

Banking Law No. 94 of 2004

IRAQ

BANKING LAW

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Section 1 - General Provisions Article 1 Definitions For the purposes of this Law, the following terms shall have the meanings indicated below: "*administrator*" means, with respect to a domestic bank, any person who is a member of the board of directors, authorized manager or member of the audit committee of the bank, and, with respect to a foreign bank, a designated branch manager;

"*affiliate*" means a company that controls a bank, any other company that is controlled by the company that controls the bank, and any other company as determined pursuant to criteria specified in regulation by the CBI;

"*authorized manager*" means a person responsible for the management of the day-to-day operations of the bank;

"*bank*" means a person engaged in banking business including a state company organized under Law No. 22 of 1997 on State Companies;

"*bank holding company*" means a company that owns or controls a bank;

"*banking activities*" means the activities that are listed in Article 27;

"*banking business*" means the business of receiving deposits of money or other repayable funds from the public for the purpose of making credits or investments for its own account;

"*branch*" means a place of business forming a legally dependent part of a bank where all or some banking activities are conducted; for the purposes of this Law all domestic branch offices of a foreign bank shall be treated as a single branch office and all communications from the CBI to any such branch office may be validly made to the branch office designated by the foreign bank to the CBI for this purpose, or failing such notification, to a branch office selected by the CBI;

"*bridge bank*" means a bank referred to in Article 67A;

"*CBI*" means the Central Bank of Iraq;

"*control*" is deemed to exist over another company if a person:

(i) directly or indirectly, or acting through one or more persons owns, controls or has the power to vote 25 percent or more of the voting shares of the company;

(ii) has the power to elect a majority of the directors of the company; or

(iii) exercises a controlling influence as the CBI may determine.

"*credit*" means any disbursement or commitment to make a disbursement of a sum of money in exchange for the right to repayment of the amount disbursed and outstanding and to payment of interest or other charges on such amount, whether secured or unsecured, any extension of the due date of a debt, any guarantee issued, and any purchase of a debt security or other right to payment of a sum of money that may provide for the payment of interest either directly or by a discounted purchase price;

"*debt security*" means any negotiable instrument of indebtedness and any other instrument equivalent to such instrument of indebtedness, and any negotiable instrument giving the right to acquire another negotiable debt security by subscription or exchange; negotiable debt securities may be in certificated or

in book-entry form;

"*deposit*" means a certain sum of money paid to a person, whether or not evidenced by any entry in a record of the person receiving the sum, on terms under which the deposit will be repaid or transferred to another account, with or without interest or a premium, either on demand or at a time or in circumstances agreed to by or on behalf of the depositor and that person;

"*designated branch manager*" means a person notified to the CBI pursuant to paragraph (1), sub-paragraph (d) of Article 6 as being responsible for the operations in Iraq of a foreign bank;

"*dinar*" means the Iraqi dinar;

"*domestic*", when applied to a juridical person, means a juridical person whose head office is located in Iraq, and when applied to an office, means an office located in Iraq;

"*dormant account*" has the meaning given in Article 37;

"*fit and proper person*" means a person who is regarded as honest and trustworthy and whose professional qualifications, background and experience, financial position, or business interests do not disqualify that person in the judgment of the CBI to be an owner, administrator, senior bank official, conservator, or receiver of a bank, provided, however, that no person shall be regarded as a fit and proper person if the person:

(i) has been convicted by a criminal court of an offense for which the person was or could have been sentenced to imprisonment for a term of one year or more without the option of a fine unless such sentence was or would have been motivated by his or her religious or political views or activities;

(ii) has been declared bankrupt by a court of law within the past seven years;

(iii) has been disqualified or suspended by a competent authority from practicing a profession on grounds of personal misconduct unrelated to his or her religious or political views or activities; or

(iv) has been declared unfit to manage a company by a court of law or under an order issued by a competent agency;

"*list*" means the list of the names of banks in the register of banks published by the CBI;

"*foreign*", when applied to a juridical person or office, means a juridical person or office that is not a domestic juridical person or office;

"*person*" means a natural person or a juridical person, or both;

"*qualifying holding*" means a direct or indirect holding by a person acting alone or through or in concert with one or more other persons in an undertaking which represents ten percent or more of the capital or the voting rights or which makes it possible to exercise significant influence over the management of the undertaking in which the holding exists, as the CBI may determine;

"*related person*", in relation to a bank, means:

(i) any administrator of the bank;

(ii) any person who is related to an administrator by marriage, blood or kinship up to the second degree, including adopted children or foster children of the administrator, and any other person residing in the administrator's household;

(iii) any person who has a qualifying holding in the bank, and any undertaking in which any such person or any administrator of the bank has a qualifying holding, and any administrator of such person or undertaking; and

(iv) any undertaking, not subject to consolidation in the preparation of financial statements of the bank, in which the bank holds a qualifying holding, and any administrator of such undertaking;

"*representative office*" means a place of business forming a legally dependent part of a bank where activities are limited to the provision of information and liaison functions, and where no banking business is conducted and no deposits or other repayable funds may be received from the public;

"senior bank official" means a person (other than an administrator) who holds the title or, without regard to title, performs the functions of one or more of the following positions at a domestic bank or, in the case of a foreign bank, a branch in Iraq: chairman, director general, general manager, president, chief executive officer, chief operating officer, chief financial officer, chief lending officer, or chief investment officer. "Senior bank official" also includes any other person who is required by the CBI to comply with the requirements of paragraph

(4) of Article 18 of this Law.

"*subsidiary*" means any juridical person in which another person or group of persons acting in concert holds the equivalent of fifty percent or more of the voting shares of such juridical person; or a qualifying holding that permits such other person or group of persons to exercise effective control over the management or policies of the juridical person in which the holding exists;

"*Tribunal*" or "*Financial Services Tribunal*" means the Financial Services Tribunal established in the Central Bank of Iraq Law.

Article 2 Regulatory objectives

1 The primary regulatory objective of this Law is to maintain confidence in the banking system. Other regulatory objectives include those of promoting public understanding of the banking system by providing appropriate information, maintaining an appropriate degree of protection for depositors, and helping to reduce financial crime, including fraud, money-laundering and terrorist financing.

2 The CBI shall discharge its functions in a way which is compatible with the regulatory objectives and which the CBI considers most appropriate for the purpose of meeting those objectives. Actions by an entity of the government other than the CBI that affects a matter subject to the jurisdiction of the CBI shall be without legal force.

Article 3 Prohibitions

1 No person in Iraq shall engage in the banking business without a banking license or permit issued by the CBI, other than a person exempted by the CBI pursuant to paragraph (3) or paragraph (6). Except as otherwise provided by law, no person in Iraq shall engage in the business of receiving deposits or other repayable funds from the public without a banking license or permit issued by the CBI.

2. The following persons do not fall under the scope of this Law:

a. persons who fund the credits they make exclusively from non-repayable capital subscriptions, proceeds of credits received from financial institutions or debt securities issued in the capital markets; or

b. persons who, in exchange for the issuance of corporate debentures or corporate bonds, receive repayable funds from the public and use such funds solely for the purpose of making investments for their own account.

3. Persons who, by virtue of the cooperative nature and size of their operations, do not carry on banking business on a scale which requires a commercially organized business undertaking may be exempted by the CBI from the requirements of this Law, provided that

exemptions so granted by the CBI may be conditional or limited in time, or may be partial and list certain provisions of this Law that shall apply to such person.

2 No one shall use the word "bank" or derivatives of the word "bank" in any language in respect of a business, product, or service without a banking license or permit issued by the CBI, unless such usage is established or recognized by law or international agreement, or unless it shall be clear from the context in which the word "bank" is used that it does not concern banking activities. Representative offices shall not use the word "bank" in their name, except in cases where the word "bank" forms an integral part of the name of the foreign bank to which they belong, provided that, in such cases, the words "representative office" shall be added.

3 The CBI shall be empowered to enter the offices and to examine the accounts, books, documents and other records of any person if the CBI determines that there are reasonable grounds to suspect that such person engages in activities that are incompatible with the preceding provisions of this article; immediately upon the request of the CBI, law enforcement officials shall, if necessary by the use of force, assist the CBI to gain access to the premises of such person and to examine the accounts, books and other records of such person.

4 Activities performed pursuant to micro and small business credit access or similar grant programs by entities other than banks shall be permitted as authorized by entities exercising governmental authority. Such activities shall be exempt from the application of this law. Such entities exercising governmental authority shall provide notice and periodic reports to the CBI concerning their exempted credit access and grant programs.

Section 2 - Licensing

Article 4 Licenses and permits

1 Establishing a bank in Iraq, including as a majority or wholly-owned subsidiary of a

foreign bank or bank holding company, shall require the prior issuance of a banking license by the CBI. Establishing a branch or representative office of a foreign bank in Iraq shall require the prior issuance of a permit by the CBI. The subsidiary of foreign owned banks shall be required to have 50 billion dinars of capital. There is no restriction on where that capital is invested.

2 A license or permit granted under this Law shall be granted in writing for an indefinite period of time and shall not be transferable. The license or permit, or its attachments, shall specify the terms and conditions under which it has been issued. Compliance with all conditions relating to the issuance of a license or permit shall be a continuing requirement applicable to all licenses or permit holders, unless later modified by the CBI.

3. Licenses may be issued only to companies established in the form of juridical persons pursuant to the laws of Iraq and appropriately registered. Such companies may be wholly or majority-owned subsidiaries of a foreign bank or bank holding company. In the case of a

subsidiary, a license may be issued only if the parent bank is subject to comprehensive consolidated supervision by a supervising authority in the country in which the parent bank's head office is located.

3 Permits for branches may be issued only to foreign banks that are subject to comprehensive consolidated supervision by a supervisory authority in the country in which the foreign bank's head office is located.

4 Subsidiaries and branches of banks in part or totally owned by foreign persons are to be treated under the laws of Iraq in the same way as domestic banks.

5 A foreign person may hold shares in an existing or new domestic bank subject to any specific requirements of this Law and its implementing regulations.

6 A foreign person may not acquire a qualifying holding or control in a domestic bank unless that person is a foreign bank subject to comprehensive consolidated supervision by a supervisory authority in the country in which the foreign bank's head office is located or a multilateral development bank.

7 Foreigners can own banks or stock of banks only if they are a bank subject to consolidated supervision by a supervisory authority in another country.

Article 5 License application

1 Licenses shall be applied for in writing to the CBI. Applications shall be in such form and detail, and shall be accompanied by such documents, as shall be prescribed by regulation of the CBI.

2. For a company established in the form of a juridical person pursuant to the laws of Iraq the application shall include the following documents and information:

a. an authenticated copy of the instrument under which the applicant is formed, together with the memorandum of association or bylaws, if any, and the address of its head office;

b. the amounts of the authorized and subscribed capital of the applicant, including the amounts that have been paid in;

c. the name, nationality, permanent place of residence, and business or profession of every administrator, together with a statement detailing the qualifications and professional experience and at least three references for each administrator;

d. the name, nationality, permanent place of residence, and business or profession of every owner of a qualifying holding, including the ultimate beneficial owner of such qualifying holding, together with at least two references verifying good financial standing, and, in case the owner of a qualifying holding is a body corporate, copies of

the latest three audited annual financial statements, including balance sheets and profit and loss accounts, if applicable;

e. a list of shareholders and ultimate beneficial owners of shares stating the name, address and respective shareholding, and, for registered shares, a copy of the shareholder register.

f. for each administrator and owner of a qualifying holding, including the ultimate beneficial owner of such qualifying holding, an affidavit duly signed by the individual disclosing any convictions for offenses by a criminal court, personal bankruptcy filings, disqualifications from practicing a profession, or past or present involvement in a managerial function in a body corporate or other undertaking subject to insolvency proceedings, if any (the standard text for such affidavit to be determined by the CBI);

g. a business plan setting out the business objectives and types of activities envisaged for the proposed bank, including a description of its organizational structure and internal control systems (including adequate measures to counter money-laundering and terrorist financing as defined in the Anti-Money Laundering Law of 2004 (AML)) together with projected balance sheets, profit and loss accounts and cash flow statements for the next three full financial years;

h. a statement by an auditor indicating the auditor's undertaking to take on the external auditing function pursuant to Article 46;

i. for the applicant and for each owner of a qualifying holding, including the ultimate beneficial owner, as defined in the AML, of such qualifying holding, a list of undertakings in which participations exist, specifying the size of such participations and the registered addresses of those undertakings;

j. the location of the principal place of business and any other place in or outside Iraq where it proposes to conduct banking business;

k. proof of payment of the application fee;

l. such other information as the CBI may require for the purpose of the application; and

m. in any case where the applicant is a subsidiary of a foreign bank or bank holding company, a statement that the foreign supervisory authority responsible for the prudential supervision of the applicant in the country of formation of the foreign bank or bank holding company has no objection to the proposed establishment of operations in Iraq, and exercises comprehensive consolidated supervision over

the applicant

n. in any case where the applicant is a subsidiary of a foreign bank or bank holding company, a statement that the foreign supervisory authority responsible for the prudential supervision of the applicant in the country of formation of the foreign bank or bank holding company has no objection to the proposed establishment of operations in Iraq, and exercises global consolidated banking supervision over the applicant.

3. For companies that are not yet established pursuant to the laws of Iraq, the procedure for a banking license consists of two stages, namely, a first stage beginning with the submission of a preliminary application for a banking license by the founders of the company, and a second stage beginning with the submission of a final application for a banking license by the company after it has been established and appropriately registered in the commercial register. The preliminary application shall be accompanied by the supporting information and documents set out in paragraph (2), provided that, with the approval of the CBI, certain documents may be submitted in draft form. When, after having received a preliminary application for a banking license and having met with the founders and the proposed administrators of the bank, the CBI determines that the preliminary application and supporting documents are satisfactory, the CBI shall notify the applicants that their preliminary application is complete and request that the second stage be initiated by the submission of a final application for a banking license.

Article 6 Permit application for a branch

1. The CBI may permit the opening in Iraq of a branch of a foreign bank authorized to conduct banking business in the country of its formation. Branches of foreign banks shall be permitted to engage in any of the activities that are authorized for domestic banks, subject to the terms and conditions of their banking permits. Permits shall be applied for in writing to the CBI. Applications shall be in such form and detail, and shall be accompanied by such documents, as shall be prescribed by regulation of the CBI, and shall include:

a. the information and documents as set out in Article 5, paragraph (2), subparagraphs (a) through (g), (j) and (l), for the foreign bank as applicant, except that paragraph (2), sub-paragraphs (c) and (f) shall only apply to the senior administrator of the head office of the foreign bank;

b. the information and documents as set out in paragraph (2), sub-paragraphs (h), (i) and (k) of Article 5 concerning the proposed branch operation;

c. a certificate of designation specifying the name, nationality, permanent place of residence and business or profession of its designated branch manager, being the senior bank officer in Iraq responsible for carrying out the functions of the bank, together with a statement detailing such person's qualifications and professional experience and including at least three references.

d. for each administrator of the branch, an affidavit pursuant to paragraph (2), subparagraph (f) of Article 5;

e. a statement that the foreign supervisory authority responsible for the prudential supervision of the foreign bank in the country of its formation has no objection to the proposed establishment of a branch in Iraq, and exercises comprehensive consolidated supervision over the applicant; and

f. such other information as the CBI may require for the purpose of the application, including an undertaking by the applicant issued by the head office through its principal officer, supported by an appropriate resolution of its board of directors, that it will, on demand of the CBI, make available, in the currency and at such place as may be specified by the CBI, funds necessary to cover all obligations and liabilities incurred in the conduct of banking business authorized under the permit.

2. Following prior notification to and approval by the CBI, the main branch may open additional branch offices in Iraq, provided that one branch is designated a main branch of the foreign bank in Iraq where any process may be served.

Article 7 Permit application for a representative office

1 The CBI may permit the opening in Iraq of one or more representative offices of a foreign bank, provided such foreign bank is authorized to conduct banking business in the country of its formation. Representative offices shall limit their activities to the provision of information and liaison functions, and shall not engage in banking business or other similar activities or receive deposits or other repayable funds from the public in Iraq.

2 Permits for representative offices shall be applied for in writing to the CBI. Applications shall be in such form and detail, and shall be accompanied by such documents necessary for purposes of the permit application, as shall be prescribed by regulation of the CBI.

Article 8 Granting of license or permit

1 Within two months from the date of the submission of an application or preliminary application for a banking license or permit, the CBI shall notify the applicant whether the application is deemed complete. Within six months from the date of a notification by the CBI that the application is deemed complete, the CBI shall approve or reject the application and shall send the applicant a copy of its decision.

2 For final applications submitted pursuant to paragraph (3) of Article 5 the CBI shall render its decision within two months after the submission of such final application.

3 In exceptional circumstances, the CBI may extend the deadlines set out in paragraphs (1) and (2), provided it notifies the applicant of the reasons for the delay prior to reaching the deadline.

4. Before it approves an application for a banking license or permit, the CBI shall carry out financial, criminal, personal and professional background checks of owners of qualifying

holdings in the proposed bank and administrators of the proposed bank for which the application is pending. To that end, banks and other financial institutions subject to the CBI's oversight and the national and local tax collection and law enforcement authorities shall provide such information to the CBI as the CBI shall request. The CBI may contact any state or local agency or ministry including any government state ministry, or enforcement agency to request information that may be useful or

relevant for any bank license, permit or application. The CBI shall establish direct contact with the relevant foreign supervisory authority in order to verify statements provided pursuant to paragraph (2), sub-paragraph (m) of Article 5 or paragraph (1), sub-paragraph (e) of Article 6

4 Applications for a banking license or permit shall be rejected if the CBI is not satisfied that the conditions specified by or pursuant to this Law for issuing such license or permit are fulfilled. The CBI shall publish by regulation standards that it will apply in evaluating applications for a banking license or permit.

6. The CBI shall grant a license or permit on being satisfied regarding:

- a. the validity of the documents submitted pursuant to Article 5 or Article 6, as applicable;
- b. the financial status and history of the applicant;
- c. the character and professional experience of the administrators as fit and proper persons;
- d. the identity and character of the owners as fit and proper persons, in particular persons with qualifying holdings;
- e. the adequacy of the staffing, operational and financial resources and capital structure of the proposed bank to cover all obligations and liabilities incurred in the conduct of the proposed banking activities to be authorized under the license or permit;
- f. the soundness of the proposed operations;
- g. the viability of the business plan;
- h. the applicant's intention to maintain a physical presence at a fixed address in Iraq; and
- i. in any case where the applicant is a subsidiary or a foreign bank or bank holding company or concerning the permit for a branch of a foreign bank, that comprehensive consolidated supervision is exercised by the relevant foreign supervisory authority.

7. A decision by the CBI to grant a license or permit shall be notified to the applicant and published in the *Official Gazette* or if the *Official Gazette* is not available for such use on a

frequent basis, then published in a widely circulated general publication(s) (here after the "Official Publication.") Upon issuance of the license or permit, the bank shall be added to the list in the register of banks.

5 If a license or permit is denied, the CBI shall serve notice of the denial decision accompanied by a description of the reasons for the denial. If an application remains incomplete or fails to meet the requirements within three months following receipt of a notification by the CBI pursuant to paragraph (1) above, the applicant shall be regarded as having abandoned the application. In all cases, the applicant shall not be entitled to a refund of the application fees paid.

6 Banks must notify the CBI of any changes in circumstances that affect the statements they made in the license or permit application. A domestic bank shall obtain the CBI's prior approval for any proposed amendment to its instrument of formation or bylaws. Such amendment or change shall not enter into force until after the CBI has granted approval and such amendment or change has been recorded in the register of banks. A foreign bank holding a permit shall notify the CBI of any material changes to the

bank's instrument of formation without undue delay.

Article 9 Additional offices

No bank shall open a branch or representative office or establish a subsidiary in Iraq without first notifying and obtaining the prior approval of the CBI. No domestic bank shall open a branch or representative office or establish a subsidiary outside Iraq without first obtaining the CBI's prior approval. Banks shall notify the CBI of any change in location or closure of any branch, representative office or subsidiary.

Article 10 Register of banks

1 The CBI shall prepare and maintain a central register of banks for inspection by the public. The register shall record for each licensed bank and for each branch and representative office of a foreign bank holding a permit: the name, address and registration number, the date on which the license or permit was issued or revoked by the CBI, the instrument of formation and other statutory documents of the bank concerned, information concerning the administrators of the bank, including the scope of their authority to commit the bank, and the addresses of any domestic branch or representative offices and offices abroad, if any. Additionally, for branch offices and representative offices of foreign banks, the name and address of the head office of the foreign bank to which they belong shall be recorded. The entire list of license and permit holders, showing only the names, head office addresses, and type of license or permit held, shall be published by the CBI in the Official Publication during the month of January of each year. Any changes to the list that occur during the course of the year shall also be published in the Official Publication at regular intervals.

2 Banks must indicate their assigned registration number and include the head office address on all documents, authorizations, and papers used in their transactions.

Article 11 Fees

1 In order to cover part of its expenses associated with bank licensing and supervision, the CBI shall charge and collect an application fee on account of each application for a banking license or permit as well as a maintenance fee for each year that a banking license or permit is in effect.

2 The fee structure shall be specified by the CBI in regulation and shall reflect the size, volume and nature of business accounted for by banks. The CBI may take into account special supervision costs, if any, attributable to particular banking activities.

Article 12 Voluntary termination of operations

1 No bank may terminate its operations without first obtaining the CBI's prior approval to do so. A bank may be liquidated at the decision of its owners after the voluntary termination of its operations

has been approved by the CBI and a written request for the revocation of the license or permit has been submitted to the CBI.

2 The revocation shall not be granted unless the CBI determines that the bank has fulfilled, or settled in a manner acceptable to the CBI, all of the bank's obligations to its depositors and other creditors, customers, and employees.

3 Upon determination by the CBI that the bank has met the requirements under paragraph (2), the CBI shall revoke the license or permit.

Article 13 Revocation of banking license or permit

1. A license or permit may be revoked only by decision of the CBI on one or more of the following grounds:

a. the license or permit has been obtained on the ground of fraudulent statements or other material irregularities that occurred in connection with the application;

b. the bank has not made use of the license or permit within twelve months after the date of its effectiveness, or the bank has ceased for more than six months to engage in the business of receiving money deposits or other repayable funds from the public or making credits or investments for its own account;

c. the bank conducts its administration or operations in an unsafe or unsound manner;

d. the bank violates an order of the CBI;

e. the bank, in a manner which materially affects the financial soundness of the bank, violates a law, a regulation of the CBI, or any condition or restriction attached to a license or permit issued by the CBI;

f. the bank, or the foreign bank or bank holding company of which the bank is a subsidiary, or a subsidiary of the bank, has engaged in criminal activities constituting fraud, money-laundering or terrorist financing;

g. the foreign bank or bank holding company of which the bank is a subsidiary has lost its operating license;

h. the CBI is hindered in supervising the bank because the bank has moved all or part of its administration, operations, books or records outside Iraq without the prior written approval of the CBI;

i. the CBI is hindered in supervising the bank because the bank is a member of a group of companies, or because the bank is a subsidiary of a foreign bank or a bank holding company that is not adequately supervised; or

j. the foreign supervisory authority responsible for the supervision of the bank or the foreign bank or bank holding company of which the bank is a subsidiary has appointed a conservator or receiver for the bank, foreign bank or bank holding company.

2. The CBI shall revoke a license or permit:

a. at the time that bankruptcy proceedings are opened against the bank by decision of the Financial Services Tribunal pursuant to Article 78; or

b. pursuant to paragraph (3) of Article 12.

1 Decisions to revoke a license or permit pursuant to this article shall be in writing and include the grounds on which they are taken. Each such decision shall be promptly served on the bank concerned, registered in the register of banks and published in the Official Publication by the CBI. A decision taken pursuant to this article shall take effect at the time that it is served on the bank concerned, unless the decision specified another date for its entry into force not later than 30 days after the decision is served. The requirement of service of such decision on a foreign bank may be met by serving the decision on its designated branch office or representative office addressed by the decision.

2 Decisions by the CBI to revoke a license or permit pursuant to paragraph (1) shall include the appointment of a conservator in accordance with Article 69 to liquidate the bank.

Section 3 - Capital

Article 14 Minimum capital of domestic banks

1. The capital of a domestic bank shall be specified in *dinars*. A bank shall at all times maintain minimum paid-up capital that is not less than 10 billion *dinars* or such higher

amount as may be established by the CBI. Existing banks must reach this capital within 18 months of the effective date of this order.

2 No bank may declare, record in an account or pay to shareholders any portion of profits, or make any transfer of profits, if such transfer or payment results in a reduction of its capital or reserves below the minimum levels required under this Law or as required by regulation or order of the CBI.

3 No bank may distribute profits to shareholders before extinguishing all expenses related to the establishment and initial organization of the bank.

4 There is no limit to the amount of capital that can be placed in the bank in any given calendar period.

Article 15 [Reserved]

Article 16 Other capital requirements

1 Each bank shall at all times maintain capital, including its unimpaired capital and reserves, in Iraq of not less than the equivalent of 12 percent of the total value of its assets determined on a risk-adjusted basis, or such higher percentage as specified by regulation of the CBI, whereby not less than one-half of such capital shall consist of core capital. For the purposes of the application of this provision,

the CBI shall define the meaning of capital, core capital, reserves and categories of risk assets in regulations, and the definition and determination of capital, core capital, reserves and assets shall be consistent with international standards.

2 The amount of any holding of capital in another bank or financial institution shall be deducted from the bank's capital for purposes of calculating the ratio pursuant to paragraph (1).

3 The CBI shall specify by regulation principles for establishing and holding a bank's paid-up minimum capital.

Section 4 - Management of a Bank

Article 17 Board of directors of a domestic bank

1 The board of directors of a bank shall be responsible for conducting the business and establishing the policies of the bank. In particular, the board of directors shall establish the risk-management standards, investment policies, minimum prudential ratios, accounting standards and internal control systems of the bank.

2. The board of directors shall have not less than five members. The members of the board of directors shall be appointed at the general meeting of shareholders for a period of not more than four years; they may be reappointed for subsequent periods of equal length. At the general meeting of shareholders, the bank's shareholders may establish the remuneration for

members of the board of directors. The board of directors shall select a chairman from among its members.

3. The chairman and all members of the board of directors must:

- a. possess legal capacity and be fit and proper persons; and
- b. be at least 30 years old.

2 The majority of the members of the board of directors must have significant banking experience and shall not work full time for the bank.

5. A member of the board of directors may not be:

- a. an administrator or employee of another bank, unless the bank is a subsidiary of such other bank or both banks are under common control, provided that, in that case, such members may not constitute a majority of the members of the bank's board of directors; or
- b. a government official who heads a ministry or holds a cabinet position.

3 The members of the board of directors shall act honestly and in good faith with a view to the best interests of the bank. In carrying out their functions, they shall exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

4 The decisions of the board of directors shall be adopted by majority vote of the members present. If the vote is evenly divided, the chairman's vote shall be the deciding vote.

Article 18 Management

1 Subject to the provisions of paragraph (4) of this article, the board of directors of a domestic bank shall appoint one of its members as the authorized manager of the bank. The authorized manager is responsible for the implementation of the decisions of the board of directors and for the management of the day-to-day operations of the bank.

2 The board of directors of a domestic bank shall appoint a chief internal auditor who shall be a qualified member of a recognized professional association with extensive professional experience in the field of accounting or audit.

3 The board of directors of a domestic bank shall designate the compliance officer of the bank.

4. A person to be appointed to serve as authorized manager of a bank, designated branch manager, or other senior bank official as specified by the CBI, must:

- a. possess legal capacity and be a fit and proper person;
- b. possess the banking competence and expertise required for the conduct of banking operations;
- c. not be an administrator or employee of another bank; and
- d. reside in Iraq and engage full time in the management of the bank's operations.

4 The CBI may specify other senior bank positions, including chief internal auditor and compliance officer, to which the provisions of paragraph (4) above are applicable.

Article 19 Changes of administrators

1 Banks shall obtain the prior written approval of the CBI, subject to a determination by the CBI of the person's professional experience and qualifications as a fit and proper person pursuant to Article 17, paragraphs (3) through (5) or Article 18, paragraph (4), as applicable, before appointing or electing an administrator or senior bank official.

2 An administrator or senior bank official of a bank shall cease the administrator's or senior bank official's functions at the bank if the board of directors finds that the individual no longer meets one or more of the legal requirements for the position as specified in Article 17, paragraphs (3) through (5) or Article 18, paragraph (4), as applicable. The board of directors shall inform the shareholders of the bank of such finding.

3 Banks shall notify the CBI of the dismissal or the acceptance of the resignation of an administrator, as well as the reasons for said dismissal or resignation, within a period of three days of such event.

Article 20 Removal of administrators

1 An administrator who is removed by the CBI from office pursuant to paragraph (2), subparagraphs (h) through (j) of Article 56 may not be a member of the board of directors, the authorized manager or designated branch manager, or work in a senior bank position in any other bank.

2 A person who has been an administrator of a bank whose license has been revoked or whose involuntary liquidation has been decided during the administrator's term of office may not be an administrator or work in a senior bank position in another bank.

3 In exceptional circumstances, having been satisfied as to the qualifications, professional experience and conduct of a person, the CBI may exempt an administrator from the provisions of paragraph (2) after the expiration of an appropriate period following the relevant event, and from the provisions of paragraph (1) after the expiration of ten years following the relevant event.

Article 21 Disclosure of personal interest

1. Each administrator or senior bank official shall disclose in full to the board of directors any significant personal financial interests, directly or indirectly, that the administrator or senior bank official may have. Each also must disclose the same information for other individuals in the administrator's or senior bank official's household. Subject to paragraph

(2) of this article, such written disclosures shall be made by the administrator or senior bank official upon appointment or election, and annually thereafter, in accordance with guidelines adopted by the bank and pursuant to any regulations issued by the CBI.

2. Whenever any matter related to such significant personal financial interest comes up for discussion by the board of directors or in any other committee or working group of the bank with decision-making authority, the administrator or senior bank official concerned shall disclose the interest at the beginning of the discussion and shall not thereafter participate in the discussion, shall withdraw himself from the meeting while discussions on the matter are ongoing, and shall take no part in the decision on such matter; and the administrator's or senior bank official's presence shall not be counted for the purpose of constituting a quorum

Article 22 Changes in ownership and acquisition of qualifying holding

1 Any person, acting directly or indirectly or through or in concert with other persons, who proposes to acquire a qualifying holding in a bank, shall obtain prior approval of the CBI and shall give at least 90 days prior notice to the CBI.

2. The notice of proposed acquisition of a qualifying holding shall include:

a. the name, nationality, permanent place of residence, and business or profession of every proposed owner of a qualifying holding, including the ultimate beneficial owner of such qualifying holding, together with at least two references verifying good financial standing;

b. for each proposed owner of a qualifying holding, including the ultimate beneficial owner of such qualifying holding, an affidavit pursuant to paragraph (2), subparagraph (f) of Article 5;

c. in case a proposed owner of a qualifying holding or its ultimate beneficial owner is a body

corporate, copies of the latest three audited annual balance sheets and profit and loss accounts, if applicable;

d. a list of undertakings in which the proposed owner of a qualifying holding, including the ultimate beneficial owner of such qualifying holding, holds participations, specifying the size of such participations and the registered addresses of those undertakings;

e. the terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

f. the identity, source and amount of the funds to be used in making the acquisition;

g. any plans or proposals regarding a major change in the bank's business, corporate structure or management; and

h. such other information as the CBI may require.

2 The CBI shall assess the expected effects on the financial soundness of the bank and satisfy itself as to the identity and character of the proposed owners, in particular owners of a qualifying holding. The CBI shall not approve a proposed acquisition referred to in paragraph (1) if it would substantially lessen competition, jeopardize the financial soundness of the bank or endanger the interests of the bank's depositors.

3 Any person, acting directly or indirectly or through or in concert with other persons, who proposes to increase an existing qualifying holding in a bank in a manner that would reach or exceed a threshold of 20 percent, 33 percent or 50 percent of the bank's capital or the voting rights, respectively, shall give at least 30 days prior notice to the CBI.

4 Any bank becoming aware of a proposed acquisition of a qualifying holding in the bank or of a proposed increase in an existing qualifying holding in the bank pursuant to paragraph (4) shall give at least 30 days prior notice to the CBI, or once it becomes aware of such proposal, whichever is earlier.

5 Any bank becoming aware of circumstances that indicate that any of its owners and, in particular, owners of a qualifying holding, are no longer fit and proper persons, shall notify the CBI.

Article 23 Merger

1 No bank shall merge or consolidate with any other bank or acquire, either directly or indirectly, substantially all of the assets of, or assume liability to pay any deposits made in, any other bank except with the prior approval of the CBI.

2 Any bank which intends to engage in any merger, consolidation, acquisition or assumption of liability under paragraph (1) shall give at least 90 days prior notice to the CBI, and provide the CBI with such information as the CBI may require.

3 The CBI shall assess the financial and managerial resources and future prospects of the existing and proposed bank, and shall not approve the proposal unless the bank to result from the transaction would satisfy all criteria were it seeking to be licensed as a new bank. The CBI shall not approve a proposed transaction referred to in paragraph (2) which would substantially lessen competition unless any anti-competitive effects are clearly outweighed by the transactions' expected positive effects.

Article 24 Audit Committee

1. Each bank shall establish an audit committee. The audit committee shall be a committee of the board of directors and shall have the following duties and powers:

a. to review and recommend the approval of the accounting procedures, annual audit plan and accounting and risk management controls for the bank;

b. to recommend and approve an auditor for appointment pursuant to Article 46 as the bank's external auditor;

c. to review the external auditor's report on the bank's financial statements and to report any findings to the board of directors before the approval of the financial statements by the board of directors;

d. to request reports from the bank's chief internal auditor;

e. to monitor compliance with the laws and regulations applicable to the bank and report to the board of directors thereon;

f. to review reports to be submitted by the bank to the CBI;

g. to report on any matters submitted to it by the board of directors;

h. to review operations and transactions of the bank on the basis of plans adopted by the audit committee, at the request of the board of directors, at the request of shareholders together holding more than 10 percent of total voting rights, or as specified by the instrument of formation of the bank; and

i. to report at least annually to the bank's shareholders at the general meeting of shareholders on its activities.

1 The audit committee of a domestic bank shall have not less than three members. The members are appointed by the shareholders at the general meeting of shareholders of the bank from among the members of the board of directors for periods of not more than four years; they may be reappointed for subsequent terms of equal length. The chairman of the board of directors, the authorized manager, and any other officer or employee of the bank shall not be members of the audit committee. The shareholders at the general meeting of shareholders shall designate a member of the audit committee to be chairman of the audit committee.

2 The decisions of the audit committee shall be adopted by majority vote of the members present. If the vote is evenly divided, the chairman's vote shall be the deciding vote.

Article 25 Application of certain provisions

1 In the absence of specific provisions to the contrary set out in this Law, the provisions of the Company Law No. 21 of 1997, as amended, shall be observed regarding matters pertaining to the

board of directors, authorized manager and general meeting of shareholders of a bank.

2 For banks that are solely owned by the State, the Minister of Finance shall, on behalf of the State, exercise any powers granted to shareholders at the general meeting of shareholders under this Law. In the absence of specific provisions to the contrary set out in this Law, for banks that are solely owned by the State the provisions of Law No. 22 on State Companies shall be observed regarding matters pertaining to the internal organization and management of a bank.

Section 5 - Rules for the Conduct of Banking Activity

Article 26 General banking principles

1 Banks shall conduct their administration and operations in a sound and prudent manner and in accordance with the requirements of the law, any conditions and restrictions attached to their banking licenses or permits issued by the CBI, and the regulations, guidelines and orders issued by the CBI.

2 Banks shall: maintain adequate capital and liquidity; make adequate provision for depreciation of assets, for discharge of liabilities, and for losses; maintain adequate accounting and other records of business; observe sufficient and effective risk controls; and ensure that their assets are diversified as to risk of loss.

3 The CBI shall, by regulation, prescribe detailed standards of conduct for banks which the CBI shall apply in its prudential supervision in accordance with international standards and best practices.

4 The CBI shall issue regulations specifying how the operational requirements specified for banks by the provisions of this section, and in regulations issued by the CBI thereunder, apply to banks and their subsidiaries on a worldwide consolidated basis.

5 Banks shall not establish group structures that hinder the exercise of effective supervision. The CBI may issue regulations specifying rules regarding affiliates of a bank, in particular, concerning the requirements for transactions between banks and any affiliates that are not subject to consolidation in the preparation of financial statements.

6 The CBI shall issue regulations specifying how the operational requirements specified for banks by the provisions of this section, and in regulations issued by the CBI thereunder, shall apply to domestic branch offices of foreign banks.

7 Whenever an administrator of a bank discovers that the capital of the bank is less than the capital required by law or by regulation of the CBI, the administrator must promptly notify the CBI thereof.

8 The CBI may provide guidance, including by means of establishing rules for good business conduct, or specify by regulation rules to ensure the banks' good relations with their depositors and customers.

Article 27 Banking activities

1. A bank may engage in the following activities subject to the terms and conditions of its banking license or permit:

a. receiving money deposits (in the form of demand deposits, time deposits or other types of deposit) or other repayable funds, bearing interest or not;

b. extending credits (whether secured or not by collateral or liens), including without limitation: consumer and mortgage credit; factoring, with or without recourse; financing of commercial transactions, including forfeiting (purchasing negotiable instruments at discount without recourse); and financial leasing services; subject to regulation of the CBI, a bank may charge interest on interest, and the total amount of interest it may receive shall not be limited by the principal amount of a credit;

c. buying and selling for its own account or for the account of customers (including underwriting and brokerage services) of any of the following: money market instruments (including checks, bills of exchange, promissory notes and certificates of deposit); foreign currencies and precious metals; exchange and interest rate instruments; stocks and other transferable securities; and forward contracts, swap agreements, futures, options, and other derivatives relating to currencies, stocks, bonds, precious metals or interest rates;

d. entering into contingent commitments, including guarantees and letters of credit, for its own account and for the account of customers;

e. providing clearing, settlement and transfer services for money, securities, payment orders and payment instruments (including checks, credit, debit and other payment cards, travelers' checks; and bank drafts, wire transfers, and pre-authorized debits and credits);

f. money brokering;

g. safekeeping and administration of valuables, including securities;

h. providing trust services;

i. providing services as portfolio manager of securities or as financial adviser, agent or consultant;

j. providing financial information and credit reference services; and

k. anything that shall be incidental to the foregoing and such other activities, not prohibited by Article 28, as the CBI may by regulation authorize as banking activities.

2. The CBI may, in its discretion, and subject to such conditions as it may stipulate, require banks to conduct certain banking activities through separately capitalized subsidiaries that are wholly or majority-owned by the relevant bank.

Article 28 Prohibited activities

No bank shall engage in or participate as an agent, partner or co-owner in wholesale or retail trade, manufacturing, transportation, agriculture or fisheries, mining, building, re-insurance, insurance underwriting or other business activities except for activities that are authorized by Article 27. Notwithstanding the foregoing, and with the prior written approval of the CBI, a bank may temporarily

carry on or participate in the carrying on of such activities to the extent necessary to obtain satisfaction of claims, provided that the CBI may require the bank to cease such activities by a date specified in the license or permit.

Article 29 Prudential requirements

1 Each bank shall develop and maintain internal policies in the form of maximum and minimum ratios, exposure limits, risk-management standards, investment policies and other prudential ratios to be maintained by the bank concerning its assets, off-balance sheet items and various categories of capital and reserves. Such internal policies shall be consistent with regulations on prudential requirements issued by the CBI pursuant to paragraph (3) of this article.

2. In particular, banks shall establish and apply internal policies on prudential ratios governing:

a. their liquid resources in relation to the value or change in value of their assets (including guarantees and collateral received), or in relation to their liabilities, provided that banks shall be permitted to meet the requirements concerning liquid resources by maintaining with the CBI money deposits of an equivalent value;

b. the maximum aggregate amount of all or certain categories of their credits and investments;

c. the classification and evaluation of assets, and provisions to be made on the basis of such classification and evaluation, and the time when earnings on non-performing loans may no longer be accounted for as income except as received in cash; and

d. prohibitions, restrictions or conditions concerning: (i) the types or forms of credits and investments made, and liabilities assumed (contingent or otherwise);

(ii) matching as to maturity and interest in respect of assets and liabilities (contingent or otherwise); and (iii) unhedged positions, exceeding a specified ratio, in foreign currencies or precious metals; exchange and interest rate instruments; stocks and other transferable securities; and forward contracts, swap agreements, futures, options, and other derivatives relating to currencies, stocks, bonds, precious metals or interest rates.

2 The CBI shall by regulation prescribe prudential requirements as well as the common procedures and methods of calculation to be followed by banks in their application. The CBI may specify requirements, prescribed in response to exceptional circumstances, concerning the rate of interest, maturity and other conditions applicable to any type or form of financing extended or received (including deposits) or applicable to contingent liabilities.

Article 29A Net domestic assets required for branches of foreign banks

Each branch of a foreign bank, if so directed by the CBI, shall maintain in Iraq an excess of assets over its liabilities to third parties other than any other office, or any affiliate, or any subsidiary of the foreign bank in such amount, if any, as the CBI may direct.

Article 30 Large exposures

1. No bank shall grant credit to a person if as a result thereof:

a. the aggregate outstanding principal amount of all of the bank's credits to that person would exceed the equivalent of fifteen percent, or such lower percentage as specified by regulations issued by the CBI, of the bank's unimpaired capital and reserves (large credit exposure), without obtaining prior approval of the CBI;

b. the aggregate outstanding principal amount of all of the bank's credits to that person would exceed the equivalent of 25 percent, or such lower percentage as specified by regulations issued by the CBI, of the bank's unimpaired capital and reserves; or

c. the aggregate outstanding principal amount of all large credit exposures of the bank pursuant to sub-paragraphs (a) and (b) would exceed the equivalent of 400 percent, or such lower percentage as specified by regulations issued by the CBI, of the bank's unimpaired capital and reserves.

2. The limitations specified in paragraph (1) shall not apply to any principal amount of credit that is fully secured by readily marketable collateral in accordance with the standards prescribed for that purpose by regulation of the CBI, provided, however, that no bank shall grant such secured credit if, as a result thereof, the aggregate outstanding principal amount of all its secured credits to the person receiving such credit would exceed the equivalent of

20 percent of the bank's unimpaired capital and reserves, or such lower percentage as specified by regulations issued by the CBI.

3. The provisions of paragraphs (1) and (2) shall not apply to:

a. transactions with, or guaranteed by, the government;

b. transactions secured by obligations of, or fully guaranteed as to principal and interest by, the Government of Iraq or any agency or instrumentality of the Government of Iraq specified by the CBI by regulation;

c. transactions denominated in Iraqi dinars that are fully secured by deposits in a segregated account at the bank denominated in Iraqi dinars; and,

d. amounts paid against uncollected funds in the ordinary process of collection.

2 For the purposes of applying this article or any regulations issued pursuant thereto, a person shall be deemed to include any other person with whom such person is connected, directly or indirectly, in such a way that the financial soundness of any of them may affect the financial soundness of the other or others, or the same factors may affect the financial soundness of some or all of them, or if as a result of the structure of their relationship the other person is in fact ultimately responsible for the credit outstanding.

3 For purposes of this article and any regulations issued pursuant thereto, the term "bank" means, with respect to a domestic bank, the bank together with its subsidiaries and, with respect to a foreign bank with a permit to operate a branch in Iraq, its Iraqi branch or branches

Article 31 Transactions with related persons and senior bank officials

1. No bank may extend credit to a related person or senior bank official:

a. if, in the case of a domestic bank, the credit and its financial terms and conditions have not been approved by the board of directors;

b. if the credit is granted to an administrator or senior bank official of the bank and the credit would cause the aggregate amount of credit disbursed by the bank to that person and outstanding, including any credit granted by one or more of the bank's subsidiaries, to exceed the equivalent of 50 percent of the annual remuneration of that person, or if the credit would cause the aggregate amount of credits disbursed to all related persons and senior bank officials and outstanding to exceed ten percent of the unimpaired capital and reserves of the bank, or such lower percentage as specified by regulation issued by the CBI, provided, however, that the foregoing percentage limits shall not apply to any credit that is secured by a mortgage on property for a local primary residence whose appraised value, in the opinion of the CBI, at the time that

that credit is granted exceeds the principal amount of the credit by not less than one-third of that principal amount;

c. if the credit is granted on terms and conditions that are less favorable to the bank than the terms and conditions that are offered by the bank to the public in the ordinary course of business at the time when the credit is granted; or

d. if the credit is not fully secured in the amount and manner specified by regulation issued by the CBI.

1 No bank may purchase assets from or sell assets to a related person that is a natural person, or any officer or employee of the bank or a related person.

3. No bank may purchase assets from a related person that is a juridical person:

a. if, in the case of domestic bank, the asset purchase and its financial terms and conditions have not been approved by the board of directors; or

b. if the asset purchase is on terms and conditions that are less favorable to the bank than the terms and conditions that are offered by the bank to the public in the ordinary course of business at the time when the asset purchase occurs.

2 In the case of a domestic bank, every credit provided by a bank to, or asset purchased from, a related person or senior bank official shall be promptly reported to the audit committee of the bank. If credit has been provided by a bank to, or an asset purchased from, a related person or senior bank official in violation of the provisions of paragraph (1), the credit must be immediately repaid, and the members of the board of directors or the designated branch manager, as the case may be, shall be personally liable, jointly and severally, for payment of principal of, and interest and other charges on, credit granted in violation of paragraph (1) with their knowledge and without their objection.

3 The CBI may instruct a bank to deduct any lending to a related person or senior bank

official from capital for purposes of calculating the ratio pursuant to paragraph (1) of Article

16.

1 The limitations contained in sub-paragraph (b) of paragraph (1) shall not apply to the portions of credits denominated in Iraqi dinars fully secured in the manner specified by the CBI by regulation, by deposits in a segregated account at the bank denominated in Iraqi dinars, or the portions of credits fully secured by, or fully guaranteed as to principal and interest by, the Government of Iraq or any agency or instrumentality of the Government of Iraq specified by the CBI by regulation.

2 Definitions. For the purposes of this article and any regulations issued pursuant thereto:

a. "Bank" means, (i) with respect to a domestic bank, the bank together with its subsidiaries and (ii) with respect to a foreign bank with a permit to operate a branch in Iraq, its Iraqi branch or branches.

b. "Related person" means a related person as that term is defined in Article 1 of this Law and, in addition, any spouses and children of persons related in the first or second degree to an administrator of the bank.

c. "Senior bank official" means a senior bank official as that term is defined in Article 1 of this Law and, in addition, any person related to a senior bank official in the first or second degree, and any spouses and children of such persons.

Article 32 Foreign currency exposure

The CBI may issue regulations to set the maximum foreign currency exposure which banks may incur in foreign currency generally or in any specified currency or currencies.

Article 33 Investment restrictions

1 It shall be prohibited for any bank without the CBI's prior approval to invest in the stocks, shares, or equity-linked bonds of any undertaking in an amount that exceeds 20 percent of the bank's unimpaired capital and reserves. To the extent that any stocks, shares, or equity-linked bonds transferred to the bank in the course of its banking operations would cause the bank's holdings to exceed such limit, the bank shall dispose of such stocks, shares, or equity-linked bonds as soon as practicable and not later than at a date at which such disposition may occur without incurring a loss, and, in any case, within two years of their acquisition at the latest. Upon request by the bank, this period may be extended for a period of up to one year by decision of the CBI.

2 Except in connection with the granting of mortgage loans in the conduct of its banking operations, it shall be prohibited for any bank to possess real estate other than real estate essential to the conduct of its operations and for the housing of its employees and workers. This provision shall not bar the bank from leasing any excess portion of real estate held for the conduct of its operations, provided it obtains the CBI's prior approval. A bank shall dispose of any real estate transferred to it in the course of its banking operations other than mortgage lending as soon as practicable and not later than at a date at

which such disposition may occur without incurring a loss and, in any case, within two years of acquiring it at the latest. Upon request by the bank, this period may be extended for two periods of up to two years each by decision of the CBI.

3 It shall be prohibited for any bank to acquire a participation in another bank or financial institution without first obtaining the CBI's prior written approval and without meeting the requirements stipulated by the CBI.

4. It shall be prohibited for any bank to possess shares in other banks or financial institutions without the CBI's prior approval unless such shares were transferred to the bank in the

course of its banking operations. In this case, the bank shall sell the shares as soon as practicable and not later than at a date at which such disposition may occur without incurring a loss and in any case, within two years of acquiring them at the latest, unless the CBI grants approval to retain the shares.

4 It shall be prohibited for any bank without first obtaining the CBI's prior written approval to acquire stock or shares in a company established outside Iraq, except when such stock or shares are transferred to it in the course of its banking operations.

Article 34 Bank holidays

All banks must open their doors for business with the public on all days and during all office hours approved by the CBI, excluding Fridays and bank holidays. The CBI shall, by regulation, announce the holidays to be observed by banks. No bank may open its doors to the public during these bank holidays, be they official or unofficial holidays. In the event that circumstances require the suspension of banking operations, the CBI may order banks to close their doors temporarily, cease their operations, and resume them only by order of the CBI.

Article 35 Suspicious transactions

1 If a bank or any of its administrators, officers or employees learns that the execution of any banking transaction or the receipt or payment of any sum of money pertains or may pertain to any crime or illegal act, the bank shall immediately notify the appropriate official or judicial authority to this effect. The bank shall inform the CBI on a monthly basis about suspicious transaction reports submitted, if any, and concerning any need for additional action regarding this matter.

2 A bank's disclosure of any information in good faith under this article shall not be considered a breach of banking confidentiality. In addition, neither the CBI nor the bank shall bear any liability as a result thereof.

Article 36 Restriction on bank shares

No bank may grant any credit, including loans and advances, or provide a guarantee or security to a customer that uses the customers' shares in the bank as collateral to secure the loan. A bank may not purchase its own shares without prior approval of the CBI.

Article 37 Dormant accounts

1 Amounts on deposit in an account at a bank, and any other property held by a bank are subject to special rules if the accounts are considered dormant accounts or the property held by a bank is considered abandoned. The requirements of this article apply only to dormant accounts maintained at an office in Iraq or abandoned property located in Iraq.

2 If a customer has not evidenced any interest in the amounts on deposit or other property by recorded transaction or written correspondence with the bank for seven years beginning no earlier than the date that this Law entered into effect, on the first business day of the following calendar year, the bank shall dispatch by registered post a notice to the customer at the customer's last known address containing particulars of the dormant account or other abandoned property, and publish in at least two newspapers of general circulation and the Official Publication the name of the customer. Not less than 30 days after such notice and publication, if the customer cannot be located, the bank shall make a detailed report to the CBI, which report the CBI shall maintain in its records for at least 20 years from the date the property is turned over to it, and shall turn over the amount on deposit or other property to the CBI, to be held in a special account at the CBI. In the case of property other than funds on deposit, the CBI shall sell the property in a public auction or other appropriate method designed to generate the maximum value for the property.

3 The CBI shall hold the funds in a special account to be invested in Iraqi government securities, or other securities if Iraqi government securities are not available, provided that, for a period of twenty years from the date the property was turned over to the CBI, any owner who, to the satisfaction of the CBI furnishes proof of ownership, shall be entitled to repayment of the amounts by the CBI. After the expiration of such period, any remaining unclaimed amounts shall be transferred to the Ministry of Finance for deposit in the State Treasury.

Article 38 Records

1. Banks shall keep on file in Iraq for at least seven years the pertinent documents for each one of their transactions, namely:

a. customer identification records;

b. application and all contract documents pertaining to the transaction (including credit, guarantee and collateral agreements) and a signed written record of the decision of the bank approving the transaction;

c. financial records concerning counterparties (including borrowers and guarantors), and any other documentary evidence on which the bank relied in approving the transaction;

d. the account agreements with its customers; and

e. such other documents as the CBI may specify by regulation.

2. Records shall be kept in written form. A bank may retain books, records, statements, documents, correspondence, cables, notices, and other documents relating to its financial activities in reduced form (microfilm, electronic data storage or other current technological devices) instead of the original for the period established in the law, to the extent that adequate data recovery systems and procedures are in place. Such reduced copies shall have the probative effect of the original. The CBI may issue regulations

setting out detailed systems requirements.

Article 39 Payment system

1 Banks may establish cooperative systems and clearing houses for the transfer of funds and for the settlement of accounts and payment instruments among themselves and among other financial institutions. The CBI may establish rules and procedures to govern the conduct of these activities.

2 Banks may establish credit reporting agencies or credit bureaus to collect and to disseminate to other banks such information concerning the financial affairs of existing and prospective customers as the banks may need in order to make prudent banking decisions. Such information shall be furnished only to banks having an actual or prospective banking relationship with the person concerning whom the information is provided. Such information shall be furnished subject to such restrictions, including rules and procedures that may be adopted by the CBI under paragraph (e) of Article 51, as shall be necessary to protect the confidentiality of banking information and to prevent the unauthorized dissemination of such information.

Section 6 - Accounts and Financial Statements

Article 40 Financial year

The financial year of domestic banks shall begin on January 1 and end on December 31 of the same year. For a branch of a foreign bank, the financial year may differ.

Article 41 Periodic reporting

1. Each bank shall furnish the CBI at the relevant intervals specified by regulation with:

- a. statements showing its assets and liabilities;
- b. statements on the foreign currency exposures, capital adequacy ratio, reserve position, liquid assets, large exposures and credits to related persons;
- c. information or statistics concerning its various accounts and activities, including information on deposits, banking facilities, credit plans, or credit and contingent liabilities granted to the bank's customers;
- d. information, statements, tables, or budgets concerning its various accounts and activities, either in a consolidated form or for each of its branches separately, at the times and according to the format and method stipulated by the CBI by regulation; and
- e. such other statements or information as requested by the CBI.

1 The CBI may request reports from any of the bank's subsidiaries or affiliates if deemed necessary for the exercise of consolidated supervision of the bank's activities.

2 The expenses incurred in complying with reporting obligations or requests by the CBI to provide information shall be borne by the relevant bank.

Article 42 Principles for accounting and preparation of financial statements

1. Banks shall:

a. maintain proper books and records required for orderly operations in accordance with the provisions set out in Article 38;

b. apply accountancy rules and systems in conformity with international accounting standards (IAS), including the use of full accrual accounting on a daily basis, and in compliance with any special requirements stipulated by the CBI in this regard; and

c. prepare its financial statements comprising the balance sheet, profit and loss account, cash flow statement and statement of changes in the bank's capital account in an adequate manner that reflects the reality of the financial positions of the bank and its branches. The financial statements shall be prepared in accordance with international accounting standards (IAS) and in compliance with any special requirements stipulated by the CBI in this regard. The financial statements shall give a true and fair view of the state of affairs of the bank and shall include a statement on the bank's internal control systems.

2. Banks shall comply with any regulations or orders issued by the CBI with respect to the rules set out in paragraph (1). The CBI shall issue, by regulation, provisions on the accounting system and rules applicable to banks.

Article 43 Financial statements

1 Each bank shall prepare financial statements. Each bank that has one or more subsidiaries shall also prepare consolidated financial statements.

2 The CBI may specify other affiliates of a bank, in particular a company that controls a bank and any other company that is controlled by the company that controls the bank, for which consolidated financial statements shall be submitted.

3 Each foreign bank with one or more branch offices in Iraq shall prepare accounts and financial statements for its operations in Iraq as if such offices together were to constitute a single entity.

4. A copy of each bank's audited financial statements, including audited consolidated financial statements, if applicable, shall be submitted by the bank to the CBI when they

become available and within four months after the end of the financial year at the latest. Each foreign bank with one or more branch offices in Iraq shall also submit a copy of the foreign bank's audited consolidated financial statements to the CBI when they become available.

4 The audited financial statements of a bank shall be made available to its shareholders not less than 30 days prior to the general meeting of shareholders at which the financial statements are to be presented for approval.

Article 44 Publication of financial statements

1 A bank shall publish, in two newspapers of general circulation, its audited financial statements, including audited consolidated financial statements, if applicable, not later than four months after the end of the financial year.

2 Each bank shall display in a prominent location at its head office and its branches its most recent audited financial statements, including audited consolidated financial statements, if applicable, and a list of the names of the members of its board of directors.

Article 45 Annual report

1 Each bank shall send copies of the annual report to the CBI not later than 30 days after it becomes available, and within six months after the end of the bank's financial year at the latest.

2 The annual report shall contain such information as prescribed by regulation of the CBI, including a report by the board of directors on the bank's business during the preceding year and the business projections for the coming year.

Section 7 - Audit

Article 46 Audit

1 Each bank shall appoint an independent external auditor with qualifications and experience in the audit of banks acceptable to the CBI. The external auditor shall be appointed by the bank's shareholders at the general meeting of shareholders, provided that if the bank fails to appoint an auditor satisfactory to the CBI, the CBI shall appoint such auditor.

2 The auditor, or any member of the audit firm, shall not be an administrator, owner, affiliate, employee, agent or representative of the bank for which the auditor is to be appointed and shall not have an interest in the bank, with the exception of holding a deposit in the bank. Should the auditor acquire any such interest in the bank during the course of the appointment, the services of the auditor shall be terminated and a temporary alternate auditor be appointed by the CBI until the bank appoints a new auditor.

3 The auditor shall not provide services to the bank that are connected with the internal audit function of the bank, except for occasional training purposes.

4 No bank shall appoint the same auditor continuously for a period of more than 5 years without an exemption granted by the CBI.

5. In accordance with internationally-recognized auditing standards and any standards issued by regulation of the CBI, the auditor shall audit the bank's operations on a consolidated basis and:

a. issue a statement to the bank indicating whether the auditor or any member of the audit firm: (i) holds an ownership interest in the bank; and (ii) complies with the provision of paragraph (3);

b. assist the bank in maintaining proper accounting systems and procedures;

c. assist the bank in maintaining proper financial control and risk management systems and procedures;

d. upon request by the audit committee, attend meetings of the audit committee;

e. within three months after the end of the financial year, prepare for the board of directors of the bank an audit report together with an audit opinion as to whether the financial statements are complete, fair and properly drawn up and present a full and fair view of the financial condition of the bank in accordance with the provisions of this Law; in particular, the audit report shall state:

(i) whether any explanation or information requested from the administrators, employees or agents of the bank in the course of the audit was satisfactory;

(ii) the degree of adequacy of, and the bank's adherence to, internal control measures and accounting systems in effect;

(iii) the method for keeping documents, records, and books, and the latter's orderliness and inclusion of operations needed to enable monitoring, auditing, and internal and external audit;

(iv) the adequacy and performance of the bank's management regarding protection of the funds of the bank and depositors;

(v) deficiencies in the bank's activities, the auditor's recommendations for the management regarding the deficiencies, and the extent to which management applied the auditor's recommendations and remarks made in connection to operations in previous years; and

(vi) the degree of accuracy of periodic statements sent to the CBI; and the correspondence of the statements with the content of records, books,

accounting systems and practices in effect at the bank and with the CBI's orders in this regard;

f. provide the board of directors and the CBI with a report stating the auditor's opinion on the bank's system of loan classification and concerning the provisioning for doubtful claims indicating any deficiency in the provisioning needed for the bank's assets according to the CBI's orders;

g. inform each member of the board of directors and the CBI about any act by an administrator, officer, employee or agent of the bank of which the external auditor has become aware that constitutes a material violation of a provision of this Law or any regulation or order issued by the CBI; and

h. inform each member of the board of directors and the CBI about any irregularity or deficiency in the bank's administration or operations of which the external auditor has become aware and which could be expected to result in a material loss for the bank.

6. Each bank shall send copies of the audit report to the CBI not later than 30 days after it becomes available. Where the CBI is not satisfied with the auditor's report, it may require the appointment of

another auditor to prepare a new audit report within a specified time.

Article 47 Additional duties

1. The CBI may impose on an auditor, in addition to any duty specified in Article 46, a duty to:

a. submit to the CBI such additional information in relation to the audit as the CBI considers necessary;

b. submit a report, carry out an inspection or establish any procedure as specified by the CBI;

c. submit to the CBI a report on the financial and accounting systems and internal controls of the bank; or

d. certify whether or not adequate measures to prevent money-laundering or terrorist financing have been adopted by the bank and are being implemented in accordance with such regulations, orders and guidelines issued by the CBI.

2. The auditor's costs for performing any such additional duties requested by the CBI shall be borne by the bank.

Article 48 Application of certain provisions

1 The provisions of the Private Companies Law shall apply to bank auditors unless stipulated otherwise in this Law.

2 Auditors shall observe professional and banking confidentiality requirements, provided that the auditor shall not incur legal liability for the disclosure of confidential information concerning a bank or a bank customer that the auditor provides in good faith to the CBI under this Law. In particular, a report by the auditor to the CBI pursuant to paragraph (5), sub-paragraphs (g) and (h) of Article 46 shall not be construed as a breach of professional or banking confidentiality obligations.

Section 8 - Confidentiality

Article 49 Banking confidentiality

A bank shall maintain confidentiality regarding all accounts, deposits, trusts, and safe deposit boxes of customers. It shall be prohibited to provide information on the aforesaid, directly or indirectly, without the written approval of the relevant customer; or, in the event that the customer is deceased, without the consent of the customer's legal representative, or one of the customer's heirs or legatees; or without the decision of a court of law or the public prosecutor in an existing judicial dispute or the existence of one of the cases permitted under this Law. This prohibition shall remain in effect even if the relationship between the customer and the bank ends for any reason.

Article 50 Individual confidentiality

It shall be prohibited for any current or former administrator, officer, employee or agent of a bank to provide information or statements on customers or their accounts, deposits, trusts, or safe deposit boxes,

or transactions or to disclose or enable a third party to examine such information and statements in other than those cases permitted under this Law. This prohibition shall also apply to any person, including auditors and employees and agents of the CBI, and any person appointed by the CBI to carry out an examination pursuant to Article 53, who examines such statements and information directly or indirectly by virtue of their profession, position, or work.

Article 51 Exceptions

The provisions of Articles 49 and 50 of this Law shall not apply to disclosure of information in the following cases:

- a. the performance of duties legally assigned to auditors appointed by the bank or by the CBI according to this Law;
- b. information and documents requested by the CBI in connection with its duties under this Law or the Central Bank of Iraq Law;
- c. actions taken in good faith in the course of the performance of duties or responsibilities imposed by this Law or in the implementation of measures countering money-laundering and terrorist financing pursuant to regulations of the CBI;
- d. the issuance of a certificate or statement of the reasons for refusing to pay a check based on the request of a rightful holder;
- e. the provision of information on: (i) customers' indebtedness to provide the necessary data for determining the soundness of granting credit; (ii) bad checks; or
- (iii) any other transaction deemed necessary by the CBI because of its pertinence to the soundness of the banking sector to banks, the CBI or any other agencies approved by the CBI to facilitate the exchange of such information pursuant to rules and procedures specified in regulation of the CBI;
- f. a bank's disclosure of all or some information on a customer's transactions to prove its claim in a judicial dispute between it and its customer regarding these transactions; and
- g. information provided by the CBI to supervisory authorities under Article 54 of this Law.

Article 52 Information provided by banks

1 Any information collected from a bank revealing its individual customers, customer transactions or other particulars pertinent to its relations with its individual customers shall be considered confidential and may be disclosed only with the consent of the bank or as authorized by this Law. The CBI shall restrict access to such individual customer information within the CBI to authorized employees.

2 The CBI may publish, in its entirety or in part, information provided to it by banks, provided such publication does not disclose confidential information. Unless the CBI first obtains the consent of the bank, the CBI shall not disclose particulars of the bank's operations other than as may be contained in the financial statements approved by the bank's board of directors, or information already in

the public domain.

Section 9 - Supervision and Examinations

Article 53 Examinations

The CBI shall supervise banks on a consolidated basis in the following manner:

- 1 The CBI shall review the statements, documents, information, clarifications, and proof submitted by banks in the application of this Law.
- 2 The CBI may request that banks, or any of its subsidiaries or affiliates, provide, and corroborate in writing when it deems necessary, any additional information, reports, documents, clarifications, or proof.
- 3 The CBI may at any time cause an on-site examination of a bank, its subsidiaries or affiliates, to be made by one or more employees of the CBI, or by any other person or persons appointed by the CBI for this purpose. The examination shall review the operations of a bank to ascertain its financial position and the extent to which the bank complies with the provisions of laws and regulations regarding the management of its activities and adheres to internal policies. The CBI shall examine all banks on a regular basis, and at least once every year, except that representative offices shall be examined at least once every two years.
- 4 Any person authorized to carry out an examination under this article shall be subject to confidentiality requirements and may require any administrator, officer, employee or agent of a bank, or its subsidiaries or affiliates, to provide access to all necessary books, accounts, documents, and records. Any information deemed necessary and requested by the examiner shall be furnished in a timely manner during the course of the examination.
- 5 Examiners shall submit to the CBI a report on the results of the examination. The CBI shall notify the board of directors of the relevant bank of the examination results.

Article 54 Exchange of information

- 1 The CBI may exchange information on supervisory matters, preferably based on a Memorandum of Understanding, with financial supervisory authorities in Iraq and with banking supervisory authorities in other countries. The exchange of such information may include confidential information, provided that the CBI has satisfied itself that reasonable steps have been taken to ensure the confidentiality of any such information submitted.
- 2 The CBI may enter into Memoranda of Understanding with financial supervisory authorities in Iraq or with banking supervisory authorities in other countries setting out the scope, procedures and further details for the exchange of information.

Article 55 Immunity from legal action

1 No member of the board of directors of the CBI, employee of the CBI, agent of the CBI, any person appointed pursuant to the provisions of this Law (i) to carry out an examination pursuant to Article 53, (ii) as conservator, or (iii) as receiver, or any person engaged by a conservator or receiver pursuant to paragraph (3) of Article 62 or paragraph (4) of Article 80 shall be personally liable in damages for any act or omission taken in the discharge or purported discharge of official functions within the scope of their employment or engagement under this Law.

2 The CBI shall indemnify a member of the board of directors of the CBI, employee of the CBI, an agent of the CBI, any person appointed pursuant to the provisions of this Law (i) to carry out an examination pursuant to Article 53, (ii) as conservator or (iii) as receiver, or any

person engaged by a conservator or receiver pursuant to paragraph (3) of Article 62 or paragraph (4) of Article 80 against any legal costs incurred in the defense against legal action brought against such person in connection with the discharge or purported discharge of official functions within the scope of their employment or engagement under this Law, provided that no such indemnification shall apply if such person has been convicted of a crime arising out of the activities that are covered by such legal action.

Section 10 - Enforcement Measures and Penalties

Article 56 Prompt corrective action and administrative penalties

1. The CBI may take any measure or impose any administrative penalty stipulated in paragraph (2) of this article in cases where it is evident that a bank, an administrator of a bank or any other person:

- a. violated the provisions of law or any regulation or order issued by the CBI;
- b. conducted unsafe or unsound banking operations.

2. If any of the violations stipulated in paragraph (1) above occur, the CBI may take one or more of the following measures or administrative penalties:

- a. send a written warning to the bank;
- b. give orders to the bank;
- c. order that the bank submit a program of measures it intends to take or a detailed description of measures it has taken to eliminate the violation and correct the situation;
- d. order that the bank cease some of its operations, or bar it from distributing profits or dividends;
- e. impose any restriction on the granting of credit deemed appropriate;
- f. in addition to any minimum balance stipulated in the Central Bank of Iraq Law and other legally required deposits, require the bank to deposit and maintain balances with the CBI without interest for a period deemed appropriate by the CBI;
- g. order that the chairman of the board of directors convene the board of directors to review

and examine the violations attributed to the bank and to take the necessary measures to eliminate the violations; in this case, one or more representatives of the CBI shall attend the board of directors' meeting;

h. order that the bank temporarily or finally suspend from office any authorized manager or designated branch manager, depending on the seriousness of the violation;

i. order that the bank remove the chairman or any of the members of the bank's board of directors;

j. dissolve the bank's board of directors and appoint a conservator in accordance with paragraph (2) of Article 59; or

k. impose an administrative penalty on the bank, provided that at the discretion of the CBI, administrative penalties may be imposed on a daily basis until the violation has eased or compliance is obtained, and such administrative penalties shall not exceed five percent of the bank's paid-up capital overall

3. The CBI may impose an administrative penalty on a bank of up to 5 million *dinars* per day until the violation has eased or compliance is obtained, and not to exceed five percent of its paid-up capital overall in the following cases:

a. if the bank intentionally submitted to the CBI statements, statistics, or information that are deficient or false; or

b. if the bank does not provide the CBI with information on a customer, certain risks of particular customers, or any other information as requested by the CBI.

The imposition of the administrative penalty stipulated in this paragraph shall not bar the CBI or other aggrieved bank from demanding compensation from the bank in violation for damages arising from actions referred to in sub-paragraphs (a) and (b) of this paragraph.

4..Other than in an emergency situation requiring urgent action, the CBI shall, before deciding whether an order shall be given to a bank pursuant to this article, serve the bank with a notice of charges, including a statement of the facts constituting the alleged violation or threat of violation, describing the order that the CBI proposes to issue, requesting a written response from the bank by a date not earlier than 30 days nor later than 60 days after the date of service of such notice. If requested by the bank in its written response, the CBI shall schedule a hearing to determine whether an order should be issued. Any order shall be accompanied by the reasons for issuing such an order. The CBI may issue such regulations as it may deem necessary prescribing the procedures for the conduct of hearings.

5. The imposition by the CBI of measures or administrative penalties stipulated in this article shall not bar any civil or criminal accountability under the provisions of any other law.

Article 57 Illegal banking business

1 Each person who engages in banking activities as a business without a banking license or permit issued by the CBI is guilty of an indictable offense and liable to the penalty for fraud contained in the Penal Code.

2 The penal courts shall be responsible for hearing actions initiated by the public prosecutor based on the request of the CBI or any concerned party.

Article 58 Collection of administrative penalties

The CBI shall collect the administrative penalties imposed on a bank under this Law. Any administrative penalties collected shall be paid to the State Treasury.

Section 11 - Conservatorship Article 59 Grounds for appointment of a conservator

1. The CBI shall appoint a conservator for a bank when the CBI determines that:

a. the bank fails to pay its financial obligations, including but not limited to deposit liabilities, as they fall due;

b. the capital of the bank is less than 50 percent of the minimum capital required by law or by regulation of the CBI pursuant to paragraph (1) of Article 16;

c. a petition has been submitted for opening bankruptcy proceedings against the bank, as set forth in Article 72; or

d. The Governor of the CBI has determined that the appointment of a conservator for the bank is necessary to ensure the stability and soundness of the banking system as a whole

2. The CBI may appoint a conservator for a bank when the CBI determines that:

a. the bank fails to carry out an order given to the bank by the CBI;

b. the capital of the bank is less than 75 percent of the minimum capital required by law or by regulation of the CBI pursuant to paragraph (1) of Article 16; or

c. there is evidence that the bank or any of its administrators have engaged in criminal activities punishable by imprisonment of one year or more or there is reasonable cause to believe that the bank or any of its administrators are engaging in such criminal activities.

d. the bank's license or permit has been obtained on the ground of fraudulent statements or other material irregularities that occurred in connection with the application;

e. the bank has not made use of its license or permit within twelve months after the date of its effectiveness, or the bank has ceased for more than six months to engage in the business of receiving money deposits or other repayable funds from the public or making credits in investments for its own account;

f. the bank conducts its administration or operations in an unsafe or unsound manner;

g. the bank, in a manner which materially affects the financial soundness of the bank, violates a law, a regulation of the CBI, or any condition or restriction attached to a license or permit issued by the CBI;

h. the bank, or the foreign bank or bank holding company of which the bank is a subsidiary, or a subsidiary of the bank, has engaged in criminal activities constituting fraud, money-laundering or terrorist financing as defined in the Anti-Money Laundering Act of 2004;

i. the foreign bank or bank holding company of which the bank is a subsidiary has lost its operating license;

j. the CBI is hindered in supervising the bank because the bank has moved all or part of its administration, operations, books or records outside Iraq without the prior written approval of the CBI;

k. the CBI is hindered in supervising the bank because the bank is a member of a group of companies, or because the bank is a subsidiary of a foreign bank or bank holding company that is not adequately supervised; or

l. the foreign supervisory authority responsible for the supervision of the bank or the foreign bank holding company of which the bank is a subsidiary has appointed a conservator or receiver for the bank, foreign bank or bank holding company.

3. The provisions of this section shall apply to the domestic branch offices and domestic representative offices of a foreign bank as if all these offices together were to form a single legal entity. All assets, liabilities, acts and omissions of the foreign bank resulting from or otherwise relating to the business of any such office shall be attributed to that single entity in applying the provisions of this section. The conservator shall be authorized to take all actions with respect to such single entity as could be taken, were it to be a domestic bank, by the authorized manager or by shareholders at the general meeting of shareholders.

Article 60 Appointment of a conservator

1 A conservator shall be appointed by decision of the CBI. A conservator may be an individual or, in the discretion of the CBI, a group of individuals organized as specified by the CBI. Only a fit and proper person is eligible to serve as conservator for a bank

2 If at any time a conservator becomes ineligible to serve, the conservator shall be replaced by the CBI.

3 Conservators shall be appointed for a term, not exceeding eighteen months, specified in the decision on their appointment. The term of appointment may be extended by the CBI once for another period not exceeding eighteen months. The conservator shall be employed by the CBI and receive remuneration from the CBI. All costs incurred by the CBI on account of the conservatorship shall be borne by and charged to the bank for which the conservator is appointed.

4 The decision by the CBI appointing a conservator or extending the term of appointment of a

conservator shall be in writing, shall specify the grounds on which it is given and shall list the principal duties of the conservator. The CBI shall ensure that promptly after the decision is given each such decision is served on the bank for which the conservator is appointed, is recorded in the register of banks and is published in the Official Publication.

Article 61 Effects of the appointment of a conservator

1 The decision of the CBI appointing a conservator for a bank shall take effect immediately, unless the decision provides otherwise.

2 The decision of the CBI appointing a conservator for a bank shall suspend the powers of the shareholders to take action at the general meeting of shareholders of the bank. Thereafter, the conservator shall have the power to take all of the actions in the ordinary course of business including those that could be taken at the general meeting of shareholders of the bank, such as the sale and disposition of assets and such other actions as may be necessary to place the bank in a safe and solvent condition, except that a transaction involving the participation of the bank in the capital stock of other financial institutions or any of the transactions referred to in Article 84 may be entered into only in circumstances and on terms and conditions that have been approved by the Financial Services Tribunal at the request of the CBI.

3 The decision of the CBI appointing a conservator for a bank shall suspend the powers of the administrators of the bank and shall have the effect of transferring all the powers of the administrators of the bank to the conservator. The conservator may delegate to other persons, including administrators and employees of the bank, such powers as the conservator deems necessary or appropriate, unless the CBI determines otherwise in a written notice to the conservator. In the absence or inability of the conservator to act, the CBI may exercise the powers of the conservator.

4 Actions taken by or on behalf of a bank after the decision appointing a conservator for that bank takes effect shall be null and void, unless they are taken by or by the authority of the CBI or the conservator, or unless they are money or securities transfer orders covered by Article 83.

5 A conservator shall be accountable only to the CBI for the performance of duties and for the exercise of the powers as conservator. The conservator shall only be subject to the duties, rules and instructions given to the conservator by the CBI.

6 Notwithstanding any requirements set forth in Article 14, the CBI, in its sole discretion, may organize and license a bridge bank which will be owned and controlled by the CBI, to receive any assets and liabilities of one or more banks as to which a conservator under section 11 or receiver under section 14 has been appointed. A bridge bank (i) may be placed under the control of a conservator or receiver under this section 11; and (ii) shall terminate its operations at the end of a two-year period following the issuance of a license, except that the CBI, in its discretion, may extend its status for three additional one-year terms.

7 In the performance of its duties, the conservator shall conduct the operations of the conservatorship in a manner which maximizes the return from the sale or disposition of the bank's assets, minimizes the amount of any losses, and provides for the fair and equitable treatment of creditors.

Article 62 Taking control of the bank

1 Immediately upon appointment, the conservator shall take control of the bank for which he has been appointed and secure the assets, books and records of the bank, and thereafter manage the bank during the period of conservatorship in order to prevent the dissipation of such assets, including but not limited to theft or other improper action.

2 The conservator shall have unrestricted access to and control over the assets, the offices, and the books of account and other records, of the bank for which he has been appointed. Immediately upon the request of a conservator, law enforcement officials shall, if necessary by use of force, assist the conservator to gain access to the premises of the bank for which the conservator has been appointed and to gain control over and to secure the assets, books and records of the bank. The decision of the CBI appointing the conservator shall have the legal force and effect of an enforceable court order requiring law enforcement authorities to provide such assistance.

3 A conservator may employ at the expense of the bank for which the conservator has been appointed, such independent attorneys, accountants and consultants on such terms as the CBI shall approve.

4. All legal acts of the bank that are taken within 60 business days before the date of the CBI's decision appointing the conservator shall upon application of the conservator be declared null and void by the CBI if the bank and its counterparty in the act knew or should have known at the time of the act that the act would damage the interests of creditors of the

bank. Such knowledge shall be presumed whenever the act consists of any act described in Article 82.8.a. through f. of the Banking Law.

4 The conservator may unilaterally terminate all current contracts or portions of contracts of the bank within a reasonable time not to exceed 60 business days from the date of its appointment, provided, however, that any party or beneficiary to such contract may file a claim for compensation for breach of contract, which compensation shall be limited to actual direct compensatory damages up to the date of termination of such contract by the conservator, with interest to the date of payment, but which shall not include any punitive damages, damages for pain and suffering, or any damages for lost profits or lost opportunities.

5 Subject to Article 88 of this Law, the conservator may enforce any contract of the bank notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or receiver.

6 No provision of this article shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of a bank except where such an interest is taken in contemplation of the bank's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of the bank

Article 63 Review of appointment

1 Within five business days from the date of service of the decision appointing the conservator for a bank, the board of directors of the bank may make written representations on behalf of the bank to the CBI challenging the appointment of the conservator. In the event that no such challenge is made within the five-day time period referred to above, the bank shall be deemed to have consented to the decision appointing the conservator. The members of the board of directors of the bank shall not be liable to the bank's shareholders, depositors, or creditors for a good faith decision not to challenge the appointment of a conservator.

2 Upon the timely receipt of such a challenge, the CBI shall review the appointment of the conservator in light of the arguments made against it and decide either to affirm the appointment or to terminate the appointment, giving the grounds for its decision in writing. The decision shall be served promptly upon the chairman of the board of directors of the bank.

3 If the appointment of the conservator is terminated, the conservator shall immediately return control of the bank and its assets, books and records to the authorized manager of the bank.

4 Any decision of the CBI appointing a conservator that is not a decision to which the bank has consented, and any decision of the CBI affirming the appointment of a conservator under paragraph (2) above, may be submitted by the bank, any administrator of the bank, creditor, depositor or shareholder to the Financial Services Tribunal for review within 20 business

days from the date of service of the decision. The appointment and powers of the conservator shall remain in full force and effect until a final decision is taken by the Tribunal.

Article 64 Report of the conservator and plan of action

1 Not later than ten business days after the appointment, the conservator shall prepare and present to the CBI a report on the financial condition and future prospects of the bank for which the conservator has been appointed. The CBI may extend the date the report is due for up to 30 calendar days after the appointment if supported by a request from the conservator. The conservator shall include in the report an assessment of the amount of assets likely to be realized in a liquidation of the bank. The report may be prepared with the assistance of such independent experts as the conservator may determine in accordance with paragraph (3) of Article 62.

2. The report shall be accompanied by a proposed plan of action, where relevant, that shall discuss the relative costs and benefits associated with:

- a. returning the bank to compliance with the law by carrying out a plan of corrective action;
- b. rehabilitation of the bank under the procedure set forth in Article 67; and
- c. opening of bankruptcy proceedings against the bank.

Article 65 Moratorium

1 If required to protect the financial condition of a bank for which a conservator has been appointed, the CBI may at any time declare deposits and investments by the public in the bank, other than deposits and investments in segregated fiduciary accounts, to be totally or partially blocked for a maximum period of 30 calendar days, provided that measures are taken which, in the opinion of the CBI, will preserve the approximate value of these deposits and investments together with interest accrued before and during the moratorium. In extraordinary cases, the conservator, with the approval of the CBI, may at any time permit the withdrawal of some or all of the deposits held in the name of a natural person not to exceed 5 million *dinars* for each such case.

2 Upon the appointment of a conservator, all court proceedings against the bank shall be stayed for 12 business days. Any applicable statute of limitations will be tolled for the duration of this stay

Article 66 Termination of conservatorship

1. The appointment of a conservator shall terminate upon the earlier of:

a. completion of the term specified in the decision appointing the conservator or in the decision last extending the term of the conservator;

b. a decision by the CBI or the Financial Services Tribunal to that effect; or

c. appointment of a receiver pursuant to Article 78.

1 Upon termination of the appointment of a conservator as described in sub-paragraphs (a) or (b) of paragraph (1), the conservator shall immediately return control of the bank and its assets, books and records to the authorized manager of the bank.

2 Within 20 business days of the termination of the appointment, the conservator shall prepare and submit to the CBI a final report and accounting of the conservatorship.

Section 12 - Rehabilitation of Banks

Article 67 Rehabilitation procedures

1. A bank shall be rehabilitated by the conservator appointed for the bank under supervision of the CBI if the Minister of Finance has decided, based upon the written recommendation of the CBI, that the stability of the banking system of Iraq requires the rehabilitation of the bank. Once the Minister of Finance has taken a decision regarding the rehabilitation of a bank, the Minister of Finance may in the Minister's discretion authorize or make available financing in connection with the transactions, costs and expenses referred to in paragraphs

(4) and (5) of this article.

1 The recommendation of the CBI to rehabilitate a bank shall be accompanied by a rehabilitation plan prepared by the CBI in consultation with the conservator. The plan shall identify the existing weaknesses in the administration or operations of the bank, determine the corrective measures required to remedy such weaknesses, and provide a timetable and financing plan for the proposed rehabilitation. The plan shall also review and evaluate strategies for transferring the core business of the bank to another bank, including but not limited to a bridge bank, through one or more of the transactions authorized by Article 84 and shall to the extent practicable preclude the enrichment of bank owners at the expense of the State. At any time during the execution of the plan, the Minister of Finance, after having consulted the CBI, may (i) terminate the rehabilitation plan or (ii) request that the CBI submit a petition to the Financial Services Tribunal for the institution of bankruptcy proceedings under Article 72.

3. For the purpose of conserving the assets, protecting deposits and managing the business of a bank under rehabilitation on a going concern basis, the CBI may direct the conservator to transfer all or part of the assets and liabilities of the bank to a bridge bank capitalized by the

State, which transfer shall become effective immediately. If some obligations of the bank to creditors would be excluded from such a transfer, the conservator shall take the interests of such creditors into account. Such a transfer shall not require the consent of the bank or any of its governing bodies. The transfer of liabilities shall be published by notice in the Official Publication and in two or more newspapers of general circulation designated by the CBI.

4. In addition to the powers granted under Article 61 and 62 of this Law, the CBI may:

a. authorize the conservator for the bank under rehabilitation to carry out one or more of the transactions referred to in Article 84, which may include financing provided by the State in the form of capital, loan, deposits, grants, or guarantees; or,

b. order the bank under rehabilitation to increase the authorized capital of the bank and to issue shares of capital stock of the bank on such terms and conditions as the CBI may determine..

2 The costs incurred on account of rehabilitation of a bank shall be charged to the bank, and, in the event that the assets of the bank shall prove insufficient, to the State.

Article 67A Bridge banks

1 The CBI, in its sole discretion, may organize and license a bridge bank which will be owned and controlled by the CBI, to receive any assets and liabilities of one or more banks as to which a conservator under section 11 or receiver under section 14 has been appointed.

2 At the request of the Minister of Finance, the CBI shall organize and license a bridge bank, which will be capitalized by the State, to acquire all or part of the assets and liabilities of a bank under rehabilitation.

3 The CBI shall appoint the members of the board of directors of a bridge bank. The board of directors of a bridge bank shall execute the memorandum of association of the bridge bank as approved by the CBI and shall adopt such bylaws as may be approved by the CBI.

4. A bridge bank shall have all corporate powers granted to banks by, and be subject to the

requirements of, this Law, except that:

a. the bridge bank shall be exempt from the requirements of Article 14 and Article 16 of the Banking Law;

b. the CBI may exempt the bridge bank from or modify the requirements of Articles 30, 31, and 33 of this Law and the regulations issued thereunder; and

c. the CBI may appoint or remove any of the bridge bank's administrators and senior bank officials.

4 Any judicial action to which a bridge bank becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a bank in default shall be stayed from further proceedings for a period of up to 45 days at the request of the bridge bank.

5 Except with the prior approval of the CBI, a bridge bank may not, in any transaction or series of transactions, issue capital stock or be a party to any merger, consolidation, disposition of assets or liabilities, sale or exchange of capital stock, or similar transaction, or change its charter.

6 A bridge bank (i) may be placed under the control of a conservator or receiver under this section 11; and (ii) shall terminate its operations at the end of a two-year period following the issuance of a license, except that the CBI, in its discretion, may extend its status for three additional one-year terms.

Section 13 - Liquidation of Banks

Article 68 Voluntary liquidation

1 A bank may be liquidated at the decision of its owners after the voluntary termination of operations has been approved by the CBI, at their request, pursuant to Article 12, and the license has been revoked. The liquidation shall be carried out by the bank, in compliance with the procedures to be issued by the CBI and under supervision of the CBI.

2 The bank shall provide the CBI with such documents and information as the CBI shall request and shall grant the employees of the CBI, or any other person or persons appointed by the CBI for this purpose, access to the buildings, books and records of the bank whenever the CBI decides that such access is required to discharge its supervisory responsibilities.

3 If the CBI determines that the bank does not ensure an orderly liquidation or if the bank fails to comply with the provisions of paragraph (2), the CBI shall appoint a conservator under paragraph (1) of Article 69 who shall carry out or complete the liquidation of the bank.

Article 69 [Reserved]

Section 14 - Receivership of Banks

Article 70 General insolvency law does not apply to banks

Neither the Bankruptcy Law nor any other provisions amending or replacing the Bankruptcy Law in whole or part shall apply to banks.

Article 71 Grounds for opening bankruptcy proceedings

Upon receipt of a satisfactory petition under Article 72 and the appointment of a conservator under Article 73 by the CBI, the Financial Services Tribunal shall open bankruptcy proceedings against a bank on one or more of the following grounds:

- a. the bank is not paying its financial obligations, including deposit liabilities, as they fall due;
- b. the CBI determines that the capital of the bank is less than 25 percent of the capital required pursuant to paragraph (1) of Article 16;
- c. the CBI determines that the value of the assets of the bank is less than the value of the liabilities of the bank; or
- d. the CBI determines that any of the grounds for the appointment of a conservator identified in Article 59 exist.

Article 72 Petition for opening bankruptcy proceedings

1 Petitions for opening bankruptcy proceedings against a bank shall be submitted in writing to the Financial Services Tribunal.

2. No petition for opening bankruptcy proceedings against a bank may be granted by the Tribunal unless:

- a. the petition is presented by the CBI, together with financial statements of the bank certified by the CBI, showing the basis on which one or more applicable grounds under Article 71 for opening bankruptcy proceedings applies; or
- b. the petition has been filed with the Tribunal and served on the CBI by three or more creditors of the bank with obligations aggregating more than 4 billion *dinars* that are due and unpaid, together with documentary evidence showing that the bank is not paying its financial obligations as they fall due under paragraph (a) of Article 71.

Article 73 Appointment of conservator

1 As soon as a petition for opening bankruptcy proceedings against a bank has been served on the CBI by creditors of the bank under paragraph (2), sub-paragraph (b) of Article 72, or the CBI has presented a petition to the Tribunal under paragraph (2), sub-paragraph (a) of Article 72, a conservator shall be appointed by the CBI pursuant to paragraph (1), subparagraph (a) of Article 59. The provisions of Article 63 shall not apply and decisions of the CBI appointing a conservator pursuant to this article shall not be subject to review by the Financial Services Tribunal.

2 In the event that the Tribunal rejects the petition for opening bankruptcy proceedings under Article 75, the appointment of the conservator hereunder shall terminate.

Article 74 Tribunal hearing

1 Upon filing of a petition for opening bankruptcy proceedings against a bank, the Financial Services Tribunal shall summon the CBI and any other petitioner, the conservator appointed for the bank, and one or more administrators of the bank to attend a public hearing to consider the petition. In exceptional situations the Financial Services Tribunal may decide to conduct a non-public hearing. The hearing shall begin not later than two business days from the time of filing of the petition.

2 If the petition is filed by the CBI under paragraph (2), sub-paragraph (a) of Article 72, the hearing shall be concluded within one week. If the petition is filed by creditors of the bank under paragraph (2), sub-paragraph (b) of Article 72, the hearing shall be concluded within two weeks. At the conclusion of the hearing, the Tribunal shall either reject the petition or grant the petition.

Article 75 Grounds for rejecting the petition

1. A petition for opening bankruptcy proceedings against a bank shall be rejected by the Tribunal if:

a. the petition is not accompanied by the documents required by paragraph (2) of Article 72 or otherwise does not meet the requirements of the law; or

b. the CBI opposed the petition under paragraph (2) of this article.

2. If the petition is made by creditors of the bank, the CBI may oppose the petition only if:

a. the CBI has determined that none of the statutory grounds identified in paragraphs (a), (b), or (c) of Article 71 for opening bankruptcy proceedings against the bank applies; the Tribunal may require the CBI to produce evidence supporting its determination including financial statements of the bank certified by the CBI; or

b. the CBI submits to the Tribunal a decision of the Minister of Finance in accordance with

Article 67 that the stability of the banking system of Iraq requires the rehabilitation of the bank.

At its request, the CBI shall be granted two weeks in which to submit such evidence or decision, before the Tribunal rules on the petition.

Article 76 Rejection of frivolous petitions filed by bank creditors

1. At any time after the filing of a petition for opening bankruptcy proceedings against a bank by creditors of the bank, the Tribunal may reject the petition in writing, with or without a hearing, on the ground that the petition is frivolous, in which case the petitioners may be held

liable for monetary damages, including costs and expenses resulting from the filing of the petition, which the Tribunal may award to the bank and to the CBI.

2 In exceptional circumstance the filing of a frivolous petition for opening bankruptcy proceedings against a bank may constitute an offense that, upon conviction in a penal court, may be punished by imprisonment for a period not exceeding 6 months or by the payment of a fine not exceeding 1 billion *dinars* or both.

3 Anyone who is determined by the Tribunal to have filed a frivolous petition for opening bankruptcy proceedings against a bank may be subject to prosecution in the penal courts in a proceeding initiated by the public prosecutor based on the request of the Tribunal.

Article 77 Forced liquidation if bankruptcy petition is rejected

If a petition presented by the CBI for opening bankruptcy proceedings against a bank is rejected by the Tribunal on grounds other than those specified in Articles 75 or 76, or the Tribunal fails to observe the time periods set forth under this Law or to render a decision in a timely manner under Article 74 or paragraph (2) of Article 84, the conservator appointed by CBI shall liquidate the bank in accordance with the procedures prescribed by this section as if it were a receiver.

Article 78 Bankruptcy decision

By the decision of the Tribunal to grant a petition for opening bankruptcy proceedings against a bank, the bank shall be declared bankrupt, bankruptcy proceedings opened against the bank and a receiver appointed by the Tribunal under Article 80.

Article 79 Service and publication of bankruptcy decision

Immediately after the Tribunal has issued a decision opening, or rejecting a petition for opening,

bankruptcy proceedings against a bank, the decision shall be served by the Tribunal on the CBI, the creditors filing such petition, and on the bank and the Tribunal shall arrange for publication of the decision in the Official Publication and in at least two newspapers of general circulation.

Article 80 Receiver

1 The receiver appointed by a decision of the Tribunal opening bankruptcy proceedings against a bank, or under paragraph (5) of this article with respect to any replacement receiver, shall be selected by the Tribunal from a list of candidates submitted to the Tribunal by the CBI. Only fit and proper persons are eligible to serve as receiver or replacement receiver for a bank. The bankruptcy decision shall specify the remuneration and the other terms and conditions of employment of the receiver. The remuneration and other costs and expenses incurred on account of the receiver shall be paid from the assets of the bank for which the receiver is appointed.

2 The CBI shall indemnify the receiver of a bank for all liabilities and all costs and expenses incurred by the receiver on account of the receivership to the extent that such liabilities, costs or expenses exceed the assets of the bank available to meet them.

3 Receivers shall carry out their activities under the direction and supervision of the CBI, which on the appointment of the receiver, shall provide the receiver with written directions including a list of activities which the receiver may undertake without the need for involvement of the CBI. Such directions shall include a delegation of authority to the receiver to enter into individual transactions not to exceed a stated amount for each such transaction, including, but not limited to, sales of assets, individually or by bulk sale. Although the receiver may at any time apply to the CBI for directions, the receiver shall be obligated to apply to the CBI for directions only where specifically required to do so by a provision of this Law.

4 A receiver may employ at the expense of the bank for which the receiver has been appointed such independent attorneys, accountants and consultants, on such terms and conditions, as the CBI shall approve.

5. The Tribunal shall replace the receiver immediately upon the request of the CBI:

- a. upon the resignation, death or incapacity to act of the receiver;
- b. in the event that the receiver does not diligently perform the receiver's tasks;
- c. in the event that the receiver no longer is a fit and proper person; or
- d. if for any other reason, the receiver becomes ineligible to serve in that capacity.

5 Whenever a receiver is replaced, the person replacing the receiver shall succeed to the powers of the receiver being replaced, and the books, records and remaining assets of the bank in the custody of the receiver being replaced as well as the books and records of the receivership shall be promptly transferred into the custody of that person.

6 In the performance of its duties, the receiver shall conduct the operations of the receivership in a manner which maximizes the return from the sale or disposition of the bank's assets, minimizes the amount of any losses, and provides for the fair and consistent treatment of claimants in accordance with Article 92.

Article 81 Powers of the receiver

1 Upon appointment the receiver shall become the sole legal representative of the bank, and shall succeed to all rights and powers of the shareholders of the bank relating to their shares of capital stock of the bank, the board of directors of the bank, and the authorized manager of the bank. Such rights and powers shall include holding title to the books, records, and assets of the bank; operating the bank; marshalling assets and claims; transferring or disposing of assets; and taking any other action necessary to the effective liquidation of the bank.

2 Claims against the bank shall be served on the receiver for the bank.

Article 82 Effect of bankruptcy decision

1 The decision of the Tribunal opening bankruptcy proceedings against a bank shall take effect at the time that the decision is taken.

2 Immediately upon the decision referred to in paragraph (1) above taking effect, the bank shall cease to take deposits from the public.

3 Acts performed by or on behalf of the bank after the bankruptcy decision takes effect shall be legally void and unenforceable, except for acts performed by or under authority of the receiver for the bank and acts deemed beneficial to the estate of the bank by the receiver and ratified by the receiver.

4 As a result of the bankruptcy decision, all current court proceedings against the bank are stayed and no court proceeding against the bank shall commence after the bankruptcy decision takes effect.

5 As a result of the bankruptcy decision, all attachments or liens in aid of execution in favor of the bank's creditors or other restraints on the bank's assets shall be deemed removed by operation of law. Attachments placed and acts of execution performed after the bankruptcy decision takes effect shall be void, except for execution in accordance with the provisions of Article 91 of assets encumbered by a mortgage or lien to the extent of the debt secured by such encumbrance.

6 Neither interest nor any other charge shall accrue on liabilities of a bankrupt bank after the bankruptcy decision takes effect.

7 Transfers of shares of a bankrupt bank made after the bankruptcy decision takes effect, except for transfers made with the prior consent of the CBI, shall be void.

8. All legal acts of the bank that are taken within 60 business days before the date of the CBI's decision appointing a conservator for the bank shall upon application of the receiver be declared null and void by the CBI if the bank and its counterparty in the act knew or should have known at the time of the act that the act would damage the interests of creditors of the bank. Such knowledge shall be presumed whenever the act consists of:

a. a gift or other transfer without consideration to any person;

b. a payment or transfer to an owner, administrator or employee of the bank, unless such owner, administrator or employee shows to the satisfaction of the Tribunal that the payment or transfer concerned his or her employment by the bank or concerned an account maintained with the bank, or that he did not know that the payment or transfer would damage interests of creditors of the bank;

c. a payment or transfer before its due date or the transfer of collateral for a debt before the due date of the debt;

d. the conclusion or performance of a contract imposing obligations on the bank that are significantly more onerous than the obligations imposed on the other party or parties to the contract;

e. an arrangement between the bank and one or more others, other than an eligible financial contract defined in Article 88, permitting an offset between rights and obligations of the bank that without such arrangement would not have been permissible before the time of the bankruptcy decision; or

f. interbank transfers between a domestic branch of a foreign bank and such foreign bank or its branches or subsidiaries abroad.

Article 83 Finality in payment and securities settlement systems

1 Irrevocable money and securities transfer orders entered by a bank into a payment or securities settlement system recognized as such by the CBI shall be legally enforceable and binding on third parties, even in the event of a decision of the Financial Services Tribunal opening bankruptcy proceedings against the bank, but only if the transfer orders become irrevocable before the bankruptcy decision takes effect.

2 Where a bank enters irrevocable money or securities transfer orders into a payment or securities settlement system recognized as such by the CBI after the Tribunal's decision opening bankruptcy proceedings against the bank takes effect and the transfer orders are carried out on the date of the Tribunal decision, the transfer orders shall be legally enforceable and binding on third parties, unless the receiver proves that the system operator was aware of the bankruptcy decision before the transfer orders became irrevocable.

3 Netting agreements of a payment or securities settlement system recognized as such by the CBI shall be enforceable notwithstanding the Tribunal's decision opening bankruptcy proceedings against its participant.

4. For the purposes of this article:

a. a transfer order entered into a money or securities settlement system becomes irrevocable at the time defined by the rules of that system; and

b. "netting" means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants in a settlement system either issue to, or receive from, one or more other participants in that system with the result that only a net claim or a net obligation remains.

4 Nothing in this article limits the receiver's powers under paragraph (8) of Article 82 of this Law.

Article 84 Transfers of bank shares, bank assets and liabilities

1. In the interests of preserving the soundness of the banking system and to maximize the value of a bank for its creditors, in the event that the receiver, with the concurrence of the CBI, determines that engaging in a transaction or series of transactions set forth in subparagraphs (a) or (b) of this paragraph is necessary, the receiver shall apply to the Tribunal for approval to:

- a. transfer all or substantially all of the shares in capital stock of the bank; or
- b. transfer all or substantially all of the assets of the bank or all or substantially all of the liabilities of the bank, or both;

provided, however, that the approval of the Tribunal shall not be necessary for transactions other than those referred to in sub-paragraphs (a) and (b) above.

1 The Tribunal shall render a decision approving or disapproving the application of the receiver referred to in paragraph (1) above within three business days of receipt of such application.

2 A transaction pursuant to paragraph (1) may be requested and authorized at any time after the filing of a petition for opening bankruptcy proceedings against the bank until the bank has been liquidated.

3. A transfer of liabilities under paragraph (1), sub-paragraph (b) shall become effective for all interested parties at the beginning of the day following the day of publication of a notice of the transfer in the Official Publication.

Article 85 Property report

1. Within two weeks from the date of the Tribunal decision opening bankruptcy proceedings against a bank, the receiver shall submit to the CBI a property report listing:

- a. the assets of the bank, including claims of the bank on account of unpaid subscriptions of capital stock of the bank, loan and guarantee agreements, and agreements of purchase or sale, as well as the book values and estimated liquidation values of the assets;
- b. the contracts pursuant to which property of the bank is held by other parties, including rental, lease and collateral agreements;
- c. the contracts pursuant to which the bank receives services; and

d. the significant transactions entered into by the bank during the period of 60 business days immediately preceding the date of the bankruptcy decision.

2. The report shall be updated quarterly and shall be made available at the CBI for inspection by the creditors of the bank whose claims are included on the list of approved claims prepared pursuant to Article 87.

Article 86 Registration of claims

1 Except as provided in paragraphs (1) and (2) of Article 87, claims on a bankrupt bank shall be registered with the receiver in writing within 60 business days from the date that the Tribunal decision opening bankruptcy proceedings against the bank is published in the *Official Gazette*; at the request of three or more creditors submitted to the Tribunal at least ten days prior to the expiration of the period referred to in this paragraph, the Tribunal may once extend this term for all creditors by 20 business days on grounds of equity.

2. Claims shall be registered together with documentary evidence of the claim and the following information:

a. the name and address of the creditor;

b. the amounts of interest and other charges, penalties and taxes included in the principal amount of the claim; and

c. details concerning any mortgage, lien or guarantee securing the claim, including the name and address of any guarantor.

2 The decision of the Tribunal opening bankruptcy proceedings against a bank suspends the authority of depositors to access their deposits recorded in the books or records of the bank.

3 Creditors shall be given a registration receipt by the receiver on the registering of a claim, which receipt shall be conclusive evidence of registration.

Article 87 Admission of claims

1 Only claims that are registered in accordance with Article 86 may be admitted by the receiver, except that claims on account of deposits recorded in the books or records of the bank shall be admitted for the amounts so recorded without requiring registration.

2 Registered claims recorded in the books or records of the bank shall be admitted by the receiver as recorded without further proof, except that claims registered for an amount that is less than the amount recorded by the bank shall be admitted only for the lesser amount.

3. Creditors of the bank with claims secured by a mortgage or lien resting on assets of the

bank may register their claims for the amount by which the amount of the claim exceeds the expected sales value of the asset in a public auction or the market value as determined by an

independent appraiser. Any claim so registered shall not be admitted until the auction has taken place or title to the asset has been otherwise transferred pursuant to Article 91.

3 Claims whose value is uncertain may be admitted for a value estimated by the receiver.

4 After examining the registered claims, the receiver shall record the claims admitted by the receiver on a list of admitted claims and the claims contested by the receiver on a list of contested claims specifying the reasons for the opposition. Registered claims contested in part shall be recorded on both lists for the admitted part and the contested part respectively. Both lists shall for each claimant specify name and address, the amounts of the claims, and whether the claims are secured by collateral; claims of equal ranking shall be listed together, in the order of their priority of payment.

5 Both lists shall be completed and submitted to the Tribunal for approval within 30 business days from the deadline for registration of claims. Thereafter, the receiver shall submit quarterly updated lists to the Tribunal for approval. Before approving the lists, the Tribunal may move claims from one list to the other in consultation with the receiver. The Tribunal may specify the evidence required for the approval of contested claims.

6 The Tribunal shall set dates for hearings where creditors whose claims are contested may submit evidence to prove their claims to the receiver and the Tribunal, provided that such hearings shall be held not later than 40 business days after the date on which the list of contested claims is submitted to the Tribunal. Creditors shall be notified of the date of each hearing by mail and by notice placed by the receiver in the Official Publication. No creditor need be notified of a hearing by mail more than once for the same claim. Following the hearing, the Tribunal shall decide whether the contested claims shall be approved or rejected. Claims for which the creditor fails to appear at the hearing of which the creditor has been notified by mail shall be regarded as rejected. Creditors whose claims have been rejected shall be notified by the receiver in writing.

7 The approval by the Tribunal of claims shall be final. Claims approved by the Tribunal shall be removed from the list of admitted claims or the list of contested claims and be recorded on a list of approved claims kept by the Tribunal and the receiver. Creditors whose claims have been approved by the Tribunal shall be notified by the receiver in writing.

8 No payment shall be made by the receiver on account of claims that are rejected by the Tribunal. The creditor whose claim has been rejected by the Tribunal may appeal the decision of the Tribunal to the appropriate appellate court within two weeks after the date of receipt of notice of the decision.

Article 88 Set off and netting

1 Except as otherwise stated in this article, nothing in this Law and no decision made under this Law shall prevent or prohibit the set off by operation of law of obligations between a bankrupt bank and its contractual counterparties.

2. In determining the rights and obligations between a bankrupt bank and its contractual

counterparties, effect shall be given to the termination provisions of eligible financial contracts between them. The net termination value determined in accordance with an eligible financial contract between them shall be a claim of the bank on the counterparty or shall be admitted after its registration as a claim of the counterparty on the bank. In this paragraph (2), "eligible financial contract" means any of the following agreements:

- a. a currency or interest rate swap agreement;
 - b. a basis swap agreement;
 - c. a spot, future, forward or other foreign exchange agreement;
 - d. an agreement providing for a cap, collar or floor transaction;
 - e. a commodity swap agreement;
 - f. a forward rate agreement;
 - g. a repurchase or reverse repurchase agreement;
 - h. a spot, future, forward or other commodity agreement;
 - i. an agreement to buy, sell, borrow or lend securities, to clear or settle securities transactions or to act as a depository for securities;
 - j. any derivative, combination or option in respect of, or agreement similar to, an agreement referred to in sub-paragraphs (a) to (i);
 - k. any master agreement in respect to an agreement referred to in sub-paragraphs (a) to (j);
 - l. any master agreement in respect of a master agreement referred to in subparagraph (k);
 - m. a guarantee of the liabilities under an agreement referred to in sub-paragraphs (a) to (l);
- and
- n. any agreement of a kind prescribed by regulation of the CBI;

and "net termination value" means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract in accordance with its provisions.

3. Except as provided by Article 83, no set off shall be allowed with respect to claims acquired and debts assumed with respect to a bank after the Tribunal decision opening bankruptcy proceedings against the bank takes effect or with respect to claims acquired and debt assumed in bad faith before that decision takes effect.

Article 89 Termination of current contracts

1 All current contracts or portions of contracts of a bankrupt bank may be terminated

unilaterally by the receiver within a reasonable time after the petition for opening bankruptcy proceedings has been granted not to exceed 60 business days . . .

2 Subject to Article 88 of this Law, the receiver may enforce any contract of the bank notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or receiver.

Article 90 Negotiated settlements

With the prior approval of the CBI, the receiver for a bank may enter into and carry out negotiated settlements of claims with any creditor and debtor of the bank. No such settlement shall be subject to opposition, review or appeal.

Article 91 Secured claims

1 Assets securing an approved claim of a creditor against the bank shall be sold in a commercially reasonable manner and the secured creditor shall be deemed repaid in full to the extent that proceeds of the sale provide sufficient funds to cover the approved claim. If proceeds of the sale exceed the approved value of a claim, any such excess funds shall be remitted to the receiver for inclusion in the assets of the bank available for distribution to other creditors as provided in paragraph (1) of Article 92. If the proceeds of the sale are insufficient to satisfy the approved value of a claim in full, the balance shall be treated as an unsecured claim of the creditor against the bank pursuant to paragraph (1), sub-paragraph (f) of Article 92.

2 In the case of secured claims of the bank against other persons, if the claim is due on demand or is mature, or if the maturity of the claim can be accelerated, the assets securing the bank's claim shall be placed at the disposal of the receiver promptly upon the receiver's request. The assets shall be sold in a commercially reasonable manner and the bank shall be deemed repaid in full to the extent that the proceeds of the sale generate sufficient funds to cover the claim. If proceeds of the sale exceed the value of the bank's claim, any such excess funds shall be remitted to the owner of the assets. If the proceeds of the sale are insufficient to satisfy the value of the bank's claim in full, the receiver may proceed against the obligor to recover the deficiency. Secured claims of the bank against other persons that are not yet mature where the maturity cannot be accelerated under the terms of any applicable agreement may be sold by the receiver without the consent of such other persons.

3. Assets shall be deemed to have been sold in a commercially reasonable manner when they are disposed of as follows:

a. securities, foreign currencies and other assets that can be readily sold at market sold in the markets where they are traded; and

b. sold at public auction, provided that if the receiver determines that no reasonable price can be obtained for assets in a public auction, the CBI may authorize the receiver to sell the assets privately at a price approved by the CBI.

3 Any dispute between the receiver and a secured creditor as to the value of an asset securing

a claim shall be resolved by the CBI unless the asset is sold at market or at public auction, in which event the sales price at market or at public auction shall be conclusive as to the value of the asset.

4 Notwithstanding paragraph (1) above, with respect to assets other than those set forth in paragraph 3, sub-paragraph (a), the receiver may satisfy the claim of any secured creditor by payment to such creditor without the need for a public auction. In such event, the receiver may rely on an appraisal of an independent third party of the assets in question.

Article 92 Priority of payments

1. The assets of a bankrupt bank shall be distributed among its creditors in the following order of priority:

a. claims with regard to deposits that are not in the form of debt securities up to a maximum amount of 5 million *dinars* per depositor;

b. all costs and expenses on account of the administration of the bankruptcy or the conservatorship including the costs of additional or new financing, goods or services provided after the bank is placed under the control of the conservator or receiver;

c. liabilities of the bank on account of conservatorship and rehabilitation;

d. state and local taxes and state social security premiums due over a period of not more than one year preceding the date of the bankruptcy decision;

e. salary payments to employees of the bank, excluding any remuneration of members of the board of directors, as accrued to the date of the decision to open bankruptcy proceedings;

f. any claims of depositors not paid under sub-paragraph (a) together with claims of unsecured creditors; and

g. any claims relating to subordinated debt.

2. Remaining assets shall be transferred to the owners of the bank pro rata to their respective ownership shares.

Article 93 Liquidation plan

1. Within 60 business days from the date of the decision of the Tribunal opening bankruptcy proceedings against a bank, the receiver shall prepare and submit to the CBI for its approval a detailed liquidation plan for the bank. The plan shall include:

a. a current pro forma balance sheet showing the assets and liabilities of the bank valued at their estimated liquidation value and a pro forma balance sheet of the expected assets and liabilities of the

bank at a date about three months later; the balance sheets shall show liabilities as admitted claims of creditors as well as approved claims and contested claims of creditors;

b. quarterly statements of past and projected income and expenses of the bank;

c. a progress report on the sale and on plans for the sale of major assets or groups of assets of the bank;

d. a report on the judicial or extrajudicial pursuit of claims of the bank, including court action to obtain annulment of fraudulent agreements and the transfers made and rights created by them;

e. a report on illegal activities of administrators of the bank and actions to obtain compensation for the bank;

f. a report on the continuation or termination of ongoing contracts, such as insurance, employment and service contracts of the bank, including a detailed analysis of financial provisions for bank employees;

g. a report on the liabilities of the bank and a schedule of expected payments to creditors of the bank during the next quarter; and

h. a report on the costs and expenses of the receivership as of the date of the liquidation plan, and an estimate of future costs and expenses.

2. The liquidation plan shall be updated quarterly. After its approval by the CBI, the liquidation plan shall be available for inspection by the creditors of the bank whose claims are included on the list of approved claims prepared pursuant to Article 87.

Article 94 [Reserved]

Article 95 No compromise with creditors

Subject to the provisions of Article 90, there shall be no compromise or other arrangement with groups of creditors concerning a bankrupt bank.

Article 96 General meeting and committee of creditors

1 There shall be no general meeting of creditors concerning the liquidation of a bankrupt bank unless, at the request of the receiver, the CBI decides that such meeting is desirable to achieve an efficient liquidation of the bank.

2 There shall be no committee of creditors concerning the liquidation of a bankrupt bank unless, at the request of the receiver, the CBI decides that such committee is desirable to represent and protect significant interests of one or more classes or groups of creditors.

3 The CBI decisions authorizing a general meeting of creditors or a committee of creditors

shall specify the tasks of the meeting or the committee and the scope of its activities.

Article 97 Immediate advances to depositors

Claims on account of demand deposits with a bankrupt bank that are not in the form of debt securities may be paid in advance of any other distribution to unsecured creditors up to a maximum amount of 5 million *dinars* per depositor.

Article 98 Distribution of payments

1 Subject to Article 92, approved claims shall be ranked and combined according to their priority of payment and recorded in a distribution schedule. Except for the provisions of Article 97, the amounts to be paid on claims of the same class shall be determined on the basis of the same percentage applied to the amount of available funds.

2 At any time, and consistent with Article 92, the receiver may propose and the CBI may approve a distribution schedule of payments to be made to creditors of the bank with approved claims.

3 Immediately after the approval of a distribution schedule by the CBI, the receiver shall make the payments listed in that distribution schedule. Amounts included in a distribution schedule that cannot be paid because the creditors cannot be identified or contacted shall be deposited in an account with the CBI. The receiver shall publish a notice in the Official Publication and two newspapers of general circulation inviting these creditors by name to come forward. The amounts so deposited shall remain available for payment to the creditors or their successors until the statute of limitations for the claims has run out, in which case the unpaid amounts shall be transferred to the State Treasury.

Article 99 Bankruptcy proceedings concerning branch or representative office

1. Bankruptcy proceedings may be opened against a domestic branch office or a domestic representative office of a foreign bank:

a. if any of the grounds listed in Article 71 applies to such office as if it were a separate legal entity; or

b. at the petition of the CBI, if bankruptcy proceedings have been opened against the foreign bank in the country where its head office is located or where it principally carries on business.

1 The provisions of this section shall apply to the domestic branch offices and domestic representative offices of a foreign bank as if all these offices together were to form a single legal entity. All assets, liabilities, acts and omissions of the foreign bank resulting from or otherwise relating to the

business of any such office shall be attributed to that single entity in applying the provisions of this article. The receiver shall be authorized to take all actions with respect to such single entity as could be taken, were it to be a domestic bank, by the authorized manager or shareholders at the general meeting of shareholders.

2 At the time that the decision of the Tribunal opening bankruptcy proceedings against a domestic branch office or a domestic representative office of a foreign bank is served on that office, the foreign bank shall cease all banking activities in Iraq, except for banking activities carried out by or with the prior written authorization of the receiver appointed for that office.

3 In its application in bankruptcy proceedings opened against an office of a foreign bank, Article 88 only applies to the set off and netting of obligations resulting from or otherwise relating to the business of the foreign bank in Iraq.

4 Bankruptcy proceedings in Iraq opened against an office of a foreign bank shall not limit the rights of creditors of the foreign bank to pursue foreign assets of that bank in satisfaction of their claims.

Article 100 Cross border bank insolvency

1. In order to promote equal access of domestic and foreign creditors to a universal pool of assets of a bankrupt bank with cross border activities:

a. if a bankrupt domestic bank has branch offices or representative offices in a foreign country, the CBI shall cooperate as much as possible with the authorities of that country;

b. if a creditor of a bankrupt domestic bank has received partial payment on its claims in a foreign country, the balance of its claims may be presented for payment together with costs incurred in the proceeding in Iraq;

c. the Financial Services Tribunal shall decide to what extent foreign bankruptcy decisions, conservation measures and bank rehabilitation measures concerning foreign banks should be recognized with respect to their domestic branch offices and representative offices; and

d. if a foreign bank is in liquidation in the country in which its head office is located or where it principally carries on business, the Tribunal may at the request of the CBI

authorize the transfer to the liquidator in that country of such assets of the foreign

bank as the CBI shall deem advisable and in the interest of the creditors of that bank.

2. A receiver or conservator for any bank shall be the sole representative of such bank, its branches, offices, and subsidiaries, wherever situated, and may take such action in the courts of Iraq or other jurisdictions, as may be necessary or appropriate to carry out the provisions of this Law.

Article 101 Consultations between the Financial Services Tribunal and CBI

Before taking any decision affecting a bank declared bankrupt, the Tribunal shall inform the CBI of its proposed decision and afford the CBI a reasonable opportunity to give its advice to the Tribunal concerning the proposed decision. In making its decision, the Tribunal shall take account of the advice of the CBI. In the event that the Tribunal rejects all or part of the advice of the CBI, the decision shall describe the advice so rejected and give the grounds for the rejection.

Article 102 Termination of bankruptcy proceedings

1 Upon termination of the receiver's tasks, the receiver shall be discharged by decision of the Tribunal, but not before the receiver has prepared and submitted to the Tribunal a report of the receivership. The decision of discharge by the Tribunal shall direct where the books and records of the bank and the receivership shall be deposited.

2 The bankruptcy proceedings against a bank shall be terminated by decision of the Tribunal when all assets of the bank have been liquidated and the proceeds paid to the creditors of the bank or deposited with the CBI to remain available for payment to creditors of the bank pursuant to paragraph (3) of Article 98.

3 The decision of the Tribunal terminating bankruptcy proceedings against a bank shall be published by the Tribunal in the Official Publication.

Section 15 - Final Provisions

Article 103 Applicability of certain laws

The provisions of the Public Companies Law or any other law that may replace either of the aforesaid two laws shall apply to banks to the extent that these provisions do not conflict with the provisions of this Law and the Central Bank of Iraq Law and regulations and orders issued there under.

Article 104 Regulations

1 The CBI shall have the power to issue regulations, orders, guidance, and information to facilitate the implementation of this Law. Regulations, and any subsequent amendments thereof, shall be published in the Official Publication.

2 If the CBI proposes to issue a regulation pursuant to this Law, it shall publish a draft of the proposed text of the regulation in a form and in a manner determined by it to be best calculated to bring the proposed regulation to the attention of the domestic banking industry and the general public. The draft shall be accompanied by an explanation of the purpose of the proposed regulation and a request for comments within a specified time of not less than one month after the date of publication of the draft. The CBI shall have regard to any comment received and issue the final text of the regulation accompanied by an account in general terms of the comments. This procedure shall not apply if the delay involved would be a serious threat to the interests of the banking system, provided that such decision by the CBI shall be explained in the preamble to the regulation.

Article 105 Judicial review

1 Final orders and decisions of the CBI under this Law shall be subject to review in a court of law only as stipulated in this Law.

2. Any aggrieved party may, within 30 days following the date of receipt of the order or decision, or within such shorter period of time as is specified in this Law, appeal any final order or decision of the CBI:

- a. rejecting the application for a license or permit under paragraph (8) of Article 8;
- b. revoking the license or permit under Article 13; or
- c. imposing any measure or administrative penalty pursuant to paragraph (2) of Article 56

to the Tribunal, which must decide the appeal pursuant to the Central Bank of Iraq Law, provided that the filing of an appeal does not automatically result in a suspension of the revocation or any measures or administrative penalties imposed by the CBI.]

1 Tribunal decisions may be appealed for judicial review only as provided for in the Central Bank of Iraq Law.

2 Notwithstanding paragraph (2) above, in any case brought under Articles 59 through 102 of this Law, the Tribunal, or other appropriate court may award monetary damages, but shall not suspend, enjoin, terminate or bar any act of a conservator, receiver, the CBI or the State, except with respect to a decision by the Tribunal regarding the removal of a conservator under Article 63.

Article 106 Transitional provisions

1 The Post Office shall be exempted from the application of this Law through December 31, 2005.

2 Every bank that, on the date that this Law enters into effect, carries a banking license or permit issued by the CBI may continue to operate as a bank and shall be subject to the provisions of this Law.

3 Every bank that, on the date that this Law enters into effect, carries a banking license or permit shall provide the CBI with a list of shareholders as described in paragraph (2), subparagraph (e) of Article 5, and for each owner of a qualifying holding, including the ultimate beneficial owner of such qualifying holding, the information and an affidavit as described in paragraph (2), sub-paragraphs (d), (f) and (j) of Article 5, and such other information on their owners, in particular owners of a qualifying holding, as requested by the CBI, within one year of the law's entry into force.

4 The capital requirements set out in paragraph (1) of Article 14 and paragraph (1) of Article 16 shall not apply through December 31, 2005 for every bank that, on the date that this Law enters into effect, carries a banking license or permit issued by the CBI and which has obtained the CBI's approval of a plan and timetable detailing the proposed increase of its capital by December 31, 2005.

5 The prohibition established in paragraph (1), sub-paragraph (b) of Article 30 shall not apply through December 31, 2005, provided that banks may not increase the aggregate outstanding principal amount of any such single large credit exposure to exceed the limit of 25 percent of the bank's unimpaired capital and reserves over that time period.

6 Through December 31, 2004, banks are prohibited from engaging in active trading in equities for their own account and shall not acquire stocks, shares, or equity-linked bonds by means of purchase without the CBI's prior approval.

7 Notwithstanding the limit established in paragraph (3) of Article 60, through December 31, 2005, the term of appointment of a conservator may be extended for two further periods of up to 18 months each, provided that such appointment shall extend through June 30, 2007 at the latest.

8 Through December 31, 2004, the provisions of section 7 shall not apply to banks that are solely owned by the State, provided they are subject to a government audit by the Board of Supreme Audit.

Article 107 Relationships to other provisions of the laws of Iraq

1 Provisions in the Law of Companies that limit the percent of participation in companies is not applicable to shareholdings in banks.

2 In case of inconsistency with a provision of any other law of Iraq, this Law shall prevail.

Article 108 Entry into force

This law shall enter into force on the same date that the Order authorizing this law enters into force. Thereafter, this law shall be published in the Official Publication.