

COALITION PROVISIONAL AUTHORITY ORDER NUMBER 39**FOREIGN INVESTMENT**

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA) and the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolution 1483 (2003),

Having worked closely with the Governing Council to ensure that economic change occurs in a manner acceptable to the people of Iraq,

Acknowledging the Governing Council's desire to bring about significant change to the Iraqi economic system,

Determined to improve the conditions of life, technical skills, and opportunities for all Iraqis and to fight unemployment with its associated deleterious effect on public security,

Noting that facilitating foreign investment will help to develop infrastructure, foster the growth of Iraqi business, create jobs, raise capital, result in the introduction of new technology into Iraq and promote the transfer of knowledge and skills to Iraqis,

Recognizing the problems arising from Iraq's legal framework regulating commercial activity and the way in which it was implemented by the former regime,

Recognizing the CPA's obligation to provide for the effective administration of Iraq, to ensure the well being of the Iraqi people and to enable the social functions and normal transactions of every day life,

Acting in a manner consistent with the Report of the Secretary General to the Security Council of July 17, 2003, concerning the need for the development of Iraq and its transition from a non-transparent centrally planned economy to a market economy characterized by sustainable economic growth through the establishment of a dynamic private sector, and the need to enact institutional and legal reforms to give it effect,

Having coordinated with the international financial institutions, as referenced in paragraph 8(e) of the U.N. Security Council Resolution 1483,

In close consultation with and acting in coordination with the Governing Council, I hereby promulgate the following:

Section 1 Definitions

- 1) “*Administrator*” means the Administrator of the Coalition Provisional Authority.
- 2) “*Business entity*” means any entity constituted or organized by law of any country, including, but not limited to, any corporation, partnership, joint venture, firm, enterprise, State-owned enterprise, organization, or other similar entity.
- 3) “*Foreign investment*” means investment by a foreign investor in any kind of asset in Iraq, including tangible and intangible property, and related property rights, shares and other forms of participation in a business entity, and intellectual property rights and technical expertise, except as limited by Section 8 of this Order.
- 4) “*Foreign investor*” means (a) a business entity constituted or organized under the law of a country other than Iraq; (b) a natural person who is (i) a national of a country other than Iraq, (ii) a stateless person not residing permanently in Iraq, or (iii) a national of Iraq residing permanently outside of Iraq; or (c) a business entity constituted or organized by any of the above under the law of Iraq; that is making or has made an investment in Iraq.
- 5) “*Iraqi investor*” means (a) a business entity constituted or organized under the law of Iraq other than by a foreign investor; or a natural person who is (i) a national of Iraq residing permanently in Iraq, or (ii) a stateless person residing permanently in Iraq; that is making or has made an investment in Iraq.

Section 2 Purposes

This Order promotes and safeguards the general welfare and interests of the Iraqi people by promoting foreign investment through the protection of the rights and property of foreign investors in Iraq and the regulation through transparent processes of matters relating to foreign investment in Iraq. This Order specifies the terms and procedures for making foreign investments and is intended to attract new foreign investment to Iraq.

Section 3 Relation to Existing Iraqi Law

- 1) This Order replaces all existing foreign investment law.

- 2) This Order is subject to revision by the Administrator, or to adoption or replacement by an internationally recognized, representative government established by the people of Iraq.
- 3) Future Orders or other guidance will be issued concerning various sectors of the economy.

Section 4 Treatment of Foreign Investors

- 1) A foreign investor shall be entitled to make foreign investments in Iraq on terms no less favorable than those applicable to an Iraqi investor, unless otherwise provided herein.
- 2) The amount of foreign participation in newly formed or existing business entities in Iraq shall not be limited, unless otherwise expressly provided herein.

Section 5 Trade Offices & Branches

A foreign investor may open trade representation offices and branches in Iraq; such offices and branches shall be registered with the Iraqi Registrar of Companies.

Section 6 Areas of Foreign Investment

- 1) Foreign investment may take place with respect to all economic sectors in Iraq, except that foreign direct and indirect ownership of the natural resources sector involving primary extraction and initial processing remains prohibited. In addition, this Order does not apply to banks and insurance companies.
- 2) Foreign investment may take place in all parts of Iraq.
- 3) A foreign investor shall be prohibited from engaging in retail sales, unless at least 30 days prior to engaging in such retail sales such foreign investor deposits \$100,000 in a non-interest-bearing account in a properly licensed Iraqi bank located in Iraq pursuant to procedures to be promulgated by the Ministry of Trade. Once a deposit is made pursuant to its procedures, the Ministry of Trade shall issue documentation to the foreign investor reflecting the authorization to engage in such retail sales. Such deposit must be maintained during the entire time that the foreign investor is engaged in retail sales; provided however, it shall be returned upon the request of the foreign investor at the completion of the retail sales activity.

Section 7
Implementing Foreign Investment

- 1) A foreign investor may implement foreign investment using, among other things, freely convertible currencies or Iraqi legal tender, in the following forms:
 - a) establishing a wholly foreign-owned business entity in Iraq, including as a subsidiary of a foreign investor;
 - b) establishing a business entity jointly with an Iraqi investor;
 - c) establishing a branch office, as set forth in Section 5 herein; and
 - d) directly acquiring an investment.

- 2) A foreign investor shall be authorized to:
 - a) possess, use, and dispose of its investments;
 - b) manage or participate in managing a business entity;
 - c) transfer its rights and obligations to other persons in accordance with the law;
 - d) transfer abroad without delay all funds associated with its foreign investment, including:
 - i) shares or profits and dividends;
 - ii) proceeds from the sale or other disposition of its foreign investment or a portion thereof;
 - iii) interest, royalty payments, management fees, other fees and payments made under a contract; and
 - iv) other transfers approved by the Ministry of Trade;
 - e) exercise any other authority conferred upon it by law.

- 3) The Finance Minister and the Minister of Planning may jointly issue regulations to assist in the implementation of this Order.

Section 8
Use of Real Property

- 1) After the date of this Order, unless otherwise permitted by law, a foreign investor or a business entity with any level of foreign investor participation may not under any circumstances purchase the rights of disposal and usufruct of private real property.
- 2) The duration of any license to use property shall be determined by the duration of operations related to the foreign investment. The initial term of a license shall not exceed 40 years, but may be renewed for further such periods. Licenses may be reviewed by the internationally recognized, representative government established by the people of Iraq upon its assumption of the responsibilities of the CPA.
- 3) If a business entity that is owned or controlled by a foreign investor or foreign investors is dissolved before the expiration of the license or lease, then the license or lease shall be terminated at the time of such dissolution.

Section 9
Insurance

A foreign investor shall be permitted to obtain insurance coverage for all aspects of its operation from any foreign or Iraqi source deemed appropriate by the foreign investor.

Section 10
Dispute Settlement

Disputes between a foreign investor and an Iraqi investor pertaining to investment in Iraq, or between a foreign investor and an Iraqi legal or natural person, shall be resolved in accordance with the dispute resolution provisions contained in any applicable written agreement governing the relationship between the parties. The parties may elect in any agreement to utilize the arbitration mechanisms outlined in Iraqi law.

Section 11
Dissolution of Entities

- 1) Within 14 days from the date of adopting a resolution or other instrument terminating the operations of a business entity that is owned or controlled by a foreign investor or foreign investors, the business entity with foreign investment shall submit the resolution or other instrument to the Iraqi Registrar of Companies.

- 2) Upon termination of operations and dissolution of the business entity with any level of foreign investment, any such foreign investor shall, consistent with Section 7 of this Order, have the right to transfer profits from the sale or liquidation to any foreign location, or as provided in a written agreement between the foreign investor and an Iraqi investor, provided that all amounts owed by such business entity to the government of Iraq and all Iraqi creditors have been paid in advance of the transfer.

Section 12
Tax Treatment

The Administrator may issue further orders to address the tax treatment of income derived from a foreign investment that is reinvested in a business entity in Iraq.

Section 13
Treatment of Investors

No legal text that impedes the operation of this Order shall hold and all investors, foreign and Iraqi, shall be treated equally under the law, except as otherwise specifically provided in this Order.

Section 14
International Agreements

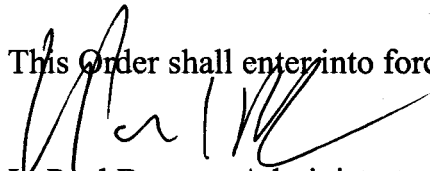
Where an international agreement to which Iraq is a party provides for more favorable terms with respect to foreign investors undertaking investment activities in Iraq, the more favorable terms under the international agreement shall apply.

Section 15
Evasion

Violations of Sections 6(3) and 8(1) of this Order may serve as a basis for suspension or cancellation of the rights of a foreign investor in Iraq that arise under this Order.

Section 16
Entry into Force

This Order shall enter into force on the date of signature.


L. Paul Bremer, Administrator
Coalition Provisional Authority