of Foreign Awards (Law 30/1928) says that a foreign court is only held competent upon the approval by both parties<sup>44</sup>. For the enforcement of a foreign award under Law 45/1980, Art. 11 of Law 30/1928 requires a bilateral agreement or assured reciprocity<sup>45</sup>.

Iraq is not a signatory of the New York Convention on Recognition and Enforcement of Foreign Arbitral Awards (1958) and the relating UNCITRAL rules. However, Iraq is a signatory of the Arab League Convention on Commercial Arbitration (1987) and the Riyadh Convention on Judicial Cooperation (1983), which facilitates enforcement of state court and arbitration panel decisions.

### F. First results

Iraq has an old culture with a historical record of the rule of law<sup>46</sup> and now a very investor friendly environment. The new investment laws are just coming into operation. While Arab investment is heavy, Western investment is still slow<sup>47</sup>. Some naughty questions still exist: What about conflicting investment decisions? Does the Kurdish opportunity to purchase land prevail over the Federal decision to allow 50 year leases only? Will there be an efficient investment dispute resolution mechanism? As of today, it may sometimes be advisable to funnel Western investment via Great Britain, Turkey, an Arab state, or, now, Germany, in order to achieve maximum protection and judicial enforcement.

---

<sup>43</sup> Cf. S. Jäger, op.cit.(FN 40), p.88

<sup>44</sup> Cf. S. Jäger, op.cit.(FN 40), p.89

<sup>45</sup> Cf. S. Jäger, op.cit.(FN 40), p.90

<sup>46</sup> cf. Codex Hamurabi of ca. 1760 BC, Islam as a religion of law

<sup>47</sup> see above FN 9; M. Ryan, Iraqi Kurdistan still a tough sell to investors, International Herald Tribune (Reuters) August 31, 2008, [www.iht.com/bin/printfriendly.php?id=15756367](http://www.iht.com/bin/printfriendly.php?id=15756367) (called Sept. 2, 2008)