

IRAQ LEGAL COUNTRY PROFILE

LEGAL SYSTEM OVERVIEW

Iraq's legal system contains both civil law and Sharia law, as well as statutes and regulations. The Iraqi Constitution of 2005 is supreme and any legal text that contradicts the Constitution is 'considered void'. It also guarantees the territorial 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.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 is prevalent in court proceedings, but in the absence of legislation courts adjudicate according to custom, and in the absence of custom a ruling should be made in accordance with the relevant principles of Sharia. This is enshrined in 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 Ministry 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 and 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, defining contractual law, obligations, and validity amongst others. The Iraqi Commercial Code of 1984 further 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.⁴ There are further laws in effect in the Kurdistan Region that may affect commercial dealings such as the Law of Investment in Kurdistan Region and the 2007 Oil and Gas Law.⁵

Iraq is a signatory to a number of international treaties including the Geneva Conventions and Protocol One, the Biological and Chemical Weapons Conventions, the United Nations Convention against Corruption and the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which established the International Centre for Settlement of Investment Disputes providing a mechanism for foreign investors to settle disputes.

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

⁵ <http://cabinet.gov.krd/p/page.aspx?l=12&s=000000&r=418&p=333&h=1&t=0>.

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.

BUSINESS OVERVIEW

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 and 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 154 of 190 in the World Bank's Starting a Business Index and 168 of 190 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 environment, security, 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 growth in global oil production by 2035, totalling US\$5 trillion, 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

COUNTRY OVERVIEW

Iraq is a country located in the Middle East, South-West Asia, 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.¹⁰

Iraq is currently deemed as 'very high risk' with regards to travel and commercial activity largely owing to the ongoing threats of insurgency, combat operations, ethnic tensions, and criminal activity.¹¹ Territory controlled by Daesh has been predominantly reduced to 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.

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

⁷ <http://www.state.gov/e/eb/rls/othr/ics/investmentclimatestatements/index.htm?year=2017&dliid=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.cia.gov/library/publications/the-world-factbook/geos/iz.html>.

¹¹ <https://globaledege.msu.edu/countries/afghanistan/risk>.

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.¹² 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 US\$171.49 billion but from 2018 onwards, GDP is expected to slowly, but consistently, grow.¹³ The official currency is the Iraqi Dinar.

The government is defined as an 'Islamic, democratic, federal parliamentary republic'.¹⁴ 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.

¹² https://www.transparency.org/news/feature/corruption_perceptions_index_2016#table.

¹³ 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&ssd=1&sort=country&ds=.&br=1&c=433&s=NGDP_RPCH%2CNGDPD&grp=0&a=.

¹⁴ <http://www.irfad.org/iraq-government/>.