

COALITION PROVISIONAL AUTHORITY ORDER NUMBER 81

**PATENT, INDUSTRIAL DESIGN, UNDISCLOSED INFORMATION,
INTEGRATED CIRCUITS AND PLANT VARIETY LAW**

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 Resolution 1483 and 1511 (2003),

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

Acknowledging the Governing Council's desire to bring about significant change to the Iraqi intellectual property system as necessary to improve the economic condition of the people of Iraq,

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

Recognizing that companies, lenders and entrepreneurs require a fair, efficient, and predictable environment for protection of their intellectual property,

Noting that several provisions of the current Iraqi Patent and Industrial Design Law and related legislation does not meet current internationally-recognized standards of protection,

Recognizing the demonstrated interest of the Iraqi Governing Council for Iraq to become a full member in the international trading system, known as the World Trade Organization, and the desirability of adopting modern intellectual property standards,

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

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

Section 1
Amendments to the Patents, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law

- 1) The Patent and Industrial Designs Laws and Regulations (No. 65 of 1970) is hereby renamed the Patents, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law (the “Law”).
- 2) Article 1.1 is amended to read as follows: “Minister—Minister of Industry.”
- 3) Article 1.4 is amended to read as follows: “Invention—Any innovative idea, in any of the fields of technology, which relates to a product or a manufacturing process, or both, and practically solves a specific problem in any of those fields.”
- 4) Article 1.6 is amended to read as follows: “Patentee—The natural or legal person to whom the patent is granted.”
- 5) Article 2 is amended to read as follows: “Patents of invention shall be granted pursuant to the provisions of this Law for each invention that is industrially applicable, novel and involves an inventive step, either concerning new industrial products, new industrial methods, or new application of known industrial methods”
- 6) Article 3.2 is suspended.
- 7) Article 4 is amended to read as follows: “An invention shall not be considered as new in the following three cases:
 - a) If, the invention has been publicly worked out in or outside Iraq, or if the description or drawing of the invention has been publicized in periodicals within Iraq or outside it in such a clear way that enables experts to exploit;
 - b) If, letters patent had been granted to the invention or part thereof to a person other than the inventor or to whom the rights of the invention have been assigned, or that others had already applied for the same patent, or part thereof;
or
 - c) Notwithstanding subparagraphs (a) and (b), the disclosure of the invention to the public shall not be taken into account if it occurred twelve months before the filing date of the application or its priority date, if any, and it occurred by actions taken by the applicant or applicant’s predecessor or due to an abuse by third parties against the applicant or predecessor.

- 8) Article 5 is amended to read as follows: “Notwithstanding the grant of the patent, a person who, in good faith, manufactures, uses an industrial manufacturing process of a product, or makes serious preparations therefore, before the filing date of an application by another person, or before the priority date of the application pertaining to the same product or process, shall have the right to continue such use or to use the invention as envisioned in such preparations. Assignment or transfer of the said right is only permitted together with the establishment or with that part of the establishment in which the use or preparations for use have been made.”
- 9) Article 7.3 is amended to read as follows: “Nationals of States Party to a relevant international agreement to which Iraq is a member.”
- 10) Article 7.5 is amended to read as follows: “Companies, societies and establishments formed in Iraq or in countries that are members of a relevant international agreement to which Iraq is a member, and enjoying juridical personality, industrialists, manufacturers, merchants or laborers, provided that the invention shall be primarily registered in the name of the inventor, unless when the invention had already been patented outside Iraq, in which case such invention may be registered in the name of the company, establishment or society that owns it.”
- 11) Article 12 is amended to read as follows: “A patent shall grant its owner the following rights:
 - a) Where the subject of the patent is a product, the right to prevent any person who has not obtained the owner's authorization from making, exploiting, using, offering for sale, selling or importing that product.
 - b) Where the subject of the patent is an industrial process, the rights to prevent any person who has not obtained the owner's authorization from using the process or the product directly made by the process, offering for sale, selling or importing the product.”
- 12) Article 13.1 is amended to read as follows: “The term of duration of the patent shall not end before the expiration of a period of twenty years for registration under the provisions of this Law as from the date of the filing of the application for registration under the provisions of this Law.”
- 13) Article 13.2 is suspended.
- 14) Article 16.2 is amended to read as follows:

“(2) An applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

(2)*bis* An applicant for a patent shall provide information concerning the applicant’s corresponding foreign applications and grants.”

15) Article 17 is suspended.

16) Article 18(2) is amended to read as follows: “That the specification and drawing disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.”

17) Article 27 is amended to read as follows: “The Registrar may grant a license to use a patent to third parties without obtaining the patentee's consent in any of the following cases exclusively:

A. If the use of the patent by the state authorities or licensed third parties is a necessity for national defense or emergency or for noncommercial public good provided that the patentee is notified as soon as it becomes possible.

B. 1. If the patentee does not exploit it or exploits it insufficiently before the elapse of four years as of the application date or three years as of the granting date, the period to be applied is the one that elapses later. However, the Registrar may grant the patentee an additional grace period if it is deemed that reasons beyond the control of the patentee have prevented exploitation.

2. For the purposes of item (1) of this paragraph, and without prejudice to the provisions of the relevant International Conventions, the importation of the subject goods of the patent to Iraq shall be deemed utilization of the patent.

C. If rights are exercised by the patentee in such a way as to prevent others from competing fairly.”

18) Article 28 is amended to read as follows: “The following shall be taken into consideration when compulsory licenses are granted:

A. Each application for a license shall be decided separately for its specific conditions and circumstances.

B. The applicant shall have tried to obtain a license from the patentee under reasonable remuneration and conditions but did not reach an agreement during a

reasonable period of time in the case provided for in paragraph (B) of Article 27 of this Law.

C. The scope and duration of the license shall be limited to the purpose for which it is granted. If the license application relates to semiconductor technology, then it shall only be granted for noncommercial public good or to rectify practices deemed by the competent judicial or administrative authority to be anticompetitive.

D. The license to exploit shall not be exclusive.

E. The license shall not be assignable to third parties.

F. The license shall only be granted for meeting the demand in the local market except in cases where practices have been deemed by the competent judicial or administrative authority to be anticompetitive.

G. The patentee shall receive an equitable remuneration which takes into account the economic value of the patent.”

19) Article 29 is amended to read as follows: “The Registrar may cancel the compulsory license *sua sponte* or on the strength of an application from the patentee if the reasons for its grant lapsed. This license cancellation shall, however, preserve the rights of those involved in the compulsory license.”

20) Article 30 is amended to read as follows: “The provisions and procedures related to licensing of patent utilization shall be prescribed pursuant to regulations to be issued to this aim.”

21) Article *30bis* is added following Article 30 to read as follows: “The Registrar's compulsory license decision shall be appealable to the Minister within 60 days of its notification.”

22) Article 34 is amended to read as follows: “Patentee’s rights shall not be affected by the exploitation of the invention in land, sea or air means of transport belonging to any of the countries that are members of the Paris Convention for the Protection of Industrial Property or the World Trade Organization or that treat Iraq on a reciprocal basis, during their temporary or accidental existence in Iraq.”

23) Article *36.2bis* is added following Article 36.2 to read as follows: “The application for registration of industrial designs or models shall be granted where the industrial design or model is new or original.”

24) Article 36.2*ter* is added following Article 36.2*bis* to read as follows: “The industrial design or model applied for is not considered novel if:

(1) It has been displayed, described or its uses were described to the public prior to the date of deposit of the application for registration.

However, the industrial design or model shall still be considered novel, if its description or display had been made after the application for the registration in a country that treats Iraq on reciprocal basis, or if such is displayed in national or international exhibitions, or the industrial design or model has been made public in a conference or in scientific journals within a period not exceeding six months prior to the date of the application for the registration in Iraq.

(2) It includes non-basic differences in respect of a prior industrial design or model, or is dedicated to another type of product other than to which the previously registered industrial design or model was designed for.”

25) Article 36.2*quater* is added following Article 36.2*ter* to read as follows: “Application for registration of industrial designs that are dictated essentially by technical or functional considerations shall not be granted.”

26) Article 37*bis* is added following Article 37 to read as follows:

“1. The owner of a protected industrial design shall have the right to prevent a third party not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.

2. The Minister may, by regulation, provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.”

27) Article 41 is amended to read as follows: “The term of protection of industrial designs shall be ten years as from the date of issue of the certificate, provided payment of the prescribed renewal annual fees is carried out.”

28) Article 44 is amended to read as follows:

“A. The owner of a patent or industrial design registered in Iraq, upon bringing suit to prevent the infringement of rights in the patent or design, may file a complaint with the competent court, with a bond, which the court shall accept for the following provisional measures:

1. Cease the infringement;
2. Seize the products subject of the infringement wherever it occurs; or
3. Preserve evidence related to the infringement.

B. 1. The patent or design owner, before bringing a claim of infringement, may, with a bond, request the court to order any of the procedures provided in paragraph (A) of this Article without notifying the defendant. The court may grant the owner's request if the owner proves any of the following:

- the patent or design is being infringed;
- the infringement is imminent and may cause irreparable harm; or
- the risk that the evidence will disappear or be damaged is great.

2. If the patent or design owner does not file the lawsuit within eight days from the date of the court's order for precautionary procedures, the ordered procedures shall be deemed canceled.

3. The defendant may appeal the court's decision of precautionary procedures to the Court of Appeals within eight days from the date the defendant was notified of the decision. The decision of the Court of Appeals is final.

C. The defendant may file a request, with a bond, to ask the court to discontinue the precautionary measures including the closure of the enterprise, factory, or other related businesses. This decision shall be appeal able within eight days as of the date of its notification. The decision of the Court of Appeals shall be final.

D. The defendant may seek equitable compensation for damages suffered if the court concludes that the plaintiff's lawsuit is without merit or was not filed within the prescribed period.

E. The court may, in all cases, seek the help of experts and specialists.

F. The court may order the confiscation of the infringing products, as well as the materials and tools substantially used in the infringement of the patent. The court may order them destroyed or disposed of for noncommercial purposes.”

29)Chapter Three*bis* is added following Article 54 for protection of Undisclosed Information.

30) Article 1 is added as the first article in Chapter Three*bis* to read as follows:
“Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices so long as such information:

- a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
- b) has commercial value because it is secret; and
- c) has been subject to reasonable steps under the circumstances by the person lawfully in control of the information to keep it secret.”

31) Chapter Three*bis*, Article 2 is added to read as follows: “If the Minister requires the submission of data pertaining to secret tests, or any data which has been derived as a result of considerable efforts in order to approve the marketing of pharmaceuticals or chemical agricultural products which contain new chemical substances, then the Minister shall comply with the following:

- a) Protection of such data from unclassified commercial use through prohibiting any other person who did not obtain the consent of the submitter to rely on it for marketing that other person’s pharmaceuticals and products except after the lapse of five years as of the date of obtaining the submitter of such data the approval to market those products; and
- b) The protection of this data from disclosure with the exception of the following:
 - i) Should disclosure be necessary for the protection of the public; or
 - ii) Should the Minister realize the necessary precautions to guarantee unclassified commercial use of such data.”

32) Chapter Three*ter* is added following Chapter Three*bis* for protection of Integrated Circuits.

33) Chapter Three*ter*, Article 1 is added to read as follows: “The following words and phrases shall have the following meanings wherever mentioned in this Chapter, unless otherwise indicated:

- o **The Ministry:** The Ministry of Industry.

- **The Minister:** The Minister of Industry.
- **Integrated Circuit/IC:** A product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections are integrally formed in and/or on a piece of material and which is intended to perform an electronic function.
- **Design:** Three-dimensional array of the elements constituting the circuit forming the integrated circuit or specifically prepared for manufacturing the integrated circuit.
- **Protected Design:** A design in respect of which the conditions of protection referred to in this Chapter are fulfilled.
- **Registrar:** The Registrar of Integrated Circuit Designs in the Ministry as appointed by the Minister.
- **Register:** The register of Integrated Circuit Designs.
- **Rights holder:** The creator of the protected design or legal successors.”

34)Chapter Threeter, Article 2 is added to read as follows:

“A. A Register shall be established under the supervision of the Registrar and shall be entitled “Register of Integrated Circuit Designs.” In such Register, all information related to designs, rights holders, their addresses and certificates issued on their behalf shall be handwritten and registered together with the measures and legal procedures taken to include:

B. Any transfer, acquisition, assignment or licensing from rights holder to third party/parties; and

1. Any mortgage, lien, seizure, levy or any constraint in utilizing such design.

C. The public may access the Register pursuant to regulations issued by the Minister as published in the Official Gazette.

D. Computers may be used to register designs and related information. Information and documents certified by the Registrar are presumed evidence of registration, unless otherwise proven.”

35)Chapter Threeter, Article 3 is added to read as follows: “The design is registrable, if:

A. The design is original in the sense that it is the result of its creator's own intellectual effort and is not commonplace among creators of integrated circuit designs and manufacturers of integrated circuits at the time of its creation; and

B. The application for registration is presented within two years of its first commercial exploitation anywhere worldwide.”

36)Chapter *Threeter*, Article 4 is added to read as follows: “The beneficiaries for design protection shall be as follows:

A. The creator or to whomever the design rights are accrued;

B. All participants in the design if the design is a result of a combined effort. Registration shall be equally owned unless otherwise agreed;

C. If the design was designed by more than one independent individual, the right is to the creator prior in applying for registration; or

D. The employer, if designed by an employee in fulfillment of an employment agreement, or commission, unless employment agreement otherwise stipulates.”

37)Chapter *Threeter*, Article 5 is added to read as follows: “The design is registered by filing the application for registration to the Registrar on the designated form, with requested information, samples and drawings attached. The application for registration is valid for only one registration.”

38)Chapter *Threeter*, Article 6 is added to read as follows: “A. The date the Registrar receives the application for registration of the design is considered the date of filing provided it fulfills all legal requirements and the information identifying the applicant and the design diagrams is attached.

A. If the Registrar determines that the application is incomplete as mandated by paragraph (A) of this Article, applicant may be given a period determined by regulation to complete the application, or make necessary amendments provided that such amendments exceed what was previously stated in the original application. The date of completion or amendment shall be the date of filing the application. Alternatively, the Registrar may determine that the applicant abandoned the application. Such decision may be appealed in the Court of Appeals within sixty days of the date of notification.”

39)Chapter *Threeter*, Article 7 is added to read as follows:

“A. If the application fulfills all conditions and legal requirements, the Registrar shall accept the registration and assess the fees.

B. If the Registrar announces such registration in the Official Gazette, any third party may file an objection within ninety days from the date of the published announcement. The appellate procedures shall be based on the regulations stipulated by this Chapter.

C. If no objection is filed against the acceptance of the registration of the design, the Registrar shall approve its registration and issue a certificate after assessing the determined registration fees.”

40) Chapter Threeter, Article 8 is added to read as follows:

“A. The rights holder of the registered design is entitled to authorize or prohibit the following acts:

1. Reproduction of the protected design, in whole or in part, whether incorporated in an integrated circuit or by any other means, except reproduction of any part that does not comply with the requirement of originality; or
2. Importation, sale or other distribution for commercial purposes of the protected design or an integrated circuit in which a protected design is incorporated.

B. It shall be an infringement of the rights of the owner of the protected design if any of the acts provided for in paragraph (A) of this Article are committed by third parties without consent of the rights holder and shall be liable to punishment.

C. A design comprising a combination of elements and interconnections that are commonplace shall be protected only if the combination, taken as a whole fulfills the conditions of originality as stipulated in this Chapter.”

41) Chapter Threeter, Article 9 is added to read as follows: “Notwithstanding the provisions of Article 8 of this Chapter, the performance without the authorization of the right holder, of the following:

A. Reproduction of the design in the following cases:

1. If reproduction is performed by a third party for private purposes or for the sole purpose of evaluation, analysis, research or teaching; or
2. If reproduction is of a non-original part of the design.

B. Incorporation of the protected design in an integrated circuit if, on the basis of evaluation or analysis of the protected design, creates a design complying with the requirement of originality referred to in Article 3 (A);

C. Any of the acts as stipulated in subparagraph 2 of paragraph (A) of Article 8 of this Chapter with respect to:

1. a similar design that is original and which was independently created;
2. a design or an integrated circuit incorporated in which is a design offered on the market by the rights holder or the rights holder approved offering of such; or
3. an integrated circuit that incorporates an illegally reproduced design or a product that incorporates such circuit and alleged infringer when acquiring such circuit or product was unaware and could not have been aware that such circuit or product contains a design that was illegally reproduced, in compliance with Article 10 of this Chapter.”

42)Chapter *Threeter*, Article 10 is added to read as follows: “If a person commits an act stipulated in subparagraph 3 of paragraph (C) of Article 9 of this Chapter and the right holder had legally notified such person, then that person is entitled to dispose of the stocked products before being held liable provided that such person compensates the rights holder with a sum equivalent to reasonable revenues had such act been based upon a license between the parties.”

43)Chapter *Threeter*, Article 11 is added to read as follows:

“A. Protection of the design shall be effective from the date the application for registration is filed in Iraq.

B. The period of the design protection is ten years from the date of first commercial exploitation anywhere worldwide, such period shall, however, not exceed fifteen years from the date of creation of the design.”

44)Chapter *Threeter*, Article 12 is added to read as follows:

“A. Any third party is entitled to request the cancellation of the design in the following cases:

1. the design is unregistrable due to lack of any of the conditions stipulated in Article 3 of this Chapter; or

2. the application for registration does not include all the required information, or if such information or attached documents are contrary to the facts or in violation of the provisions of this Chapter.

B. The Registrar's decision to cancel the registration of the design in accordance with paragraph (A) of this Article may be appealed to the Court of Appeal within sixty days of notification."

45)Chapter *Threeter*, Article 13 is added to read as follows:

"A. 1. Design ownership may be transferred in whole or in part, with or without compensation. The design may have a lien against it or be levied, which shall be published in the Official Gazette.

2. Transfer of design ownership, liens or levies to a third party is effective only as of the date of registration in the Register.

B. Ownership of the design may be transferred by inheritance."

46)Chapter *Threeter*, Article 14 is added to read as follows: "Procedures for design ownership transfer, liens and levies on ownership and all legal procedures shall be stipulated by regulation issued by the Minister and published in the Official Gazette."

47)Chapter *Threeter*, Article 15 is added to read as follows: "The owner may license a third party to exploit the protected design according to a written agreement to be registered with the Registrar. The Registrar shall keep the agreement of the contract confidential."

48)Chapter *Threeter*, Article 16 is added to read as follows:

"A. The rights holder upon bringing suit to prevent infringement of the design or in anticipation of such a suit, may file a complaint with the competent court, with a bond, which the court shall accept for the following provisional measures:

1. Cease the infringement;

2. Seize goods subject of the infringement wherever it occurs; or

3. Preserve evidence related to the infringement.

B. 1. Before bringing a claim of infringement, the rights holder may, with a bond, request the court to order any the procedures provided for in paragraph (A)

of this Chapter, without notifying the defendant. The court may grant the rights holder's request if any of the following is proven:

- the design was infringed;
- infringement is imminent, and may cause irreparable harm; or
- the risk that the evidence will disappear or be damaged is great.

1. If the right holder does not file the lawsuit within eight days from the date of the court's order for precautionary procedures, the ordered procedures shall be deemed canceled.

2. The defendant may appeal the court's decision to order precautionary procedures to the Court of Appeals within eight days from the date of the defendant's notification of the decision. The Court of Appeals' decision shall be final.

3. The defendant may claim compensation for damages if it is proved that the plaintiff was unjustified in his claim for precautionary procedures or the plaintiff did not bring the lawsuit within the period prescribed in item 2 of this paragraph.

C. The defendant may seek compensation for the damages suffered, if the court concludes that the plaintiff's lawsuit is without merit.

D. The court may, in all cases, seek the opinions of experts and specialists.

E. The court may order the confiscation of the infringing products and the material and tools mainly used in infringement upon the design of these products. The court may also order destruction of these products, material and tools or dispose of them for any noncommercial purpose."

49)Chapter Threeter, Article 17 is added to read as follows: "The Minister shall issue the necessary regulations for implementing the provisions of this Law including fixing the fees to be assessed."

50)Chapter Threeter, Article 18 is added to read as follows: "The protection of layout designs of integrated circuits provided under this Law shall be extended to foreigners, whether natural or juridical persons, on a basis no less favorable than that accorded to Iraqi nationals with regard to the protection and enjoyment of such rights and any benefits derived from such rights."

51)Chapter *Threequater* is added following Chapter *Threeter* for the protection of new varieties of plants.

52)Chapter *Threequater*, Article 1 is added to read as follows: “The following words and phrases shall have the following meanings wherever mentioned in this Chapter, unless otherwise indicated:

- **The Ministry:** The Ministry of Agriculture.
- **The Minister:** The Minister of Agriculture.
- **The Plant taxonomy:** Plants gradation in the plant kingdom is from the group to the class to the family to the sort to the varieties.
- **The variety:** Any plant grouping within a single botanical taxon of the lowest known rank, which grouping, irrespective of whether the conditions for the grant of a breeder’s right are fully met, can be defined by the expression of the characteristics resulting from a given genotype or combination of genotypes, distinguished from any other plant grouping by the expression of at least one of the said characteristics and considered as a unit with regard to its suitability for being propagated unchanged.
- **The protected variety:** The variety registered according to the provisions of this Chapter.
- **The education:** Breeding a new plant variety or discovering and developing such.
- **The breeder:** The person who bred, discovered or developed a new variety, or the legal successor to such person.
- **The Registrar:** The Registrar of the new plant varieties nominated by the Minister.
- **The Register:** The Register of the new plant varieties.”

53)Chapter *Threequater*, Article 2 is added to read as follows: “The provisions of this Chapter shall become effective with respect to the varieties listed under the various plant denomination determined by the regulation issued in accordance with the provisions of this Chapter.”

54)Chapter *Threequater*, Article 3 is added to read as follows:

“A. A Register shall be regulated in the Ministry under the supervision of the Registrar and shall be called the “Register of New Plant Varieties” in which all the data related to the new plant varieties shall be maintained. The name, the names and addresses of breeders, the registration certifications and the resulting procedures and dispositions shall be registered, including:

1. Any transfer, assignment or transfer of title, or licensing from its owner to third parties for use while taking into consideration the confidentiality included in the license contract; and

2. The mortgage or lien on the protected variety or any limitation for usage of such.

B. 1. The public shall have the right to view the Register and the documents related to the rights granted to the breeder and to view the growth tests or any other necessary tests as stipulated in this Chapter according to the instructions issued by the Minister and published in the Official Gazette; and

2. The data and other documents that are reproduced and maintained by the Registrar shall be considered to be the same as originals unless otherwise determined.”

55)Chapter *Threequarter*, Article 4 is added to read as follows: “The variety may be registered according to the following criteria:

A. If the variety is novel such that at the date of filing the registration application or at the date of the priority provided in paragraph (A) of Article 8 of this Chapter and according to what may be required, then plant propagating and harvesting materials of the variety have not been sold or otherwise transferred to others by or with consent of the breeder for purposes of exploitation of the variety:

1. For more than one year inside Iraq and for more than four years outside Iraq;
or

2. For more than six years outside Iraq if related to trees or vines;

B. If such materials are distinctive so that the variety differs clearly from any other variety whose existence is a matter of common knowledge at the time of filing the application, considering that any filing of an application for the granting of plant variety protection or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the

application leads to the granting of the right or to the entering of the said other variety in the Register, as the case may be;

C. If it is uniform subject to the variation that may be expected from the particular features of its propagation; or

D. If it is stable such that its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.”

56)Chapter *Threequarter*, Article 5 is added to read as follows: “The right in registering the variety shall be as follows:

A. To the breeder or to whom the variety rights shall be transferred to;

B. To all persons participating in its education if it is an outcome of their joint effort provided that it is registered in equal shares among them, unless they otherwise agree;

C. To the breeder prior in filing the variety's registration application if such is educed by more than one person and if each person is independent from the other; or

D. To the employer if the variety is educed by the employee in accordance with an employment agreement in which the employee is obliged to undertake such education unless the agreement may provide otherwise.”

57)Chapter *Threequarter*, Article 6 is added to read as follows: “The variety shall be registered as follows:

A. The registration application shall be filed with the Registrar on the designated form indicating the plant taxonomy of the variety, the proposed denomination, and any other matters or data defined by the issued regulation pursuant to the provisions of this Chapter;

B. Registration shall not be permissible if the application contains more than one variety, and one fee is paid; and

C. If the applicant is not a citizen or resident of Iraq, then the applicant shall appoint an authorized agent in Iraq.”

58)Chapter *Threequarter*, Article 7 is added to read as follows:

“A. The date at which the Registrar received the application for registration shall be deemed as its filing date provided that it fulfills all the legal requirements and includes the applicant’s identification information and a sample of the variety intended for registration.

B. If the Registrar discovers that the application does not fulfill the requirements determined in paragraph (A) of this Article, the applicant may either complete the application or make the necessary modifications within thirty days from the date of notification by the Registrar. The date the application is completed shall be considered the filing date. Where the application is not completed as requested, the Registrar shall have the right to consider the application abandoned, with an opportunity for appeal to the Court of Appeals within sixty days from the date of notifying the applicant.”

59)Chapter *Threequarter*, Article 8 is added to read as follows:

“A. 1. The applicant for plant variety registration shall include with the application, a claim for the right of priority based on a previous application filed in a country member of the World Trade Organization or other relevant international agreement to which Iraq is also a member provided that the application is filed in Iraq within a period not to exceed twelve months as calculated from the date following the first filing date.

2. If the application includes a priority claim pursuant to item (1) of this Article, the Registrar may ask the applicant, within three months from the filing date, to provide an exact copy of the documentation related to the first application approved from the office in which it was filed. The Registrar may ask the applicant within such period to provide any samples or other evidence which affirms that the variety subject of the first application is the same variety of the application related to the priority right. In such case, the filing date of the application shall be deemed as the same date on which the application was filed in the other country.

B. If the applicant is unable to demonstrate the claimed priority right in accordance with paragraph (A) of this Article, the application shall be registered on the date filed with the Registrar.

C. The applicant may ask for a grace period of two years after the expiration of the priority period to provide the Registrar with the necessary information, documentation and required materials in accordance with this Chapter for the purposes of examination pursuant to Article 9 of the Chapter. If the filed application in the other country was not accepted or was withdrawn, the applicant shall be given a grace period of six months from the date of rejection or

withdrawal of the application to provide the necessary information and documentation for the examination.”

60)Chapter *Threequarter*, Article 9 is added to read as follows:

“A. The variety may be subjected to a technical examination to verify the following:

1. It is listed under the plant taxonomy determined in its application; and
2. It fulfills the conditions of distinctiveness, uniformity and stability provided in paragraphs (B), (C) and (D) of Article 4 of this Chapter.

B. The examination provided in item (2) of paragraph (A) of this Article shall be carried out under the supervision of the Ministry by one of the following methods:

1. Pursuant to the growth and germination examinations and any other necessary tests carried out by a technical authority inside or outside Iraq if such examinations or tests have been done in environmental conditions comparable to those of Iraq; or
2. The Ministry shall carry out the examinations and tests cited in subparagraph (1), or at the expense of the breeder, designate an authority to perform the examinations or tests on its behalf.

C. A technical committee of those experienced and skilled in the art shall be established in accordance with instructions issued by the Minister and shall be asked to evaluate the results of the examinations and tests provided in paragraph (B) of this Article to comply with the procedures of registering the variety provided that such instructions shall include defining the other tasks of this Committee; how it shall work, make decisions and all related matters.”

61)Chapter *Threequarter*, Article 10 is added to read as follows:

“A. The Registrar shall ask the applicant to provide all the necessary information and documentation for undertaking the technical examination provided in Article 9 of this Chapter within the period defined in a regulation issued in accordance with this Chapter. If the applicant does not provide the requested information, the Registrar shall consider the application as abandoned; this decision may be appealed to the Court of Appeals within sixty days from the date of notification.

B. The standards provided in Article 9 of this Chapter shall be met in approving the application. Additional tests and examinations may be undertaken after registration to ensure the maintenance of the variety's uniformity and stability.”

62)Chapter *Threequarter*, Article 11 is added to read as follows:

“A. If the application fulfills all the conditions and requirements defined in this Chapter, the Registrar shall accept the application and grant the applicant preliminary approval that shall be published in the Official Gazette after collecting the established fees. The publication shall include the name of the variety and its plant class.

B. Any person shall have the right to object to the registration of any new variety within ninety days from the date of announcement of the preliminary approval in the Official Gazette.

C. Regulations shall be issued to determine the periods within which the publication shall be completed, data shall be published, procedures, and extensions of time for objecting to provisional approval, and other related issues.”

63)Chapter *Threequarter*, Article 12 is added to read as follows: “The applicant shall be given provisional protection during the period between the date of publication of the application in the Official Gazette and the date of registration of the variety. The applicant shall have the right during such period to use and make the variety, and be entitled to equitable remuneration from any person who, during this period, has carried out acts which, once the registration is granted, require the authorization of the breeder as provided for in Article 14.”

64)Chapter *Threequarter*, Article 13 is added to read as follows: “Unless an objection is made against the registration of the variety, or the objection against the registration is rejected, the Registrar shall register the variety and shall provide the breeder with a certificate after collecting the established fees.”

65)Chapter *Threequarter*, Article 14 is added to read as follows: “Taking into consideration the provisions of Articles 15 and 16 of this Chapter:

A. After registration of the variety, the following acts with respect to the propagating material of the protected variety shall require the authorization of the breeder:

1. production or reproduction (multiplication);
2. conditioning for the purpose of propagation;

3. offering for sale;
4. selling or otherwise marketing;
5. exporting;
6. importing; or
7. stocking for any of the purposes mentioned cited in this paragraph.

B. The authorization of the breeder shall be required to carry out the acts cited in paragraph (A) of this Article in respect of the harvested material, including the entire plants and parts of plants obtained through the unauthorized use of propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise the breeder's right in relation to the said propagating materials.

C. The provisions of paragraphs (A) and (B) of this Chapter shall be also applicable to the following varieties:

1. The varieties which are essentially derived from the protected variety where the protected variety is not itself an essentially derived variety. The variety is considered essentially derived from another variety according to the following criteria;

a) it is predominantly derived from the initial variety, or from a variety that is itself predominantly derived from the initial variety while retaining the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety;

b) it is clearly distinguishable from the initial variety; and

c) except for the differences which result from the act of derivation, it conforms to the initial variety in the expression of the essential characteristics that result from the genotype or combination of genotypes of the initial variety. If it is similar to the original variety as for its main properties resulting from the hereditary composite or a group of the hereditary composites for the original variety, except what is related to the differences resulting from the derivation;

2. The varieties which are not clearly distinguishable from the protected variety in accordance with paragraph (B) of Article 4 of this Chapter; and

3. The varieties whose production requires the repeated use of the protected variety.

D. It shall be permissible to obtain the essentially derived varieties as a result of the selection of a natural or induced mutant, or of a somaclonal variant, the selection of a variant individual from plants of the initial variety, backcrossing, or transformation by genetic engineering.

E. The third party's performance of the acts provided in paragraphs (A) and (B) of this Article shall be deemed as an infringement of the rights of the breeder and shall be subject to penalties if the defendant knew, or had reason to know, that the defendant infringed the rights of the breeder.”

66)Chapter *Threequarter*, Article 15 is added to read as follows:

“A. Notwithstanding Article 14 of this Chapter, the breeder's right shall not include the following acts of third parties for personal non-commercial purposes, for purposes of experimentation or education of new varieties.

B. Farmers shall be prohibited from re-using seeds of protected varieties or any variety mentioned in items 1 and 2 of paragraph (C) of Article 14 of this Chapter.”

67)Chapter *Threequarter*, Article 16 is added to read as follows:

“A. The breeder's right shall not include acts related to the materials of the protected variety, or to the materials of the protected variety, or to the materials of any variety covered under paragraph (C) of Article 14 of this Chapter, or to materials derived from these materials, and which the breeder has sold or marketed in any other form directly or with the consent of the breeder in Iraq, unless these acts include the following:

1. Further propagation of the relevant variety; or

2. Exporting of material of the variety, which enables the propagation of the variety, into a country which does not protect varieties of the plant genus or species to which the variety belongs, except where the exported material is for final consumption.

B. The word "material" wherever mentioned in paragraph (A) of this Article shall mean the propagation material of any kind, harvested material, including entire plants and parts of plants, and any product made directly from the harvested material.”

68)Chapter *Threequarter*, Article 17 is added to read as follows: “The term of protection for the protected variety shall be twenty years from the date of filing the application. With respect to trees and vines, the term of protection shall be twenty five years.”

69)Chapter *Threequarter*, Article 18 is added to read as follows:

“A. It shall be permitted to transfer, mortgage or lien all or some of the breeder's rights with or without compensation.

B. The right in the protected variety shall be transferred to the heirs by inheritance.

C. The procedure for transferring, mortgaging and placing a lien on the title of the protected variety and all relevant legal practices, including licensing for its use in accordance with instructions issued for such purpose by the Minister and published in the Official Gazette, shall be determined.

D. The transfer of title of the variety shall be considered as evidence against a third party only as of the date of registration of the transfer in the Register and its publication in the Official Gazette.”

70)Chapter *Threequarter*, Article 19 is added to read as follows: “It shall be permissible for the breeder to grant a license to a third party for use of the protected variety in accordance with a written contract that shall be registered with the Registrar.”

71)Chapter *Threequarter*, Article 20 is added to read as follows: “The variety's registration shall be nullified only according to the following criteria:

A. If it is proven that the conditions in Article 4 were not complied with at the time of the grant of the breeder’s right;

B. If it is proven that where the grant of the breeder’s right has been essentially based upon information and documentation furnished by the breeder, the variety is not uniform or stable at the time of the grant of the breeder’s right; or

C. That the breeder’s right has been granted to a person who is not entitled to it, unless it is transferred to the person who is so entitled.”

72)Chapter Threequarter, Article 21 is added to read as follows:

“A. The Registrar may cancel the variety's registration only according to the following criteria:

1. If it is demonstrated as a result of the technical examination provided in Article 9 of this Chapter, that the variety's uniformity and stability are no longer fulfilled;
2. If the breeder does not provide the Registrar with the information, documentation or materials deemed necessary for verifying the maintenance of the variety;
3. If the breeder fails to pay the annual fixed fees; or
4. If the breeder does not propose, where the denomination of the variety is cancelled after the grant of the right, another suitable denomination.

B. For the purposes of applying subparagraphs 2, 3 and 4 of paragraph (A) of this Article, the Registrar shall notify the breeder of the cancellation; the cancellation shall not be done except after the expiration of the period fixed by the issued regulation governing this Chapter.”

73)Chapter Threequarter, Article 22 is added to read as follows: “The Registrar shall register the decision of the registration nullity or its cancellation, which shall be published in the Official Gazette.”

74)Chapter Threequarter, Article 23 is added to read as follows: “Decisions shall be subject to appellate review to the Court of Appeals within sixty days from the date of the notification of the decision.”

75)Chapter Threequarter, Article 24 is added to read as follows:

“A. Each variety shall be registered with a denomination which will be its generic designation. The denomination may be composed of a word, a combination of words and numbers or a combination of letters and numbers, which may or may not have a meaning. The denomination shall not be composed of numbers except where this is an established practice for designating varieties.

B. A variety must be submitted to the Registrar under the same denomination used in other countries unless the denomination is considered unsuitable in Iraq.

C. It shall be prohibited to use or register a denomination that otherwise identifies another variety as it may cause confusion with the earlier-registered variety from the same plant genus or one closely resembling it. The denomination of the earlier-registered variety may be registered or known either in Iraq or in any other country. This prohibition shall remain in effect even after the expiration of rights in the variety as the denomination may have acquired a certain meaning related to the variety.

D. Taking into consideration paragraph (E) of this Article, anyone who, within Iraq, offers for sale or markets propagating material of a variety protected within Iraq shall be obliged to use the denomination of that variety, even after the expiration of the breeder's right in that variety.

E. Prior rights of third persons shall not be affected. If, by reason of a prior right, the use of the denomination of a variety is forbidden to a person who, in accordance with the provisions of paragraph (D), is obligated to use it, the Registrar shall require the breeder to submit another denomination for the variety.

F. It shall be permissible to associate a trademark, trade name or any similar indication with the registered variety denomination. If marketing a variety or offering a variety for sale, such denomination must be easily recognizable.”

76)Chapter *Threequarter*, Article 25 is added to read as follows: “It shall not be permissible to register the denomination of the variety if the denomination is:

A. In conflict with the provisions of this Chapter;

B. In conflict with the public order and morals; or

C. Misleads or causes confusion regarding the variety's characteristics, value or identity of the variety or the identity of the breeder.”

77)Chapter *Threequarter*, Article 26 is added to read as follows: “The proposed denomination for the variety shall be determined in the application and the procedures of registering the denomination, its publication and the periods related to such shall be determined by regulation issued according to the provisions of this Chapter.”

78)Chapter *Threequarter*, Article 27 is added to read as follows:

“A. The breeder of the protected variety, upon bringing suit to prevent the infringement of rights in the protected variety or in anticipation of such suit, may

file a complaint with the competent court, with by a bond, which the court shall accept for the following provisional measures:

1. Cease the infringement;
2. Seize goods subject of the infringement wherever it occurs; or
3. Preserve evidence related to the infringement

B. 1. The breeder of the protected variety, before bringing a claim of infringement, may, with by a bond, request the court to order any of the procedures provided in paragraph (A) of this Article, without notifying the defendant. The court may grant the breeder's request if the owner proves any of following:

- the breeder's rights have been infringed;
- the infringement is imminent and may cause irreparable harm; or
- the risk that the evidence will disappear or be damaged is great.

2. If the breeder of the protected variety does not file the lawsuit within eight days from the date of the court's order for precautionary procedures, the ordered procedures shall be deemed canceled.

3. The defendant may appeal the court's decision of precautionary procedures to the Court of Appeals within eight days from the date of the defendant's notification of the decision. The Court of Appeals' decision shall be final.

C. The defendant may seek compensation for the damages suffered if the court concludes that the plaintiff's lawsuit is without merit.

D. The court may, in all cases, seek the help of experts and specialists.

E. The court may order the confiscation of the infringing variety as well as the materials and tools substantially used in the infringement of the protected variety. The court may also decide to destroy the infringing variety as well as the materials and tools or to dispose of them in any noncommercial purpose.”

79) Chapter Threequarter, Article 28 is added to read as follows:

“A. The Minister shall issue the necessary regulations for implementing the provisions of this Chapter including determining the annual fees for renewing the registration, and other fees in accordance with the provisions of this Chapter.

B. The instructions referred to in this Chapter shall be published in the Official Gazette.”

Section 2
Entry into Force

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



L. Paul Bremer, Administrator
Coalition Provisional Authority