

IRAQ COUNTRY LEGAL PROFILE

LEGAL SYSTEM OVERVIEW

Iraq's legal system contains both civil law in the form of statutes and regulations and Sharia law. The Iraqi Constitution of 2005 is supreme and any legal text that contradicts the Constitution is 'considered void'. It also acts as the guarantor of the unity of Iraq. Islam plays a key role within Iraq's legal system: laws which contradict established provisions of Islam may not be enacted, and Islam acts as a foundation source for legislation. The Constitution also enshrines the individual's rights of religious belief and practice.¹

The independence of the judiciary is guaranteed by Article 87 of the Constitution. The Iraq Federal Judiciary oversees the affairs of the federal court system which comprises ordinary civil, labour, personal status and criminal courts, including the Central Criminal Court. The Supreme Court is made up of judges who are 'experts in Islamic jurisprudence', and is responsible for interpreting the Constitution and determining the constitutionality of new laws and regulations; it also acts as a final court of appeals. Constitutional and statutory law prevalent in court proceedings, but in the absence of applicable legislative provisions courts should adjudicate according to custom, and in the absence of custom a ruling should be made in accordance with the principles of Sharia most applicable to the case. This is enshrined in Law No.40 of 1951, The Civil Code.

Corruption is less amongst the judiciary than other parts of the State, such as the police, owing to higher wages. Nevertheless, the judiciary is still plagued by corruption, as is the Interior and Justice Ministry. Furthermore, judges and lawyers remain vulnerable to tribal or ethnic pressures as well as fearful of repercussions in cases involving personal status or Criminal/Anti-terror law.² The Iraqi Criminal Law Code, Law 111 of 1969, and Law 93 of 2004 address corruption offences such as bribery and money laundering.³

The antiquated Civil Code of Iraq is a primary source of Contract Law and forms the core of the commercial legal system. A contract is defined as the unison of an offer made by the contracting party with an acceptance by another party. The Civil Code, Part One, Chapter One, Articles 73-183 defines contractual law, including obligations, validity, interpretations, and responsibility. In the case of one of the parties failing to fulfil their agreed obligations, the other can repudiate the contract, and where necessary, claim compensation for the losses, unless it is proven that the failure was beyond the control of the party in breach of the contract.⁴ The Iraqi Commercial Code of 1984 regulates matters relating to businesses including trade names, registration, financial transactions as well as terms for international sales, whilst the Iraq Companies Law of 1997 governs the types of companies allowed in Iraq, as well as their formation, management and dissolution. Whilst domestic arbitration is well established, the law is inconsistently applied and commercial cases can drag on for months or years. The enforcement of contracts is problematic owing to corruption and unclear regulations; it takes an average of 34 days and 9 procedures to enforce a contract in Iraq.⁵

¹ Iraq's Constitution of 2005, https://www.constituteproject.org/constitution/Iraq_2005.pdf?lang=en.

² https://landinfo.no/asset/2872/1/2872_1.pdf

³ <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1257498e.pdf>

⁴ The Civil Code Article 168, 177.

⁵ <http://www.business-anti-corruption.com/country-profiles/iraq>

Iraq is a signatory to a number of international treaties including the Geneva Conventions and Protocol One, the Biological and Chemical Weapons Conventions and the United Nations Convention against Corruption. Iraq is also a member of a number of multinational organisations including the World Bank, International Monetary Fund, Arab League, Organisation of Oil Exporting Countries and has requested accession to the World Trade Organisation.

THE BUSINESS SECTOR

The Iraqi economy has taken a double shock since mid-2014 in the form of the Daesh insurgency and the fall in oil prices: the oil sector provides more than 90% of government revenue and 80% of foreign exchange earnings. Aside from security concerns, corruption, bureaucratic bottlenecks, poor infrastructure, shortages of skilled labour, regulations and long payment delays on government contracts are common complaints from firms operating in Iraq. Indeed, Iraq ranks 164 of 190 in the World Bank's Starting a Business Index and 165 of 185 in their Ease of Doing Business rankings.⁶ There are a number of legal requirements for starting a business in Iraq, totalling at least nine individual procedures including naming, company registration and employee registration. Many of the procedures are time consuming and include costs, creating opportunities for corruption.

Nevertheless, Iraq has significant long-term investment potential.⁷ Iraq will require considerable investment in reconstruction and infrastructure once the security situation has stabilised. Opportunities to invest exist in the security, the environment, construction, healthcare, tourism, agriculture, infrastructure and particularly the energy sectors. Iraq also imports large quantities of agricultural commodities, machinery and 'defence articles'.⁸ A number of markets are also uncrowded which will benefit early entrants. Iraq's hydrocarbon resources are the least explored of any major producer; the International Energy Agency estimates that Iraq will produce 46% of the global oil production by 2035, which creates huge opportunity in energy security, extraction and infrastructure, although government regulation and involvement in the energy sector is considerably greater than other industries. Nevertheless, the Government of Iraq seems to have the political will to strengthen the economy and to further open the country to foreign investment.⁹

SECURITY SITUATION

The security situation in Iraq remains unstable and uncertain. Whilst Daesh have lost the vast majority of their territory, they have continued to claim attacks throughout Iraq, such as in Baghdad and Nasiriyah. The risk of terrorism remains high as attacks are frequent, particularly in areas where Daesh has a presence, such as Anbar, Ninewah and Baghdad. Attacks often target the Government, the security forces and Shi'a civilians: the threat is increased during religious holidays such as Ramadan. Recently liberated areas are highly likely to contain unexploded ordnance and improvised explosive devices. There is also a high risk of kidnapping throughout the country from Daesh and other militant groups, both for ideological as well as financial or political gain.¹⁰

⁶ <http://www.doingbusiness.org/Rankings>

⁷ <http://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?year=2017&dclid=269978>

⁸ Ibid.

⁹ <https://www.gov.uk/government/publications/exporting-to-iraq/doing-business-in-iraq-including-the-iraqi-kurdistan-region-iraq-trade-and-export-guide>

¹⁰ <https://www.gov.uk/foreign-travel-advice/iraq>

Iraq has made little progress on managing the country's severe ethnic, religious and sectarian divides: the latter has particular scope for future unrest. Tensions between the Government of Iraq and Kurdish Autonomous Region are also high following the Kurdistan Regional Government's independence referendum of 25 September 2017 and military operations by the Iraqi Armed Forces and allied militias in October 2017 to retake Kirkuk province from the Kurdish Peshmerga. Although the situation has now somewhat stabilised, it could deteriorate rapidly.

The security situation in Iraq means that the security and defence industry will continue to face a high demand for products and services in the near future. Close security protection constantly provides opportunities as it is advised for all Western nationals travelling outside of Baghdad's International/Green Zone to travel with close protection teams: a large number of Western Private Security Companies have 'flourished' in the Iraqi market.¹¹ The Government of Iraq also plans to increase its defence and security spending to 25% of the national budget over the next decade, providing further opportunities for business and investment.

COUNTRY OVERVIEW

Iraq is a country located in the Middle East, bordering Turkey, Iran, Kuwait, Saudi Arabia, Jordan and Syria. It is the 35th most populous country in the world with 39.2 million inhabitants. The capital, Baghdad, is also the most populous metropolitan area with 6.6 million denizens. Arabic and Kurdish are Iraq's official languages, although Turkmen, Syriac and Armenian are official in the small localities where native speakers are a majority. The major religion is Islam: 55-60% follow Shi'a Islam, with a further 40% following the Sunni denomination.¹²

Iraq is currently deemed as 'very high risk' with regards to travel and commercial activity largely owing to a number of threats, including ongoing insurgency, combat operations ethnic tensions, and criminal activity.¹³ Territory controlled by Daesh has been reduced to primarily the sparsely populated areas of the Iraqi-Syrian border in Ninewah and Anbar provinces, although they have retained the capability to enact terrorist attacks nationwide.

Corruption is endemic in Iraq, existing at numerous levels of government and society: the country is ranked at 166 of 176 in Transparency International's 2016 Corruption Index.¹⁴ The independent Commission of Integrity, was established to prevent and investigate corruption but has had little effect, having faced significant opposition from political blocs which utilise deeply entrenched patronage networks.

Iraq's GDP has fallen by 27% since 2014 and currently stands at \$171.49 billion and from 2018 onwards, GDP is expected to consistently, but slowly, grow.¹⁵ The official currency is the Iraqi Dinar. The government is defined as an 'Islamic, democratic, federal parliamentary republic'.¹⁶ The current President of the Republic is Fuad Masum, who acts as Head of State, although Prime Minister Haider al-Abadi, holds executive authority for policy making. The Council of Representatives is Iraq's elected parliamentary body, with elections held every four years.

¹¹ <https://www.gov.uk/government/publications/exporting-to-iraq/doing-business-in-iraq-including-the-iraqi-kurdistan-region-iraq-trade-and-export-guide>

¹² <https://www.cia.gov/library/publications/the-world-factbook/geos/iz.html>

¹³ <https://globaledege.msu.edu/countries/afghanistan/risk>

¹⁴ https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table

¹⁵ http://www.imf.org/external/pubs/ft/weo/2017/02/weodata/weorept.aspx?pr.x=32&pr.y=13&sy=2015&ey=2022&scsm=1&sd=1&sort=country&ds=.&br=1&c=433&s=NGDP_RPCH%2CNGDPD&grp=0&a=

¹⁶ <http://www.irfad.org/iraq-government/>