

COALITION PROVISIONAL AUTHORITY ORDER NUMBER 76

CONSOLIDATIONS OF STATE-OWNED ENTERPRISES

Pursuant to my authority as Administrator of the Coalition Provisional Authority (CPA) and under the laws and usages of war, and consistent with relevant U.N. Security Council resolutions, including Resolutions 1483 and 1511 (2003),

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

Acknowledging the Governing Council's desire to bring about significant change to the Iraqi economic system by promoting economic reconstruction and the conditions for sustainable development in a competitive global marketplace,

Determined to encourage more efficient Iraqi governance by consolidating government functions carried out by certain state-owned enterprises into government agencies,

Further committed to improve the production and economic performance of some Iraqi state-owned enterprises by merging them together,

I hereby promulgate the following:

Section 1 Purpose

This Order provides for the consolidation and reorganization of certain state-owned enterprises into government ministries or agencies. This Order also clarifies the operation of existing procedures with respect to the merger of state-owned enterprises.

Section 2 Consolidation

- 1) The state-owned enterprises listed in Column 1 of Annex A shall be consolidated into the Iraqi ministries listed opposite those companies in Column 2 and may be reorganized or reclassified as appropriate under the particular economic facts and circumstances, so long as such reorganization remains consistent with this Order. The Administrator may add to and remove state-owned enterprises from Annex A. A minister may propose to the Administrator a state-owned enterprise for consolidation. Following the transfer of governmental authority to the Interim Iraqi Government, a minister shall make proposals for consolidation of state-owned enterprises to the Council of Ministers or its successor. Generally, state-owned enterprises selected for consolidation will be those that are not a complete business, but that provide a needed

and valuable service, the operations and assets of which can be successfully transferred to a ministry. State-owned enterprises that include any private ownership shall not be consolidated pursuant to this Order.

- 2) Such consolidation shall be effected on approval of the Administrator and executed under the direction of the minister of the ministry into which the state-owned enterprise will be consolidated (the “gaining ministry”). Following the transfer of authority to the Interim Iraqi Government, a consolidation shall be effected on approval of the Council of Ministers or its successor. The minister shall have the authority to reorganize the state-owned enterprise or components thereof in a manner that effectively integrates the enterprise into the respective ministry.
- 3) The gaining minister may, with the written approval of the Minister of Planning (or his delegee), and as provided by law, sell or otherwise dispose of any surplus assets, except real property and cultural property (as defined in the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954), of the state-owned enterprise or the ministry that are no longer necessary to the continued functioning of such enterprise or ministry as a result of the consolidation; provided, however, that such sale or disposition is accomplished through a transparent and market-based transaction between two parties with independent interests, operating in good faith and at arms-length, resulting in fair market value compensation to the ministry. The proceeds of any sale or disposition under this Section shall be paid to the Ministry of Finance, which may, in its discretion and with a view toward encouraging the sale of unnecessary surplus assets, pay up to 50% of such proceeds to the gaining ministry, so long as the proceeds are paid through the gaining ministry’s existing accounts and reported in line with usual budget and accounting procedures.
- 4) Once the consolidation of a state-owned enterprise is complete, the gaining minister shall submit a completion certificate to the Ministry of Finance, the Governing Council and the Administrator. Following the transfer of governmental authority to the Interim Iraqi Government, the gaining Ministry shall submit a completion certificate to the Ministry of Finance and to the Council of Ministers or its successor.
- 5) The completion certificate shall contain, at a minimum, the following:
 - a) the name of the consolidated state-owned enterprise;
 - b) the name of the relevant ministry;
 - c) any assets disposed of as part of the consolidation and the amounts received as a result of that disposal;
 - d) the date on which the consolidation was completed;

- e) the budget for the consolidated state-owned enterprise within the ministry, including a sheet of spent, committed, and remaining budget allocations for the current year; and
 - f) a list of employees consolidated into the relevant ministry.
- 6) After submission of the completion certificate and approval of budget allocations for the current year by the Ministry of Finance, paragraph (3) above shall no longer be applicable and Iraqi law shall prevail. The Ministry of Finance shall expedite procedures for reviewing submitted completion certificates, and current year budget allocations shall be deemed approved if not acted upon within two weeks of submission.
- 7) In cases where the state-owned enterprise is consolidated into a ministry that did not supervise the state-owned enterprise, the gaining ministry shall agree in writing with the releasing ministry on the terms of the consolidation, including, with respect to the payment and identification of any and all outstanding obligations, disposition of assets and employee-related matters. Such an agreement is not required where the former ministry of the state-owned enterprise has itself been dissolved prior to the consolidation, including all ministries dissolved pursuant to CPA Order No. 2 (CPA/ORD/23 May 2003/2).

Section 3

Contracts, Property and Budgets

- 1) By operation of this Order, the ministry into which the state-owned enterprise is consolidated shall be substituted for the state-owned enterprise as a party in each contract to which the state-owned enterprise is a party. Upon consolidation, the substituting ministry shall be entitled to exercise all of the rights and receive all of the benefits of the enterprise.
- 2) Notwithstanding paragraph (1) above, the substitution of the relevant ministry for the state-owned enterprise in a contract shall not constitute an explicit or implicit waiver of any immunity, including sovereign immunity, to which the relevant ministry is entitled. Nor shall the relevant ministry retain benefits and entitlements concerning revenue generation, such as raising funds by issuing debt, making loans from a bank other than the Central Bank of Iraq, or holding a bank account outside the Central Bank of Iraq.
- 3) Except as set forth in Section 2(3), title to all property owned by the state-owned enterprise being consolidated – whether movable or real, tangible or intangible – shall be transferred to the gaining ministry. The gaining ministry shall accomplish such transfer of property through the means or procedures prescribed by Iraqi law.

- 4) After a completion certificate is delivered to the Governing Council and the Administrator, (or the Council of Ministers or its successor, as appropriate) the Ministry of Finance shall transfer to the gaining ministry the allocation of the national budget associated with the state-owned enterprise being consolidated.

Section 4 Legal Identity

- 1) Upon the date that the completion certificate is submitted to the Governing Council and the Administrator, (or the Council of Ministers or its successor, as appropriate) the state-owned enterprise shall no longer have a separate legal identity and shall cease to exist.
- 2) Notwithstanding paragraph (1), the authorities granted by law, regulation or rule to the state-owned enterprise being consolidated shall be transferred to the gaining ministry and may be exercised by the gaining ministry as part of its own authorities.

Section 5 Modifications to the State Companies Law

To effectuate the terms of this Order, the State Companies Law shall be modified as follows:

- 1) Article 31, Paragraph First of the State Companies Law, No. 22 of 1997 (the “State Companies Law”) shall be amended to read in full: “It is permissible to merge two or more wholly state-owned enterprises into a single state-owned enterprise, provided they engage in a similar or integrated activity. If all of the state-owned enterprises involved are overseen by a single ministry, the relevant minister may propose the merger. If each of the state-owned enterprises involved is overseen by a different ministry, ministers of all involved ministries must agree in writing to the merger, including with respect to which ministry will ultimately oversee the state-owned enterprise resulting from the merger (for the purposes of Article 31, 32, 33 and 34, the ‘new enterprise’).”
- 2) Article 31, Paragraph Second of the State Companies law shall be amended to read in full: “The involved minister or ministries shall prepare a proposal describing the merger and submit it for final approval to the Administrator in consultation with the Governing Council. Following the transfer of governmental authority to the Interim Iraqi Government, the proposal shall be submitted to the Council of Ministers or its successor for approval.”

- 3) Article 32 of the State Companies Law shall be amended to read in full: “Once the Administrator in consultation with the Governing Council (or the Council of Ministers or its successor, as appropriate) has approved the merger pursuant to Article 31, Paragraph Second, the ministry that will ultimately supervise the new enterprise shall amend the original contract or draw up a new contract. The board of directors shall amend the basic law or draft a new basic law.”
- 4) Article 33 of the State Companies Law shall be amended to read in full: “The ministry that will ultimately oversee the new enterprise shall inform the Registrar of the amended contract or provide the Registrar with the new contract. The merger shall be considered valid as of the date of the Administrator’s (or Council of Ministers’ or its successors’, as appropriate) approval, unless otherwise specified by the Administrator in consultation with the Governing Council (or the Council of Ministers or its successor, as appropriate). On the date the merger becomes valid, the corporate status of the enterprise or enterprises being merged into the new enterprise shall expire. The Registrar shall issue a new certification of establishment.”
- 5) Article 34, Paragraph First of the State Companies Law shall be amended to read in full: “The Governing Council, and subsequent to the transfer of authority to the Interim Iraqi Administration, the Council of Ministers or its successor, shall publish notice of its merger decision in the Official Gazette of Iraq and, if available, the bulletin issued by the Registrar.”
- 6) Article 34, Paragraph Second of the State Companies Law shall be amended to read in full: “The rights and obligations of the enterprise or enterprises being merged shall revert to the new enterprise.”
- 7) Following the transfer of full governmental authority to the Iraqi Interim Government, the duties of the Administrator and the Governing Council under this Order shall be assumed by the body vested with national executive authority.

Section 6 Administrative Instructions

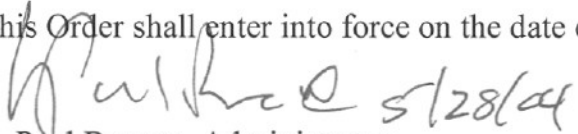
The Administrator may delegate authority to issue Administrative Instructions to clarify and implement this Order.

Section 7 Inconsistent Legislation

Any provision of Iraqi law that is inconsistent with this Order or Annex A is hereby suspended to the extent of such inconsistency.

Section 8
Entry into Force

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


L. Paul Bremer, Administrator
Coalition Provisional Authority

ANNEX A

SOEs to be Merged:

1. The Industrial Bank into Rafidain Bank, with Rafidain Bank surviving
2. The Real Estate Bank into Rafidain Bank, with Rafidain Bank surviving
3. The Agricultural Bank into Rasheed Bank, with Rasheed Bank surviving
4. The Socialist Bank into Rasheed Bank, with Rasheed Bank surviving