

# CAKES WITHOUT SUGAR: REASONS BEHIND FOREIGN INVESTOR RELUCTANCE TO ENTER MESOPOTAMIA

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## I. INTRODUCTION

Iraq was hopeful when it imagined preparing itself as an “investment cake” under the new Investment Law. Following investment environment reforms,<sup>1</sup> Iraq opened the doors of its economy to foreign investors.<sup>2</sup> However, as some foreign investors flowed in and commenced “eating” the cake, they were disappointed to find it sugar-free, not sweet and sugary as most would prefer.<sup>3</sup> What then would be

1. See SAMI SHUBBER, *THE LAW OF INVESTMENT IN IRAQ* 5-6 (2009).

2. Iraq has made significant progress in the reconstruction of its economy, and investors have shown considerable interest in the country, as evidenced by the influx of Chinese investors in the past few years. In fact, recent statistics show that the number of foreign investments doubled in 2010, as investors swarmed into the Middle Eastern country to cash in on investment opportunities arising from Iraq’s stability. More positive results are being reported by western news agencies, as evidenced by Newsweek International’s (London) following assertion: “Civil war or not, Iraq has an economy, and—mother of all surprises—it’s doing remarkably well. Real estate is booming. Construction, retail and wholesale trade sectors are healthy, too, report by Global Insight in London. The U.S. Chamber of Commerce reports 34,000 registered companies in Iraq, up from 8,000 three years ago. Sales of second-hand cars, televisions and mobile phones have all risen sharply. Estimates vary, but one from Global Insight puts GDP growth at 17 percent last year and projects 13 percent for 2006. The World Bank has it lower: at 4 percent this year. But, given all the attention paid to deteriorating security, the startling fact is that, Iraq is growing at all.” See generally WORLD BANK, *MIDDLE EAST AND NORTH AFRICA REGION, REBUILDING IRAQ: ECONOMIC REFORM AND TRANSITION* (2006).

3. Considering the investment needs in Iraq, investment opportunities are myriad across sectors in the Iraqi economy. In this respect, the Iraqi Government has availed investment opportunities across sectors including construction, industry, agriculture, tourism, housing, communications, and health care. Leading investment companies still have a tendency to invest in the energy sector, particularly as proven by the fact that Iraqi reserves of oil stand at 115 billion barrels. On the basis of these figures, Iraq ranks 2-3 worldwide with the largest proven amount of reserves. There are also indications that Iraq has 45-100 billion additional barrels in its western desert, which remain undiscovered. Furthermore, Iraq’s discovered oil reserves amount to 10% of the world’s total reserves.

the result?

Certainly, other investors would receive a “warning” notice that the Iraqi “cake” was not only free of sugar, but also salty. The following question would be raised here regarding the multi-white-powder cakes in a warehouse: which of them has sugar?

The thesis of this article is that ten years of Iraqi and international efforts<sup>4</sup> to encourage foreign investment have failed and that foreign investment in Iraq remains limited to the extent of foreign investment flows amounting to USD 1.617 billion, as of 2011.<sup>5</sup>

The path to investing in Iraq is still full of obstacles because reforms have not been addressed. For example, a number of old laws do not meet minimum international standards, yet they remain in force. Moreover, national infrastructure is not up to acceptable standards, and foreign investors must comply with administrative red tape. Despite other recently emerging challenges, as described by this article’s analysis below,<sup>6</sup> some writers argue that there are sufficient existing justifications for foreign investors to come to Iraq and initiate a harvesting of dividends.<sup>7</sup>

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Iraq has natural gas (“NG”) reserves as well. Available information indicates 112 trillion cubic feet NG reserves in Iraq, thus placing Iraq at the tenth position worldwide in terms of largest NG reserves. Potentially, additional NG reserves amount to 275-300 trillion cubic feet along with large amounts of other metals including phosphate, sulphur, and iron. See *Top Ten Reason to Invest in Iraq*, REPUBLIC OF IRAQ NATIONAL INVESTMENT COMMISSION, available at <http://investpromo.gov.iq/why-iraq/> (last visited Oct. 30, 2013).

4. See ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, SUPPORTING INVESTMENT POLICY AND GOVERNANCE REFORMS IN IRAQ 8 (2010). The Iraqi Government is at the forefront in spearheading reconstruction efforts in Iraq, but support is being provided by other investment partners such as the U.S. through the U.S. Chamber of Commerce, which is also channeling funds toward improving reconstruction efforts in Iraq. *Id.*

5. UNCTAD, WORLD INVESTMENT REPORT UNITED NATIONS 171 (2012).

6. See generally Clarence M. Dass, *Adventure Capitalizing in Baghdad: An Entrepreneurial Approach to Reconstructing Iraq*, 4 ENTREPRENEURIAL BUS. L.J. 157 (2010); Ned Parker, *The Iraq We Left Behind: Welcome to the World’s Next Failed State*, 91 FOREIGN AFF. 94 (2012); Antony Blinken, *Is Iraq on Track? Democracy and Disorder in Baghdad*, 91 FOREIGN AFF. 152 (2012); Christopher J. Coyne & Adam Pellillo, *Economic Reconstruction Amidst Conflict: Insights from Afghanistan and Iraq*, 22 DEF. & PEACE ECON. 627 (2011); CHRISTOPHER J. COYNE, *The Economic Reconstruction of Iraq* (2010), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1550867](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1550867) (last visited Oct. 30, 2013).

7. David Grantham argues that the calculation of profits outweigh risks for foreign investment companies in Iraq. See David Brent Grantham, *Calculated Risk: The Advance of IOCs and NOCs Into the Iraqi Investment Theater*, 3 J. WORLD ENERGY L. & BUS. 315 (2010) [hereinafter Grantham, *Calculated Risk*]; See generally Judith Richards Hope & Edward N. Griffin, *The New Iraq: Revising Iraq’s Commercial Law is a Necessity for Foreign Direct Investment and the Reconstruction of Iraq’s Decimated Economy*, 11

These opinions rely on a drastic change in the country's political, legal, and economic arenas, with new facts being formulated after the Anglo-American troops toppled the then-ruling Baathist Regime. Thereafter, the new Iraqi Government sought to rebuild the country's war-torn economy by opening its doors to investors. Iraq has moved from a central to an open-market economy. To enable this shift, a number of laws were enacted;<sup>8</sup> Investment Law No. 13 of 2006 is the most notable of these new laws. The law provides for guarantees together with prohibition of nationalization and confiscation, adoption of stable legislation, and provision of international arbitration as mechanisms of dispute settlement. A host of incentives and exemptions have been provided for by this law, the most important of which is the ten year tax free period for investments.<sup>9</sup>

The reconstruction efforts are one reason why international investors are storming into Iraq. It is estimated that Iraq's reconstruction efforts are going to cost about USD 100 billion.<sup>10</sup> International companies are coming into Iraq to acquire a share of the finances.

Another reason for such a notion is the amount of support Iraq is receiving from international organizations and governments. Since 2003, Iraq has been a recipient of aid both in technical and legislative know-how from the Organization for Economic Cooperation and Development (OECD). Political developments in the country are seen as remarkable progress in that MENA-OECD deemed it necessary to help hold competitive elections as part of the democratic transition.

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CARDOZO J. INT'L & COMP. L. 875 (2004); Robert D. Tadlock, *Occupation Law and Foreign Investment in Iraq: How an Outdated Doctrine has Become an Obstacle to Occupied Populations*, 39 U.S.F. L. REV. 227 (2005). The title of David Grantham's previous article was *Caveat Investor: Assessing the Risks and Rewards of IOCs Entry into Iraq*, which won the Spring 2009 AIPN Student Writing Competition. See David Brent Grantham, *Caveat Investor: Assessing the Risks and Rewards of IOCs Entry Into Iraq*, 3 J. WORLD ENERGY L. & BUS. 304 (2010).

8. One of these was the "Foreign Investment Order." This legislation, which was part of the 100 orders issued by the former U.S. civilian administrator Paul Bremer when he was head of the Coalition Provisional Authority ("CPA") during the first year of occupation, has provided U.S. groups with a multitude of benefits: full repatriation of profits earned in Iraq by foreign companies, sale of all Iraqi companies to foreign groups including banks, privatization of the entire Iraqi public sector, total legal immunity for occupants and their subcontractors in Iraq, and "national treatment" of foreign investments. See Order No. 39 Foreign Investment, THE IRAQ COALITION (Dec. 20, 2003), available at [http://www.iraqcoalition.org/regulations/20031220\\_CPAORD\\_39\\_Foreign\\_Investment\\_.pdf](http://www.iraqcoalition.org/regulations/20031220_CPAORD_39_Foreign_Investment_.pdf) (last visited Nov. 5, 2013).

9. See SHUBBER, *supra* note 1, at 5.

10. James Glanz & T. Christian Miller, *Official History Spotlights Iraq Rebuilding Blunders*, N. Y. TIMES, Dec. 14, 2008, at A1.

However, Iraq's political and economic environments are still seen as challenges for its government, and will need to be dealt with in the years ahead. At the international conference concerning developments in Iraq, the representatives of the International Compact with Iraq (ICI) recognized the importance of reforms that are required to be supported by the MENA-OECD: noting that reforms should center on governance and investment for development. Structural reforms such as promoting sector development, attracting foreign investment, and good governance were presented at this gathering. According to the representatives, all these aspects affect a country's business environment.<sup>11</sup>

The author argues that such a reform is a white point on a grey board, but is still insufficient for the revival of the investment environment. Unfortunately, the Iraqi investment environment has been shaken to the roots by political rifts at the borders, where the volcano of terrorism has erupted. The consequent corruption has taken its toll. Furthermore, the weak investment-related legal system can be ascribed to a lack of effective protection of intellectual property rights, the indefinite role of national investment authorities, and the extreme ineffectiveness (even lack) of an independent and efficient judiciary.

This article concludes that there are certain reforms that may alleviate these obstacles and establish a sustainable investment-friendly environment so that Iraq may move forward.

The rest of this article consists of five parts: the first part analyzes the endemic obstacles in the country; the second part tests the efficiency of the Iraqi legal system; the third part reveals that the country's investment frameworks are inhibitory; the fourth part demonstrates that legal determinants still exist in the investment environment; the fifth part presents a roadmap for the reform of the investment environment in Iraq.

## II. ANALYSIS OF INHERENT LIMITATIONS

Even though Iraq is a country rich in investment opportunities, investors have expressed concerns over the feasibility of investing money in Iraq and obtaining negative returns. The causes of investors' fears include political conflicts, insecurity, corruption, and poor infrastructure.

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11. See ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *supra* note 4, at 14, 34.

### A. Political Conflict and Security Collapse

On December 19, 2011, Iraqis woke to receive the news that Vice President, Tareq al-Hashemi, had been arrested on charges of running a terrorist group.<sup>12</sup> This story caused further damage to the deteriorating political, legal, and security situation in the country, sending a bleak message to potential investors.<sup>13</sup> Upon analysis, it was determined that the worst part of the situation was that it reflected a negative political environment. If the charges against the Iraqi Vice-President, who was accused of harboring terrorists, were proven in the absence of any fierce political competition, this would be a clear indication that terrorists held a strong foothold in the Iraqi Government. However, if the charges were proven false, the case would reflect the exclusion mechanism adopted by politicians on one hand, and the lack of independence of investigative authorities and the judiciary represented by the court that sentenced Al-Hashemi to death on the other.<sup>14</sup> This led to massive political and legal issues. The asylum sought by Al-Hashemi in Kurdistan and his stay therein under the protection of the Kurdistan forces despite the arrest warrant against him was followed by the reluctance of the Kurdistan Police to enforce the Baghdad court arrest orders; the role of the Kurdistan Police in denying the Federal Police admittance into Iraqi Kurdistan to enforce the arrest warrant is also significant.<sup>15</sup> Such developments resulted in a big question over the administrative and legal powers of the Kurdistan region, leaving the Iraqi Constitution in a dilemma regarding the regulation and administrative organization of the state.<sup>16</sup> This scene is but a reflection

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12. See INTERNATIONAL CRISIS GROUP, REPORT NO. 126, DÉJÀ VU ALL OVER AGAIN? IRAQ'S ESCALATING POLITICAL CRISIS (2012), available at <http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/Iraq%20Syria%20Lebanon/Iraq126-deja-vu-all-over-again-iraqs-escalating-political-crisis.pdf> (last visited Nov. 5, 2013).

13. See Blinken, *supra* note 6 at 155

14. On September 9, 2012, the Iraqi Central Criminal Court sentenced Vice President Tareq al-Hashemi to death after he was convicted on charges of managing terrorist death squads. See The Judicial Authority, TRANSLITERATED ARABIC TITLE [JUDGMENT TO DEATH BY SUPREME JUDICIAL COUNCIL] (2012), available at <http://www.iraqja.iq/view.1677/> (last visited Nov. 5, 2013); Michael A. Newton, *The Death Penalty and the Iraqi Transition: Observations on a Lost Opportunity* (Vanderbilt Law Sch. Pub. Law & Legal Theory Research Paper Series, Paper No. 12-45, 2010), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2191144##](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2191144##) (last visited Nov. 5, 2013).

15. See *Iraq VP Tariq al-Hashemi Sentenced to Death*, BBC NEWS (Sept. 9, 2012), available at <http://www.bbc.co.uk/news/world-middle-east-19537301> (last visited Nov. 5, 2013).

16. Most of the political and administrative problems are due to the failing constitution

of a failed state, where the absence of law and infesting corruption and brutality are the rule. Political leaders use security forces and militias to suppress enemies and intimidate the public with an inclination to settle scores with opponents by means of timed bombs and silencer guns on streets.<sup>17</sup> There are large-scale accusations against the government and ruling parties of protecting and harboring criminals and corrupt individuals on one hand and liquidating supervisory and judicial bodies that hinder illegal activities on the other.<sup>18</sup> Clearly, the Iraqi Government has proven itself unable to provide basic services such as electricity, clean water, and appropriate healthcare to the public. Unemployment among youths amounts to 30%; thus, they are easy prey for terrorist groups.<sup>19</sup> Consequently, Iraq does not exhibit the stability sought by foreign companies which has a negative impact on its efforts to attract investors.<sup>20</sup>

The post-2003 political conflicts in Iraq resulted in a fragile security environment;<sup>21</sup> however, such fragility has existed in Iraq over the last four decades owing to wars fought by Iraq and its consequent political seclusion, as manifested by the investor repellent siege. However, the governments in existence during those times endeavored to enact pro-investment laws to attract investors into Iraq. This effort failed because of the then unstable political and security situations, and the presence of a pessimistic outlook.<sup>22</sup> This led to the failure of

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in terms of the sought-after crystal clear administrative federal or decentralized organization. The ambiguous constitutional provisions regarding the regulation of powers between the central and province governments on one hand, and the overlap of powers on the other, contributed to creating one of the most complex problems that resulted in the conflict between the Central Government, Kurdistan Region and the Region-free Governorates. See Haider Ala Hamoudi, *Notes in Defense of the Iraq Constitution*, 33 U. PA. J. INT'L L. 1277 (2012); Christina J. Sheetz & Matthew T. Simpson, *Symposium: Rethinking the Future: The Next Five Years in Iraq*, 24 AM. U. INT'L L. REV. 181 (2009).

17. See Parker, *supra* note 6.

18. See Blinken, *supra* note 6, at 152-53.

19. See Parker, *supra* note 6, at 94.

20. See Dass, *supra* note 6, at 157, 161-62.

21. See James P. Pfiffner, *U.S. Blunders in Iraq: De-Baathification and Disbanding the Army*, 25 INTELLIGENCE & NAT'L SECURITY 76, 76-85 (2010). The dissolution of the Iraqi army and security departments by the former Civil Administrator of Iraq, Paul Bremer, and his substitution with militias of the ruling parties contributed to the insecurity. This led to large-scale corruption in granting military positions to persons who lacked basic police or military training. The political rampage has been further compounded by sacking thousands of civil servants who once were members of the banned Baath Party. For the same political reasons (i.e., membership of the Baath Party), some opponents were banned from having a say in the political process. *Id.*

22. See Dass, *supra* note 6, at 159-60.



attracting in-bound investments and out-bound departure of local capital.<sup>23</sup> By 2005, the political situation improved following the adoption of the new constitution and the completion of the first free elections, thus marking a better political situation and a future democratic outlook. Another positive point was the significantly improving security situation.<sup>24</sup>

Contrary to expectations, the political and security situation in Iraq only worsened, with serious setbacks taking place to initiate an unending series of daily terrorist acts since mid-2006. As for investors, deliberate assassinations, kidnappings, bombings, and threats against individuals and corporations alike have created an enormous obstacle to in-bound investments. Political instability and insecurity are the main reasons behind foreign companies and local capital leaving Iraq.<sup>25</sup>

In 2009, under a political truce, the number of terrorist attacks reduced owing to hunting down of armed militias under the “law enforcement” operation. Following the formation of the national partnership government, which involved parties from across the Iraqi political spectrum, the investment environment improved slightly, with numerous Turkish, Chinese, and Iranian companies engaging in business activities of various natures, particularly in the housing industry.<sup>26</sup>

Despite the aforementioned progress, the Iraqi investment environment remained incapable of attracting and retaining major foreign companies. At the time, foreign investors were uncertain about the long term stability of Iraq’s investment climate.<sup>27</sup> Fleeing from investments in Iraq is justifiable; the political congestion between Baghdad and Irbil has generated problems that have reflected on the operations of oil companies.<sup>28</sup> Relations between investment-hosting and parent states have gained importance in Iraq’s case, as the strained Baghdad–Ankara<sup>29</sup> political relations have had a toll on Turkish

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23. See generally Stephen Biddle, Michael E. O’Hanlon & Kenneth M. Pollack, *How to Leave a Stable Iraq*, 87 FOREIGN AFF. 40, 52-53 (2008).

24. See ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, *supra* note 4, at 14.

25. See Dass, *supra* note 6, at 161-62.

26. See WORLD BANK, MIDDLE EAST AND NORTH AFRICA REGION, *supra* note 2, at 27, 44.

27. See Grantham, *Calculated Risk*, *supra* note 7, at 315, 319-20.

28. See REX J. ZEDALIS, THE LEGAL DIMENSIONS OF OIL AND NATURAL GAS IN IRAQ: CURRENT REALITY AND FUTURE PROSPECTS 317, 319 (2009).

29. Baghdad–Ankara relations are experiencing tension because of a number of differences; recently, Turkey refused to extradite the fugitive Iraqi Vice-President Al-

companies' Iraq-based operations.<sup>30</sup> The security of Turkish investors is related to Iraq's inter-country political disputes.

Broadly speaking, the partial stability of given areas in an investment region does not lead to astonishing results. Although the southern and northern parts of Iraq enjoy reasonable security, the creation of a healthy and attractive environment requires more stability across Iraq.<sup>31</sup> Foreign direct investments are long-term by nature, and hence, investors are interested in the political and security situation across the whole of a country, rather than just parts of it.<sup>32</sup> Therefore, insecurity is a hindrance to foreign private investment as it results in higher security and protection costs for investments, and transport. A number of opinions stress that such investment companies sometimes use security or military companies to overcome the insecurity dilemma.<sup>33</sup> Moreover, some sectors such as the oil sector will be a target for foreign companies for two reasons: (1) the global strategic importance of this sector, which promotes the protection of such companies, and (2) the high returns that motivate a high-risk approach.<sup>34</sup>

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Hashemi in addition to accusations brought by Al-Maliki's government against Erdogan of dealing with Kurdistan as an independent state last August, following the Turkish Foreign Minister Ahmet Davutoglu's visit to Kirkuk without notifying the Federal Government, which irked the latter. Earlier, Erdogan accused his Iraqi counterpart of power monopoly. In response, Al-Makili accused Turkey of causing chaos in the region by meddling in the internal affairs of neighboring countries, including Iraq and Syria. *See Iraq Warns Turkey over Kurdistan Pipeline Deal*, BBC NEWS (May 22, 2012), available at <http://www.bbc.co.uk/news/world-middle-east-18163248> (last visited Nov. 6, 2013).

30. Hundreds of Iraqi demonstrators burnt the Turkish flag and threatened Turkish interests in Iraq on the backdrop of Turkey's interference with Iraqi affairs and violation of Iraqi sovereignty. *Turkey, Iraq Condemn "Shameful Behavior" Against Flag in Basra Protest*, TODAY'S ZAMAN (May 20, 2012), available at <http://www.todayszaman.com/news-280891-turkey-iraq-condemn-shameful-behavior-against-flag-in-basra-protest.html> (last visited Nov. 6, 2013).

31. Dass, *supra* note 6, at 157.

32. SURYA P. SUBEDI, INTERNATIONAL INVESTMENT LAW RECONCILING POLICY AND PRINCIPLE 16 (2008).

33. Alberto Abadie & Javier Gardeazabal, *Terrorism and the World Economy*, 52 EUR. ECON. REV. 1 (2008).

34. This can be seen in Colombia, where foreign companies were reluctant to enter the Colombian market. Opposition groups used to blow up the pipelines of foreign oil companies, but the latter managed to wipe out such opposition groups by offering huge financial support to the Colombian Government with a view to securing their interests. The same holds true for the companies that operated in Afghanistan before toppling, as they concluded many agreements with the Government since 1996. These foreign companies offered large amounts to the Taliban Government. When Unocal was told that Taliban is a regressive terrorist movement, UNOCAL spokesman Mike Thatcher said, "We're an oil and gas company. We go where the oil and gas is." This makes sense because large companies

Iraq is going through difficult times, mainly because of sectarian and racial divisions that have never been as deeply felt or expressed as they are now.<sup>35</sup> The country's foreseeable future holds no indication of the settlement of rampant disputes that have taken place between warring parties since the last parliamentary elections.<sup>36</sup> All political efforts did not lead to any solution; the appointment of the two ministers of defense and interior is far from settled,<sup>37</sup> the council of strategic policies has never come to light, and the dispute between Baghdad and Irbil about Kirkuk and other disputed regions remains intact.<sup>38</sup> Moreover, acting on the Oil and Gas Law is still of no interest to politicians. Meanwhile, the Federal Government and Government of Kurdistan are still at war regarding the endorsement of oil agreements with several oil companies created without the federal government's review or consent. The Constitution<sup>39</sup> remains as it is despite its ambiguities. No census has been executed. There are a large number of political blocs, especially those represented in the House of Representatives, on top of conflicts that affected the overall situation of the State.

In a serious evaluation of political and sectarian conflicts, grassroots uprising in Iraqi cities, particularly Ramadi and Salahuddin,

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use specialist security companies for protection. This applies to the Iraqi economy, where oil resources are outside city boundaries, thus making protection and capital retention easy. See Wayne Madsen, *Afghanistan, the Taliban and the Bush Oil Team*, GLOBAL RESEARCH (Jan. 23, 2002), available at <http://globalresearch.ca/articles/MAD201A.html> (last visited Nov. 6, 2013).

35. One of the reasons behind sectarian volatilization has been the Iraq-based U.S. Forces; the Sunnis, Shiites, and Kurds deal with the U.S. forces differently. The first fought U.S. Forces, while the second cooperated with them to establish the foundations of the nascent state, but for U.S. Forces exiting Iraq afterwards. However, the Sunnis felt insecure about U.S. Forces leaving the country. See Bart S. Fisher, *Symposium: Markets in Transition: Reconstruction and Development: Part One - Reconstruction: Prescriptions for Iraq, Predictions for Russia and Performance for China: Investing in Iraq: Legal and Political Aspects*, 18 TRANSNAT'L L. 71 (2005).

36. Strong suspicions exist between political blocs which stubbornly fight and exchange accusations of power monopolies or attempted dictatorships. See IMTIAZ HUSSAIN, *AFGHANISTAN, IRAQ AND POST-CONFLICT GOVERNANCE: DAMOCLIAN DEMOCRACY?* 5 (David Sciulli ed., Brill Academic Publishers, 2010).

37. See INTERNATIONAL CRISIS GROUP, *supra* note 12; Parker, *supra* note 6.

38. SONER CAGAPTAY ET AL., *THE FUTURE OF THE IRAQI KURDS* 15 (Washington Institute for Near East Policy, Policy Focus 85, 2008), available at <http://www.washingtoninstitute.org/uploads/Documents/pubs/PolicyFocus85v2.pdf> (last visited Oct. 29, 2013).

39. An undertaking given to the Sunni movements in return for their political involvement. See Parker, *supra* note 6, at 108.

started with a wave of raids and arrests based on terrorism charges against the bodyguards of the Minister of Finance, Rafe al-Eissawi, a member of the Iraqya political bloc and an iconic Sunni figure.<sup>40</sup> However, the uprising gave way to larger-scale demands, most importantly the angry demand for the freedom of female detainees in Iraqi prisons. Protestors accuse security forces of arresting women to force their wanted husbands and sons to turn themselves in,<sup>41</sup> and call for releasing those detainees already proven innocent by court orders, but never set free as well as others who were arrested upon informant reports while being denied the right to legal investigation.<sup>42</sup>

Regarding protesters, it is important to mention that the way the state is addressing the dilemma of terrorism is clearly politicized and sectarian. This has caused protesters to call for abolishment of the Anti-Terrorism Law owing to the notion that it is designed to target Sunni Arabs. Moreover, protesters call for the Accountability and Justice Law, which has replaced the De-Baathification Law, to be rescinded and for a newly enacted amnesty law for all detainees to be put into force.<sup>43</sup>

Prime Minister Nuri al-Maliki's response to protesters has consisted of a mixture of warnings and approbation. He has expressed his willingness to set up a fact-finding committee to investigate the cases of detainees and penitentiaries while accusing some demonstrators of making up a sectarian crisis and being involved in a clamor that will end with a partitioned Iraq.<sup>44</sup>

Considering the latest developments in Iraq, the door is wide open for partitioning, with the ill omens of civil war looming ahead.

### B. Spread of Corruption

Globally, the previously quoted indices indicate that corruption has reached serious proportions and threatens the development and investment programs just as it distorts the economic decision-making process and drains the economy.<sup>45</sup> This reduces the quality and volume

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40. Duraid Adnan, *Arrest of a Sunni Minister's Bodyguards Prompts Protests in Iraq*, N.Y. TIMES, (Dec. 21, 2012) at A9.

41. Rami Ruhayem, *Protests Engulf West Iraq as Anbar Rises Against Maliki*, BBC NEWS (Jan. 2, 2013), available at <http://www.bbc.co.uk/news/world-middle-east-20887739> (last visited Oct. 29, 2013).

42. See Parker, *supra* note 6, at 102-203.

43. Ruhayem, *supra* note 41.

44. *Id.*

45. David Ng, *The Impact of Corruption on Financial Markets*, 32,10 MANAGERIAL FIN. 822-36 (2006).

of foreign and local investments.<sup>46</sup>

Despite the fact that most countries in the world contain a certain degree of corruption, corruption has never prevented foreign investors from investing in these countries. However, the case is different with the 169th country of 175 listed that was awarded 18 points by Transparency International (TI) in 2012.<sup>47</sup> The worst part about this is the suspicions regarding the reconstruction efforts undertaken after 2003 among supporters and donors.<sup>48</sup> Corruption is a serious problem, especially in Iraq; Iraq is a country rich in natural resources where the rule of law has been weakened by consecutive wars and dictatorships. Therefore, Iraq is the victim of instability and punitive supervisory procedures. Furthermore, since the discovery of oil to the present date, Iraq has lost opportunities of economic recovery derived from large oil revenues. Corruption, as witnessed currently, is starting to nurture terrorism and deepen sectarian divisions. The failure of rehabilitating state institutions hinders the development of investment and business environments.<sup>49</sup>

Since 2004, there has been a constant series of corruption charges within the UN Oil-for-Food Program.<sup>50</sup> The scandal emerged after an Iraqi newspaper published a list of 270 persons that included UN officials, politicians, and company owners who made use of illegal oil transactions as part of the program. Thereafter, the U.S. Congress discovered that Saddam Hussein had accumulated a staggering amount of USD 17.3 billion from such transactions, of which USD 13.6 billion were with neighboring countries.<sup>51</sup>

46. *Id.*

47. *Corruption Perceptions Index 2012*, TRANSPARENCY INT'L, available at <http://transparency.org/cpi2012/%20results> (last visited Oct. 29, 2013).

48. M. Cherif Bassiouni, *Postconflict Justice in Iraq*, 33 HUM. RTS. 15 (2006).

49. See Charles Tiefer, *The Iraq Debacle: The Rise and Fall of Procurement-Aided Unilateralism as a Paradigm of Foreign War*, 29 U. PA. J. INT'L L. 1 (2008); Ryan J. Liebl, *Rule of Law in Postwar Iraq: From Saddam Hussein to the American Soldiers Involved in the Abu Ghraib Prison Scandal, What Law Governs Whose Actions?*, 28 HAMLINE L. REV. 91 (2005).

50. The Oil-for-Food Program was designed in 1996 at a cost of USD 60 billion to enable Iraq to buy food, medicine, and other necessary supplies using oil revenues. Back then, oil volumes had an impenetrable ceiling against the UN-imposed blockade on Iraq after its invasion of Kuwait in 1990. The program came to an end because of the invasion of Iraq in 2003 and the toppling of Saddam Hussein. See Joy Gordon, *When Unilateralism is Invisible: A Different Perspective on the Oil-for-Food Scandal*, 13 GLOBAL GOVERNANCE 59 (2007).

51. Independent Inquiry Committee into the United Nations Oil-for-Food Programme, Report on the Management of the Oil-for-Food Programme, Volume II—Report on

The UN received backlash for being the entity responsible for the program.<sup>52</sup> This led the UN to set up a three-member independent committee, presided over by Folker, for investigating the charges. The investigations resulted in corruption charges against officials, companies,<sup>53</sup> and organizations.<sup>54</sup> The program damaged the reputation and credibility of the UN, and was described as the largest financial scandal in history.<sup>55</sup> Astonishingly, Iraqi brokers accused of suspicious dealings have emerged once again to contribute to the reconstruction stage in Iraq.<sup>56</sup>

With the arrival of U.S. Forces in Iraq, reconstruction finances started to flow into the war-torn country.<sup>57</sup> What happened to such finances? Washington provided a total of USD 60 billion to reconstruction efforts and USD 146 billion in the Iraqi currency.<sup>58</sup> However, Iraqi citizens have not benefited considerably from these funds. How then was the money spent? Recently, the Iraqi Ministry of Electricity failed to satisfying the needs of the electricity despite “the true price of Iraq’s power crisis is not just the \$40bn it costs the Iraqi economy annually, but also the growing frustration of the Iraqi populace that suffers with only four-five hours of electricity each day.”<sup>59</sup> Portable

Investigation (Sept. 7, 2005).

52. *Id.* at 3.

53. A key figure of the scandal was Benon Sevan, the former director of the program, who pleaded not guilty to all bribery or complicity charges leveled against him. Kojo, the son of UN Secretary General Kofi Annan, has been proven to have received payments from Cotecna, another suspicious person. *See id.* at 71-72.

54. Investigations included French company Total, as well as international companies from the Middle East and Russia, in addition to security companies. *See id.* at 29-30.

55. The wider scale of this scandal was all about the future of the UN, with the so-called Neo-conservatives in the United States adding fuel to the fire as an indication of the UN’s incompetence. Senator Norm Coleman, head of the Congressional Investigation Committee, called for Annan’s resignation. *See* Nile Gardiner, *The White House Should Call on Kofi Annan to Resign*, THE HERITAGE FOUNDATION (Dec. 15, 2004), available at <http://www.heritage.org/research/reports/2004/12/the-white-house-should-call-on-kofi-annan-to-resign> (last visited Nov. 7, 2013).

56. Gordon, *supra* note 50. The provisional Iraqi Government conducted routine investigations in 2005 but never came up with a decision. *Id.*

57. David Caron, *The Reconstruction of Iraq: Dealing with Debt*, 11 U.C. DAVIS J. INT’L L. & POL’Y 123, 126 (2005).

58. *See* STUART W. BOWEN, A FINAL REPORT FROM THE SPECIAL INSPECTOR GENERAL FOR IRAQI RECONSTRUCTION, vii, 9 (2013), available at <http://www.sigir.mil/learningfromiraq/> (last visited Nov. 7, 2013).

59. *See* Shamsek Asad, Hussain Qaragholi & John Sachs, *Iraq’s Power Crisis and the Need to Re-engage the Private Sector – Smartly*, THE MIDDLE EAST ECONOMIC SURVEY (Feb. 6, 2012), available at <http://www.mees.com/en/articles/3923-iraq-s-power-crisis-and->

water supplies are cut off every other day. Conditions in the country are as poor as those in the “pre-Saddam” era and are worsening because of the terrorist attacks, which have claimed the lives of tens of thousands since 2003.<sup>60</sup>

Considering this situation, TI warned that reconstruction efforts may well turn into the largest corruption scandal in history<sup>61</sup> and stated that management of oil revenues must be more transparent and accountable<sup>62</sup> and a weak government, black market, and legacy of dictatorship form a dangerous corruption-breeding combination.<sup>63</sup>

George W. Bush faced strong pressure from opponents to unveil profiteering war-related activities in Iraq.<sup>64</sup> Henry Waxman, who presides over the Congressional Committee on Integrity and Government Reform, said, “[t]he money squandered or gulped by corruption as part of these contracts are infuriating and astonishing. We

the-need-to-re-engage-the-private-sector-smartly (last visited Nov. 7, 2013).

60. ANTHONY H. CORDESMAN, ECONOMIC CHALLENGES IN POST-CONFLICT IRAQ, CENTER FOR INTERNATIONAL AND STRATEGIC STUDIES, (2010), available at [http://esis.org/files/publication/100317\\_IraqEconomicFactors.pdf](http://esis.org/files/publication/100317_IraqEconomicFactors.pdf) (last visited Nov. 7, 2013).

61. See JEFFREY COONJOHN, CORRUPTION IN POST-CONFLICT ENVIRONMENTS: AN IRAQI CASE STUDY, (Kurdistan Center for Democracy in the Middle East, 2012), available at <http://www.kedme.com/Corruption%20in%20Post-Conflict%20Environments%2002.02.2012.pdf> (last visited Nov. 7, 2013).

62. TI recommended key steps to be adopted urgently before a “plague of corruption” amounts to inevitability and irreparability. International contractors operating in Iraq, according to the TI, must abide by the Anti-Corruption Law. Donors and allied forces are encouraged to adopt a stricter approach in dealing with the phenomena. TI indicated a highly corrupt post-war Iraq. See *id.*

63. Bribery has been rampant since the toppling of Saddam Hussein. Some contractors and government officials have conceded that corruption widely exists. The report lashed out at the U.S. policy of awarding investment contracts in Iraq, depicting the same as secretive and favoring certain large companies. TI agrees with some UN bodies, such as the UN global consultative body which reported that the U.S. awarded an oil investment contract to the Texas-based Halliburton run by Dick Cheney until Cheney was elected Vice President of the U.S. last December. A BBC team tracked down the missing billions in a house inhabited by Hazem Sha’alan, who was appointed minister of defense in the 2004 Iraqi Government in Acton, West London. Sha’alan and accomplices drained about USD 1.2 billion from the ministry by purchasing old military equipment from Poland while claiming it to be state-of-the-art and subsequently transferring the difference in money to personal accounts. Radi Ar-Radi, the judge who presided over the Public Commission on Integrity, said, “They failed to rebuild the ministry of defense, and hence the continuing violence and blood baths. Iraqis and foreigners are still slaughtered, and those corrupt officials are to be blamed for that. They are criminals.” Sha’alan was sentenced to death, but fled the country to avoid this sentence. See *id.*

64. See Jane Corbin, *BBC Uncovers Lost Iraqi Billions*, BBC NEWS (June 10, 2008), available at [http://news.bbc.co.uk/2/hi/middle\\_east/7444083.stm](http://news.bbc.co.uk/2/hi/middle_east/7444083.stm) (last visited Nov. 7, 2013).

may discover that it has been the widest profiteering process in history.”<sup>65</sup>

The Office of the Special Inspector General for Iraq Reconstruction (SIGIR) identified two reasons for the lack of tangible results from the reconstruction efforts in Iraq: (1) rampant corruption<sup>66</sup> and (2) economic mismanagement. However, the 2008 federal report revealed that the reconstruction policies adopted by Washington for Iraq failed owing to bureaucratic division inside the Pentagon and a lack of familiarity with the Iraqi society.<sup>67</sup>

Today, corruption is present in the Iraqi Government at all levels. Some ministries are obviously controlled by militias or organized crime bosses.<sup>68</sup> The Iraqi Government is incapable of enforcing the bare minimum of anti-corruption laws.<sup>69</sup> Furthermore, key Government officials boldly refuse to engage in or initiate any corruption case investigations. Consequently, the Commission of Integrity is not empowered to be a true investigative authority.<sup>70</sup>

Despite the powers of the commission associated with investigating corruption cases, it cannot fulfill its role because of fragile security and violent criminals who are controlling various ministries. It is impossible to investigate corruption cases without support from the police and government. However, in Iraq, such support does not currently exist.<sup>71</sup>

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65. *Id.*

66. An example cited by the report is USD 36 billion deal for military equipment, weapons, and communication gear for the Iraqi forces, but no one knows about the fate of this expenditure. The report also mentions that a U.S. company, DynCorp International, submitted USD 18 million in invoices for unjustifiable costs. Furthermore, large amounts have been mismanaged or squandered (e.g., a police training camp with a USD 43.8 million swimming pool which was never used). See Judith Richards Hope & Edward N. Griffin, *The New Iraq: Revising Iraq's Commercial Law is a Necessity for Foreign Direct Investment and the Reconstruction of Iraq's Decimated Economy*, 11 *CARDOZO J. INT'L & COMP. L.* 875 (2004).

67. James Glanz & T. Christian Miller, *supra* note 10.

68. Parker, *supra* note 6.

69. *Id.*

70. Special Inspector General for Iraq Reconstruction, *Report to Congress*, SIGIR OBSERVATIONS (July 30, 2012), available at [http://www.sigir.mil/files/quarterlyreports/July2012/Section1\\_-\\_July\\_2012.pdf#view=fit](http://www.sigir.mil/files/quarterlyreports/July2012/Section1_-_July_2012.pdf#view=fit) (last visited Nov. 7, 2013).

71. CRISIS GROUP MIDDLE EAST REPORT NO.113, FAILING OVERSIGHT: IRAQ'S UNCHECKED GOVERNMENT (2011), available at [http://www.europarl.europa.eu/meetdocs/2009\\_2014/documents/d-iq/dv/d-iq20111005\\_06\\_/d-iq20111005\\_06\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2009_2014/documents/d-iq/dv/d-iq20111005_06_/d-iq20111005_06_en.pdf) (last visited Nov. 7, 2013).



Accordingly, the commission investigators cannot be relied upon to detect criminal activities of persons protected by the influential, even to the extent that they cannot be protected in the course of any such investigation. Any comment about the ability of Iraqi institutions established to combat corruption to enforce anti-corruption laws is pointless. Another acknowledgment to be made here is that anti-corruption and law enforcement efforts have not been well planned in the consideration of rampant corruption, which has come to take various forms and become a means of profitable trade through which security and military positions are acquired in exchange for money.<sup>72</sup> Many officials receive bribes for these purposes. Corruption has become a human disaster, even a matter of life or death in Iraq, and has found its way into child vaccines, portable water, and admittance of fatal radioactive goods and foods into Iraq.<sup>73</sup> The pressing question here is: where do huge amounts of corruption-generated money go? And what reasons are behind the increasing rates of corruption?

Most of such corruption-generated money is used to finance and strengthen the ruling parties to ensure their survival and purchase secret accounts outside Iraqi borders. The rest of this money is used to finance and nurture terrorism. Increasing corruption rates are due to illegal uses of oil revenues, which have been on the rise because of increasing oil prices.<sup>74</sup>

### C. Diminished Infrastructure Capacity

In today's world, infrastructure receives outstanding importance, as it is the cornerstone of economic and social development. On one hand, infrastructure assumes the role of being the link between economic resources of a given country and production structures therein; on the other hand, it links production locations and markets, thus boosting

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72. Arming contracts and all security-related activities are corrupting-breeding arenas owing to the inability of the independent supervisory bodies to audit them under the pretext of national security. See Solomon Moore, *Secret Iraqi Deal Shows Problems in Arms Orders*, N.Y. TIMES (April 13, 2008), available at [http://www.nytimes.com/2008/04/13/world/middleeast/13arms.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2008/04/13/world/middleeast/13arms.html?pagewanted=all&_r=0) (last visited Nov. 7, 2013).

73. See Anwar Al-Hamdani, STUDIO 9/AL-BAGHDADIYA TV (2012), available at <http://www.albaghdadia.com/programs/politics-prog/studio9.html> (last visited Nov. 7, 2013) (in Arabic).

74. Patrick Cockburn, *Iraq 10 Years on: How Baghdad Became a City of Corruption*, THE INDEPENDANT (Mar. 4, 2013), available at <http://www.independent.co.uk/news/world/middle-east/iraq-10-years-on-how-baghdad-became-a-city-of-corruption-8520038.html> (last visited Nov. 7, 2013).

economic activities and their horizons and variety in addition to improving commercial activities and promoting easier establishment of service and production ventures.

As far as investment is concerned, in developing an efficient infrastructure, there is an urgent and inevitable need for attracting direct foreign investments (DFIs) while enhancing the competitive edge of the country concerned. Accordingly, the deteriorated infrastructure in Iraq sends a negative message to foreign investors, thus limiting investor-flowing opportunities. This is the impact of the abovementioned situation on economic growth and development.

Undoubtedly, the Iraqi economy suffers from out-of-date infrastructure, which is largely due to the wars in which Iraq has been involved<sup>75</sup> Iraqi infrastructure has experienced little improvement since 2003, such as construction of building roads and airports. However, the infrastructure, e.g., transportation and electricity utilities, are still victimized by out-of-datedness and governmental negligence.<sup>76</sup> It is worthy to mention that the low<sup>77</sup> electricity production rate has affected the performances of other sectors, particularly the industrial sector.<sup>78</sup>

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75. The Iraq-Iran war wreaked havoc in terms of infrastructure, followed by the First and Second Gulf Wars, which wiped it out. Acts of rampage, destruction, and looting also contributed to the current situation. Similarly, the electricity dilemma in Iraq started with a lack of basic materials and spare parts necessary for maintenance. Technical support for a grid station was also lacking due to the economic blockade imposed after the 1991 Iraqi invasion of Kuwait. The dilemma persisted up to 2003, after which Iraq only encountered slow-motion schemes in the form of specific investment targets for the electricity sector. Poor planning and rampant administrative corruption across the departments in the Ministry of Electricity account for this persistent predicament. See William Nordhaus, *The Economic Consequences of a War with Iraq*, YALE U. (Oct. 29, 2002), available at <http://www.econ.yale.edu/~nordhaus/iraq.pdf> (last visited Oct. 29, 2013); Asad, Qaragholi, & Sachs *supra* note 59.

76. Dahr Jamail, *A Country in Shambles*, AL JAZEERA (Jan. 9, 2012), available at <http://www.aljazeera.com/indepth/features/2012/01/20121411519385348.html> (last visited Nov. 7, 2013).

77. An annual growth rate of 2.8% during the 1990s has been achieved in terms of electricity production, marking a rate lower than the population growth rate. In return, electricity consumption has increased by an annual rough rate of 8%, marking a clear divide in the electricity production levels. Electricity station operation ratings have remained lower than needed; as a result, 25% of the institutional capacity in Iraq was hit despite an increase in electricity production over four years following 2003, with a total institutional capacity of 3550 megawatts in 2004, which increased to 5390 megawatts during 2005 only to regress to 4500 megawatts in 2006 owing to the increasing sabotage against electricity stations and towers. The Ministry of Electricity produced only 6850 megawatts in 2013, which means a daily operation capacity of 12 hours. See STATISTICS PRODUCTION ANALYSIS OF ELECTRIC POWER IN IRAQ, SUPERVISORY ANALYSIS 2014(2014) (in Arabic).

78. The low-capacity infrastructure in Iraq, especially in terms of electricity

Terrorist attacks pose a key danger to the shyly growing infrastructure, especially when it comes to electricity transmission towers and railways.<sup>79</sup> In fact, the lack of strategic thinking and appropriate execution of reformative schemes for institutions concerned with provision of the services needed for infrastructure rehabilitation and development has resulted in a ramshackle and deteriorated the national infrastructure.<sup>80</sup> Unfortunately, the excessively weak infrastructure has contributed to foreign investors' reluctance to invest in Iraq, as such infrastructure would increase operational and reach-out costs for local and international markets alike. Eventually, this situation discourages foreign investment in Iraq.

### III. DETERMINANTS OF LEGAL FRAMEWORK

This section highlights the nature of legal limitations that have relatively precluded foreign investment flows and distorted the investment environment. It further analyzes existing legal limitations, which can be classified into three levels:

#### A. *Inadequate Protection and Enforcement of Intellectual Property Rights*

Laws regarding intellectual property rights in Iraq do not comply with the provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in several respects. Copyright Law No. 3 of 1971 is not completely harmonious in its use of terms such as "author" and "original author" or in its references to the rights included in a copyright and for holders of such rights.<sup>81</sup> For example, the protection range set forth in the Copyright Law is narrow and only

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production, will impact all other sectors, particularly the industrial sector, given the urgent and inevitable need for projects to create electrically powered units. Given the abysmal distribution capacity of this sector and the resulting longer blackout periods, individuals and institutions, especially those in the private sector, have sought to come up with alternatives from private generators to make up for the power shortage. Such generators are fuel powered. This leads to increasing electricity costs and consequently higher direct costs in the form of higher production costs for production projects. Therefore, one may say that less efficient infrastructure is a major hindrance to investment. See *Why Business is Still in the Dumps*, THE ECONOMIST (July 1, 2010), available at <http://economist.com/node/16488938> (last visited Nov. 7, 2013).

79. Jamail, *supra* note 76.

80. Corbin, *supra* note 65.

81. See Bashar Malkawi, *Iraqi Patent Law: In Search of Compliance with TRIPS*, 37 INT'L REV. INTELL. PROP. & COMPETITION L. 591 (2007) [hereinafter Malkawi, *Iraqi Patent*].

provides for consolidated data without any reference to other articles,<sup>82</sup> while TRIPS provide for readable, selection-based, or content-order-based works.<sup>83</sup> Similarly, Malkawi noted that Copyright Law No. 3 of 1971 does not address whether the exclusive right to adapt a work includes the right to make a cinematographic adaptation of the work.<sup>84</sup>

Further, the protection term under the aforesaid Iraqi Copyright Law lags well behind TRIPS,<sup>85</sup> with the law providing for the first public issue as the commencement date for protection.<sup>86</sup>

The Trademark Law<sup>87</sup> violates the provisions of TRIPS in that it allows for the filing of appeals and application of decisions of the trademark registrar before the Minister of Industry and Minerals.<sup>88</sup> However, TRIPS provides for litigation before independent administrative and/or judicial entities.<sup>89</sup>

Moreover, despite the introduction of amendments to the Iraqi Trademark Law, it still lacks in the use of state-of-the-art technology in filing trademark registration applications, mainly because red tape procedures are time- and money-consuming as well as less effective.<sup>90</sup>

Regarding patents, pursuant to TRIPS, a patent must be a novel innovation and applicable industry-wide. However, compared to Article 27 of TRIPS, Iraqi Patent Law No. 65 of 1970 does not explicitly set forth patent-awarding requirements. Therefore, Iraqi legislators have made up for this shortcoming through Article 2 of Patent Law No. 65 of 1970, which was produced to fulfill the aforementioned requirements.<sup>91</sup>

In certain parts, Iraqi Patent Law No. 65 of 1970 goes further than

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82. Bashar Hikmet Malkawi, *Iraq's Accession to the WTO: Commitments and Implications*, 6 J. INT'L TRADE L. & POL'Y 14, 19 (2007) [hereinafter Malkawi, *Iraq's Accession*].

83. See Agreement on Trade Related Aspects of Intellectual Property at Art. 10.2, available at [http://www.wto.org/english/docs\\_e/legal\\_e/27-trips\\_04\\_e.htm](http://www.wto.org/english/docs_e/legal_e/27-trips_04_e.htm) (last visited Sept. 26, 2013) [hereinafter TRIPS].

84. See Malkawi, *Iraq's Accession*, *supra* note 82.

85. See TRIPS, *supra* note 83, at arts. 20.4, 6.

86. See *id.* at art. 12 (“[S]uch a term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.”).

87. It is worth mentioning that compatibility exists between the Iraqi Law and TRIPS in terms of the visual sensitivity requirement for trademarks. See Malkawi, *Iraq's Accession*, *supra* note 82.

88. *Id.*

89. See TRIPS, *supra* note 83, at art. 24.3.

90. See Malkawi, *Iraqi Patent*, *supra* note 81.

91. See Malkawi, *Iraq's Accession*, *supra* note 82.

TRIPS in that it includes even biological patents for development of methods of diagnosis and treatment, surgeries, and protection of flora and fauna. Accordingly, Article 3 of the law should be amended to accommodate exclusions provided for under Article 27 of TRIPS.<sup>92</sup>

The provisions of the law regarding “fair compensation” are ambiguous; an innovator may claim fair compensation from the relevant employer in return for such an innovation as long as the same is covered by the employment contract period, unless such a contract provides for a specific compensation for an innovation. This provision may well leave the door wide open for several predictions on accepting compensation, setting a fair compensation mechanism in accordance with the significance and importance of the innovation in question, and the entity associated with setting the compensation value.<sup>93</sup>

Once again, Patent Law No. 65 fails to refer disputes to judicial entities. Article 33 of the law allows for appealing a registrar’s decision to void a patent before the competent minister, while TRIPS provides for judicial referral to settle such disputes.<sup>94</sup> The protection period for an industrial prototype is seven years as per the Iraqi Patent Law No. 65, but 10 years as per TRIPS, in yet another violation of TRIPS.<sup>95</sup>

Furthermore, the Iraqi Government’s ability to enforce protection of intellectual property rights and enforcement of relevant laws is extremely weak. In addition, Iraqi laws on intellectual property rights lack procedural measures for border-based customs management when it comes to purchasing illegal copies of commodities and shipping them across borders amounting to violations of property rights.<sup>96</sup> Moreover, such laws are not enforced in the first place. For example, it is possible to find hacked copies in public stores. The Iraqi laws on intellectual property rights do not authorize competent authorities to self-act for

92. *Id.*

93. See Elizabeth Mirza Al-Dajani, *Post Saddam Restructuring of Intellectual Property Rights in Iraq Through a Case Study of Current Intellectual Property Practices in Lebanon, Egypt, and Jordan*, 6 J. MARSHALL REV. INTELL. PROP. L. 250 (2006).

94. See TRIPS, *supra* note 83, at art. 32.

95. See Malkawi, *Iraq’s Accession*, *supra* note 82, at 19.

96. It is hoped that the new intellectual property bill will comply with Articles 51–60 of TRIPS regarding the competent court judgment requirement to finalize customs clearance procedures of commodities suspected to be violating intellectual property rights. See 2013 INVESTMENT CLIMATE STATEMENT- IRAQ, U.S. DEP’T OF ST. (2013), available at <http://www.state.gov/e/eb/rls/othr/ics/2013/204661.htm> (last visited Nov. 5, 2013). For this purpose, a national committee has been established by the Council of Ministers of relevant Iraqi ministries, syndicates, trade bodies, and the private sector to draft a new intellectual property rights bill covering all related intellectual property rights. See *id.*

confiscating materials that are proven to be violating property rights. Furthermore, registry organizations in ministries and government bodies concerned with the protection of intellectual property rights are still using primitive tools that do not meet international standards. Finally, the Iraqi laws on intellectual property rights are dispersed under several laws managed by several bodies. Hence, there is an urgent need to consolidate all intellectual property rights under one easily referred to law.<sup>97</sup>

### B. Unclear Iraqi Laws for Ratification of International Arbitration Awards

Iraq is an active member of the Arab League of Nations, and in this respect,<sup>98</sup> the country is often governed by stipulations from the 1985 Riyadh Convention,<sup>99</sup> which provides a common framework through which member states enforce laws (including arbitration laws).<sup>100</sup>

According to Articles 251–276 of the country's civil laws, any arbitration proceedings taking place in the country are normally considered to be a domestic issue (even though it may involve a foreign party).<sup>101</sup> However, with recent changes in legislation, foreign nationals or parties can decide to choose foreign arbitration.<sup>102</sup>

Most states across the globe are common signatories to the New

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97. See Malkawi, *Iraq's Accession*, *supra* note 82, at 19.

98. According to Article 3 of Iraq's 2005 Constitution, "Iraq is a country of multiple nationalities, religions, and sects. It is a founding and active member in the Arab League and is committed to its charter, and it is part of the Islamic world. Article 3, Doustour Jaumbouriat al-Iraq [The Constitution of the Republic of Iraq] of 2005, available at <http://www.wipo.int/wipolex/en/details.jsp?id=10027> (last visited Nov. 4, 2013).

99. The Riyadh Arab Agreement for Judicial Cooperation was signed on June 4, 1983, in "Riyadh," by all the Council of Arab Ministers of Justice except Egypt and Islamic Republic of Comoros. *Riyadh Arab Agreement for Judicial Cooperation*, LEAGUE OF ARAB STATES (April 6, 1983), available at <http://www.unhcr.org/refworld/docid/3ac6b38d.html> (last visited Nov. 4, 2013).

100. *Id.* at art. 37. "Without prejudice to the provisions of Articles 28 and 30 of this Agreement, adjudications of arbitrators shall be recognized and executed by any contracting party in the manner stipulated in this part subject to the legal norms of the requested party, and the competent judicial authority of the requested party may neither discuss the subject of such arbitration nor refuse to execute the judgment, except in the following cases: (a) If the law of the requested party does not permit the settlement of the subject of the dispute by arbitration, (b) If the adjudication of the arbitrators is made in execution of a condition or arbitration contract that is void or has not become final, (c) If the arbitrators are non-competent under the contract or condition of arbitration or under the law on the basis of which the adjudication was made." *Id.*

101. Saleh Majid, *Arbitration in Iraq*, 19 ARAB L.Q. 267 (2004).

102. SHUBBER, *supra* note 1, at 139-140.

York Convention on the Recognition and Enforcement of Arbitrary Awards, but Iraq failed to be a signatory to the agreement and is therefore excluded from the convention.<sup>103</sup>

Requirements for the recognition and enforcement of foreign arbitration decisions in Iraq are unclear because the Law on Enforcement of Foreign Judgments in Iraq (No. 30 of 1928) and the Civil Procedural Law (No. 83 of 1969) do not regulate such decisions. Accordingly, foreign arbitration decisions may not be enforceable in Iraq, since this principle cannot be deduced from the provisions neglecting the same. Furthermore, Law No. 30 of 1928 has provided explicitly for the scope of enforcement in that it requires a decision or judgment to be handed down by a court formed outside Iraq for it to be enforceable in Iraq.<sup>104</sup>

Iraqi commentators adopt two opinions regarding this negative attitude: the first allows for enforcement, while the second denies such enforcement. Advocates of the first opinion say that foreign arbitration judgments can be enforced in Iraq despite the lack of a legal provision to this end. The argument behind this is that the Arbitration Section of Iraqi Civil Procedure Law No. 83 of 1969 does not specify judgments within the scope thereof.<sup>105</sup> Therefore, such scope cannot be restricted without an explicit legal provision. Accordingly, it covers national and foreign arbitration judgments, i.e., an absolute provision remains so unless restricted by another. According to this opinion, irrespective of whether foreign arbitration judgments are covered by international conventions for enforcement of foreign arbitrator's judgments,<sup>106</sup> they shall be enforced. Moreover, the acceptance of such enforcement in the country has become a principle of private law that is common across the

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103. Abdel Sattar al-Beriqdar, spokesman for Iraq's High Judicial Council, told RFE that Iraq is keen to join the 1958 New York Convention on the Recognition and Enforcement of Arbitrary Awards. *See generally Iraq Drafting International Arbitration Law*, RADIO FREE EUR. RADIO LIBERTY (2011), available at [http://www.rferl.org/content/iraq\\_arbitration/2320391.html](http://www.rferl.org/content/iraq_arbitration/2320391.html) (last visited Nov. 4, 2013). Despite the fact that Iraqi officials have indicated that they are going to sign the New York convention treaty, their failure to do so means that if a foreign national or company is to obtain an arbitration award against an Iraqi company (or individual), it will have to enforce the same through the courts. *See PAULSSON ET AL., FRESHFIELDS GUIDE TO ARBITRATION CLAUSES IN INTERNATIONAL CONTRACTS* (3d ed. 2011).

104. *See* Dr. Hamzeh Haddad, *Enforcement of Foreign Judgments and Award in Jordan and Iraq*, Lecture Before the IBA Conference of Bahrain (Mar. 8, 1989), in *ARAB INSTITUTE OF ARBITRATION & ADR*, available at <http://www.aiadr.com/aiadr%20re/2.pdf> (last visited Nov. 4, 2013).

105. *Id.*

106. Majid, *supra* note 101.

world, as any judgment so handed down in the country is required to be enforced. Hence, such enforcement is acceptable in Iraq as per Article 30 of the applicable Iraqi Civil Law, which provides the following: "Any matter not covered by the previous articles regarding conflict of laws shall be governed by the most common private international law principles." However, the second opinion rejects the above argument, as the advocates of the same are (rightly so) in favor of non-acceptance of foreign arbitration judgments in Iraq unless the same are regulated by international bilateral or multilateral agreements providing for enforcement of the arbitrators' judgments in the contracting country if Iraq is party thereto.<sup>107</sup>

In addition, enforcement of foreign arbitration judgments is one of the most common principles of the private international law worldwide, and hence, the potential enforcement thereof in Iraq pursuant to Article 30 of the Iraqi Civil Law may not be accepted in this respect because the aforesaid Article is restricted to a subject of the private international law or conflict of laws. It reads as follows: "Any matter not covered by the previous Articles regarding conflict of laws shall be governed by the most common private international law principles."<sup>108</sup> Considering the fact that enforcement of foreign arbitration judgments is not a case of conflict of laws, the said Article is not applicable thereto.<sup>109</sup>

Therefore, foreign arbitrator judgments including those handed down to settle foreign investment contracts are not applicable in Iraq unless provided for by international agreements. In any event, for the purposes of enforcement of arbitration decisions by the concerned executive authorities, the approval of such a decision by the competent court after payment of fees pursuant to Article 272 (F/1) of Iraqi Civil Procedure Law No. 83 of 1969 is a requirement of the Iraqi laws. The purpose of this procedure is to monitor the arbitrators' work through approval or revocation judgments handed down by the competent court on the ground that arbitrators are different from judges in terms of legal experience. Another reason is to ensure that the arbitrators' decisions are not illegal in either subject or form.<sup>110</sup>

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107. ABDUL HAMID EL-AHDAB & JALAL EL-AHDAB, *ARBITRATION WITH THE ARAB COUNTRIES* 230 (3d ed. 2011).

108. Majid, *supra* note 101.

109. EL-AHDAB, *supra* note 107, at 230.

110. Haddad, *supra* note 104.



### C. Institutional Capabilities of Iraqi Judiciary

Undoubtedly, the Iraqi judiciary has adopted a number of steps to win foreign investors interested in Iraq.<sup>111</sup> However, there are many

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111. In the aftermath of 2003, a new position was introduced in the Iraqi judiciary. Additionally, some key reforms were introduced in the Iraqi judicial system; e.g., the Supreme Judicial Council (SJC) was restructured by Provisional Civil Coalition Authority (PCCA) Order No. 35, whereby the SJC was assigned supervision of the Iraqi judicial system independently from the Ministry of Justice. The said order was followed by the PCCA-enacted Law No. 12 on May 8, 2004, which was designed to boost an independent judiciary by providing for administrative and financial independence of the SJC from the Ministry of Justice. See Benjamin B. Brockman-Hawe, *The Iraqi High Court: A Retrospective and Prospective View*, 14 TILBURG L. REV. 422 (2008). An independent judiciary is enshrined and well-established in the Iraqi Constitution under Article 47, which provides for establishing three federal powers in the State of Iraq, the independence of which shall be established by the Constitution: legislative, executive, and judicial powers. Each of these powers shall conduct their work under the "separation of powers" principle. See Bassiouni, *supra* note 48. Furthermore, the judicial power shall be independent, with duties and functions conducted by courts of various degrees and types. See Christina J. Sheetz & Matthew T. Simpson, *Symposium: Rethinking the Future: The Next Five Years in Iraq*, 24 AM. U. INT'L L. REV. 181 (2009).

Courts shall hand down their judgments pursuant to the applicable laws. In addition to this point, judges shall be independent and not subject by any power except that of the law in the course of conducting their duties. No power may interfere with judicial affairs or administration of justice. See Bassiouni, *supra* note 48.

Additionally, the Commercial Court has been created recently by virtue of the SJC Statement No. 136, issued on 01/11/2010, which is the first specialist court in Iraq to be assigned cases in which a party is a non-Iraqi. After the establishment of the economic open-door policy in Iraq, it has become inevitable to create commercial courts to assure investors of the presence of an impartial specialist court that allows for summary settlement of disputes. Furthermore, a foreign investor may not only plead before such a court in the course of legal proceedings marking disputes with private sector entities but also with entities from the Iraqi Government. The only difference between a commercial court and a court of first instance lies in the involvement of non-Iraqi litigants. However, in a commercial case with Iraqi litigants, a court of first instance shall be the competent court. See JUDICIARY, ESTABLISHMENT OF THE COMMERCIAL COURT (2010), available at <http://www.iraqja.iq/view.680/> (last visited Oct. 29, 2013) (in Arabic); see also Jordan E. Toone, Foreign Direct Investment in Iraq: Reassessing the Legal Framework, *BYU I.L. & MGMT. REV.*, (Sept. 25, 2012), available at <http://ssrn.com/abstract=2152037> (last visited Oct. 29, 2013). The first judgment of the Commercial Court revoked the decision of the Ministry of Industry and Minerals (MoIM), which was the defendant (the trademark registering party) on the French Veolia Environment and condemned the defendant for registering a trademark in the plaintiff's name pursuant to the legally applicable ways. Veolia Environment, the plaintiff, filed an application with the relevant department of the defendant to register its trademark, Veolia Environment, in several types of commodities and goods following the defendant's refusal to register the same on no legal grounds because the trademark was a two-word phrase, while the other trademark was a one-word phrase in upper case letters and placed inside a square frame. The trademark to which the subject matter of the case is related is not framed and is written in lower case letters. Therefore, no similarity exists between both trademarks, and thus, the case was dismissible.

challenges ahead, which are obstacles to creating a national world-class judiciary.

The challenge encountered by the Iraqi judiciary is the unmet dire needs of judicial institutions in terms of resources, training, and facilities. Lack of experience in foreign investment disputes, international arbitration, training for judges, and court officers or employees are the major concerns.<sup>112</sup> Foreign investors' trust the Iraqi judicial system has been compromised by political interferences with judicial work,<sup>113</sup> mainly in the form of personal safety threats against judges, thus undermining the efficacy of judicial institutions.<sup>114</sup> Furthermore, outdated legislations and delayed legal reforms undermine the integrity of the judiciary and Iraq's abidance to international obligations under international law.<sup>115</sup> Clearly, this leads to delayed judgments. As a result of the enforcement of the De-Baathification Law, many judges have been relieved of office on the grounds of being members of the Baath Party.<sup>116</sup> As a result, only 750 judges remain to

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Moreover, the court reviewed the original copy of the trademark layout and decided to appoint three judicial experts to look into the matter. They confirmed non-similarity between both trademarks and the subsequent cheating and deceiving of the public into buying trademarked commodities bearing misleading trademarks that are not identical. There is a clear verbal difference in the pronunciations of the trademarks, and hence, the experts grounded the report, which is valid for a judgment pursuant to Article 140 (1) of Evidence Law. The Court handed down its judgment based on Articles 5 and 10 of the Trademark and Commercial Logos Law No. 21 of 1957. See Commercial Court, Judicial B No. 315 / commercial court / 118 (2011) (in Arabic).

112. Court administrations still feature many administrative technique problems on a large scale, all of which are obsolete. Such techniques include keeping case records, not integrating records, and primitive and weak exchanges of information. These methods are causing a lot of concern owing to the resulting potential disclosure of case details. See U.N.E.P., IRAQ INSTITUTIONAL CAPACITY ASSESSMENT REPORT 18, 25 (2006), available at [http://www.unep.org/disastersandconflicts/portals/155/disastersandconflicts/docs/iraq/ICA\\_iraq\\_report.pdf](http://www.unep.org/disastersandconflicts/portals/155/disastersandconflicts/docs/iraq/ICA_iraq_report.pdf) (last visited Oct. 27, 2013); QED GROUP, LLC, IRAQ INSTITUTIONAL CAPACITY BUILDING (ICB) ASSESSMENT, USAID|IRAQ 2, 52 (May 2010), available at [http://pdf.usaid.gov/pdf\\_docs/PNADW087.pdf](http://pdf.usaid.gov/pdf_docs/PNADW087.pdf) (last visited Oct. 27, 2013).

113. A.B.A., JUDICIAL REFORM INDEX FOR IRAQ 35 (2006).

114. *Id.* at 29. Terrorist attacks against judges may well cast shadows on the country's judicial institutions because investigations and trials are usually followed by threats and violence against judges concerned, thus compromising their abilities to fairly and impartially look into cases. See *id.* Most judges lack knowledge of personal security details or sufficient training therein. *Id.* Other areas of lacking include provisions of a judicial safe house, safe workplace, and firearms license. *Id.* A total of 58 judges and 70 judicial officers were killed between 2003 and 2012. See *Martyrs of Judges*, Iraqja.iq (May 30, 2012), available at <http://www.iraqja.iq/shheedq.php> (last visited Nov. 5, 2013) (in Arabic).

115. A.B.A., *supra* note 112, at 19.

116. Jeffrey J. Coonjohn & Zuhair al-Maliki, *Chaos in the Courts Can Iraq's*

serve nation-wide judicial needs. Despite the fact that the appointment of judges is a top priority for the SJC, it has been slow and accompanied by a lack of experience among new judges in handling specific issues such as foreign investment disputes.<sup>117</sup>

#### IV. PILLARS OF THE INVESTMENT ENVIRONMENT SUFFER SUBSTANTIAL CRACKS

Although Iraq has taken significant steps to create an attractive and competitive investment environment together with the enactment of Investment Law No. 13 of 2006 and establishment of the National Investment Commission, which has given way to rising hopes of strong Iraq-bound foreign investment flows, the following limitations account partly for foreign investors' reluctance to flow into Iraq.

##### A. Imbalance in Investment Commissions

The facilitating procedures of foreign investors' dealings with government commissions in the investment hosting country would normally mark a positive economic and commercial activity encouraging attitude.<sup>118</sup> Therefore, the Iraqi Investment Law No. 13 of 2006 provides for establishing investment commissions<sup>119</sup> that shall be responsible for developing and planning national investment policies, facilitating investment law enforcement by enacting regulations and directives, and monitoring the execution of strategic investment projects.<sup>120</sup>

However, the Iraqi National Investment Commission (NIC) was born politically dependent. Political rifts and corruption cast shadows

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*Embattled Chief Justice Fend-off Presidential Strategists*, JJCOONJOHN.COM (Feb 26, 2013), available at <http://jjcoonjohn.com/wp-content/uploads/2013/02/Chaos-in-the-Courts-.pdf> (last visited Oct. 27, 2013); Pfiffner, *supra* note 21. The Chief Justice was removed from service on the grounds of being a member of the Baath Party. Coonjohn, *supra*; Pfiffner, *supra* note 21. Jeffrey Coonjohn, a Senior Policy Advisor working in the Middle East, North Africa, and Central Asia commented, "Valentine's Day was none too sweet for Iraq's Chief Justice Medhat al-Mahmoud this year. Coonjohn, *supra* note 115; Pfiffner, *supra* note 21. The 79-year-old jurist awoke to find himself ignominiously ousted from his post as a result of having once been Saddam Hussein's personal legal advisor." Coonjohn, *supra*; Pfiffner, *supra* note 21.

117. A.B.A., *supra* note 113, at 18.

118. SHUBBER, *supra* note 1, at 48.

119. See The Investment Law Oct. 2006 Article 4, TRADE, available at [http://trade.gov/static/iraq\\_investmentlaw.pdf](http://trade.gov/static/iraq_investmentlaw.pdf) (last visited Oct. 27, 2013) [hereinafter *Investment Law*].

120. SHUBBER, *supra* note 1, at 49.

largely on the commission performance of the local NIC.<sup>121</sup> Political quotas played a key role in choosing NIC officers and employees, thus leading to incompetent individuals being entrusted with the responsibility of management of investment commissions.<sup>122</sup> Furthermore, the private sector, represented by high-profile businessmen or key investors, is not represented in the NIC board.<sup>123</sup> Much to Iraq's detriment, the non-professional administration of some investment commissions has led to politically-motivated decisions granting or denying investment licenses;<sup>124</sup> investment commissions have not been far from the government bodies causing corruption, of which the Commission of Integrity (CoI) has detected several cases of blackmailing foreign investors into bribing employees for completing or approving investments and disburse payments.

The NIC has not fulfilled its role, nor has it worked smoothly, as it failed to reconstruct a foreign investment friendly environment. Moreover, the NIC never had an investment advancement plan and even lacked a comprehensive vision to plan for foreign investment attraction.<sup>125</sup> All of this led to incorrect investment choices in terms of

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121. Consequences of political rifts in the Iraqi Government include lack of coordination concerning obtainment of approvals for key projects that end up rejected owing to the non-obtainment of necessary approvals because of political rifts in decision-making circles. See Hussein Tamimi, *Iraq Needs to Rehabilitate and Expand Infrastructure Investment through the Gate*, NENO'S PLACE (Jan. 17, 2013), available at <http://nenosplace.forumotion.com/1973-iraq-needs-to-rehabilitate-and-expand-infratstructure-investment-through-the-gate> (last visited Oct. 27, 2013).

122. See *Assessment of Current and Anticipated Economic Priorities in Iraq*, USAID-TIJARA at A-79 (2012), available at [https://tijara-iraq.com/?pname=resources\\_tech&doctype=21&t=Technical\\_Reports](https://tijara-iraq.com/?pname=resources_tech&doctype=21&t=Technical_Reports) (last visited Oct. 27, 2013) [hereinafter USAID]. In general, NIC employees show a very modest level of expertise and competence, especially in terms of mastering foreign languages, administrative systems, and e-control. *Iraq Investment Climate Statement Bureau of Economic, Energy, and Business Affairs*, IRAQPROJECT.COM, available at <http://iraqproject.com/investment-in-iraq/> (last visited Oct. 27, 2013).

123. See *Investment Law*, *supra* note 119.

124. The most critical point here is that investment commissions have lost their institutional professionalism regarding the vision behind establishment and performance. They are the victims of political pressures that have affected their performance. For such reasons, investment commissions have lost their credibility and necessary political support to interact effectively with investors and national institutions (as put forward by the Council of Representatives). See Rahim al-Uqaiee, *Corruption in Iraq Hampered Investment*, 117 JUDICIARY 12 (2012) (in Arabic).

125. The NIC does not have a clear-cut integrated plan for current or future investment opportunities. Qusay al-Abadi, a member of the Parliamentary Economy and Investment Committee, called to cancel the national investment for failing to ensure the success of the investment process in the country. See Ahmed Hussein, *Ebadi Suggests Canceling Iraqi*

servicing Iraqi development priorities.<sup>126</sup> In addition, the NIC could have played a greater role in supporting Iraqi legislators and the government via identification of key obstacles to foreign investment inflow, with a view to adopting appropriate solutions considering direct contact of the NIC with investors, which enables the NIC to spot obstacles to smooth inflows of foreign investments into Iraq.<sup>127</sup>

Iraq's foreign investment promotion policy has never been commensurate with the country's investment needs. Shortcomings in terms of promotion have been a key characteristic of the NIC; the NIC has never established a promotion unit through which it may raise awareness of the parties concerned through media campaigns, conferences, or websites, thus creating a "foggy" perspective in the already investor-reluctant investment environment.<sup>128</sup>

Furthermore, despite the participation of the NIC in international and national affairs, the organization needs more effective and active participation to attract individuals and corporations to Iraq by displaying available investment opportunities, distributing promotional booklets and holding direct meetings with key investors or companies to provide first-hand knowledge of investment projects in the country.<sup>129</sup>

In addition, the NIC Marketing Department lacks strategic means for targeting and building relationships with clients. Most NIC employees do not master communication and foreign-language skills. The mechanisms adopted to follow planning and project-licensing

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*National Investment Commission*, IRAQI NEWS (Oct. 11, 2012), available at <http://www.iraqinews.com/baghdad-politics/ebadi-suggests-canceling-iraqi-national-investment-commission/> (last visited Oct. 28, 2013); John Lee, *Sadrist MP calls for Abolition of NIC*, IRAQ BUS. NEWS (Jan. 11, 2013), available at <http://www.iraq-businessnews.com/?s=Failure+of+iraq+National+Investment+ Commission&x=42&y=16> (last visited Oct. 28, 2013); Qusay al-Abadi, *Call to Cancel the Investment Commissions*, ALL IRAQ NEWS (2012), available at [http://www.alliraqnews.com/index.php?option=com\\_content&view=article&id=:2012-10-11-16-37-41&catid=41:2011-04-08-17-27-21&Itemid=86](http://www.alliraqnews.com/index.php?option=com_content&view=article&id=:2012-10-11-16-37-41&catid=41:2011-04-08-17-27-21&Itemid=86) (last visited Oct. 28, 2013).

126. NIC suggestions, proposed by local investment commissions, should be studied, prioritized, and then listed as part of the wider national investment plan. See SUPPORTING INVESTMENT POLICY AND GOVERNANCE REFORMS IN IRAQ, *supra* note 4, at 16, 18.

127. The NIC argues that it has never been enabled to serve as an independent, empowered member to adopt an investment attraction and sustainment strategy, but suffers from governmental and political pressures. See *id.* at 20.

128. The NIC lacks sufficient and accurate information about the investment environment in Iraq, particularly about the legal framework to establish investments, seize available investment opportunities, and provide statistics and studies. See *id.* at 38.

129. See Mohammed al-Musawi, *Weaknesses in the Performance of Investment Commissions*, 18 AL-QADISIYA L. SCI. 350 (2013) (in Arabic).

processes such as design, purchase, production, distribution, marketing, post-transaction services, search, and development are still paper-based.<sup>130</sup> Furthermore, the NIC Department of Statistics has only limited and far from accurate statistics, which lack any classification or analyses. This leads to difficult investment decision-making in the light of uncertainties owing to a lack of a reliable database.<sup>131</sup>

The performance of the NIC has always been distorted by conflicts and interference with ministries. Despite entrusting the NIC with the responsibility of planning and executing investment projects, the investment and development departments in other government bodies that are entrusted with establishing ministry specific investments are still in charge of such planning and execution. This led to a lack of a comprehensive investment vision.<sup>132</sup> Therefore, the long-awaited objective of reconstructing the national economy has never materialized. This was further worsened by the presence of weak political will in standardizing the existing institutional framework of action, the controversial applicable laws, which are too ambiguous to settle such duplication of roles.<sup>133</sup>

The NIC-provincial investment commission relationship is all about interference in terms of power and capacities despite the supervisory powers given to the NIC and the requirements that such provincial bodies act in line with the National Investment Plan.<sup>134</sup> However, there is an objection to the non-regulation of potential conflicts between the NIC and provincial or territorial counterparts. A clear manifestation of this conflict materialized in cooperation cessation and contract termination threats delivered by the Iraqi Government to Shell and Exxon Mobil, should the latter sign contracts with the Government of Iraqi Kurdistan.<sup>135</sup> As explained by the Central Government, the reason behind such disputes is that the Kurdistan Board of Investment is not authorized to issue oil exploration

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130. See Zainab Abbas, *National Investment Commission Under the Hammer*, 18 AL-QADISIYA L. SCI. 350 (2011) (in Arabic).

131. SUPPORTING INVESTMENT POLICY AND GOVERNANCE REFORMS IN IRAQ, *supra* note 4, at 38.

132. USAID, *supra* note 122, at 27.

133. *Id.* at 38, 47.

134. al-Musawi, *supra* note 129.

135. The Exxon Mobil-Kurd oil deal spat spotlights Iraq's juggling act between politics and investments. See Alice Fordham & Dan Morse, *Exxon Mobil Dispute Deepens Arab-Kurd Split in Iraq*, WASH. POST (Apr. 5, 2012), available at [http://articles.washingtonpost.com/2012-04-05/world/35453128\\_1\\_kurdistan-regional-government-kurdish-region-exxon-mobil](http://articles.washingtonpost.com/2012-04-05/world/35453128_1_kurdistan-regional-government-kurdish-region-exxon-mobil) (last visited Nov. 4, 2013).

licenses.<sup>136</sup> The Iraqi Ministry of Oil continually requests that Kurdistan notify the ministry of all oil agreements signed by the latter with international companies.<sup>137</sup> In turn, the Ministry of Natural Wealth and Resources in Kurdistan argues that the Iraqi Constitution gives Iraqi provinces the right to enter into contracts with oil companies.<sup>138</sup> It appears that such disputes will persist because of the lack of legislation for regulating Iraqi oil wealth.<sup>139</sup> The Iraqi legislature is blamed for not referring to the legal personality of the governorate non-provincial investment authorities so that it can enjoy the same personality as the National Investment Authority in Baghdad. This lack of legal personality would limit their powers regarding issuance of investment licenses for investors considering such authorities' financial dependence.<sup>140</sup>

For these reasons, some Iraqi writers and officials have called for a "Supreme Investment Council" along the lines of the Supreme Energy Council, which was formed in neighboring Arab countries. This council is supposed to consist of the NIC, Ministry of Finance, Ministry of Planning, and representatives from departments of investment in other ministries and bodies under the management of the Ministerial Cabinet.<sup>141</sup>

The objective of setting up the Supreme Investment Council is to settle existing disputes between the NIC and ministries and standardize investment plans and efforts.<sup>142</sup> This can be realized by setting up the

136. The Iraqi Government declared the illegality of production-sharing agreements between foreign companies and the Kurdistan Regional Government. Rex J. Zedalis, *Iraqi Oil Revenues from its Sale: A Review of How Existing Security Council Resolutions Affected and the Past ad May Shape the Future*, 18 EUR. J. INT'L L. 499 (2007). For instance, Hussain al-Shahristani, Deputy Prime Minister of Energy Affairs, said, "Iraq was 'weighing measures' that it may take against Exxon after the company signed what the central government considers to be illegal contracts with the Kurds." *Id.*

137. See Johnny West, *Iraq's Last Widow: Diffusing the Risks of a Petro-State* (Ctr. For Global Dev., Working Paper No. 266, 2011); Abbas, *supra* note 130.

138. ZEDALIS, *supra* note 28, at 31.

139. Iraqi Oil Minister Mr. Ghadhban stated, "I am not optimistic that the energy law will be adopted in the coming months, and I would be happy if it is adopted by the end of the year." He also stated that, "The more the law is delayed, the more we will have problems such as the one with Exxon Mobil." See Kadim Ajrash & Nayla Razzouk, *Iraq's Oil Law May Be Pushed Till End of 2012, Ghadhban Says*, BLOOMBERG (Feb. 2, 2012), available at <http://www.bloomberg.com/news/2012-02-02/iraq-s-energy-law-may-be-delayed-for-rest-of-year-ghadhban-says.html> (last visited Oct. 30, 2013).

140. al-Musawi, *supra* note 129.

141. al-Abadi, *supra* note 125.

142. SUPPORTING INVESTMENT POLICY AND GOVERNANCE REFORMS IN IRAQ, *supra* note

proposed Supreme Investment Council, which will have the upper hand in decisions taken by ministries and the NIC, thus leading to the commitment of conflicting parties to the enforcement of the same. Considering its high-level political management, the Supreme Investment Council may well overcome the obstacle of political rifts. However, this study argues against the establishment of the Supreme Investment Council, thus adding another obstacle to the already obstacle-ridden institutional framework. The viability of a national investment commission under the role assigned to the Supreme Investment Council is questionable. If the solution is to introduce an administrative council, reform should be introduced *a fortiori* to the NIC. Accordingly, the key critique thrown at the suggestion lies in the violation of principles on which Investment Law No. 13 of 2006 is based.

#### *B. Bureaucracy in Land Allocation for Investment Projects*

In the pre-1991 war era, Iraq had an outstanding position in the Middle East thanks to its distinguishable abilities in public sector management, which used to have a segment of well-trained and highly qualified civil servants.<sup>143</sup> While good institutional capabilities still exist across several fields, the long years of war and international isolation resulted in the following issues: (1) diminished investments in key domains of public sector management which diminished the administrative capabilities of civil service; (2) very large numbers of public sector employees stemming from a lack of job opportunities elsewhere (the Iraqi Government has become one of the largest pools of employees worldwide); (3) limited e-governance and automation; (4) lower credit standards, higher corruption rates, and a weaker public sector; and (5) inefficient economic governance in general.<sup>144</sup> All these factors combine to yield a weaker and less efficient government, particularly when it comes to the ability to provide key services and assume responsibility for organizational responsibilities.<sup>145</sup>

The main shortcoming to be spotted here is the strictly central administration that rules by unquestionable orders and the

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4, at 37.

143. Coyne & Pellillo, *supra* note 6.

144. USAID, *supra* note 122, at 52.

145. See, e.g., ABBAS ALNASRAWI, THE ECONOMY OF IRAQ: OIL, WARS, DESTRUCTION OF DEVELOPMENT AND PROSPECTS, 1950-2010 168-169(2010); SUPPORTING INVESTMENT POLICY AND GOVERNANCE REFORMS IN IRAQ, *supra* note 4, at 102.



accompanying red tape that takes the form of a series of orders and bodes.<sup>146</sup> This type of administration has fallen afoul of requirements for investments because the latter requires simple, out-of-the-box, and swift mechanisms to come to fruition.<sup>147</sup>

Along with the complicated political transition, the administration related challenges prevented the enforcement of necessary structural changes to re-engineer the government and its mechanisms. Red tape, lack of administrative efficiency, and blackmailing investors are key obstacles to investments, as seen by Sami al-Aa'raj, head of the NIC.<sup>148</sup>

The One-Stop-Shop Authority (OSSA) is the only entity an investor would visit if willing to be in Iraq. The OSSA facilitates the investment process by equipping investors with the investment permit without interference by the bureaucratic red tape.<sup>149</sup>

However, the one-stop-shop policy has not eliminated the red tape; even by bringing investment and land allocation licensing processes to a more complicated level there is still the requirement to obtain approvals from a large number of ministries and bodies.<sup>150</sup> For example, considering Iraq's position as the world's second largest country with oil reserves, the exploration operations for which are still underway, approval must be obtained from the Ministry of Oil to establish an investment on a given part of land. Difficulties can be easily imagined if

146. See Coyne & Pellillo, *supra* note 6.

147. *Id.*

148. See Abdul Malik Mahmoud, *Investment in Iraq: Reality or Illusion?*, 83 ALRAUD MAG. 8 (2012). Abdullah al-Ismaili, head of Development Affairs at the Omani Gulf Energy Company, said that the investment process has several obstacles and red tape to the extent of scaling down ambitions of foreign investors, particularly in terms of obtaining licenses for investments and importing materials to be used for such investments. See al-Musawi, *supra* note 129. In turn, Taymour al-Byali, the representative of a U.S. construction company, said that the current situation in Iraq requires many measures, most of which are complicated. See Mahmoud, *supra*. Furthermore, the Vice President of the Parliamentary Committee on Provinces, Mansour at-Tamimi, told Free Iraq Radio that the investment problem in Iraq is very complex owing to myriad obstacles, highlighting that the way investors are dealt with is too poor for them to maintain their investments in Iraq. Accordingly, the investment environment has become repellent rather than attractive. At-Tamimi also revealed that the one-stop-shop has failed in terms of investment facilitation. Selling or leasing lands for purposes of investment is very complicated because of red tape and conflicts between investment authorities and institutional owners of such lands. See Abbas, *supra* note 130.

149. See JAMES A. BAKER III & LEE H. HAMILTON, THE IRAQ STUDY GROUP REPORT (2006), available at [http://media.usip.org/reports/iraq\\_study\\_group\\_report.pdf](http://media.usip.org/reports/iraq_study_group_report.pdf) (last visited Oct. 28, 2013).

150. SUPPORTING INVESTMENT POLICY AND GOVERNANCE REFORMS IN IRAQ, *supra* note 4, at 35-36.

the reply obtained from the Ministry of Oil is “oil or other sources of energy soil tests are not finalized.”<sup>151</sup>

The NIC is also required to obtain approvals from the Ministry of Water Resources,<sup>152</sup> Ministry of Electricity,<sup>153</sup> Ministry of Defense, Ministry of Interior,<sup>154</sup> Ministry of Finance,<sup>155</sup> Ministry of Construction and Housing,<sup>156</sup> Ministry of Environment, Ministry of Tourism and Antiquities,<sup>157</sup> and Customs and Free Zones Authority before any investment license can be issued.

Considering the inherent red tape and delays, obtaining approvals from the aforementioned departments inevitably leads to significantly delayed efforts by the NIC, especially because of the political disputes between the NIC and the political “references” of such ministries and bodies.

### C. Financial Markets

Any outdated legislation that regulates companies operating in the Iraqi financial market must be amended to catch up with the new Iraqi economic trend toward a market economy and to keep up with the

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151. Abbas al-Yasiri, *Corruption in the Form of Bureaucracy: The Investment Projects as a Case Study*, 79 J. KUFA U. 352 (2013) (Iraq).

152. Iraq is an agricultural country wherein the rivers Euphrates and Tigris flow in addition to many creeks and water bodies that irrigate vast agro lands. Therefore, the NIC must obtain the approval of the Ministry of Water Resources and the Ministry of Agriculture to ensure that there is no conflict between an investment and public or private rights on the site proposed for such investment. See Abbas, *supra* note 130.

153. Iraq has an electricity grid that encompasses almost every part of the country. Considering the severe power shortage, the Government has prioritized projects of the Ministry of Electricity. For its part, the NIC is committed to non-conflict with grid lines or the projects of the Ministry of Electricity. See Mahmoud, *supra* note 148.

154. Since 2003, Iraq has faced a wave of terrorism and instability causing change in heavy security forces across Iraqi cities. Therefore, it is the NIC's duty to avoid issuing an investment license unless approvals of security institutions are obtained first. See al-Musawi, *supra* note 129.

155. The Ministry of Finance is the body entrusted with allocating government-owned lands. *Id.* Therefore, it holds the power to allot a piece of land to the NIC. See *id.*

156. The Ministry of Housing exerts enormous efforts to build housing communities in a large number of governorates and on vast sites under a long-term plan to build five million housing units. *Id.* Accordingly, the Ministry of Housing must be contacted to ensure non-conflict with NIC projects. See *id.*

157. Iraq has been home to the civilizations of Babylon, Assyria, Sumer, and Akkad in addition to the Islamic civilization. Mahmoud, *supra* note 148. Because of this, monuments are almost ubiquitous, and excavation efforts for artifacts of these prior civilizations are underway in many sites. This has caused the NIC's commitment to not introducing investment projects that may be harmful to archeological sites. See *id.*

legislation regulating international financial markets.<sup>158</sup> A lack of legal protection takes away the confidence of Iraqi and foreign investors and capital owners and holds them back from operating effectively in such a market. Furthermore, this market suffers from weak monitoring tools and measures, which secures minimum disclosure and transparency for those concerned—a fact that has given rise to companies operating in the Iraqi market with limited finances, with the exception of banks that are required by the Central Bank to hold a minimum capital of 250 billion Iraqi Dinars, compared to 15 billion Iraqi Dinars for money transfer companies, 150 million Iraqi Dinars for exchange companies, 1–2 billion Iraqi Dinars for small- and medium-sized loan companies, and 150 million Iraqi Dinars for financial investment companies.<sup>159</sup> In addition, some companies have weak or limited databases, much to the detriment of investors in terms of taking safe and quick consultative decisions.<sup>160</sup> Other weaknesses include lack of flexibility in the prevailing interest rate structure, especially with banks and insurance companies that offer mid- and long-term loans for real estate purposes.<sup>161</sup>

#### V. DEMONSTRATION OF THE HYPOTHESIS: IRAQ RANKING IN INTERNATIONAL INDICATORS OF THE INVESTMENT CLIMATE

Many international bodies and organizations provide investors and decision makers with digital information that helps them make investment decisions. This help takes the form of a number of indices that clarifies the efficiency of an investment environment.<sup>162</sup> Statistical studies have proven that there is a close relationship between a country's rank on such indices and how much investment it attracts.<sup>163</sup> To boost the stance of this study and show how faulty governmental reforms have proven to be obstacles to foreign investment in Iraq, the

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158. See *Doing Business in Iraq: A Legal Guide*, ÇEKTİR & BAŞARI L. FIRM (2011).

159. See Daved Gartenstein-Ross & Joshua D. Goodman, *The Global Economic Crisis & Iraq's Future*, THE JEWISH POLY CENTER, available at <http://www.jewishpolicycenter.org/966/global-economic-crisis-iraq-future/> (last visited Oct. 28, 2013).

160. Benjamin B. Brockman-Hawe, *The Iraqi High Court: A Retrospective and Prospective View*, 14 TILBURG L. REV. 422 (2008).

161. THE WORLD BANK, REPUBLIC OF IRAQ: FINANCIAL SECTOR REVIEW 11(2012).

162. Daniel Kaufmann & Aart Kraay, *Governance Indicators: Where Are We, Where Should We Be Going?*, 23 WORLD BANK RES. OBSERVER 1 (2008).

163. UNCTAD, *supra* note 5.

following points examine Iraq's performance in the investment climate on the basis of international indices.

### *A. Index of Economic Freedom*

Economic freedom is one of the most important investment-attracting factors because it constitutes the best means for reaching an advanced level of growth and economic welfare. Economic freedom is measured using a number of variables that seek to figure out how open an economy is and how much the state interferes with its economy.<sup>164</sup>

Iraq has continued to miss a position on the 2013 index because of a lack of reliable data on economic liberalism within the country. Iraq has been categorized among the countries with zero economic liberalism, and a 4.9-point classification on the index during 1997–2001. In 2002, this classification went up to 5, which is the highest ceiling for a total lack of economic liberalism, thus marking an unmistakable situation of zero economic liberalism, a tighter grip on economic activities, and expansion of state or government control.<sup>165</sup>

To have the pre-2003 Iraq so classified among states with zero economic liberalism is a result that sounds pretty logical because of the economic policies and measures adopted by the country's pre-2003 governments. This period was an era of heavy state interference with its economy. However, in post-2003 Iraq, there has been an economic reformist approach with a view to larger economic liberalism. However, the steps adopted by Iraq have never been sufficiently convincing to merit any enhancement considered in its classification.

### *B. Ease of Doing Business Index*

The Ease of Doing Business Index, created and updated annually by the World Bank Group (WBG) and International Finance Corporation (IFC), is a compound index consisting of ten sub-components that make up the base for a business-doing environment. This index measures how a country's laws and governmental procedures affect its economic situation while focusing on the small-

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164. See *2013 Index of Economic Freedom: About the Index*, HERITAGE FOUND. & WALL ST. J. (2013), available at <http://www.heritage.org/index/about> (last visited Oct. 30, 2013). The Heritage Foundation introduced this index in 1995 in conjunction with the Wall Street Journal. Other bodies concerned with measuring economic freedom include the Fraser Institute of Canada and the Dubai International Financial Center (DIFC).

165. See *2013 Index of Economic Freedom: Iraq*, HERITAGE FOUND. & WALL ST. J. (2013), available at <http://www.heritage.org/index/pdf/2013/countries/iraq.pdf> (last visited Oct. 30, 2013).

and medium-scale enterprise sector with a view toward developing benchmarks for measuring and comparing business environment conditions in developed and developing countries.<sup>166</sup>

In 2013, Iraq ranked 165 out of 185 countries on the Ease of Doing Business Index, pushing it two ranks behind its placement in 2012. Iraq debuted on this Index in 2005, when it ranked 114 out of 155 countries, before moving behind to 145 out of 175 in 2006 and 146 in 2007 and 2008, with a persistent backward trend to 152 in 2009 and 166 in 2010 and 2011. These classifications explain the difficulties encountered by the Iraqi investment, which is additional proof of the futility of the post-2003 reforms.<sup>167</sup>

### C. Country Risk Rating

The country-based risk assessment indices include a number of indications for investment-hosting countries that affect the flow-in of foreign investments. These include political, economic, and financial risks. Iraq has always been ranked low on all these indices, which is further proof of the obstacles to investing in Iraq. The unanimous categorization of Iraq by all these indices indicates the height of the risks facing investments in Iraq. Country-based risk assessment indices are issued by several specialist bodies, and the following are some of them:

#### 1. International Country Risk Guide

The BRS International Country Risk Guide is a monthly guide first issued in 1980 that measures investment-related risks.<sup>168</sup> This guide covers 140 countries, including Iraq, which remained among the high-risk countries until 2012. From 2004 to 2007, Iraq was among the very high-risk countries but moved forward to the moderate risk category in 2008, only to move back to the high-risk category from 2009 to 2012.<sup>169</sup>

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166. *Ease of Doing Business and Distance to Frontier*, WORLD BANK GROUP & INT'L FIN. CORP. (2013), available at <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB14-Chapters/DB14-Ease-of-doing-business-and-distance-to-frontier.pdf> (last visited Oct. 30, 2013).

167. *Doing Business 2013: Economy Profile: Iraq*, WORLD BANK GROUP & INT'L FIN. CORP. (2013), available at [http://www.trade.gov/iraq/build/groups/public/@tg\\_iqtf/documents/webcontent/tg\\_iqtf\\_003994.pdf](http://www.trade.gov/iraq/build/groups/public/@tg_iqtf/documents/webcontent/tg_iqtf_003994.pdf) (last visited Oct. 30, 2013).

168. *International Country Risk Guide Methodology*, PRS GROUP (2013), available at <http://www.prsgroup.com/PDFS/icrgmethodology.pdf> (last visited Oct. 30, 2013).

169. *Political Risk Rating: Iraq*, PRS GROUP (2012), available at

## 2. *Euromoney Country Risk*

This index is semiannually issued by the magazine *Euromoney* to measure a country's ability to meet its foreign obligations, such as debt service, paying for imports when due, and freedom to transfer investment returns and capital. This index has nine sub-indices with various weights. The greater the percentage of an index, the lower the risk that a country would not meet its obligations.<sup>170</sup>

In total, 185 countries are covered by this index. According to the 2012 results, Iraq belongs to the high-risk category of states. In 2004–2011, Iraq has been swinging between the very high-risk to high-risk categories.<sup>171</sup>

## 3. *Institutional Investor Index*

The Investment Corporation index has been issued semiannually since 1998 and covers 173 countries.<sup>172</sup> Iraq was categorized among the high-risk countries during 2010–2012. From 2004 to 2009, Iraq was a very high-risk country, except for 2008 when it was a high-risk country.<sup>173</sup>

## 4. *Dun & Bradstreet Index*

This index measures country specific international commercial exchange-related risks, paying attention to assessing country specific risks that are not related to a country's ability to meet the obligations of not only debt repayment, investment capital and returns, and payment for imports to exporters, but also missed exportation and investment opportunities. The index in question depends on four categories of variables that cover political risks, macro-economic risks, external, and commercial risks.<sup>174</sup> Covering 132 countries, the index has classified

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[http://www.prsgroup.com/FreeSampleRequest.aspx?fs=/prsgroup\\_shoppingcart/freedata.aspx@@ctry\\_id=44](http://www.prsgroup.com/FreeSampleRequest.aspx?fs=/prsgroup_shoppingcart/freedata.aspx@@ctry_id=44) (last visited Oct. 1, 2013).

170. *World Risk Average*, EUROMONEY COUNTRY RISK (2013), available at <http://www.euromoneycountryrisk.com/> (last visited Oct. 29, 2013).

171. *Iraq's wiki*, EUROMONEY COUNTRY RISK (2014), available at <http://www.euromoneycountryrisk.com/Wiki/Iraq> (last visited Mar. 15, 2013).

172. *Global Rankings*, INSTITUTIONAL INV. (2013), available at <http://www.institutionalinvestor.com/Research/4143/Global-Rankings.html> (last visited Sep. 14, 2013).

173. *Id.*

174. *Country Risk Subscriber Zones*, DUN & BRADSTREET INDEX (2013), available at <http://www.dnbcountryrisk.com/?page=fcetryrisk1> (last visited Sept. 25, 2013).

Iraq among the highest risk group from 2004 to 2012.<sup>175</sup>

### 5. Coface Index

This index measures the risks related to a country's failure to repay its debts and highlights how corporate financial obligations are affected by the performance of the local economy, local political conditions, and economic relations with the outer world. Countries are classified into two key groups: (1) Investment Class Countries A, which branches out into four classes (A1–A4) and (2) Speculation Class Countries (B, C, and D). According to this 164-state index, Iraq belongs to Group 2, with a low class of D, i.e., Iraq is categorized as a high-risk country.<sup>176</sup> Two of the negative results that emerges from a Coface index of 2014 are “Ethnic and religious rivalries complicating the establishment of the rule of law and fuelling the risk of civil war; Insecurity and institutional weaknesses delaying reconstruction and investment”.<sup>177</sup>

### D. Transparency Index

The Transparency Index was started in 1993 by Transparency International, which defines “corruption” as “abuse of public office for private gain.” This index measures the transparency level by determining corruption levels among public servants and politicians.<sup>178</sup> Iraq was introduced to TI's reports in 2003. Iraq ranked 113 internationally and 16 in the Arab world, with a 2.2-point<sup>179</sup> index, dropping down to 2.1 in 2004 to rank 129 internationally and 17 in the Arab world. In 2005, the index went up to 2.2, leading Iraq to rank 137 internationally and 17 in the Arab world. Iraq dropped in 2006 and 2007 to international ranks of 160 and 178, respectively, and 17 and 16, respectively, in the Arab world, with a 1.9-point index in 2006 and 1.4 in 2007. In 2008, the status of Iraq worsened to hit 1.3, ranking 178, but went back up in 2009, 2010, and 2011 as ranking 176, 175, and 169,

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175. *Country Risk: Iraq*, DUN & BRADSTREET (2013), available at [https://www.dbai.dnb.com/int/en/dbai\\_frame.html](https://www.dbai.dnb.com/int/en/dbai_frame.html) (last visited Sept. 25, 2013).

176. *Economic Studies: Iraq*, COFACE (2013), available at <http://www.coface.com/Economic-Studies-and-Country-Risks/Iraq> (last visited Oct. 29, 2013).

177. *Economic Studies: Major Macroeconomic Indicators: Iraq*, COFACE (2013), available at <http://www.coface.com/Economic-Studies-and-Country-Risks/Iraq> (last visited Mar. 14, 2014).

178. *Who We Are: Our history, 1993 In the beginning*, TRANSPARENCY INT'L (2013), available at <http://www.transparency.org/whoweare/history> (last visited Oct. 29, 2013).

179. *Corruption Perceptions Index*, TRANSPARENCY INT'L (2012), available at <http://cpi.transparency.org/cpi2012/results> (last visited Oct. 30, 2013).

respectively, with 1.5, 1.8, and 18 points in 2012.<sup>180</sup>

The quoted indices simply add to a distrustful investment environment and the growing reluctance of investors to investing in Iraq owing to lack of transparent transactions.

### *E. Governance Indicator*

Governance Indices are issued by the World Bank Group following the collection of respective elements from various sources. These indices monitor governance and institutions entrusted with power in a given country. Such monitoring includes the mechanisms of electing, supervising, and replacing a country's government, a government's ability to develop and enforce sound and efficient policies, and respect from citizens and the state for institutions that govern a country's economic and social relations.<sup>181</sup> The Percentile Index is adopted here to figure out where Iraq stands among the rest of the world.

#### *1. Regulatory Quality Index*

This index develops perceptions of a government's ability to develop and enforce sound policies and regulations that help encourage private sector growth.<sup>182</sup> Iraq's ranks on this index have been 7.4/2003, 3.4/2004, 5.4 /2005, 6.9/2006, 7.3/2007, 13.1/2008, 16.7/2009, 15.8 /2010, and 12.8/2011. This is but an indication of the deteriorating and inefficient regulatory frameworks to bring investments into Iraq.<sup>183</sup>

#### *2. Government Effectiveness Index*

This index develops perceptions on the efficiency of public services and civil service and the degree of independence of the latter from political pressures. It also analyzes the sound mechanisms used for government policy development and enforcement, as well as the credibility of the government in terms of realizing these policies.<sup>184</sup> Iraq

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180. *Id.*

181. *The Worldwide Governance Indicators (WGI) Project*, WORLD BANK GRP., available at <http://info.worldbank.org/governance/wgi/index.aspx#home> (last visited Oct. 30, 2013).

182. *Regulatory Quality*, WORLD BANK GRP., available at <http://info.worldbank.org/governance/wgi/pdf/rq.pdf> (last visited Oct. 30, 2013).

183. *Worldwide Governance Indicators: Iraq Index*, WORLD BANK GRP. (2012), available at <http://info.worldbank.org/governance/wgi/index.aspx#reports> (last visited Sept. 16, 2013) [hereinafter Iraq Index].

184. *Government Effectiveness*, WORLD BANK GRP., available at <http://info.worldbank.org/governance/wgi/pdf/ge.pdf> (last visited Oct. 30, 2013).



has secured low ratings in this respect: 1.5\2003, 2.0\2004, 1.0\2005, 0.5\2006, 2.9\2007, 8.7\ 2008, 9.1\2009 & 2010, 10.4\ 2011.<sup>185</sup>

These ratings indicate the inefficiency of the Iraqi Government's administrative performance. This is no surprise considering the conditions of the Baath Government till its toppling by the Coalition Forces in 2003. Despite the little improvements made since 2007, the ratings remain below the investors' expectations.

### 3. *Index of Political Stability and Absence of Violence*

This index measures the perceptions of potential instability, such as potential government instability or toppling by unconstitutional means, and violent cases with political and terroristic motives.<sup>186</sup>

Iraq had very low ratings from 2003 to 2011: 0.5/2003, 0.0/2004, 0.5/2005, 0.0/2006, 0.5/2007, 1.4/2008, 2.4/2009, 1.9/2010, 3.8/2011.<sup>187</sup> These ratings reveal the country's unstable political situation and higher waves of violence and terrorism. Therefore, efforts must be exerted to alleviate political rifts and enshrine national interests for a better political reality, which is currently experiencing moderate improvement.

### 4. *Rule of Law Index*

This index evaluates the confidence of the parties working with the state in terms of the latter's commitment to sound legal practices as per the rule of law principle, especially as it relates to contract enforcement, property rights, police, and courts, while ensuring such parties have necessary protection against arbitrary orders or decisions in individual cases.<sup>188</sup> Iraq ranked low on this index between 2003 to 2011: 2.9/2003, 0.5/2004 & 2005, 1.0/2006 to 2008, 1.4/2009, 1.9/2010, and 2.3/2011.<sup>189</sup> These figures prove the lack of state prestige and omission on the part of public authorities to enforce applicable laws with equality and observation of realities in Iraq. Therefore, foreign investors may be dubious about the efficiency and enforceability of legal rules and regulations in the countries they intend to invest.

In a nutshell, and as suggested by these indices, the investment

185. Iraq Index, *supra* note 183.

186. *Political Stability and the Absence of Violence/Terrorism*, WORLD BANK GRP., available at <http://info.worldbank.org/governance/wgi/pdf/pv.pdf> (last visited Sept. 25, 2013).

187. Iraq Index, *supra* note 183.

188. *Rule of Law*, WORLDWIDE GOVERNANCE INDICATORS, available at <http://info.worldbank.org/governance/wgi/pdf/rl.pdf> (last visited Oct. 30, 2013).

189. Iraq Index, *supra* note 183.

environment in Iraq has consistently secured low rating despite moderate improvement in some of these rankings during different periods. However, improvements have not been made to the extent that enables the recovery of Iraqi investment environment. In contrast, Iraq still lacks a sound, healthy, and competitive environment, which would attract foreign investors. Therefore, a clear investment promotion strategy coupled with boosting the recent approaches adopted over the years that have shown the best index ratings for Iraq must be adopted.

## VI. ROADMAP: RECOMMENDATIONS THAT SHOULD BE ADOPTED

There is no “silver bullet” for foreign investor aversion to Iraq. Nevertheless, there are certain reforms that may well alleviate foreign investors’ concerns and establish a sustainable investment friendly environment.

The general reform framework is all about introducing constitutional amendments, combating terror under a rule-of-law approach adopted by a strong and transparent (both centrally and locally) government, and introducing incentive and guarantee-based pro-foreign investment legislation.

### A. Address Inherent Determinants

By showing that the Iraqi Government’s strategy did not effectively address these challenges, this subsection highlights the importance of creating a safe environment for foreign investors and dealing with the risks encountered by these investors Iraq by addressing the country’s security and political challenges, need for institutional reform by governance, and modernization of investment environment laws.

#### 1. Constitutional Revision

Constitutional revision of power distribution between the central government and Kurdistan Province on one hand and the central government and other non-provincial governorates on the other<sup>190</sup> is the

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190. The Iraqi Constitution adopted a federal system for dealing with the Kurdistan Province. Sabah Al-Bawi, *Influences of Ambiguity of Constitutional Provisions on the Administrative System of Iraq*, 33 U. PA. J. INT’L L. 1165, 1165 (2012). This system applies decentralized administration when it comes to the central government non-provincial governorate relationship. *Id.* Constitutional provisions are so unclear that several disputes erupted across various fields, casting shadows on foreign investment companies. *Id.* Furthermore, foreign investments that entered into oil contracts with the Kurdistan Province

starting point for constitutional reform. Despite the current decentralized administration of governorates, the current administrative structures adopt an unsteady approach toward Kurdistan, but a strong approach toward other governorates. Federalism and decentralized administration have not been enforced effectively in the modern sense of the concept, while public governorate-based directories are nothing short of “seconded” circuits of various centralized ministries.<sup>191</sup>

A reformist paper about the decentralization policy must address the administrative and structural organization at the province level, in the Kurdistan Province, in non-provincial governorates, roles and responsibilities at each level, mobilization and allocation of resources, institutional development, and capacity building. A reformist paper must be based on a comprehensive survey of all existing laws and practices that could be developed through consultative measures adopted in conjunction with the concerned parties.

The conflict of federal, provincial, and governorate laws that are not clearly regulated by the Constitution is a major obstacle to foreign investments in Iraq. Therefore, amending Article 115 of the Iraqi Constitution<sup>192</sup> is a key issue because the Article prioritizes the Province Law in reference to the distribution of powers in the event of a dispute with the federal government. In contrast, other specific Articles refer to the federal law as the dominating law when applied to cases of dispute between provincial or governorate laws. Surely, this trend is compatible with sound legal logic.

The other suggestion is amending Article 122.5 of the Iraqi Constitution, which allows Provincial Councils to disobey the laws of the central legislature. Paragraph 2 of this Article gives governorates large administrative and financial powers, but relevant laws do not identify such large powers. Accordingly, the provision results in a dispute between the central government, which is annoyed by the concept of powers, and the governorates, which demand an expanding

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have been penalized by the Iraqi Federal Government, which deems any contract it does not control as invalid. *See id.*

191. *See* Michael J. Kelly, *The Kurdish Regional Constitution Within the Framework of the Iraqi Federal Constitution: A Struggle for Sovereignty, Oil, Ethnic Identity, and the Prospects for a Reverse Supremacy Clause*, 114 PENN ST. L. REV. 707 (2010).

192. *See* Article 115, Doustour Joumhouriat al-Iraq [The Constitution of the Republic of Iraq] of 2005, which reads: “All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute.”

interpretation.<sup>193</sup>

Such disputes and conflicts have been a stumbling block to establishing a healthy foreign investment environment, even leading foreign investors to lose confidence in Iraqi laws. Penalties have been imposed on foreign companies owing to their agreements with Kurdistan without the consent of the federal government. These penalties have caused a hostile atmosphere between provincial councils and Kurdistan on one hand and the central ministries on the other.

Establishing a successful system for the distribution of wealth in Iraq requires a clear interpretation of Articles 111 and 112 of the Iraqi Constitution<sup>194</sup> up to enactment of the Oil & Gas Law. As a consequent step, the central government is required to develop and enforce transparency and accountability systems that ensure a better exploitation of resources out of decentralization; otherwise, state-driven anti-red-tape efforts will grow more costly, with more chances for wider-scale corruption. The central government can play a key role in formulating public policies to attract investors, controlling the public, evaluating institutions that are in direct contact with investors, and supervising the decentralized opportunities available for investment.

Promoting a pro-foreign-investment culture in local, closed communities is an essential effort that must involve better legal awareness of foreign properties. The federal government can contribute to the benefits of foreign investments. Furthermore, the social role of the government and civil society organizations may be evident in managing the means of contact with foreign investors and local communities to break the psychological barriers that form a part of the legacy of the colonization era further awakened by the 2003 occupation of Iraq.

## 2. *Strengthening Anti-Terrorism Efforts*

Boosting security stability is a key cornerstone to building an investment attracting environment. As far as decade long terrorism stricken Iraq is concerned, efforts of combating terrorism require the following:

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193. Al-Bawi, *supra* note 190, at 1167.

194. The Government of the Kurdistan Province insists on the "existing field" phrase in Article 112, which provides for the control of oil and gas matters by the oil-producing provincial and governorate governments. This means that newly discovered fields will be controlled directly by the relevant province and/or governorate. The Central Government, in turn, insists on Article 111 of the Constitution, which reads, "Oil and gas are owned by all the people of Iraq in all the regions and governorates." *See id.* at 1168.

### a. *Combating Terrorism Financing*

The government should consider adopting new legislation on confiscation of assets, money-laundering, and combating terrorism financing with a view to allowing more room for law enforcement that hinders financing terrorism and organized crime.

### b. *Fighting Terrorism According to the Rule of Law*

Iraq's anti-terrorism efforts should move ahead while focusing on the rule of law by litigating imprisoned terrorists using the applicable Iraqi laws. The government should ensure joint responsibility of all bodies concerned with enforcing applicable laws while moving ahead with the capacity building of key government bodies and officials to combat terror and international organized crime per existing laws. Furthermore, the government is required to work with the international community to update the laws and tools used to stand against fast-growing criminal and terrorist networks.

It is essential to exert tremendous effort to enforce court orders and judgments and step up cooperation between the judiciary and Judgment Enforcement Office of the Ministries of Justice and Interior. The unending prison breaks by terrorism condemned inmates must be stopped. Government officials should honor final judgments through improved administrative and criminal mechanisms.

### c. *Cooperating Widely in Counter-Terrorism Efforts*

The government should expand its cooperative efforts across its federal, provincial, and local system of government to combat terrorism, whether Iraq-based or otherwise. Careful exchanges of information between several government bodies, along with ensuring joint but carefully distributed roles and procedures between local anti-terrorism departments and all federal security agencies is the best means of combating major threats.

## 3. *Combating Corruption Flu*

Several agencies such as the Commission of Integrity,<sup>195</sup> the

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195. A key anti-corruption body was established by Decree No. 55 of 2004, which was issued by the Interim Coalition Authority. *About COI, COMM'N OF INTEGRITY*, available at [http://www.nazaha.iq/en\\_news2.asp?page\\_name=e2](http://www.nazaha.iq/en_news2.asp?page_name=e2) (last visited Oct. 30, 2013). A key distinctive feature of this body is its independence from governmental and parliamentary supervision. *Id.* The body was established to enforce the country's anti-corruption laws, public service standards, and conduct social awareness campaigns that add to stronger demands for transparent and accountable, clean leadership. *Id.*

Inspector General,<sup>196</sup> and the Board of Supreme Audit<sup>197</sup> assume the burden of combating corruption in Iraq. The growing corruption rates in Iraq are due to the double-control, balance, and law enforcement standards, with actions of the judiciary and parliamentary powers also being in a similar position. All the abovementioned bodies have been pressured to achieve certain results and have hence caused damage to the overall anti-corruption system. There are key procedures that should be established by the government for effectively combating corruption.

*a. Strengthening Anti-Corruption Institutions*

Effective leadership for any agency or organization is determined by the employment authority. In Iraq, integrity bodies still need to boost the appointment of Commission of Integrity employees and public inspectors by the House of Representatives, as provided for in relevant law, by moving away from the political quota-based trend. Filling future vacancies by means of the random choice of public inspectors by supervising bodies (such as the best employees of the Board of Supreme Audit) would be a means of ensuring fair appointments. The same applies to the Central Bank of Iraq and Office for Reporting Money Laundering. Moreover, procedures and measures requiring determination of beneficiary owners to prevent and disclose transfers of criminal revenues should be legislatively endorsed.<sup>198</sup> Furthermore, there is an urgent need to activate and build the capacities of the Office for Reporting Money Laundering of the Central Bank of Iraq and develop new systems to settle conflicts of interest between the integrity officers.

*b. Improving Accountability*

Better accountability practices require the adoption of a group of measures, such as annual submission of financial statements to the Board of Supreme Audit and House of Representatives, regulating

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196. This office was established by Decree No. 57 of 2004. MINISTRY OF OIL, available at <http://www.oil.gov.iq/> (last visited Oct. 30, 2013). It is charged with conducting reviews and audits of and investigations into ministerial works to check for any abuses of power and violations of laws governing public service. *Id.*

197. The oldest controlling institution as it dates back to 1927 as per Law No. 17. Board's Law, BD. OF SUP. AUDIT (2013), available at [http://www.d-raqaba-m.iq/pages\\_en/about\\_law\\_c.aspx](http://www.d-raqaba-m.iq/pages_en/about_law_c.aspx) (last visited Oct. 30, 2013). Formerly the Public Audit Office, it aims at conducting financial auditing to check corruption, fraud, and misuse of public funds for the purposes of disbursement and use. *Id.*

197 United Nations Convention against Corruption art. 52, Oct. 31, 2003, U.N. Doc. A/58/422.

disclosures of income and ensuring submission to the Commission of Integrity, including capacity building to use such disclosures to expose corruption, and developing integrity, accountability, and control capacities of parliament members and governorate board members, particularly in major fields such as oil and gas, public finance, public expenditure constraints, corruption, and law enforcement. Similarly, the containment of political influence to weaken the control and influence of government employees is required. Financing political parties and disclosure of sources thereof should be regulated. The enforcement of effective anti-corruption measures at supreme levels (including imprisonment sentences commensurate with relevant crimes), prevention of criminal revenues from falling into the hands of corrupt persons, and development and enforcement of long-term capacity-building programs for combating the corrupt practices of government officials at all levels of civil service are required. In addition, government capacity should be enhanced to combat corruption and nepotism through the promotion of a professional civil service that adopts transparent policies of human resources management, including the existing efficiency-based systems and clarifying the role of the applicable Code of Conduct. Iraq needs sustained assistance to establish an anti-money-laundering system in order to detect, investigate, freeze, confiscate, and return lost assets and to immediately boost initial legal cooperation with neighboring countries and countries further from its borders. Other steps include combating money laundering by enacting appropriate legislation, supporting strong capacity building efforts for the Office for Reporting Money Laundering, and establishing a monetary intelligence unit with the Central Bank of Iraq under strong and independent leadership. These steps should be followed by a list of public officials to be monitored and developed in this respect. Finally, control, monitoring, and supervisory bodies need a better level of inter-coordination, especially between the Board of Supreme Audit and Commission of Integrity.

*c. Complying With International Commitments*

Despite approving the United Nations Convention against Corruption by virtue of Law No. 35 of 2007, Iraqi legislators are required to adopt all necessary measures to ensure effective enforcement of the said Convention and observe the provisions thereof in all laws enacted thereby. To achieve this goal, it is time to approve Article 12 of the Convention, which regulates mechanisms of control, supervision, and accountability adopted by the State in cooperation with

the private sector. Furthermore, working on harmonizing internal codes of conduct for public servants and internationally and regionally approved rules is a must. Other measures Iraq needs to undertake include international cooperation to combat money laundering crimes and coordinate efforts for the same, approval of the principle of exchangeable international judicial assistance and international cooperation in criminal and civil fields, and confiscation of corruption-generated revenues and returning the same to the country of origin. Finally, electronic means for detecting and following up on corruption and cross-border corruption-generated revenues must be implemented.

#### *4. Rehabilitation of Infrastructure*

The Iraqi Government should take up achieving good economic growth ratings as a key priority, an endeavor that requires a comprehensive and advanced program to develop and enhance the existing infrastructure. The major challenge to this program is the electricity sector because securing current and future electricity needs by the most cost-efficient means is inevitable to push forward the country's economic growth and reduce production costs.

To upgrade the infrastructure in Iraq, the government should establish a supreme council for the reconstruction of infrastructure with the mission of planning, overseeing, and coordinating efforts of the concerned ministries in accordance with an explicit future vision. The proposed council needs specialist management in the field of infrastructure and economy. Further, the Iraqi infrastructure database should have complete and continuously up-to-date data. In addition, there must be a specialist bank concerned primarily with financing various infrastructure projects for low interest rate loans while seeking to manage such loans in a manner that secures necessary liquidity for infrastructure service projects without compromising the development of such services on the grounds of lack of necessary liquidity. Meanwhile, there must be deliberate and constant endeavors to encourage infrastructure-based investments in accordance with modern finance schemes such as concession and management contracts, which secure private sector involvement by realizing double digit return ratings in return for provision of quality services and maintenance for such projects. Unequivocally, this requires a competitive approach, private sector involvement, fewer restrictions to these markets, and regulation of the same as per market economy rules.



### B. Reform of the Legal Framework

The purpose of this subsection is to seek the relevant benefits and offer them in the form of a “guiding manual” for the Iraqi Government for use in order to handle its investment-environment problems, mainly by amending and modernizing investment environment laws.

#### 1. Activation of Protection of Intellectual Property

At the center of the reform efforts is the establishment of effective institutions to deter violations against intellectual property rights, which should begin in conjunction with the launch of a public awareness campaign to respect these rights. In a related development, unifying the rules of property rights scattered in several laws under a single law is also necessary. Likewise, legal wording contained in the legislation of property rights should be clear and not allow for more than one interpretation. Additionally, the country’s intellectual property laws should be identical to the provisions of the TRIPS agreement. These reforms as well as their role in the protection of intellectual property will lead to the acceleration of Iraq’s accession to the WTO.

#### 2. Enforcement of International Arbitration Awards

The Iraqi Investment Law allows for national arbitration as per Iraqi laws or international arbitration through referral to any internationally recognized arbitration body, as provided for under Article 27/4.<sup>199</sup> However, this Article is inconsistent with provisions of the Law on Enforcement of Foreign Judgments in Iraq No. 30 of 1928 because it does not include any provision for enforcing foreign arbitration judgments in Iraq. Furthermore, Article 1 of the aforesaid law requires that for a foreign judgment to be enforced in Iraq, it needs to be issued by a foreign competent court formed outside Iraq.<sup>200</sup>

As long as there is no law allowing for the enforcement of foreign judgments, Article 27/4 of the Iraqi Investment Law is futile. This is further complicated by the fact that Iraq is not a party to international conventions on arbitration. Consequently, as a procedural guarantee for settlement of investment disputes, efficient arbitration is up to standard

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199. National Investment Law [NIL] art. 27 (2007), available at [http://trade.gov/static/iraq\\_investmentlaw.pdf](http://trade.gov/static/iraq_investmentlaw.pdf). “If one of the parties to a dispute is subject to the provisions of this law, they may, at the time of signing the agreement, agree on a mechanism to resolve disputes including arbitration pursuant to the Iraqi law or any other internationally recognized entity.” *Id.*

200. Haddad, *supra* note 104.

in Iraqi legislation. Therefore, this paper proposes amendment of Law No. 30 on Enforcement of Foreign Judgments in Iraq of 1928 in order to provide for enforcement of arbitration judgments as per the terms and conditions required thereof.

The above analysis clarifies that the enforcement mechanism of foreign arbitration decisions has terminated all efforts exerted to identify or develop effective settlement mechanisms for foreign investment disputes in Iraq. Therefore, signing the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York 1958, has become inevitable because arbitration clauses in foreign contracts require enforcement of arbitration awards. This shall become a reality only by joining the said Convention, entering into bilateral international agreements, or enactment of a new Iraqi arbitration law.

### *3. Promote Judiciary Independence and Capabilities*

Iraqi courts are key players in investment dispute settlements. Accordingly, it is imperative for the courts to have the power to deal with foreign investment contracts. This shall be a key milestone to back up upgrading capacities and establishing judicial independence and security.

#### *a. Boosting Judicial Independence*

In seeking an independent judiciary, there is a dire need to provide a sufficient number of judges and judicial courts to boost the course of civil and commercial proceedings. Through judicial education and capacity building, the SJC will be able to maintain high professional standards for new judges. The much sought after independent judicial system can be shielded from political influence by enforcing laws that provide immunity to the judiciary. In addition, a relevant suggestion is making more information and statistics regarding cases available to the general public in order to spread awareness on legal culture and judicial transparency.

#### *b. Upgrading Judicial Capacities*

Judicial newcomers' capacities must be built alongside efforts to educate current judges through systemic training, continuous learning, and updating relevant curricula. The Judicial Development Institute assumes a key role in such continuous learning efforts. Long-term activities can be technologically updated along with state-of-the-art means of reviewing and presenting cases. Advanced training for the judiciary in commercial and civil laws, as well as effective use of the

commercial structure of cases and handing down judgments are among areas of desired development. Additionally, commercial and civil legal proceedings must be upgraded to promote a scientific and technical court environment. Systemic reviews and continuous improvements in enforcement of judgments (especially foreign arbitration judgments) and court orders will contribute to better judicial capacities.

### *c. Enhancing Judicial Security*

Judicial reforms in Iraq require short-term consideration of the joint responsibility of the Supreme Judicial Council (SJC) and the Ministry of Interior (MoI) for judicial security. This objective is attainable via a judicial security plan clarifying the MoI's or SJC's responsibility for judicial security. This plan shall cover details of personal security, court security, and safe and secure houses for judges.

## *C. Reorganization of the Investment Framework*

This measure aims to determine rehabilitation mechanisms of the investment framework—an objective achievable by discussing available solutions and recommending rectification of defects in the overall investment process.

### *1. Activating the Role of Investment Commissions*

The key suggestion for a reformist plan starts with the initiation of a comprehensive scheme concerning the Law of Civil Service and Public Administration. This scheme should enhance the links between civil service and administrative reforms, enhance public finance management, and build provincial capacities to provide non-central services.

Reforms of the Law of Civil Service should adopt the key values of modern management, namely efficiency-based appointments; performance assessments and evaluations; successful planning; role determination; delineation of responsibilities and relationships between civil servants, ministers, and other elected officials; and codification of ethical values and standards for the benefit of the society. In addition, there is a need to establish secondary legislation to strengthen the civil service compliance framework and links between civil service and administrative reforms.

In a nutshell, Iraq needs to establish integrated e-governance to wipe out forms of financial and administrative corruption and provide services (absent red tape) to investors through state-of-the-art e-portals across public institutions.

This study suggests entrusting the Ministry of Finance with obtaining approvals from the ministries and government bodies in the course of any potential investments. This is because the Ministry of Finance owns all public lands that are not allotted to other ministries or bodies. Thus, the Ministry of Finance is supposedly responsible for the determination of all land available for investments, contacting other ministries to ensure that these are free of current or proposed activities by such ministries, and establishing the viability of introducing investments thereto. This suggestion ensures full knowledge and determination of the lots available for investment and thus enhances investment planning and promotion. Another benefit is minimizing the red tape associated with obtaining a host of ministerial approvals.

### *2. Removal of Bureaucratic Obstacles*

For addressing institutional obstacles, it is hereby suggested to introduce a "Liaison Department" to serve as a linking point between the NIC and other ministries and bodies concerned, for better understanding and coordination. The suggested structure of such Liaison Department is based on assigning the management thereof to the NIC, with deputy ministers accounting for other members. Ministries that are directly concerned, such as the Ministries of Finance, Planning, Housing and Construction, and Industry, should be introduced as members of the suggested Department along with other members belonging to the ministries and bodies as needed in a manner commensurate with their roles in support investment projects.

### *3. Developing the Iraqi Financial Market*

There are a number of key recommendations to enhance the Iraqi financial market, the most significant among which is increasing cooperation opportunities between Iraqi financial market components in terms of their respective services and amending the existing financial and banking legislations that regulate and control operations of non-banking economic institutions to ensure compatibility with market-driven economy requirements, develop performance among such institutions, use e-systems to run their work, and ensure sufficient legal guarantees to win investors' trust. Relevantly, an extensive durable database must be created for public entities in the Iraqi financial market to enable decision makers to make objective decisions regarding entities working therein. Another key step is providing a non-banking financial entity friendly investment climate by encouraging the creation of market-making companies, investment guarantors, and finance

companies, including small and medium loan companies. Further, banks and companies must be encouraged to issue bonds allowed under Companies Law No. 21 of 1997, as doing so is a key tool to increasing capital and developing investment awareness of good revenues. Working on developing clear mechanisms and directives to transform the central Iraqi economy to a market-driven economy adds up to taking the aforementioned steps. These actions would help dispel the ambiguities, difficulties, and gaps posed by such transformation during the transitional period.

## VII. CONCLUSION

In today's critical stage of Iraq's modern history, efforts to attract foreign investors are underway. Foreign investors have always been reluctant to break into this harsh investment environment given its particularities, such as the military force driven transformation from a dictatorship to a democracy and the transformation from a socialist to a liberal system of government. This has resulted in Iraq's inability to apply democratic ways of government and its fragile relationship with liberalism, which hinders its financial and economic openness with the rest of the world widely. Further, the current socialist laws of commerce and economy are still in force alongside new liberal laws, thus leading to a conflict between laws meant to regulate the same aspects of an action.

Analytically speaking, this article has revealed the seriousness of the risks of investing in Iraq to foreign investors. In addition, this article spots the key obstacles in the Iraqi investment environment and provides suggestions for Iraqi legislators and government for the development and enhancement the investment environment. This conclusion requires further legislation tantamount to the International Investment Law in addition to ratification of relevant international conventions and consideration of the conclusion of more bilateral investment agreements; these measures would send positive messages about the seriousness of the incentives and legal guarantees for foreign investments in Iraq. Equally important is an appropriate consideration of the challenges being faced by the concerned investment authorities and public service bodies, as these may affect the efforts to enhance Iraq's worldwide rank in foreign investment. To a large extent, codes of shielding investment authorities against political influences should be adopted. Meanwhile, initiatives developed by investment authorities to attract foreign investors must be provided with political support.