



Herbert Smith

Iraq

Investment guide – second edition



Herbert Smith in association with
Gleiss Lutz and Stibbe

IRAQ Law
Alliance PLC



Introduction

I am pleased to introduce this second edition of our guide to investing in Iraq. The guide was produced in collaboration with Iraq Law Alliance, whom I would like to thank for their input. This new edition contains a revised chapter on Iraqi environmental law to reflect changes brought into force in 2010 by Law No. 27 of 2009 (see chapter 9 for more details).

Iraq offers great potential for overseas investment given the significant need to develop its infrastructure and other facilities and services. It is vital for anyone considering inward investment into Iraq to understand the operating environment of the country. Drawing from our experience in Iraq, this guide aims to describe the Iraqi legal system and provides an overview of the current key laws and regulations. Significant changes in Iraq's legal and regulatory environment are proposed to support the country's economic development and consequently, quality legal advice in relation to each specific investment will be important.

Neil J Brimson
Managing partner
Herbert Smith LLP, Middle East

Note from the editors



The current body of Iraqi legislation comprises laws passed at different stages in the recent history of Iraq. At present, the majority of the laws date back to the regime of Saddam Hussein and before, and remain valid to the extent that they have not been repealed subsequently as part of Iraq's programme of economic development.

The oldest law referred to in this guide is the Civil Code which dates from 1951 and remains the key legislative source on contract law and torts. Within a 14 month period from April 2003, the Coalition Provisional Authority passed a number of CPA Orders to bring about some modernisation in Iraqi law. In particular, the CPA targeted laws where a change in the legislative framework would support Iraq's economic development and assist it in becoming a member of international organisations, such as the World Trade Organisation. Since 2004, the elected Iraqi government has put together a legislative programme to further progress Iraq's development.

The position in the Kurdistan region is different: laws passed since 1991 in Federal Iraq do not automatically apply in Kurdistan.

In researching this guide, we have addressed the legal position set out in the main federal laws passed by the current Iraqi government and by previous regimes. We have also sought to address the current position in Kurdistan. However, practice may change from time to time and may be reflected in subordinate or regional legislation, such as ministerial regulations.

The editors would like to thank the attorneys and consultants at ILA for their invaluable comments on this guide. In addition, we would like to thank Louise Moore and Jonathan Harwood for contributing the chapter on environmental law and regulation, Andrew Newbery and Thomas Bethel for their work on the chapter on taking security and Chris Thomson for the chapter on oil and gas regulation.

We hope that this guide will provide a useful reference for those interested in taking advantage of the tremendous opportunities in Iraq.

David Laurence – Partner, Herbert Smith LLP Middle East

**Justine Reeves – Professional support lawyer, Herbert Smith LLP
Middle East**



Herbert Smith LLP

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Dubai	Abu Dhabi
Dubai International Financial Centre Gate Village 7, Level 4 P.O. Box 506631 Dubai UAE T: +971 4 428 6300	Al Bateen Towers C2 Building Suite 302, Level 3 P.O. Box 106178 Abu Dhabi UAE T: +971 2 412 1700

Contacts

Corporate partners – Middle East

Neil Brimson

T: +971 4 428 6301

neil.brimson@herbertsmith.com

David Laurence (editor of this guide)

T: +971 4 428 6302

david.laurence@herbertsmith.com

Zubair Mir

T: +971 4 428 6303

zubair.mir@herbertsmith.com

Paul Scarr

T: +971 2 412 1879

paul.scarr@herbertsmith.com

Judith Watson

T: +971 4 428 6323

judith.watson@herbertsmith.com



Finance partners – Middle East

Adil Hussain (on secondment to Al-Ghazzawi Professional Association)

T: +966 1 463 2374

adil.hussain@herbertsmith.com

Nadim Khan

T: +971 4 428 6305

nadim.khan@herbertsmith.com

Andrew Newbery (author of chapter 10: Taking security in Iraq)

T: +971 2 412 1801

andrew.newbery@herbertsmith.com

Restructuring and insolvency partner – Middle East

Michael Barker

T: +971 4 428 6374

michael.barker@herbertsmith.com

Dispute resolution partners – Middle East

Stuart Paterson

T: +971 4 428 6308

stuart.paterson@herbertsmith.com

Craig Shepherd

T: +971 4 428 6304

craig.shepherd@herbertsmith.com

Real estate and construction partner – Middle East

Nicholas Turner

T: +971 2 412 1802

nicholas.turner@herbertsmith.com

Environmental, health and safety partner – London

Louise Moore (author of chapter 9: Environmental law and regulation)

T: +44 207 466 2096

louise.moore@herbertsmith.com



Professional support lawyers – Middle East

Leontine Brandt Corstius (finance)

T: +971 2 412 1877

leontine.brandtcorstius@herbertsmith.com

Natasha Mir (corporate)

T: +971 4 428 6340

natasha.mir@herbertsmith.com

Justine Reeves (corporate/corporate finance) (author and editor of this guide)

T: +971 4 428 6382

justine.reeves@herbertsmith.com

Business development – Middle East

Eri Tada

T: +971 4 428 6373

eri.tada@herbertsmith.com

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Iraq Law Alliance (ILA) was originally established in June 2003. The firm provides quality legal services to investors, employers and companies involved in the reconstruction and development of Iraq. The firm was reorganised in 2008 as a United States chartered legal services corporation with a branch office in Iraq to better serve its international clients. ILA currently maintains offices in Baghdad, Erbil and the United States.

ILA recognises the need for specialist expertise in a number of fields in Iraq, including corporate, project finance, construction, employment law, and intellectual property, and leverages the combined experience of its attorneys and consultants in those fields, and more than 46 years of Iraqi practice, to provide a comprehensive service to its clients.

ILA represents national and multinational companies. The firm advises on all legal matters related to corporate, petroleum related and reconstruction activities in Iraq. Our practice spans a broad spectrum and includes general corporate, construction, regulatory, licensing, labour, intellectual property and tax issues.

Contacts

Telephone: +964-771-191-8725 / +1-253-238-9013

Fax: +1-253-238-6128

E-mail: info@iqilaw.com

Information on our attorneys is available on request.



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1. Introduction to Iraq



Modern history of the political system of Iraq

The current political system of Iraq dates from October 2005 when a new constitution was approved by referendum of the Iraqi public. The referendum was instigated by the Iraq Interim Government which took over control of the country from the Coalition Provisional Authority (the CPA). The CPA comprised members of the coalition forces in the immediate aftermath of the invasion of Iraq and the overthrow of Saddam Hussein.

On the basis of the new constitution, a general election was held in December 2005 to appoint the members of the Iraqi parliament (the Council of Representatives) and resulted in the formation of a new Iraqi government. A second general election was held in March 2010, following the passing of a new election law which made changes to the electoral system.

Administrative structure

Iraq is a democratic federal republic, with a President as head of State, and a Prime Minister as head of the executive who presides over the Council of Ministers (the Iraqi cabinet). The Council of Ministers' powers include planning and executing general policy, initiating legislation, and negotiating and signing international treaties.

The Council of Representatives is the primary legislative body. The members of the Council of Representatives are elected by the Iraqi people every four years with a ratio of Council members to the population of one seat for every 100,000 Iraqi people. The Council of Representatives has certain key roles, including:

- electing the President of the Republic;
- enacting legislation which is proposed to it in draft by the President or the Council of Ministers;
- monitoring the performance of the Council of Ministers, questioning the President and Prime Minister and proposing votes of no confidence; and
- approving certain key government, judicial and military personnel, including the President of the Court of Cassation and its members.

There is another legislative body known as the Council of Union (or the Federation Council) which includes representatives of geographical areas which are not included in the Iraq administrative governorates. The Council of Union is overseen by the Council of Representatives.



Iraq federal and regional government

The Iraqi constitution allows for semi-autonomous administrative regions. A region may have its own constitution and exercise legislative, executive and judicial authority over itself, to the extent that such powers do not conflict with federal authority. A region may be comprised of one or more of the 18 administrative governorates which currently exist in Iraq. The governorates include the main cities of Baghdad, Mosul and Basra, as well as Suleimaniah and Erbil which are in Kurdistan.

Under the constitution, the federal authorities have exclusive powers in a wide range of matters including:

- foreign policy;
- national security (such as defence of national borders, including the borders of the semi-autonomous regions);
- fiscal and customs policy;
- telecommunications and mail policy; and
- policies relating to water sources from outside Iraq which guarantee the rate of flow to Iraq and its fair distribution.

The constitution provides for shared responsibility between the federal authorities and the producing administrative regions for the management of oil and gas (so that the policies ensure distribution of revenues in a fair manner in proportion to the population of the whole country) and for the formulation of strategy to develop oil and gas wealth in a way that achieves the highest benefit to the Iraqi people. However, in practice, power sharing remains a contentious issue in Iraq, as demonstrated by the ongoing dispute between the Kurdistan Regional Government and the government of Federal Iraq in relation to the validity of the Kurdistan Petroleum Law (see also chapter 13 of this guide). The constitution also provides for power sharing between the federal authorities and the regional authorities in the following areas:

- regulation of the main sources of electric energy and its distribution;
- environmental policy;
- development and general policy;
- public health;
- education;



- formulation of policy and organisation of the main internal water sources to guarantee fair distribution.

All other areas fall within the exclusive remit of the regional governments.

Kurdistan

Kurdistan is recognised as a semi-autonomous region of Iraq under the 2005 constitution and Kurdish is recognised, along with Arabic, as one of two official languages in Iraq. The region gained some autonomy from Iraq in 1991 in the aftermath of the first Gulf war. It has its own regional government, which is known as the Kurdistan Regional Government (KRG), and a democratically elected legislative assembly.

In terms of its legal system, generally speaking, Iraqi law applies to Kurdistan where the law was passed before 1991. Laws passed by the Saddam Hussein regime since 1991, the laws passed by the CPA following the invasion of Iraq and the laws passed by the new Iraqi parliament are not usually applicable in Kurdistan. However, if there is no equivalent Kurdish law, the Kurdish government will often seek to adopt the relevant post 1991 Iraqi legislation. Where Iraqi law does apply to the Kurdistan region and there is a conflict between that legislation and a Kurdish law, the Kurdish law takes precedence, unless the law relates to an area within federal control under the Iraqi constitution.

Most of this guide deals with the laws of Iraq although we have, where relevant, drawn a distinction between Iraqi law and Kurdish law.

Basis of the Iraq legal system

Iraqi law has a number of different influences, including Egyptian civil law which is in turn based on European civil systems, especially that of France. For example, the Iraqi Civil Code (Law No. 40 of 1951, as amended), which forms the basis of contract law, was enacted in 1953 and is based on the Egyptian Civil Code, in common with many Middle East countries.

Although the laws of Iraq are in the most part secular, the constitution states that no law should be enacted which contradicts the principles of Islam and that Islam is the foundation of all laws.

Foreign investment opportunities

The Iraqi government passed an Investment Law in 2006 (Law No. 13 of 2006). The law aims to promote investment by the foreign private sector in Iraq and to protect the interests of all investors in the country. The law establishes the National Investment Commission (NIC) whose role is to award investment licences for investment projects in Iraq.



An investment licence is designed to grant investors certain benefits, including the right to repatriate investment capital in an exchangeable currency, certain protections from nationalisation and expropriation, a right to lease land for a maximum period of 50 years and right of residency for foreign workers involved in the project. It also grants an exemption from taxation for a period of time, which is generally 10 years. It is important to note that the benefits of the Investment Law are conferred on projects which have obtained a foreign investment licence, and not on the corporate entity as a whole.

An amendment to the Investment Law permits overseas investors, with the consent of the National Investment Commission, to acquire public land for the exclusive purpose of housing projects to house Iraqi nationals. This is a new significant exception to the general rule that foreigners cannot acquire freehold title to land in Iraq.

In order to apply for an investment licence, the capital to be invested in the relevant project must be more than US\$250,000. It should be noted, however, that the award of an investment licence is not automatic even if the investment conditions are satisfied: it is within the discretion of the National Investment Commission as to whether a licence is granted for a project. It is not possible to apply for an investment licence for businesses involved in oil and gas extraction and production, and in the banking and insurance sectors.

For more information on the Investment Law, please refer to chapter 3 of this guide.



2. Establishment options in Iraq

The most common business entities used in Iraq by domestic and foreign investors are as follows:

- limited liability company (a LLC);
- joint stock company (a JSC); and
- branch office.

Limited liability company

Types of LLC

Under the Iraqi Companies Law (Law No. 21 of 1997), there are two types of limited liability company in Iraq:

- the private limited liability company whose shareholders are all from the private sector; and
- the mixed limited liability company, in respect of which at least 25% of the share capital must be held by an Iraqi State entity. If the State shareholding subsequently falls to beneath 25%, it is considered to be a private limited liability company.

Public subscription of shares in a LLC is not permitted under the Companies Law.

Liability and share capital

The liability of a LLC's shareholders is limited to the nominal value of their shareholding. The maximum number of shareholders for a LLC is 25 persons who can be either individuals or legal persons. It is possible for a private limited liability company to have only one shareholder.

The minimum share capital of a LLC is ID 1 million (approximately US\$850) which must be fully paid up and deposited in an Iraqi bank account before the certificate of establishment will be issued by the Companies Registry, although contributions in kind to the capital are also permitted (subject to practical issues in valuing the contribution). The Companies Law does not allow for more than one class of shares and the nominal value of each share is set by the Companies Law at ID 1. Shares may be issued at a premium only where the company is increasing its share capital (see the section below on "issuing shares and decreasing share capital").



General assembly

A LLC must hold a shareholder general assembly every six months at the company's head office or at any other place in Iraq. The assembly may be convened by the founder of the company (for the initial meeting), the managing director, holders of at least 10% of the paid up share capital or the Companies Registry. The quorum is holders of a majority of the paid up share capital of the company, although a lower quorum of holders of 25% of share capital applies on an adjournment of the original meeting for lack of quorum, other than in certain circumstances including amending the constitutional documents.

There are no provisions entitling shareholders to hold a general assembly by way of telephone, or which permit written resolutions. Shareholders must meet in person in Iraq. However, a shareholder is entitled to appoint a proxy to attend, speak and vote on his behalf at a meeting, which may be another shareholder of the company or any other person appointed under a certified power of attorney.

Voting is on the basis of one vote for every share held. Resolutions are passed by a majority of the votes cast at the assembly, other than in the following circumstances in which case a majority of all paid up shares is required:

- amending the company's constitution;
- increasing or reducing the company's share capital;
- disposing of more than half of the company's assets in a transaction outside of the ordinary course of business;
- merging the company with another;
- converting the LLC into a different type of company; and
- resolving to put the company into liquidation.

It should be noted that the Companies Law envisages that a LLC's constitutional documents may provide for a higher (but not lesser) majority to pass the above resolutions. In practice, it is not certain whether the Companies Registry would permit the constitution of the company to be altered in this way. It is not permitted to alter voting rights on other matters in the company's constitution. In practice, the parties may seek to alter their respective voting powers contractually under a shareholders' agreement.



It is a requirement of the Companies Law that minutes of the general assembly are taken and the chairman appoints a person to do this at the start of the meeting, as well as a person who establishes the quorum and collects the votes. The minutes of the general assembly must be sent to the Companies Registry within four days of the passing of the resolutions. The Companies Registry will then issue a certified copy for official use by the LLC. Note, however, that the production of a certified copy in reality constitutes an approval of the resolutions by the Companies Registry and this is not automatically provided.

Transfer of shares to foreign investors

A transfer of shares must take place at a meeting between the seller and the purchaser with the managing director of the LLC present and the parties must sign a transaction contract which includes an undertaking by the purchaser to comply with the LLC's constitution. The transaction contract is registered in the company's registers, together with the signatures of the seller, purchaser and the LLC's managing director. The fact that all these parties need to be physically present at the same time may pose logistical issues: it is possible for the parties to grant a power of attorney for another person to represent them at that meeting and execute the agreements on their behalf, although the power of attorney would need to be notarised, legalised and authenticated if executed outside of Iraq which can be a lengthy process. The other documents required to transfer shares in a LLC include notarised corporate approvals of the seller and the purchaser (which must also be legalised in the case of an overseas purchaser), minutes of a general assembly of the LLC approving the transfer, amended constitutional documents and notarised powers of attorney for the parties to be represented by a named individual in dealings with governmental authorities.

In order to transfer shares in an Iraqi LLC to an overseas investor, the Companies Registry must issue certified copies of the amended constitutional documents, showing the new shareholder, and the minutes of the general assembly of the LLC. The issue of these certified copies is not automatic: the Companies Registry in practice must seek the consent of the General Directorate of National Security, a division of the Ministry of Trade, before issuing its certified copies. This does not apply to the Companies Registry in Kurdistan and, therefore, it may be easier to transfer shares in that region.

It should be noted that the Companies Law contains pre-emption rights on the sale of shares, such that the seller must notify the other shareholders, via the managing director of the LLC, of the proposed sale. The other shareholders have 30 days in which to exercise this pre-emption right. If more than one shareholder wishes to acquire the shares, they are sold in proportion to their holdings.



Issuing shares in a LLC and decreasing share capital

In order to increase the share capital of a LLC, a resolution of the general assembly is required to amend the constitutional documents and issue the new shares. There is no concept of authorised but unissued share capital. The approval of the Companies Registry must be sought to the increase and it may reject the request, giving reasons for doing so. Shares may be issued for cash, or from a capitalisation of reserves or profits, at a price equal to or more than the nominal value of the shares.

Pre-emption rights apply to an issue of new shares, such that the shareholders have the right to acquire shares in proportion to their existing holdings for a period of 15 days from the date of offer by the LLC.

A company may also decrease its share capital if it exceeds its needs or if it incurs losses (see the section below on “mandatory reserves, profits and losses”), by the cancellation of shares, subject to approval of the general assembly and the Companies Registry. The decrease is publicised by the Companies Registry in two daily newspapers to give creditors an opportunity to object.

Minority shareholder protections

There are certain protections afforded to minority shareholders of a LLC under the Companies Law. Shareholders with a shareholding greater than 10% of the share capital may propose agenda items for consideration at a general assembly of the company’s shareholders (although this item will still require the approval of the requisite majority of shareholders present at the meeting). They may also require an inspection of the company by either the company’s auditor or lawyer, if there are reasonable grounds to believe that there has been a contravention of the Companies Law, the constitutional documents or resolutions passed by the general assembly of shareholders. Shareholders with a holding of 5% or more of the capital have a right to object to resolutions of the general assembly by application to the Companies Registry within seven days of those resolutions being passed, on the grounds that the resolutions are contrary to a specific provision of the Companies Law or in violation of general public policy in Iraq.

All shareholders are entitled to seek rectification of the shareholder register in the event of an error, and access to that register.

It is not possible to amend a LLC’s constitutional documents to provide for more extensive protections for minority shareholders, such as enhanced voting rights on shareholder resolutions (other than for the limited list of resolutions listed above in the section on “general assembly” and that ability is questionable in practice). Minority protections need to be established, therefore, in a shareholders’ agreement.



Management of a LLC

A LLC is not permitted to have a board of directors. Instead, it has a manager (known as a managing director). In the case of a LLC, he is appointed by the general assembly and can only be removed by the general assembly. He is responsible for all management activities of the company, within the scope of authority granted to him by the general assembly at their initial meeting, including:

- implementing the decisions of the general assembly;
- preparing the LLC's annual accounts for the previous financial year within the first six months of the following financial year, including writing up a report and the results of the annual business plan and submitting them to the general assembly for discussion and approval;
- discussing and approving the annual business plan for the forthcoming financial year in the last six months of the previous financial year, including a full report on the LLC's activities and a draft budget showing cash reserves, sales, human resources, capital investments and production; and
- implementing the annual business plan,

unless any of these areas of responsibility are specifically excluded by the shareholders in general assembly.

It should be noted that the powers of the managing director may be interpreted narrowly by the relevant State authorities and, consequently, it is preferable to list in the company's constitutional documents all of the powers which the managing director may need to have for the proper management of the LLC.

It is prohibited under the Companies Law for a managing director to have a direct or indirect interest in transactions which are concluded with the LLC, other than with the permission of the general assembly to which full details of the conflict should be disclosed. It is also not permitted for a managing director to participate in a matter in which he has a direct or indirect interest without disclosing the nature of the interest. The managing director is personally liable to the LLC for any loss suffered as a result of a breach of these provisions.

There are no nationality or residency requirements in relation to the managing director, however, he must have the ability to live and work in Iraq either pursuant to visa requirements or because he is an Iraqi national.



Constitutional documents

The main constitutional documents of a LLC are the certificate of establishment and the Company Contract (which is a contract between the LLC and its shareholders). The certificate of establishment grants the company its corporate status and, therefore, the LLC's separate legal personality and limitation on the liability of its owners only commences from the date of issue. There is a standard form Company Contract which is generally considered by the Companies Registry in most of the regions of Iraq to be incapable of alteration (possibly other than in limited circumstances as mentioned above). The Company Contract should set out the objects of the company and it is important that these are listed in full (a general objects clause is not permitted). Note that one or more types of business activity must be specified and so it is not thought to be possible to use an Iraqi LLC as a holding company.

The Company Contract should also include:

- the name of the company;
- the company's head office address which must be in Iraq;
- the capital of the company (number of shares and par value); and
- the names of the founders, their nationalities, professions, permanent addresses and shareholdings.

Mandatory reserve, profits and losses

There is a requirement for a company to retain at least 5% of net profits until the reserve reaches 50% of the paid up share capital of the company, although it is permitted to continue to add to the reserve beyond this level with the approval of the general assembly. The reserve is required to be used for the purposes of developing and expanding the company's business, improving the conditions of its workers, participating in projects relevant to the company's activities and contributing to the protection of the environment and social welfare. The reserve may also be used to pay the company's debts, provided that they do not equal more than 50% of the value of the reserve, in which case approval of the Companies Registry is required before debts over that amount can be discharged out of the reserve.

If a company's losses amount to 50% or more of its share capital, the Companies Registry must be informed and, if greater than 75%, the capital of the company must either be increased or decreased, or the shareholders of the LLC in general assembly must decide whether to put it into liquidation (which



resolution requires a majority of the votes attached to all the paid up shares of the company to be in favour).

Financial statements and filing requirements

A LLC must prepare annual financial statements and a report for submission to the Companies Registry and the General Taxation Department. The financial statements must be prepared to Iraqi standards as set out in the Unified Accounting Rules, which do not comply with International Financial Reporting Standards (IFRS). In practice, many overseas investors prepare two sets of accounts for their Iraqi interests: one which complies with Iraqi law and one on the basis of IFRS or other relevant accounting standards for the purposes of group consolidation. The financial statements must include:

- related party transactions concluded in the relevant financial year between the LLC and any related party (which includes the managing director, holders of 10% or more the LLC's shares, their respective families' interests and any entities under their respective control);
- results of operations and distribution of net profits;
- details of the reserve balance and its uses;
- amounts received by the managing director in terms of salary and other benefits;
- sums spent on publicity, travel, entertainment and donations.

The financial and tax year for all Iraqi companies formally ends on 31 December. The financial statements of the LLC must be prepared by the managing director in the first six months of the following year, with a general assembly meeting to discuss and approve them held within 60 days of the date on which the audit is complete. The managing director is required to sign the financial statements and he is personally responsible to the shareholders, as well as the Companies Registry, the Ministry of Interior and the General Taxation Department, for the accuracy of the information. The financial statements, together with the approval of the general assembly, must be sent to the Companies Registry. Tax filings must be made with the General Taxation Department before 31 May each year.

As noted above, all minutes of shareholder general assemblies must be sent to the Companies Registry for approval. Furthermore, an annual return must be submitted to the Companies Registry by 1 October each year, setting out certain information including the names, nationalities, professions and shareholdings of the company's shareholders and the managing director. In addition, any changes to the company's constitutional documents must be approved by the Companies Registry.

The information held by the Companies Registry is not publicly available.



Joint stock company

A joint stock company is also a limited liability company, such that the shareholders' liability is limited to the nominal value of the shares held by them. The key difference between a JSC and a LLC is that, with a JSC, the shares are offered to the public for subscription and the certificate of establishment is only issued after the public subscription has occurred. It is not required that a JSC be listed on the Baghdad Stock Exchange as part of that public subscription. The founders of the JSC must subscribe for at least 20% of its nominal share capital. The public subscription period is between 30 and 60 days and involves the publication in two daily newspapers of a statement by the founders (approved by the Companies Registry) offering the shares for sale. If there are not sufficient offers for 75% of the nominal share capital (including the founders' shares), the incorporation of the JSC can be cancelled or the share capital of the JSC decreased so that at least 75% of the shares will be subscribed. A bank acts as an intermediary between the JSC and the shareholders for the purposes of administering the public subscription process.

As with a LLC, it is possible to have a mixed (partly State owned) JSC, or a JSC which is entirely within the private sector.

Any company which is engaged in the activities of insurance or re-insurance or financial investment must be a JSC.

The other key differences between a LLC and a JSC are as follows under the Companies Law:

- the minimum number of shareholders in a JSC is five persons and the maximum is 100 members;
- the minimum share capital is ID 2 million (approximately US\$1,700);
- there is a requirement as part of the incorporation process of a JSC to submit a technical and economic feasibility study to the Companies Registry detailing the business plan of the company and describing any technical experience necessary to achieve the business goals;
- the actual liabilities of a joint stock company should not exceed 300% of its total capital and other equity rights to ensure the company is capitalised, has little debt, and is economically healthy (note that this requirement does not apply to contingent liabilities and, therefore, it does not act as a direct restriction on a JSC giving indemnities, although a JSC should monitor the amount of liabilities which would accrue if its contingent liabilities crystallised and it would not be advisable for a JSC to enter into uncapped indemnities for this reason);



- any non-cash consideration for the issue of shares must be evaluated by a committee, the members of which are approved by the Companies Registry, and a report submitted to the general assembly;
- the founders are prohibited from transferring their shares in the first year of the JSC's incorporation;
- no pre-emption rights apply to a transfer of shares in a JSC;
- a JSC is entitled to issue bonds;
- the general assembly of a JSC is required to meet once per year in Iraq, the notice for which must be advertised in two daily newspapers and on the Baghdad Stock Exchange. The general assembly should also be attended by a representative of the Companies Registry (who leaves after confirming that a quorum is present unless otherwise requested to stay by a shareholder) and most of the members of the board of directors;
- a JSC is managed by a board of directors of between five and nine members who are elected by the general assembly and must meet at least once every two months in Iraq. Board directors must be shareholders of the JSC. Directors hold office for a renewable three year period. Directors can not hold more than six directorships at one time and cannot be a member of a board of a competing company;
- board meetings are quorate when a majority of the directors are present. Votes are cast on the basis of one vote each, with a resolution being passed by a simple majority. The chairman has the casting vote. Telephone board meetings and written resolutions are not permitted.

Branch and representative offices

Foreign companies are entitled to establish branch and representative offices by registration with the Companies Registry. In common with most Middle East jurisdictions, branch and representative offices are extensions of the foreign parent company and, therefore, do not have separate legal personalities.

Generally speaking, branch offices can operate in all business sectors and perform most activities. It should be noted, however, that in practice the establishment of branch offices in Federal Iraq is limited to circumstances in which the foreign parent company has entered into a contract with an Iraqi government entity and requires a presence in Iraq to perform its contractual obligations. If no government contract exists, the foreign parent is restricted to establishing a representative office until such a contract is entered into. The activities of a representative office are restricted to marketing and promotional activities.



A branch or representative office must submit audited financial statements for its own operations and for those of its parent. It must also file an annual report to the Companies Registry, containing information about the branch or representative office, including:

- the name and address of both the parent company and the branch or representative office;
- the names and nationalities of the board of directors of the parent company;
- the name and nationality of the Iraqi branch or representative office manager;
- a business plan for the forthcoming financial year's activities; and
- information concerning the employees of the branch or representative office.

Information filed in connection with the branch or representative office registration must be correct at all times. Changes must be filed within seven days of the date they occur, including address changes for the company's principal office in Iraq.

A branch or representative office is required to nominate an agent for service of legal process in Iraq to receive legal correspondence and notices. It is important that this address is kept up to date because the parent company is legally responsible for all notices and correspondence sent to the address stated in the Companies Registry files.

Other establishment options

The other types of entity capable of establishment in Iraq include:

- a "sole owner enterprise" which is owned by only one person who assumes unlimited personal liability for the obligations of the enterprise; and
- a "joint liability company" which may be formed by between two and 25 people who assume unlimited personal liability for all of its obligations (similar to a partnership).

Application to Kurdistan

The Companies Law is applied in Kurdistan. As noted above, however, the requirements of the regional Companies Registry in Kurdistan differ (and in some circumstances are less restrictive) than the Companies Registry in Baghdad or other regions of Iraq. There are two Companies Registries in the Kurdistan Region: one in Erbil and one in Suleimaniah, and it may be necessary to register in both depending on the scope of activities of the company.

3. Other establishment issues



Investment licence

Overview

The Investment Law came into force in 2006. Its aims are to:

- promote the investment in, and the transfer of modern technology to, Iraq as part of expanding and diversifying Iraq's production and service sectors;
- encourage domestic and overseas investment in Iraq by providing incentives for establishing investment projects, and protection for trade investments;
- develop the employment market in Iraq; and
- expand Iraqi exports and improve the balance of payments and trade of the country.

On 13 October 2009, the Council of Representatives approved an amendment to the Investment Law which provides a right for overseas investors to acquire and own Iraqi public land for the exclusive purpose of housing projects designed to house Iraqi nationals, with the consent of the National Investment Commission. This is a significant development in the investment climate and real estate laws in Iraq (see chapter 8 of this guide for a description of Iraqi real estate legislation).

Investment licences may only be awarded to "projects" which is widely defined in the Investment Law as an "economic activity". Consequently, applications for a licence will only be granted to a particular commercial undertaking (such as a construction project), rather than to the corporate entities which are operating the project. The current minimum capital investment for a project to be granted a foreign investment licence is US\$250,000. An investment licence will not be granted to projects in the oil and gas extraction and production sector, nor in the banking and insurance sectors.

The Investment Law provides for certain legal privileges and protections for projects which are granted an investment licence in chapter 3 of the Law, and also imposes obligations on investors in chapter 4 of the Law.

Benefits for the investor

The legal benefits and privileges conferred by the grant of an investment licence are available to both Iraqi and foreign investors. The benefits are as follows:



- repatriation of the investment capital and profits in an exchangeable currency, after deduction of Iraqi taxes and other dues;
- the right to acquire and dispose of shares and debt securities listed on the Baghdad Stock Exchange;
- an entitlement to lease land required for the relevant project (irrespective of its type) for a maximum period of 50 years (which term is renewable with the consent of the National Investment Commission, taking into consideration the nature of the project and its benefit to the Iraqi economy). This is in addition to the right for overseas investors to acquire freehold title in Iraqi land for housing projects, as mentioned above;
- the right to insure the project with any foreign or domestic insurance company;
- the ability to open bank accounts in local and foreign currency, both in Iraq and overseas, in connection with the project;
- certain protections against seizure and nationalisation of all or part of the relevant project;
- the right to employ non-Iraqi workers in the project, where Iraqis with the requisite skills and qualifications are not available; and
- the grant of residency visas and entry/exit visas for non-Iraqi workers engaged in the project and the right for such workers to transfer their remuneration to overseas bank accounts after deduction of Iraqi taxes and other dues.

With regard to taxation, chapter 5 of the Law states that projects which are granted an investment licence enjoy certain exemptions from taxes and fees for a 10 year period from the date on which commercial operations commence, as stipulated by the Council of Ministers for the area of development within which the project falls. The NIC may grant an extension to the duration of the tax exemptions in circumstances where some of the capital is in Iraqi hands, up to a maximum of 15 years where the Iraqi ownership share is greater than 50% of the project. The Council of Ministers may also propose laws to grant further exemptions (including by altering the duration and/or the amount of the exemption), or to provide other benefits or incentives in certain circumstances, taking into account the effect of the project on economic development and the national interest.

Imported assets used in the project are exempt from duties (including customs duties) for the first three years of the project, and imported spare parts are also



exempt for an unlimited period if the value of those parts does not exceed 20% of the fixed asset value. Certain projects have additional exemptions for imports related to refurbishments made at least once every four years, including hotels, hospitals and education centres, provided the imports are used within three years of NIC approval of the imports.

Obligations on the investor

The investor in the project must make certain legal commitments to be granted an investment licence. The most commercially important of these obligations are as follows:

- to meet the timeframes specified in the schedule of work submitted to the NIC – in the event that the works overrun by more than six months, punitive measures may be taken by the NIC, which may include withdrawal of the investment licence;
- to protect the environment and adhere to Iraqi and international quality standards, together with Iraqi laws related to security, health, public order and values of Iraqi society; and
- to train the Iraqi workforce and to improve their efficiency, skills and capabilities.

In addition, the investor must give employment to Iraqi nationals as a priority over non-Iraqis, save where the skills or qualifications are not available in the local market. The Investment Regulations No. 2 of 2009 (which are implementing regulations of the Investment Law, issued by the Council of Ministers) also state that the NIC must apply a condition that at least 50% of the workforce involved in the project are Iraqi nationals. There is no further guidance on whether this is a strict condition, without which it will not be possible to be granted an investment licence, nor whether the condition operates across the workforce generally or at each level of employment grade.

There are also notification and reporting requirements contained in the Investment Law, including providing:

- any information required by the NIC on the project's budget and progress; and
- records of the project's duty-free imported materials and depreciation periods of those materials.



Application process

The NIC is the State authority which grants investment licences. It is also responsible for drawing up national policies for investment and monitoring implementation of its regulations and guidelines. The NIC is headquartered in Baghdad, but with various regional and provincial investment councils across Iraq. The 2009 Investment Regulations set out the NIC's strategic objectives and details on its administrative functions. In particular, the Regulations state that "strategic projects of a federal nature" in any region of Iraq are within the remit of the NIC head office in Baghdad, which include:

- infrastructure projects with a capital of at least US\$50 million;
- projects involving the extraction of natural resources;
- projects to which the Republic of Iraq is a party;
- projects in the sectors of engineering, minerals, petrochemicals and pharmaceuticals and the manufacture of certain vehicles in which the capital is at least US\$50 million;
- transport projects including roads, ports, airports and railways, in which the capital is at least US\$30 million;
- electricity projects which have a production capacity of at least 30 MW;
- projects involving dams, reservoirs and irrigation projects where the irrigated area is at least 250m²;
- communication projects; and
- any other projects in which the capital is at least US\$1 billion.

The NIC has the discretion as to whether a project is granted an investment licence under the Investment Law. To apply for an investment licence, the investor must submit various documents including:

- an application to the NIC, including a report on financial competency from an accredited bank;
- details of the projects already operated by the investor (inside or outside Iraq);
- details of the proposed project and its economic feasibility; and
- a timetable of works to complete the project.



As with a company registration, some of the documents will need to be notarised and legalised by the Iraqi Ministry of Foreign Affairs and the Iraqi embassy in the country of origin.

It should be noted that other licences may be required for the investor and/or the project, depending on the sector and geographical location of the project. The NIC has a role in assisting investors to obtain these licences.

Process for establishing a company

In order to establish a company in Federal Iraq, the following documents should be submitted to the Iraqi Companies Registry:

- an application form;
- the Company Contract;
- a statement from an Iraqi bank to show the deposit of the initial share capital;
- a copy of the certificate of registration and the articles of association of the parent company, if the shareholder is a company, or a copy of the passport or Iraqi national identification document (the *jineya*), if the shareholder is an individual;
- a resolution of the board of directors of the company establishing the new company in Iraq;
- a power of attorney in favour of the Iraqi lawyers making the registration;
- a copy of a signed lease agreement for premises in Federal Iraq;
- in the case of a LLC, the name of the managing director of the LLC, together with a copy of his passport or national identification document;
- in the case of a JSC, the names of the directors, together with copies of their passports or national identification documents; and
- in the case of a JSC, a subscription document signed by the JSC's founders, and a technical and economic feasibility study.

Documents must be submitted in Arabic, or accompanied by a certified translation by an Iraqi translator if submitted in a foreign language. Some of the documents will have to be notarised and legalised by the Iraqi Ministry of Foreign Affairs and the Iraqi embassy in the country of origin.



As a preliminary step to registering the documents with the Companies Registry, it is also important to reserve the company's name with the trade names section of the regional Chamber of Commerce. In Federal Iraq, this name must be in Arabic and must have a meaning in Arabic.

In Kurdistan, the documents which need to be filed with the regional Companies Registries are broadly the same as in Federal Iraq. Similarly to registration of a company in Federal Iraq, it is important to reserve the company name with the relevant regional Chamber of Commerce (either Erbil or Suleimaniah).

Process for establishing a branch

For the establishment of a branch or representative office, the documents which must be filed include the following:

- an application form;
- a copy of the parent company's certificate of incorporation/establishment and constitutional documents;
- a letter of authorisation on parent company headed notepaper:
 - o authorising the establishment of the branch or representative office;
 - o consenting to service of process in Iraq in relation to the new establishment; and
 - o naming (i) the branch or representative office manager of the establishment in Iraq, (ii) the contact for service of process in Iraq and (iii) the Iraqi lawyer responsible for the filing of documents with the Companies Registry, all of whom must be resident in Iraq;
- financial statements of the parent company for the previous accounting and tax year;
- a letter from the parent company undertaking to assume and underwrite the legal and financial liabilities of the branch or representative office in Iraq;
- a power of attorney for the branch or representative office manager to act on behalf of the branch;
- power of attorney in favour of the Iraqi lawyer who will be filing the documents with the Companies Registry;
- a copy of a signed lease agreement for the branch or representative office in Iraq;



- a copy of the passport or Iraqi national identification document of the branch or representative office manager; and
- in the case of a branch office in Federal Iraq, a letter from the appropriate government entity confirming that there is a contract between the company and a government entity.

The filing requirements for the establishment of a branch or representative office in the Kurdistan region do not substantially differ to that required in Federal Iraq, save for the fact that the registered lease contract must be in respect of premises in Kurdistan. Also, in practice, there is no requirement in Kurdistan for the branch to have won a government contract for it to be established.

Role of the Companies Registry

As mentioned in chapter 1, the Companies Registry plays a significant role in the establishment and ongoing monitoring of companies and branches in Iraq. Its role is not simply that of a registry of information but rather its approval is required for various company secretarial acts before it will issue certified copies of the key corporate documents and resolutions needed to conduct business in Iraq.

Deposit of capital

As noted above, in order to incorporate a company in Iraq, a statement needs to be obtained from an Iraqi bank to show the deposit of the share capital. In the case of a retail business, a minimum deposit of US\$100,000 is required. Typically, the Iraqi law firm responsible for filing the registration documents will complete this step, provided it has a power of attorney to do so.

Lease of premises

As noted above, a copy of a signed lease agreement for premises in Federal Iraq or Kurdistan is required as part of the process of establishing a company, or branch or representative office. Generally, the lease will need to be registered with the Land Registry. It should also be noted that the relevant authorities may visit and inspect the premises before the establishment process is completed.

Trade licence

Application will also need to be made to the Ministry of Trade and the Companies Registry for a trade licence. If specific ministerial approval is needed, it may also be necessary to contact the relevant ministry as directed by the Companies Registrar.

Tax registrations

The new company will need to register with the General Taxation Department and have its accounting records legalised by that body. Typically, the firm



responsible for registering the company in Iraq will complete this task, provided it has the requisite power of attorney.

Business insurance

The Investment Law provides that an overseas investor is entitled to obtain insurance cover, whether from Iraq or elsewhere in the world, in relation to its operations in Iraq. However, there are currently few reputable domestic insurance providers. One option for international investors is to seek insurance in the domestic market and then re-insure through an agent or broker of global standing.

Foreign exchange

The remittance of funds into Iraq and the conversion of those funds into either Iraqi Dinar or another currency must be conducted through a bank authorised by the Ministry of Interior to exchange funds. There are also specific foreign exchange control restrictions which apply to certain industry sectors.

4. Agency and distribution arrangements



Commercial agency and importation of goods

It is not a requirement of Iraqi law that an overseas entity must appoint a commercial agent for the import of goods in Iraq. This is because, historically, the import-export business was primarily in the control of the State during the Saddam Hussein era. Consequently, it is currently possible for a foreign manufacturer to make its own arrangements to bring its products into Iraq. This position differs from many other Middle East countries where the importation of goods by foreign entities must be done through a local commercial agent.

A foreign manufacturer is entitled to make direct sales into Iraq from overseas without the need to appoint a commercial agent. However, if a foreign manufacturer wishes to distribute its products in Iraq on a more regular or extensive basis (without forming a legal entity in Iraq), it may consider the appointment of one or more commercial agents to facilitate this. There are no restrictions on the appointment of those agents in terms of number, geographic exclusivity or term of appointment, other than as set out in the contract between the parties.

Registration

It is a requirement of the Iraqi Commercial Agencies Law (Law No. 51 of 2000) that a commercial agent is:

- resident in Iraq;
- at least 25 years of age; and
- a member of the Chamber of Commerce.

A commercial agent must not be a government official or any person employed in public service.

In practice, a commercial agent must also be an Iraqi national because licences to act as a commercial agent are awarded by the local Chamber of Commerce who will generally only license Iraqi nationals.

Protections for the commercial agent

The Commercial Agencies Law does not afford any substantive protections for commercial agents. This position differs from many other Middle East countries where the law provides significant protections for agents, including exclusivity and prescribed circumstances in which the principal must pay compensation to the commercial agent, often including non-renewal of an agreement upon its expiry.



Generally, Iraqi law leaves the terms of the commercial agency to be agreed between the principal and commercial agent. There are no implied terms providing exclusivity to a commercial agent and there are no requirements on the amount of commission to which a commercial agent is entitled. In addition, there are no provisions for compensation on termination set out in the Iraqi Commercial Agencies Law. In relation to the payment of compensation to the agent, the Iraqi Civil Code (Law No. 40 of 1951, as amended) only states that an agent has the right to claim compensation from the principal as a result of termination of the agency agreement “at an inopportune moment” and without just cause. This provision therefore provides a right for an agent to seek damages if the commercial agency agreement is terminated before the end of the contractual term, without any default on the part of the agent. The Civil Code does not state whether it is possible to contract out of this obligation to pay compensation or if a contractual right to terminate early on notice will also give rise to a right to receive compensation under the Civil Code.

Choice of law and jurisdiction of commercial agency agreements

It is open to the parties to agree upon a foreign law to apply to a commercial agency agreement, although, in relation to commercial agency disputes specifically, it is unlikely that the Iraqi courts would agree to a foreign court hearing the dispute if proceedings were commenced in Iraq in breach of a foreign governing law and jurisdiction clause. See chapter 11 below in relation to the Iraqi court system and the enforcement of foreign judgments.

The better option is for the parties to agree to submit to arbitration and it is possible for an overseas principal and an Iraqi commercial agent to agree to submit any dispute arising under a commercial agency agreement to arbitration with a foreign seat. See chapter 11 below for suggestions on appropriate arbitration provisions.

Application to Kurdistan

The Commercial Agency Law and the Civil Code, which are the main sources for commercial agency law in Iraq, are both applied in the Kurdistan region.

5. Labour law and visa requirements



Recruitment of Iraqi nationals

Many Middle East countries have enacted laws which place obligations upon employers to aim to employ a specific percentage of nationals of that country. Iraqi law does not contain such specific requirements, unless an investment licence is required for a particular project in which case the Investment Regulations state that the NIC will apply a condition that at least 50% of the employees in the workforce of the project must be Iraqi nationals. In addition, the Investment Law states that one of the obligations placed on overseas investors operating in Iraq under a foreign investment licence is that priority in employment and recruitment must be given to Iraqi nationals. Only if Iraqi nationals with the requisite skills or qualifications are not available to fill the relevant position may a foreign worker be recruited. Overseas investors are also obliged to train their Iraqi employees, as well as raise their efficiency, skills and capabilities.

Iraqi labour law in practice

The Iraqi employment law is contained in the Labour Law (Law No. 71 of 1987 as amended). It contains requirements on employers operating within Iraq, some of which are described in detail below. However, it is important to bear in mind that, in practice, some of the provisions of the Labour Law are not implemented, partly because the law has not been substantively amended since the Saddam Hussein era. Therefore, the law may not be in line with economic developments. An example is the minimum wage for unskilled employees under the Labour Law which is far lower than the wage demanded currently in Iraq by Iraqi nationals.

Mandatory provisions of employment contracts

Employment contracts in Iraq must be in writing and in Arabic (other than in Kurdistan where the contract may be in Kurdish). Any attempt by the employer to rely on an agreement written in any other language will fail before the Iraqi courts, even if the agreement was signed by the employee. Equal treatment is provided under the Labour Law for Arabs and Iraqis, as well as employees from other countries who hold a valid work permit.

The employment contract must by law state the work to be performed and the salary of the employee (which must be in Iraqi Dinars). An employment contract may provide for a probationary period of a maximum of three months.

The duties of an employer include the following:

- to take health and safety measures to protect the employee; and
- to give training to enable the employee to enhance his knowledge and skills.



A contract of employment may be terminated in the following circumstances:

- mutual agreement of the employer and employee;
- expiry of the contract;
- by the employee in the case of a fixed term employment contract (with 30 days' notice or, if less notice is given, the employee is liable to compensate the employer for the remainder of that notice period, in the amount of his salary for that period);
- in the case of illness lasting for more than six months or substantial incapacity, evidenced by an official medical report; or
- redundancy, provided that notice is given to the Ministry of Social Affairs.

It is important to note that an employer is not entitled to terminate the employment of an employee with notice (without just cause) and, therefore, it is usual for employees to be employed on a rolling fixed term basis.

It is possible for an employer to dismiss an employee for cause, although the provisions of the Labour Law are restrictive in this respect and make it difficult in practice for an employee to be dismissed. The reasons for summary dismissal of an employee include:

- serious misconduct leading to material damage to the employer (subject to 24 hours' prior notice to the Ministry of Social Affairs);
- disclosure of confidential commercial information where the disclosure was prejudicial to the employer;
- where, on more than one occasion, the employee failed to comply with health and safety instructions, was drunk or under the influence of drugs, or otherwise engaged in conduct incompatible with work;
- where a crime is committed at work for which the employee is convicted, or where the employee is sentenced to more than one year in prison for any other crime; and
- if the employee is absent from work for a period of 10 consecutive days or 20 non-consecutive days in any year without cause, provided the employee has been given warnings for absenteeism prior to termination.

There are strict procedures to be followed in order to dismiss an employee, including enquiries and referral to a labour tribunal.



The maximum daily work period is eight hours, which may be increased (provided overtime pay of between 50% and 100% of the normal salary is paid) or reduced (if the work is particularly arduous or harmful to health). Employees are entitled to one day of rest per week, which is usually Friday. Paid annual leave is set at 20 days per year, which is increased to 30 days per year for work which is arduous or harmful to health. The length of annual leave must be increased by two days for every five years of service.

An employee is entitled to 30 days of paid sick leave per year (which may be accumulated to up to 180 days in any year) after which he is subject to the laws on pension and social security. Maternity leave is set at six months at full pay and a further six months at half pay.

Application in Kurdistan

The Iraqi Labour Law is applied in Kurdistan.

Work permits and visas

A work permit is required for any overseas employee wishing to work in Iraq and will only be granted on the basis of an agreed employment contract with an employer based in Iraq. Work permits are granted for a one year period which is renewable. Any person who is granted a work permit may apply for their dependants to be granted residency. There are differing requirements for the grant of a work permit based on the applicant's nationality. Work permits must be applied for in the country in which the applicant has residency or is a citizen, before arriving in Iraq.

When an overseas national intends to travel to Iraq, he may only do so on the basis of an entry visa granted by the Iraqi embassy or consulate in their home State. It is not generally possible to be granted an entry visa on arrival. The issue of entry visas is restricted. In January 2009, Iraq entered into a Status of Forces Agreement which now requires nationals from the States which comprise the coalition forces to apply for visas through Iraqi embassies in their home jurisdictions.

There are a number of different entry visas which can be granted, depending on the duration of the visit. The standard entry visa grants an individual the right to enter Iraq on one occasion in a three month period for a maximum period of three months. This visa is not renewable and does not allow for multiple entries and exits during its duration. It should be noted that visa requirements may change without notice and so the position should be re-confirmed before organising travel to Iraq.



Application to Kurdistan

The visa entry requirements apply to Kurdistan, although in practice they may differ. For example, it is currently possible for certain nationalities to receive a 10 day visa upon arrival at any port of entry in Kurdistan.



6. Key contract law issues

Basics of Iraqi contract law

The contract law of Iraq is contained in the Civil Code (Law No. 40 of 1951, as amended). As mentioned in chapter 1, it is based on the Egyptian Civil Code, which in turn was inspired by European civil law and, in particular, the French Civil Code.

A contract is formed by offer and acceptance. A contract does not need to be reduced to writing provided that it can be proven that the parties intended to be mutually bound by the agreement. The subject matter of the contract must not be illegal or “prejudicial to public order and morals”. In an Islamic country, this will mean that the contract must not be contrary to Shari’ah (for example, the contract should not relate to gambling activities).

Exclusion and limitation clauses

There is no specific provision of the Iraqi Civil Code which expressly prohibits excluding or limiting liability for death, personal injury or loss arising from damage to a person’s property. However, according to the Iraqi Civil Code, it is not permissible to limit liability for gross negligence or wilful misconduct in any respect.

Decennial liability

The Iraqi Civil Code, in common with many civil law systems, contains a provision creating joint liability for a building contractor and the architect of a building for a period of 10 years for:

- any complete or partial collapse of the building or the fixed installations; and
- any defects in the construction of the building or its installations which may threaten the strength and safety of the building.

This liability remains in place irrespective of whether the collapse is due to an inherent defect in the land on which the construction is made, or whether the principal employer has agreed to the defective construction. The liability is for a lesser period if the construction and its installations have been designed to remain for less than the 10 year period. The liability period runs from the date of completion and delivery of the works. Note that if the role of the architect is limited to the preparation of designs for the building and it is not responsible for the supervision of the project, it will only be liable for defects arising out of the design and not for the execution of the design.

It is not possible to limit or exclude liability under this provision and any attempt to do so is void.



This position contrasts with the law in other jurisdictions in which an element of negligence must be proven against the architect and/or building contractor. Also, the liability of the architect and the building contractor would not automatically be joint in other jurisdictions.

Specialist decennial liability insurance is available in the insurance market.

Force majeure

The Civil Code provides that a party is not liable to pay damages for non-performance or delay in performance of a contract if it can establish that the non-performance or delay arose from a cause beyond its control.

However, although Iraqi law makes provision for the effect of a force majeure event, it is recommended that parties entering into commercial contracts include standard force majeure provisions.

It should be noted that the Iraqi courts have been reluctant to construe force majeure clauses to cover civil unrest or war in favour of a contracting party against the Iraqi government or government entities.

Contractual remedies

The Iraqi courts can order specific performance for a breach of contract but, in the event that performance of the obligation would be too onerous on that party, damages may be awarded instead. Alternatively, a party may request that the contract is cancelled and claim compensation in the form of damages. Generally, the courts will aim to put the parties into the position they would have been in had the contract been performed. Unless the claim involves fraud or gross negligence, the damages awarded will not exceed the loss suffered or the amount of lost profit which was foreseeable at the date of entering into the contract. It is open to the parties to agree the amount of damages payable in the contract but the amount may be subject to review by the courts if the original agreement was excessive. The parties may also agree limitations on liability under the contract.

The Civil Code also provides for an interest rate of 4% on delayed payment in respect of civil matters (payments due in a personal capacity or unsecured loans) and 5% in relation to commercial matters (transactions in the course of a business or secured loans) from the date that a claim is filed with the courts for payment. The parties may, however, choose a different interest rate, provided that it does not exceed 7%.



Limitation period

Generally, the contractual limitation period under Iraqi contract law is 15 years, other than in certain circumstances in which it is less. These include tortious claims for which the Civil Code states the limitation period is three years from the date on which the claimant becomes aware of the damage suffered and the person who caused it (with a maximum of 15 years from the date of occurrence of the harmful act), where the right is a recurring one such as the right to receive rent or salary for which a five year limitation period applies, and the rights of certain professionals and employees to be reimbursed for their work for which a one year limitation period applies. It is not permitted to amend the limitation period contractually.

Application to Kurdistan

The Civil Code applies directly to Kurdistan.



7. Intellectual property law

General

Prior to the overthrow of the Saddam Hussein regime, the Iraqi intellectual property laws had not been amended for many years and did not conform to modern international standards. The CPA implemented amendments to the intellectual property laws, which it identified as key to Iraq becoming a full member of the World Trade Organisation. Iraq is currently an observer government of the WTO: it made a request for accession as a full member in September 2004. Its application is still being negotiated.

Trade marks

Iraq has a trade mark law which dates from 1957: the Trade Mark and Indications Law (Law No. 21 of 1957) which was amended by the CPA (CPA Order No. 80).

The law provides for the protection of trade marks and service marks and other types of marks, by registration in Iraq. Registration grants an exclusive right to prevent third parties from unauthorised use of marks which:

- are identical or similar to the registered mark; and
- which would be likely to result in confusion.

Registration is made at the Trade Marks Registry in Baghdad (or at a sub-office in Basra) which is under the control of the Ministry of Industry and Minerals. There is a Trade Mark Registry in Kurdistan in Suleimaniah, although it is reportedly being transferred to Erbil.

Registration provides protection for the trade mark for 10 years which is renewable in the ninth year for a further 10 year period. The trade mark owner has a grace period of six months after expiry of the trade mark to apply for a renewal, failing which measures will be taken to remove it from the register. In practice, very few trade marks have been registered in Iraq under the Trade Mark Law in recent years by overseas trade mark owners. The registration process in itself requires some further modernisation.

Infringement of a registered trade mark in Iraq is a criminal offence, which may be punished by imprisonment of between one and five years, or a fine of between ID 50 million (approximately US\$42,500) and ID 100 million (approximately US\$85,000). A court may also order the confiscation of all products which infringe the trade mark and the revenues generated by the infringement. On a second conviction, the possible term of imprisonment increases to between five and 10 years and the potential fine increases to



between ID 100 million and ID 200 million (approximately US\$170,000), as well as the potential closure of the relevant enterprise for a period of between 15 days and six months by court order.

Note that the Iraqi Trade Mark Law provides that the owners of “well-known” trade marks have the right to enjoy the same protection under the law, even where such a trade mark has not been registered in Iraq, if the infringement involves non-identical goods which would indicate a connection between the owner of the well-known trade mark and those other products. There is no guidance or definition in Iraqi law for what constitutes “well known”.

The Trade Mark Law is applied directly in Kurdistan but the CPA Order may not be enforced.

Copyright

The Iraqi law on copyright is contained in the Copyright Law (Law No. 3 of 1971) which was amended by the CPA under CPA Order No. 83.

There is no registration requirement for copyright in Iraq. The Copyright Law provides for protection of a person’s economic rights for a period of 50 years from death (in the case of an individual) and 50 years from the date of first publication of the works (in the case of a corporate or other entity).

The CPA Order amended the Copyright Law so that it protects a wide range of works including:

- all written works;
- computer programs;
- works conveyed verbally (such as lectures, lessons and speeches);
- artistic works (such as drawings, paintings and sculpture);
- architecture;
- dramatic works and plays;
- musical works;
- photographic and cinema productions;
- works for television and radio; and
- sound recordings and compilations of data.



A copyright infringement gives rise to a criminal offence. The penalties capable of being imposed range from imprisonment (in the most serious and repeated instances of infringement) to a right to compensation, which is determined by taking into account the cultural standing of the copyright owner, the literary, scientific or artistic value of the work, and the extent to which the infringer benefited from the infringement. An Iraqi court may also grant an injunction to require the infringer to cease the infringement and to allow the confiscation of relevant material and the proceeds of the infringement activities.

The Copyright Law is applied directly in Kurdistan but the CPA Order may not be enforced.

Patents

The Patent Law of Iraq dates back to 1970 but was amended by the CPA under CPA Order No 81.

The Patent Law grants the registered owner of the patent protection for its invention from unauthorised use, exploitation, production, sale or importation. The invention must be an innovative idea in a field of technology which relates to a product and/or a manufacturing process, and practically solves a specific problem in that field. Protection for registered patents lasts for 20 years from the date of registration.

Iraq has a patent office, the Registry of Patents and Industrial Designs, which is part of the General Directorate of Registration and Supervision of Companies in Baghdad.

In the event of an infringement of a registered patent, a registered owner may request a court to order the seizure of the infringing items, an injunction to prevent further infringement, and damages.

Note that the Patent Registry may grant a licence to a third party to use a patent without the permission of the registered owner where the use of the patent is a necessity for national defence or emergency or for “non-commercial public good”, provided that the registered owner is notified as soon as possible. The Registry may also grant a third party a non-exclusive, non-assignable licence for a limited duration if it has failed to reach an agreement with the patent owner on the basis of reasonable remuneration and terms for a patent licence and the licence is needed in order to meet a demand in the local market for the product. The Registry will grant the licence on the basis of equitable remuneration which takes into account the economic value of the patent.

The Patent Law is applicable in Kurdistan but the CPA Order may not be enforced.



Other rights

The Patent Law also covers the protection of industrial design, integrated circuits and plant varieties. Registration is also made through the Patent Registry in Baghdad.

International conventions

Iraq is a signatory to the Paris Convention for the Protection of Industrial Property and a member of the World Intellectual Property Organisation. In particular, the Paris Convention has the following additional benefits:

- signatories to the Paris Convention agree to afford to the nationals of other State signatories the same rights as conferred on their own nationals in relation to the protection of industrial property; and
- a patent, trade mark or industrial design which is registered in any other country which is a signatory to the Paris Convention benefits from a right of priority as regards registration in Iraq for 12 months (in the case of a patent or industrial design) or six months (in the case of a trade mark), such that the registration of the right within such period in Iraq would take effect from the date of first registration in the other State.



8. Real estate law

Prohibition on non-Iraqi ownership of land

Generally speaking, overseas investors are not entitled to own freehold land in Iraq (with the exceptions mentioned below). This is a result of the Iraqi constitution which states that every Iraqi has the right to own property anywhere in Iraq, but that no others may possess immovable assets, except as exempted by law. The prohibition applies to overseas investors holding freehold land directly. It is also thought to cover holding freehold land through an Iraqi incorporated company in which overseas investors are shareholders (irrespective of whether the company is partly owned by Iraqi nationals). Although the constitution does not specifically make clear that a foreign owned Iraqi company may not hold land, it is unlikely that the registration of the land would be permitted or that the company would be able to enforce its rights as landowner before the Iraqi courts.

As mentioned in chapter 3, on 13 October 2009, the Council of Representatives approved an amendment to the Investment Law which permits both Iraqi and overseas investors to acquire and own Iraqi public land for the exclusive purpose of housing projects designed to house Iraqi nationals, subject to the consent of the National Investment Commission. The land which may be used for this purpose must be designated for development for housing projects by the relevant municipal or regional authority (for example, the Municipality of Baghdad) and it is then within the power of the National Investment Commission to allocate that land to investors in accordance with internal regulations approved by the Council of Ministers. The National Investment Commission will monitor the development of the land in accordance with the agreed terms of its use.

It should be noted that the Investment Law states that non-Iraqis are entitled to take a lease for up to 50 years over public land in Iraq. Outside of the Investment Law, there are strict controls on the lease of public land, and authority from the Council of Ministers is likely to be required. An overseas investor may lease private land and there are no restrictions on the length of the lease. However, leases with a term of more than one year must be registered with the Land Registry. In fact, one of the filing requirements on the establishment of a company, or branch or representative office, is a copy of the lease agreement and, generally, that lease must be registered.

One way in which overseas investors may currently create an interest in Iraqi land as part of a joint venture is for an Iraqi national or wholly Iraqi owned company to hold the freehold title for the benefit of an overseas investor. By way of contract, the overseas investor may then benefit from any income or capital



gain from the land. The disadvantage of this approach is that the overseas investor has no means to protect his interest other than under contract and, in the event of a breach of contract, may be reliant upon the Iraqi courts to enforce the contract (see chapter 11 below in relation to dispute resolution).

A further limited exception to non-Iraqis owning land is contained in the Real Estate Registration Law (Law No. 4 of 1971) which allows for registration of land held by non-Iraqis. It is, however, subject to a number of conditions, including that the real estate must be no more than 30 miles from one of the Iraqi borders and the relevant army and regional government authority both consent to the registration. This provision is rarely used and it is likely to be difficult to rely on it unless the overseas investor is proposing a project of political or economic importance in one of the border regions of Iraq.

Title and registration of title

There are four types of interest in land which are registered in Iraq:

- leasehold interests with a term greater than one year;
- freehold interest;
- *mustaha* (which is a surface right whereby the land is transferred for up to 50 years (which is extendable) after which period both the land and the project constructed on the land are returned to the land owner);
- *tasarruf* (which is similar to lease, under which the land owner (which is always the Iraqi State for this type of interest) retains title to agricultural land but grants a right for the other party to use the land for his own benefit).

The registration of an interest in land at the Land Registry provides recognised protection of that interest. It is possible to register mortgages over land with the Land Registry. The Land Registry is located in Baghdad and in various regional areas.

It should be noted that it is not possible for a third party to obtain information registered with the Land Registry: only the owner of the title, the judiciary and government authorities are provided access to Land Registry records.



9. Environmental law and regulation

The Iraqi Council of Ministers has recently passed new environmental laws, which create the most modern body of environmental law in the Middle East. The comprehensive regime creates a baseline of environmental regulation which, although currently lacking in enforcement, isolates critical areas in need of environmental remediation and protection, condemns harmful practices, and encourages oil producers to adopt international best practices of petroleum extraction, transport and off loading. The most recent law, which came into force in 2010, is not only more detailed but is significantly stricter than previous laws, both in terms of the requirements and the penalties it imposes. It also implements international conventions and agreements to which Iraq has recently acceded.

Changing domestic legislation and international treaties

Until its repeal in 2010, the 1997 Environmental Law (Law No. 3 of 1997 - the Law of Environmental Protection and Improvement) provided the legal framework for the protection of the environment in Iraq. It regulated soil, air quality, and water resources and Article 18 required an Environmental Impact Assessment (EIA) for all projects in Iraq. The concept and requirements for EIAs were vague, but the Law did set out broad guidelines for the minimum requirements.

The 2009 Environmental Law (Law No. 27 of 2009) replaces and repeals the 1997 Environmental Law and significantly expands the role of environmental regulation in Iraq. The 2009 Environmental Law partly restates certain components of the 1997 Environmental Law, but whereas the previous law only included express restrictions relevant to pollution of waters (which are restated), the new law also includes new express restrictions on other activities:

- causing pollution of air and land;
- causing noise pollution;
- causing damage to biodiversity;
- relating to use and disposal of hazardous materials and waste;
- relating to the use of pesticides or chemicals for agricultural purposes; and
- relating to oil and gas exploration and extraction activities.

The above restrictions are generally of a framework nature and, with the exception of the last of these categories, they prohibit specific types of activity or activities that may have a particular effect, unless they are undertaken subject to the requirements set out in underlying regulations and applicable international conventions, or with the approval of, or within the limits set by, the Ministry of Environment or other relevant authorities.



Iraq has also acceded to a large number of international environmental conventions and agreements in the last few years and plans to ensure their full implementation over time. In particular, during 2009, Iraq signed the Basel Convention into law and, in 2008, it ratified the Climate Change Convention and Kyoto Protocol, the UNESCO Convention and the Convention for Biological Diversity. It also joined the Ramsar Convention on wetlands in 2007, with water resource management and marshlands being a particular focus. The Iraqi government is also working towards signing other international treaties. With the new 2009 Environmental Law requiring appropriate compliance with such international laws, a very different approach to future environmental legislation is starting to emerge. Note, however, that the principles of these treaties may not have been fully implemented into Iraqi law yet.

The Ministry of Environment

The Ministry of Environment is empowered with environmental authority over projects and environmental damage. It was originally established under CPA Order No. 44 of 2003, which has since been repealed and replaced by the 2008 Environmental Law (Law No. 37 of 2008). The 2008 Environmental Law sets out the powers and objectives of the Ministry of Environment and gives it a wide mandate, including formulating and regulating environmental policy and legislation, protecting natural and cultural heritage, controlling waste management and protection from ionizing radiation, as well as promoting environmental education and awareness and conducting environmental studies and testing. The 2008 Environmental Law also gives the Ministry of Environment jurisdiction over EIAs.

The Ministry of Environment is made up of a central Ministry divided into technical, legal and administrative departments and regional departments covering the north, central, middle Euphrates and southern regions. The powers and role of the Ministry have recently been extended into regulatory supervision (see below).

Regulatory supervision

The 2009 Environmental Law provides for a significant expansion of the environmental supervision role of the Ministry of Environment and establishes a fund into which compensation payments made for breach of Environmental Law and/or environmental damage (paid into by the polluter) and other contributory sources are to be paid. It also provides that polluters can be required to compensate for damage and the removal of pollution and restoration of the environment, as well as being subject to the risk of increased financial penalties and imprisonment, with the ability for additional penalties to be imposed for repeated offences and while a breach remains unaddressed.



In addition, a new Council for the Environment will be established (with the Minister of the Environment as president) to provide environmental advice and ensure the progress of national environmental programmes and commitments. Sustainable development and environmental protection will also become an express component for planning authorities to accommodate in development projects. There is also a proposal to establish an environment police.

Environmental Impact Assessments

The 2009 Environmental Law restates the broad guidelines of the 1997 Environmental Law with respect to EIAs, namely that an EIA must include:

- determination of positive and negative impacts of the project on the environment and the impact on the environment surrounding it;
- the means proposed to prevent and address the causes of pollution in order to achieve compliance with environmental regulations and instructions;
- contingencies for pollution emergencies and potential precautions to be taken to prevent their occurrence;
- possible alternatives to the use of technology less harmful to the environment and the rational use of resources;
- provisions to reduce waste, such as the inclusion of recycled or reused materials when possible; and
- an assessment of the environmental feasibility of the project and an estimate of the cost of pollution relative to production.

The 2009 Environmental Law also includes an express provision that activities affecting the environment cannot be undertaken without obtaining approval from the Ministry of Environment, and that the EIA requirement will apply to expansions or renovations of existing facilities, and not just to new facilities.

Oil and gas and other infrastructure projects

The Iraqi Ministry of Oil has specified enhanced requirements in connection with the management of environmental, safety and social issues and EIAs in the context of oil projects through:

- the Provisional Regulations for Petroleum Operations, dated 13 November 2008, published and brought into force in connection with the first licensing round of oil and gas production contracts involving international oil companies; and



- the model contracts issued in connection with the licensing rounds for new oil and gas projects involving international oil companies.

These Provisional Regulations and model contracts include both detailed specific obligations and a general requirement to apply good international petroleum industry standards in the context of EIAs, operations, and decommissioning. The Kurdistan Ministry of Natural Resources has adopted a similar approach although the detail of the requirements differs.

The draft Petroleum Law from 2007, which has yet to be passed into law, is less specific than the later Provisional Regulations and model contracts, but also shows a clear policy requiring petroleum operations to be conducted in accordance with international standards and to ensure the protection of the environment and safety of personnel. It is probable that a similar approach will be taken to other major projects involving international companies and Iraqi government bodies, not least given the recent accession to international environmental agreements.

Certain Articles of the 2009 Environmental Law apply to parties responsible for the exploration and extraction of oil and natural gas. These Articles require them (amongst other things) to take the measures necessary to reduce damage and risks arising from exploration and drilling for oil and gas and necessary precautions and measures to protect land, air and waters (including groundwater) from pollution and to prevent oil spills on the surface or to groundwater used for human or agricultural purposes.

Uncertainties and practicalities

As a result of the ongoing development of Iraqi environmental law, and the relatively untested nature of much of the new regime, there is uncertainty over how some of the requirements will operate in practice and how different regulatory bodies will interact. For example:

- the licensing round model contracts require submission of EIAs to the relevant Regional Oil Company (part of the Ministry of Oil), but under the 2008 and 2009 Environmental Laws it is the Ministry of Environment which is the responsible body to which EIAs must be submitted; and
- the licensing round model contracts require a baseline assessment of environmental conditions and envisage possible remediation of historic environmental damage by the contractor, with the costs recoverable from the relevant Regional Oil Company, but the approach to this provision and scope of remediation is uncertain.



It is anticipated that standards and diligence regarding environmental controls and assessments will increase over time and operators will be required to demonstrate that assessments undertaken and practices adopted were adequate in all the relevant circumstances. The Ministry of Environment is taking steps to enable greater training, scientific capability and monitoring. Over the next few years, it will be supported by the non-governmental organisation, Nature Iraq, to develop and revise further Iraqi environmental laws and regulations, many of which are likely to emerge under the new 2009 framework legislation.

10. Taking security in Iraq



This chapter describes the Iraqi law on taking security for indebtedness and compares the Iraqi law position with structures which are possible in other Middle Eastern and more developed jurisdictions. It should be noted, however, that there is little practical experience of secured transactions in Iraq in recent years and, therefore, the approach which the Iraqi courts may take in relation to the types of legal structures mentioned in this chapter is uncertain.

Principal legislation and types of security

Iraqi law recognises various types of security interest. Under the Civil Code the following types of security are described:

- an authentic mortgage over land and buildings and other structures on that land; and
- a possessory mortgage (which can be over land and over other types of assets).

The Companies Law permits a mortgage to be taken over shares in a joint stock company or a limited liability company by private sector investors.

The Commercial Law (Law No. 30 of 1984) also contains some general provisions which deal with mortgages made in a commercial context (by parties pursuing an economic activity with the aim of making profit, as defined in the Commercial Law).

The providing and receiving of financial security is also, in practice, regulated at a ministerial level.

Authentic mortgage over land

An authentic mortgage is a right for a lender to secure repayment of a debt from the proceeds of a sale of a particular piece of land and its buildings and other attachments. Ownership of the land does not pass to the lender during the term of the mortgage. The mortgagor (the borrower) retains possession of the land.

An authentic mortgage can be used to secure future and/or contingent debts, as well as current debts, and can therefore be used as security under a revolving credit agreement or a loan which is drawn down over time, provided that the maximum amount of the debt is specified.

An authentic mortgage is created by way of a written deed of mortgage which is signed by the mortgagor and the lender before witnesses. In order to be valid, it must be registered with the Iraqi Land Registry located in the area in which the property is situated. A representative of the Land Registry will visit the site to assess its market value.



The amount of the mortgage must be expressed in Iraqi Dinar. Under the Iraqi Real Estate Registration Law (Law No. 43 of 1971), an authentic mortgage cannot contain compound interest and interest must not exceed the amount of the debt.

The lender is entitled to oppose all acts which may diminish the security, including the right to seek an injunction to prevent such action being taken. However, it is possible for the mortgagor to sell the secured land to a third party and, in this circumstance, the third party takes the land subject to the security interests of the lender and the debt, unless the mortgage is discharged and the debt repaid before the land is transferred.

The benefits and risks associated with the land remain with the mortgagor during the term of the mortgage.

Enforcement

In order to enforce security against land secured under an authentic mortgage, the lender must serve notice on the mortgagor and then, after seven days, if the debt has not been repaid, may apply to the court for leave to sell the asset. If the court grants leave to sell the asset, it is sold by public auction.

If the land has been sold to a third party, the lender must serve notice on the third party who has acquired the property subject to the mortgage and, if the debt remains unpaid for 30 days, the lender may apply for the sale of the land by way of a court summons addressed to both the third party purchaser and the original mortgagor of the land and the land is then sold by way of auction. If the sale proceeds exceed the amount of the debt, the balance is returned to the third party purchaser.

There are restrictions on foreign ownership of land in Iraq (see chapter 8 of this guide) and therefore security may need to be held by an onshore agent (possibly an Iraqi bank involved in the financing). It should also be noted that the potential purchasers to whom the relevant land may be offered on enforcement will be limited by those requirements (which may in turn have an impact on the value which can be realised for the relevant property on enforcement).

Possessory mortgage

A possessory mortgage is the grant of security over assets which can be taken into the possession of the lender, or an agent nominated for that purpose. Generally, title to the assets does not pass to the lender.



The asset may be immovable such as land, in which case the mortgage must be registered with the Land Registry in the same way as an authentic mortgage. However, the security assets may also be any other type of asset which can be dealt in, including movable assets and debts.

Registration is also thought to be required in respect of mortgages secured over vehicles and plant and machinery, by regulations issued by the relevant competent governmental ministries. Practice is unclear on these types of registrations however. There are fees payable in relation to the registration of mortgages for land and certain other assets.

In order to be valid security over movable assets, the mortgage must be created by way of an instrument which records the date of creation of the mortgage and the description of the asset which is the subject of the security.

Types of asset which may be secured

It is possible to mortgage by way of possessory mortgage the following types of assets:

- land and buildings (with the lender taking possession of the land but granting a right to use the land to the mortgagor, as noted in the paragraph below in relation to the possessory requirement);
- cash (although note that if cash is secured by taking security over a bank account, the borrower is not able to use the account; security can only be created over a deposit in a blocked account);
- promissory notes (where the mortgage takes effect by being endorsed on the face of the promissory note);
- vehicles;
- book debts (see the paragraph below in relation to the possessory requirement);
- physical assets, for example a shipment, evidenced by a bill of lading.

It is possible to structure a “security trustee” type arrangement in respect of a possessory mortgage because the law allows for an asset taken into possession by one lender on behalf of others to be used as security for the debts of multiple lenders. It should be noted, however, that the concept of a trust does not exist under Iraqi law and therefore, the arrangement is likely to take the form of a contractual agency.



It is also possible, in respect of commercial mortgages, for the pool of secured assets to be fluid where the assets are fungible. In the case of non-fungible assets (such as plant and machinery), the assets subject to the security can be substituted, provided that the mortgage deed permits substitution and the consent of the lender is obtained.

As with authentic mortgages, future debts can be secured by a possessory mortgage but a maximum sum must be stated.

The possessory requirement

It is a key requirement that the asset can be taken into the “possession” of the lender. This can either be by physical possession or, in the case of a mortgage falling within the scope of the Commercial Code as a commercial mortgage, by constructive possession. There is constructive possession if: (i) the asset is placed at the lender’s disposal in such a manner as to lead third parties to believe that the asset has entered his custody; or (ii) the lender receives an instrument representing the secured asset which vests a right in the lender to take delivery of the asset. The extent to which a lender must go to try to ensure that third parties believe that the property has entered its custody is not clear.

Other Middle East jurisdictions have similar possessory requirements in relation to taking financial security. In certain of these countries, practices have developed where assets are designated and “advertised” as being within the possession of the lender despite the fact that they are being used by the borrower, for example using fencing and signs to purport to take possession of stock and machinery within a factory. Public notices can also be given, for instance in trade publications or newspapers and direct to specific third parties, to attempt to show that the constructive possession requirements have been met. However, it is not certain whether the Iraqi courts would agree that the lender has taken possession by such actions.

Moveable assets which are secured under a possessory mortgage may only be used by the borrower where an arrangement exists for the lender to take a share of the profits from the borrower’s use of the asset. An analysis of the assets and operations of the borrower in any particular financing will have to be undertaken to establish which assets may be secured but made available for the borrower’s use in this manner under a profit sharing agreement and, in the particular circumstances, how profit should be allocated.

In the case of an immovable asset secured by a possessory mortgage, the lender may grant a “lease” to the mortgagor in order to enable the mortgagor to retain occupation of the premises. A note of the existence of the lease must be made in the register at the Land Registry which also notes the existence of the mortgage. It should be noted that the Iraqi law refers to a “lease” but, given that



the lender does not hold legal title to the land, it is more similar to a licence or other right to allow the borrower to use or occupy the asset.

In the case of book debts, in order for the mortgage to be valid, the lender must take possession of the document which establishes the existence of the debt (and take assignment of the debt as required by the Commercial Law) and the third party debtor must be given notice of the creation of the mortgage. If the book debt matures before the secured debt, the monies are held by an agent on behalf of both the mortgagor and the lender until the secured debt is discharged. The lender may receive interest from the secured debts and deduct those amounts from the amounts secured by the mortgage. It is also possible for the lender and the borrower to agree that the lender receives directly all or some of the book debts when paid, provided that the borrower is notified of the receipt by the lender.

It should be noted that under the Civil Code, title to the assets does not pass to the lender. However, where the asset comprises rights which are evidenced by an instrument, the mortgage takes the form of an assignment of those rights and a note in the books of the party which issued the instrument must be made (as stated in the Commercial Law).

Obligations and rights in respect of the secured asset

A secured lender is required to preserve and maintain the asset in its possession and to pay taxes and dues which may be payable in respect of the asset. Subject to limited exceptions, the lender will also be liable for any deterioration or loss of the asset or any part of it. The lender must also properly manage the asset and, in the case of mismanagement, the mortgagor may apply to court to appoint a trustee to manage the asset in place of the lender, or prepay the loan to regain control of the asset. Any profit made by the lender in respect of the asset during its possession is for the account of the mortgagor and should be deducted from the amounts due from it, repaying interest and expenses before the principal sum.

It may be possible to “contract out” of the majority of the above requirements. This may include having an arrangement under which the relevant asset is used by the borrower and the borrower agrees that it will be responsible for all the obligations that would otherwise be on the lender (which may be backed-up by appropriate indemnities). This sort of arrangement would suffer from the fact that residual liabilities would remain with the lender, although it may be possible to insure the residual risk. In addition, lenders may be able to arrange for possession to be held through an “orphan” SPV company so that the risks associated with this type of arrangement are distanced from the balance sheet of the lender (in a similar manner as is often used in Islamic lease finance structures).



In the same way as an authentic mortgage, the lender has the right to object to any act which may diminish the value of the secured asset or which prevents the lender from exercising its rights. However, the asset can be sold without the rights of the lender being prejudiced by that sale and the lender may collect its debt from the sale of the secured asset, even where ownership of the asset has passed to a third party purchaser. As with an authentic mortgage, if the third party settles the debt, it is entitled to assume the rights of the lender against the original mortgagor.

Enforcement

If the debt under a commercial mortgage is not repaid on the maturity date, the lender may, after seven days, demand the sale of the asset and receive repayment of the debt from the proceeds. In order to sell the asset, the lender must apply to the court for leave to sell, which sale must be conducted by way of a public auction. If the mortgage covers several assets, the lender may designate which assets are to be sold to repay the debt, unless otherwise agreed in the mortgage deed.

Priority

The lender has priority over ordinary unsecured creditors of the mortgagor and any person who creates a mortgage in respect of that asset after the date of the relevant mortgage (subject to the ranking of privileged debts specified in the Civil Code, mentioned below).

The mortgage instrument is the key evidence for the purposes of establishing the priority of the lender, unless there is a requirement to register the mortgage over that particular asset. If there is no requirement to register the mortgage with any external registry, this should not be a deterrent for lenders where it is possible to take physical possession of the asset. However, where a “constructive possession” method is used, as described above, this may give rise to uncertainty as to whether the asset is already subject to a mortgage, particularly if the instrument is not needed to be produced in practice to deal with the asset.

Mortgage over shares

The Companies Law permits a mortgage over shares in joint stock companies and limited liability companies, but not in the capital of any other type of entity permitted to be created under Iraqi law.

In order to create a mortgage over shares, a written agreement must be entered into and it must be recorded in a register held by the company whose shares are mortgaged for that purpose. It is only possible to amend the register to remove the mortgage once the lender has agreed that the debt has been repaid or released, or after a court has ordered that the register be amended. Therefore,



provided that the mortgage register is kept up to date, inspection of the register by a lender would provide some assurance that the shares have not already been used as security under a valid mortgage.

The enforcement of the debt against shares in a joint stock company or a limited liability company requires the seizure of those shares which may only occur by way of a court order, which must also be noted in the company's register.

Priority and preferential creditors

Priority

In the case of each type of security identified above, secured lenders will rank in priority to unsecured creditors of a company (subject to the preferential creditors identified below).

Priority between competing secured interests (for example, where there are two mortgages over the same piece of land) is determined by date of creation. Where the relevant security is registerable (such as a mortgage over land), priority will still be established by date of creation but the security must be registered to gain priority and the date of creation of security will be noted on the register.

In relation to book debts, priority is established from the date of service of the notification on the third party debtor by the lender.

Preferential creditors

The Civil Code provides for certain debts against the assets of a debtor to be privileged and rank above ordinary and secured debts in bankruptcy proceedings (some in relation to the property of the debtor as a whole and some which relate to specific assets only), including as follows:

- amounts due to the Iraqi State by way of taxes, duties and other dues;
- the costs of legal proceedings incurred in the common interest of all creditors of the debtor;
- expenses incurred for the preservation of, and necessary repairs to, movable assets; and
- debts incurred in relation to certain matters including wages and salaries where such debts were incurred in the previous six months.

The number and type of preferential creditors may result in the security afforded to lenders being significantly eroded.



Comparative table of legal features of secured lending

The table below compares the key elements of a Western market security package with the current position under Iraqi law in order to illustrate where the most important issues may arise when considering providing finance into Iraq.

Feature of Western market security	Iraqi law position
Security can be taken over a wide range of assets	The types of asset that security can be created over are limited by the types of security available and the possessory element (and the level of control that goes with that). So, for example, security cannot be taken over a “revenue account” in Iraq in a project financing where the account is being used on a regular basis to receive income and pay a variety of outgoings
A “floating charge” type of security is available	There is no prohibition on floating charges in Iraq but there is no recognised concept of a floating charge and such a charge may not be enforceable (for example, a court may rule that the secured assets are insufficiently described). Consequently, it will be easier to lend on a secured basis to project/ companies which have significant fixed assets
Security can be taken over future assets	Where security is taken over fungible assets (for example, a store of a particular stock) the assets may be replaced by substantially similar goods. However, there is no recognised concept of a charge over all the assets of a business
Future debts may be secured	An authentic mortgage over land may secure future debts (but a maximum amount of debt must be fixed in the mortgage instrument)
Security can be taken without taking possession of the relevant asset	The possession (or constructive possession) elements limit the types of asset over which effective security can be taken, whilst still allowing the borrower enough freedom to go about its business



Feature of Western market security	Iraqi law position
Enforcement can be by way of sale or taking charge of the asset and can be carried out without a court order and, in the case of a sale, without going through a public auction process	Lenders generally wish to be able to step in and take charge of an asset following a default and to sell the asset freely. In Iraq, the ability to do so is restricted because a court order is required and the sale must be by way of public auction. There are also foreign ownership restrictions for land which may affect the ability of the secured lender to realise the value of the secured asset
There are very few “preferential creditors” which rank ahead of fixed security holders	There are preferential creditors which rank ahead of secured lenders. This may lead to the assets of a company or project being significantly depleted prior to the secured lender being able to recover its debt and will mean that there are significant “stakeholders”, other than the secured lenders, who will have influence over the way that a company or project in difficulty operates (which undermines the important “defensive” purpose of taking security)
There are no substantial fees payable on creation of security, on a regular basis thereafter or on enforcement	At the time of writing, there is no stamp duty in Iraq and no substantial fees payable in connection with the creation or enforcement of security
A “security trustee” or equivalent concept exists which allows one party to hold and enforce security on behalf of a group of creditors	It is possible for each type of security described above to be held by an agent on behalf of multiple lenders.
Secured parties have priority and priority is clear	Secured creditors have priority over ordinary creditors and, amongst competing secured creditors, security is determined by date of creation of the security



Feature of Western market security	Iraqi law position
A clear system of registration	The registration system is limited. Only security over land and certain physical assets can be registered. Share security can be registered but only in the company's own records

Potential structures for secured lending

Onshore

Each of the types of security may be used in a secured financing by international lenders in Iraq. However, security in Iraq is most suited to specific land and physical assets and so certain projects and operations will be more suited to the creation of security under Iraqi law than others.

The possessory requirement and the obligations placed on a secured lender present significant challenges. It may, however, be possible, for structures to be developed to mitigate these issues. Constructive possession will be able to be used in a number of circumstances. Subject to structuring an appropriate profit sharing arrangement and taking as many measures as possible to establish that the lender has taken possession of the relevant assets, assets should be able to be used by the borrower despite the possessory requirement. The obligations on lenders in relation to secured assets may be able to be reduced by appropriate contractual and indemnity arrangements. Residual risks may have to be accepted by financiers at a premium or absorbed in some other way.

Lease finance arrangements may also be considered as an alternative to taking security, under which the lender retains title of the asset but allows the borrower to use the asset (and uses the borrower as its agent to maintain the asset). This has the advantage of making enforcement easier if the borrower defaults but the arrangement will not be subject to the same risk that a court may hold that the security is invalid due to a failure to meet the possessory requirement (which is a concern with a possessory mortgage where the borrower continues to use the asset). Residual risks related to property ownership would rest with the lender however.

Offshore

Lenders may wish to ensure that as much security as possible is taken offshore, in order to increase the options available to them to take valid and valuable security. For example:



- in a project financing, it may be possible for valuable assets required for the project to be held by an offshore company over which share security may be taken; and
- in many cases, some or all of a project's or company's income stream may be paid offshore into offshore accounts which is then secured in favour of the lenders.

Other forms of “security”

In order to reduce the risk profile on a finance transaction into Iraq, lenders will also take comfort from the involvement of large international companies as construction contractors (in the form of completion guarantees to the project) and as offtakers (with consideration being given to the length of their contractual commitment and pricing).

Additional legal considerations

For corporate borrowers incorporated in Iraq, it is essential that the Company Contract contains express borrowing powers and powers to grant security over its assets, otherwise the loan and the security will be unenforceable against it under Iraqi law.

There are no specific restrictions on foreign banks lending to Iraqi companies or projects in Iraq. However, in order to register security with the relevant registries, generally the registrant must have a place of business in Iraq. Consequently, if the foreign bank is not established in Iraq either in the form of a branch/representative office or a LLC, it will need to use a local agent to hold and register the security.

There are extensive documentary formalities involved in the execution of documents in Iraq and in the establishment of arrangements such as agencies and powers of attorney.

This chapter has focused on security provided by a borrower. There will be additional considerations (such as corporate benefit and maintenance of capital) which will need to be borne in mind if considering security to be provided by a third party.



11. Dispute resolution

Court system

Iraq has a three tiered court system for civil cases: the Courts of First Instance, the Courts of Appeal and the Court of Cassation. There are also some specialised courts, which include Shari'ah courts which hear mainly family law matters for Muslims (such as divorce and inheritance claims), labour law courts and administrative courts.

At the Courts of First Instance, cases are presided over by a single judge, but at both the Court of Appeal and the Court of Cassation, three judges sit in judgment on any particular case. There are no jury trials in Iraq. Appeals from the Court of First Instance to the Courts of Appeal may be on fact or law, but an appeal from the Court of Appeal to the Court of Cassation may only be on the basis of a point of law.

The judiciary

Under the Iraqi constitution, the judiciary is independent and no power has the right to interfere with it or the affairs of justice.

There are two key judicial bodies: the Higher Juridical Council and the Supreme Court. The Higher Juridical Council primarily manages and supervises the judiciary. The Supreme Court is an independent body made up of judges, Shari'ah experts and legal scholars which is responsible for the interpretation of the Iraqi constitution, overseeing the constitutionality of laws and regulations and settling disputes between governmental bodies.

Court procedure

There is no system of binding case precedent in Iraq, in common with many civil law jurisdictions. The litigation process is generally slow and it can take up to three years for a case to come to court and reach a final verdict.

The court system is generally inquisitorial: the presiding judge has a role in investigating the evidence and establishing the facts. An outline of the system is as follows:

- proceedings are commenced by the claimant filing a statement of claim (in either Arabic or Kurdish) with the court and serving notice on the defendant that a claim has been filed;
- the defendant receives a copy of the statement of claim from the claimant (or its lawyers), or from a specialised division of the court dealing with service on defendants;
- the notice will detail the amount of time the defendant has to respond to the claim, which must be no fewer than 30 business days;



- if no response is received, the claimant may then schedule a procedural default hearing, at which time the court will determine if the correct court procedure for notifications was followed;
- if the defendant appears at court for the procedural default hearing, it is entitled to postpone that hearing on that occasion and for two further times in order to allow a sufficient period to prepare a defence; and
- if the defendant fails to attend any of the scheduled procedural default hearings or does not ultimately file its defence on time, the court may award judgment against it.

There is little pre-trial exchange of evidence in Iraqi court proceedings, although the judge may conduct evidentiary investigations either on its own initiative, or upon a request from one of the parties. The parties submit their evidence during the trial and it is mostly in the form of written evidence. Oral witness statements are usually only heard during a trial in order to establish the authenticity of a particular document.

Iraqi courts do not have a wide range of powers to order interim remedies. A court will usually only intervene before a final judgment is given in the event that:

- there is a serious risk of important evidence in the case being destroyed, in which event the court will review this evidence on a more urgent basis; or
- if assets the subject of the case are threatened, in which circumstance the court will appoint a guardian.

The court does, however, have a variety of substantive remedies to choose from, including damages, specific performance and injunctive relief. The available methods to enforce judgments are also wide ranging, including attachment orders.

Arbitration under Iraqi law

Iraqi law recognises arbitration as a method of resolving disputes. The Iraqi Civil Procedures Code (Law No. 83 of 1969) states that an agreement to arbitrate may be made in relation to a specific, existing or potential future dispute. An arbitration agreement must be in writing and contain all the elements to make a valid contract. Matters referred to arbitration must be capable of being resolved by compromise (this does not include matters of public policy or criminal acts).

There is no Iraqi law specifically designed for international arbitration and consequently, the Civil Procedures Code provisions will apply to any arbitration conducted where the seat is Iraq. Many standard form contracts with Iraqi



government entities provide for international arbitration. At the time of writing, there are no institutional arbitral bodies capable of dealing with a large arbitration operating in Iraq.

The parties may agree on the form and rules of the arbitration under the Civil Procedures Code. In relation to choice of law for the arbitral hearing, generally, as between private sector parties, if at least one party is foreign then the parties are free to choose the governing law, provided that the application of the chosen law would not be contrary to law, public order or morals in Iraq.

Enforcement of foreign judgments and foreign arbitral awards

Generally, the Iraqi courts will only enforce a foreign judgment if there is a bilateral treaty in place between the relevant country and Iraq, or if there is an international convention to which Iraq is a signatory which provides for reciprocity of recognition of judgments. The treaty or convention must also have been brought into force under Iraqi law.

Iraq has entered into few bilateral treaties, but it is a signatory to the 1983 Riyadh Convention on judicial co-operation between Arab States. The Riyadh Convention provides that judgments given in one signatory country are directly enforceable in another signatory State, subject to:

- the judgment conforming to the principles of Shari'ah;
- the judgment not being contrary to public order or good morals;
- the losing party being properly notified of the court hearing; and
- the judgment not being the subject of proceedings in the other country.

Many of the countries in the Middle East are signatories to the Riyadh Convention (including the United Arab Emirates, Bahrain and Saudi Arabia). Consequently, one option for overseas investors would be to secure a judgment in another Riyadh Convention signatory State in order to enforce it in Iraq.

Iraq has not signed the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (although this is currently under consideration). The Riyadh Convention applies to arbitral awards, however, and consequently an award from an arbitration conducted in a signatory country to that convention is the best possible option to enforce an award in Iraq. Some of the countries which are signatory to the Riyadh Convention have well established arbitration laws and arbitration centres (for example, the DIFC-LCIA in the Dubai International Financial Centre).



In addition to the conditions set out above for the enforcement of foreign judgments, in relation to foreign arbitral awards, the following further conditions apply:

- the dispute which is the subject of the arbitral award must be capable of being resolved by arbitration in Iraq;
- the arbitration agreement must not be void;
- the arbitral award must be final; and
- the arbitrators must be competent to arbitrate the dispute.

Practically, in order to obtain enforcement, an order must be obtained from the local Court of First Instance.



12. Bribery and corruption legislation

The Iraqi Penal Code (Law No. 111 of 1969) contains provisions which prohibit bribery in Iraq in the public sector.

The offences

There are three basic offences under the Penal Code:

- the seeking or acceptance of a gift, benefit, honour or promise by a public official to carry out an employment duty, or refrain from doing it, or breach such a duty;
- the giving, offering or promising of a gift, benefit, honour or promise to a public official to carry out an employment duty, or refrain from doing it, or breach such a duty; and
- acting as an intermediary between the public official and the person offering the gift, benefit, honour or promise to that public official.

There is no requirement for the public sector worker to intend to act (or refrain from acting) under the influence of the bribe. The offence also applies if a public official accepts the bribe for a third party (for example, the public official agrees to perform an act in return for a benefit conferred on a relative).

The definition of what constitutes a “public official” is wide, including any worker who is “entrusted with a public task in the service of the government, or its official or semi-official agencies, or agencies belonging to it or under its control”. This would include directors and employees of companies in which the government or any of its agencies has a financial interest, such as mixed limited liability companies and mixed joint stock companies in which the government or a government entity has a shareholding (see chapter 2 on establishment options).

There is no minimum or maximum amount set out in the Penal Code for the gift, benefit, honour or promise. Consequently, even low value gifts may breach the law if given to a public sector worker.

Jurisdiction of Iraqi criminal law

The offence applies to any act of bribery which takes place in Iraq and includes acts where one or more of the parties was outside of Iraq if the act has consequences which are realised, or are intended to be realised, in Iraq. So the person who is committing the bribery need not be present in Iraq at the time of the bribery in order to fall within the jurisdiction of Iraqi criminal law. The parties to the criminal offence do not need to be Iraqi nationals. See below in relation to bribery laws of other countries which may also apply.



Punishment

The main offences of bribery are punishable by a prison sentence of a maximum of 10 years. A fine may also be imposed (which should not be less than the amount of the bribe). If the public official accepts the bribe for acting (or refraining from acting) in relation to a duty which was not within his authority, the offence carries the lesser punishment of a maximum of seven years' imprisonment, or detention and a fine.

A corporate body may be criminally liable for offences committed by its directors, employees or agents. Companies may only be subjected to a fine, confiscation or other specific remedy which may be imposed by the law. The managers or directors of a company held criminally liable for an offence of bribery are not automatically convicted of the same offence, although it will be a question of fact as to whether the employees involved were acting under instructions from management.

Other applicable bribery and corruption laws

It should be remembered that the laws of other countries may contain an offence of bribing a public official which applies to their nationals irrespective of the country in which the bribe takes effect. For example, the United States has the Foreign Corrupt Practices Act and the United Kingdom has enacted the Bribery Act.



13. Oil and gas law and regulation

Structure of Iraq's oil and gas sector

The dissolution of the Iraq National Oil Company (INOC) in 1987 led to 16 State owned oil companies directly under the Ministry of Oil.

Upstream	Iraqi Drilling Company (IDC) North Oil Company (NOC) Oil Exploration Company (OEC) South Oil Company (SOC) Missan Oil Company
Downstream	Midland Refineries Company (MRC) North Gas Company (NGC) North Refineries Company (NRC) South Gas Company (SGC) South Refineries Company (SRC)
Transportation/Distribution/ Marketing	Gas Filling Company (GFC) Oil Marketing Company (SOMO) Oil Pipelines Company (PLC) Oil Products Distribution Company (OPDC) Oil Project Company (SCOP) Oil Tanker Company (IOTC)

The State Oil Marketing Organisation (SOMO) is the State run oil organisation in charge of marketing Iraq's oil, with the sale proceeds going to the central government "for the benefit of the Iraqi people as a whole".

The Petroleum Contracts and Licensing Directorate (PCLD) is the State run organisation which controls the tender and bidding processes for Iraq's oil and gas fields and manages the licensing administration for local and international oil and gas companies operating in Iraq.

Proposed new Iraqi Oil Law

A draft Petroleum Law has been awaiting parliamentary ratification since mid 2007.

Under the proposed new law:

- INOC will be revived as an independent holding company controlling the oil companies currently run by the Ministry of Oil, but will have the power to create new Iraqi oil companies under its control. The INOC reorganisation bill was sent to Parliament in July 2009;



- a High Federal Oil and Gas Council will be created to assist the Council of Ministers in creating policies and related plans in the oil and gas industry, as well as establishing committees for each regional authority;
- current and future oil revenues will be collected by the federal Iraqi government and redistributed back to regions based on population; and
- production sharing agreements, rather than the existing technical service agreements, will be introduced.

The Kurdistan position

On 6 August 2007, the Kurdistan National Assembly ratified a regional Petroleum Law which provides for a regime based on production sharing.

The Kurdistan Regional Government (KRG) has signed production sharing agreements with a number of foreign investors. A number of oil and gas projects have been awarded to the government owned companies established under the regional legislation – Kurdistan Exploration and Production Company (KEPCO) and Kurdistan National Oil Company (KNOC). The KRG has also signed a number of other oil and gas contracts for downstream and transportation projects.

It should be noted that there is debate between the KRG and the Iraqi federal government as to the legality of the KRG's independent legislation.

Iraq's licensing rounds and model contracts

The Iraqi Ministry of Oil has now issued three rounds of licensing. The first licensing round was launched in June 2008 and the results were announced on 30 June 2009. The second licensing round was launched in December 2008 and the results were announced on 11 December 2009. A third round of licensing is underway at the time of writing, for which the deadline for submission of bids is stated to be 1 October 2010. There were six oil fields and two non-producing gas fields on offer in the first round of licensing. Ten oil fields were on offer in the second licensing round, with six being undeveloped and four having very limited production from exploratory wells. The third licensing round is for contracts for three undeveloped gas fields, at the time of writing.

Under the first licensing round, there were two model contracts on offer (the term for both being 20 years):

- gas service development and production contract (the Gas Contract); and
- oil technical service contract (the Oil Contract).



Bids for the second licensing round were invited against a single model contract which is closer in form to the Gas Contract for the first round as it does not provide for rehabilitation and extended oil recovery, which provisions were contained in the Oil Contract for the first round.

The contracts are technical service contracts, under which the contractor's profit is based on a fee for a volume of production (i.e. a dollar figure per barrel of oil produced). There is no right to share in production.

Contract phases

Under the Oil Contract for the first licensing round, the contract is in two phases:

- 30-36 months of rehabilitation;
- production phase – remainder of the 20 year term.

Under the Gas Contract and Oil Contract for the second licensing round, the contract provides for three phases:

- exploration;
- development; and
- production.

Remuneration fee

The contracts are based on a fixed service fee for each volume unit produced:

- in the case of the Oil Contract, the fee is paid per barrel (above a baseline level in the case of the first licensing round); and
- under the Gas Contract and the Oil Contract for the second licensing round, the fee is paid per barrel of fuel oil equivalent.

The fees may be paid in oil or cash at the contractor's election and are subject to Iraqi income tax. Each party is required to bid for the fee per unit and the production target.

Joint venture interest

The winning investors under both contracts will hold a 75% participating interest. The remaining 25% interest will be given to an Iraqi State partner and this interest will be carried by the international investors.



Management under the Gas Contract and the Oil Contract

The contractor has greater input and control of operations than under service contract systems in certain other countries.

Under the Gas Contract and the second licensing round Oil Contract, operatorship rests with the contractor until the joint operating company is established. The joint operating company is not established until the field is cash flow positive. The joint operating company is a 50/50 joint venture with the State.

Under the Oil Contract for the first licensing round, operatorship remains with the relevant regional oil company (either North Oil Company or South Oil Company) until the establishment of the field operating division. The field operating division is established 30 days after execution of the service contract. The contractor maintains influence over the field operating division, which is an unincorporated body which is jointly owned with the State.

Results of the two completed licensing rounds

At the time the results of the first licensing round were announced, only one field was successfully awarded. Since the conclusion of the first round, the Ministry of Oil has pursued bilateral negotiations with a number of the unsuccessful bidders and, at the time of writing, has awarded contracts for two of the other largest fields covered by the first round.

The Iraqi government expects production from these three mature fields alone, the North and South Rumaila, West Qurna – Phase 1 and Zubair fields, to boost Iraq's total oil production to around seven million barrels a day from current levels of two and a half million barrels a day within six years, which, according to the US government, would move Iraq from being the world's thirteenth largest producer to the fourth. If achieved, this would significantly outperform the government's own targets to increase oil production.

Many more bids were made and accepted under the second licensing round than under the first, with seven of the ten fields on offer being successfully awarded. As undeveloped fields, it is likely to be some years before they are able to begin producing significant volumes of petroleum.



Glossary and abbreviations

1997 Environment Law	Law No. 3 of 1997 (as amended)
2008 Environmental Law	Law No. 37 of 2008
2009 Environmental Law	Law No. 27 of 2009
Civil Code	Law No. 40 of 1951
Civil Procedures Law	Law No. 83 of 1969
Commercial Law	Law No. 30 of 1984
Commercial Agencies Law	Law No. 51 of 2000
Companies Law	Law No. 21 of 1997
Companies Registry	The main regulator for companies and representative/branch offices in Iraq which is part of the Ministry of Trade
Company Contract	The constitution of an Iraqi company (known in other jurisdictions as the articles of association or the by-laws)
Copyright Law	Law No. 3 of 1971
Council of Ministers	The Iraqi executive body
Council of Representatives	The Iraqi parliament
CPA	Coalition Provisional Authority
Federal Iraq	The Republic of Iraq excluding the semi-autonomous regions
General assembly	Meeting of shareholders in an Iraqi LLC or JSC
INOC	Iraq National Oil Company
Investment Law	Law No. 13 of 2006
Investment Regulations	Investment Regulations No. 2 of 2009 (which are implementing regulations of the Investment Law, issued by the Council of Ministers)



JSC	Joint stock company
KEPCO	Kurdistan Exploration and Production Company
KNOC	Kurdistan National Oil Company
KRG	Kurdistan Regional Government
Labour Law	Law No. 71 of 1987
LLC	Limited liability company
Managing director	The manager of a LLC, in place of a board of directors
NIC	National Investment Commission
PCLD	Petroleum Contracts and Licensing Directorate
Penal Code	Law No. 111 of 1969
Real Estate Registration Law	Law No. 4 of 1971
Riyadh Convention	1983 Riyadh Convention on judicial co-operation between Arab States
SOMO	State Oil Marketing Organisation
Trade Mark and Indications Law	Law No. 21 of 1957
Unified Accounting Rules	The accounting rules applied by law in Iraq, which do not conform with IFRS
WTO	World Trade Organisation

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Abu Dhabi

Herbert Smith LLP
Suite 302, 3rd Floor
Al Bateen Towers C2 Building
Al Bateen
PO Box 106178
Abu Dhabi UAE
T: +971 2 412 1700
F: +971 2 412 1701

Amsterdam

Stibbe
Stibbetoren
Strawinskylaan 2001
PO Box 75640
1070 AP Amsterdam
T: +31 20 546 06 06
F: +31 20 546 01 23

Bangkok

Herbert Smith (Thailand) Ltd
1403 Abdulrahman Place
990 Rama IV Road
Bangkok 10500
T: +66 2657 3888
F: +66 2636 0657

Beijing

Herbert Smith LLP
28th Floor Office Tower
Beijing Yintai Centre
2 Jianguomenwai Avenue
Chaoyang District
Beijing PRC 100022
T: +86 10 6535 5000
F: +86 10 6535 5055

Belfast

Herbert Smith LLP
3 Cromac Quay
Ormeau Gasworks
Belfast BT7 2JD
T: +44 28 9025 8200
F: +44 28 9025 8201

Berlin

Gléiss Lutz
Friedrichstrasse 71
10117 Berlin
T: +49 30 800 979-0
F: +49 30 800 979-979

Brussels

Herbert Smith LLP
Central Plaza
Rue de Loxum 25
1000 Brussels
T: +32 2 511 7450
F: +32 2 511 7772

Gléiss Lutz
Central Plaza
Rue de Loxum 25
1000 Brussels
T: +32 2 551 1020
F: +32 2 551 1039

Stibbe
Central Plaza
Rue de Loxum 25
1000 Brussels
T: +32 2 533 5211
F: +32 2 533 5212

Budapest

Bán, S. Szabó & Partners
Gléiss Lutz associated firm
József nádor tér 5-6
1051 Budapest
T: +36 1 266-3522
F: +36 1 266-3523

Dubai

Herbert Smith LLP
Dubai International Financial
Centre
Gate Village 7, Level 4
PO Box 506631
Dubai UAE
T: +971 4 428 6300
F: +971 4 365 3171

Stibbe
Dubai International Financial
Centre
Gate Village 7, Level 4
PO Box 506631
Dubai UAE
T: +971 4 428 6300
F: +971 4 365 3171

Düsseldorf

Gléiss Lutz
Bleichstrasse 8-10
40211 Düsseldorf
T: +49 211 54061-0
F: +49 211 54061-111

Frankfurt

Gléiss Lutz
Mendelssohnstrasse 87
60325 Frankfurt/Main
T: +49 69 95514-0
F: +49 69 95514-198

Hamburg

Gléiss Lutz
Hohe Bleichen 19
20354 Hamburg
T: +49 40 460017-0
F: +49 40 460017-28

Hong Kong

Herbert Smith
23rd Floor, Gloucester Tower
15 Queen's Road Central
Hong Kong
T: +852 2845 6639
F: +852 2845 9099

Jakarta

Hiswara Benjamin and
Tandjung
Herbert Smith LLP
associated firm
23rd Floor, Gedung BRI II
Jl. Jend. Sudirman Kav. 44-46
Jakarta, 10210
T: +62 21 574 4010
F: +62 21 574 4670

London

Herbert Smith LLP
Exchange House
Primrose Street
London EC2A 2HS
T: +44 20 7374 8000
F: +44 20 7374 0888

London (continued)

Stibbe
Exchange House
Primrose Street
London EC2A 2ST
T: +44 20 7466 6300
F: +44 20 7466 6311

Luxembourg

Stibbe Luxembourg, Avocats
Rue Jean Monnet 6
2180 Luxembourg
T: +352 26 61 81
F: +352 26 61 82

Madrid

Herbert Smith Spain LLP
Paseo de la Castellana 66
28046 Madrid
T: +34 91 423 4000
F: +34 91 423 4001

Moscow

Herbert Smith CIS LLP
10 Ulitsa Nikolskaya
Moscow 109012
T: +7 495 363 6500
F: +7 495 363 6501

Munich

Gléiss Lutz
Karl-Scharnagl-Ring 6
80539 Munich
T: +49 89 21667-0
F: +49 89 21667-111

New York

Stibbe
489 Fifth Avenue, 32nd floor
New York, NY 10017
T: +1 212 972 4000
F: +1 212 972 4929

Paris

Herbert Smith Paris LLP
66, Avenue Marceau
75008 Paris
T: +33 1 53 57 70 70
F: +33 1 53 57 70 80

Prague

Kubánek & Nedelka v.o.s.
Gléiss Lutz
associated firm
nám. Republiky 1a
110 00 Prague 1
T: +420 225 996-500
F: +420 225 996-555

Saudi Arabia

Al-Ghazzawi Professional
Association
Herbert Smith LLP
associated firm
Jeddah Commercial Centre,
3rd Floor, Al Maady Street
Corniche Al Hamra
P.O. Box 7346
Jeddah 21462
T: +966 2 6531576
F: +966 2 6532612

Saudi Arabia (continued)

Al-Ghazzawi Professional
Association
Herbert Smith LLP
associated firm
Arabian Business Center
Prince Muhammad Street
PO Box 381
Dammam 31411
T: +966 3 8331611
F: +966 3 8331981

Al-Ghazzawi Professional
Association
Herbert Smith LLP
associated firm
King Faisal Foundation
North Tower, 4th Floor
K. Fahd Road
PO Box 9029
Riyadh 11413
T: +966 1 4632374
F: +966 1 4627566

Shanghai

Herbert Smith LLP
38th Floor, Bund Center
222 Yan An Road East
Shanghai 200002
T: +86 21 2322 2000
F: +86 21 2322 2322

Singapore

Herbert Smith LLP
50 Raffles Place
#24-01 Singapore Land Tower
Singapore 048623
T: +65 6868 8000
F: +65 6868 8001

Stuttgart

Gléiss Lutz
Maybachstrasse 6
70469 Stuttgart
T: +49 711 8997-0
F: +49 711 855096

Tokyo

Herbert Smith
41st Floor, Midtown Tower
9-7-1 Akasaka, Minato-ku
Tokyo 107-6241
T: +81 3 5412 5412
F: +81 3 5412 5413

Warsaw

Pietrzak Siekierzynski
Bogen Sp. k.
Gléiss Lutz
associated firm
ul. Zlota 59
00-120 Warsaw
T: +48 22 22242-00
F: +48 22 22242-99

www.herbertsmith.com
www.gléisslutz.com
www.stibbe.com