

Establishing your company in Iraq

With increased international interest in doing business in Iraq, it is becoming more of a necessity to set up offices or subsidiary companies within Iraq in order to pursue its vast opportunities. The following is a summary guide of the types of companies that can be set up in Iraq. The advice of local Iraqi corporate lawyers will be required before registering a company in Iraq.

The Regulatory Framework

The regulatory framework for setting up and registering companies in Iraq has been in effect in its current form since 2004. It provides the framework for foreign companies to establish themselves and to conduct commercial activities in Iraq. Continued developments in Iraq's legal trade and investment laws provide certain exemptions and incentives for those investing in Iraq.

Which company option?

The Iraqi Companies Law No. 21 of 1997, as amended by CPA Order No. 64 of 2004 (the "Companies Law") provides a range of incorporation options that are available for individuals or entities looking to do business in Iraq.

The following is a brief overview of the available incorporation options under the Companies Law:

Incorporation Option	Number of Shareholders	Minimum Share Capital	Liability	Special Requirements
Sole Owner Company	One person – Note: A "person" can be a natural person or a corporate entity	500,000 Iraqi Dinars	Personal and Unlimited liability	
Simple Company	Partnership between 2 to 5 persons	500,000 Iraqi Dinars	The liability of the partners is limited to their capital contribution, if not otherwise agreed between the partners	Memorandum of Association ("MoA") of the company should be authenticated by a notary public and a copy of the authenticated MoA should be placed with the Registrar of the Companies
Joint Liability Company	Partnership between 2 and 25 persons	500,000 Iraqi Dinars	Partners have a personal and unlimited liability in respect of the obligations of the company	
Limited Liability Company	1 to 25 natural persons or other limited liability companies	1,000,000 Iraqi Dinars	The liability of the shareholders is limited to their capital contribution in the company	Could be formed as a mixed or private limited liability company

Incorporation Option	Number of Shareholders	Minimum Share Capital	Liability	Special Requirements
Joint Stock Company	Minimum of 5 members (no-cap) who participate by owning shares through a public subscription. However the number of founding members is capped at 100 members.	2,000,000 Iraqi Dinars	The liability of the shareholders is limited to the nominal value of the shares to which they have subscribed	Could be formed as a mixed or private joint stock company. <u>Mixed Joint Stock Company</u> : Founding members are required to subscribe to 30% to 55% of the nominal share capital <u>Private Joint Stock Company</u> : Founding members are required to subscribe to a minimum of 20% of the nominal share capital

Government Co-ownership

It is worth noting that Companies Law makes a distinction between companies that have government participation. Companies can be classified as follows:

(i) Private companies

- a. Companies formed between two or more non-governmental persons, or between non-governmental and governmental persons
- b. Governmental person's contribution towards the share capital must not exceed 25%
- c. Can be any of the above listed company types

(ii) Mixed companies

- a. Companies formed between private and governmental persons
- b. Governmental person's contribution must be a minimum of 25%
- c. Can only be formed as joint stock or limited liability companies

Foreign Companies entering the Iraqi market

Whilst the Companies Law provides several incorporation options for foreign companies seeking to do business in Iraq, a foreign company may choose to set up a foreign company branch office under CPA Order number 39 of 2003, which allows foreign companies to form and operate through a branch office. Companies must consider their options from a liability perspective. Setting up a branch office is one of the quickest ways of setting up an office for a foreign company, however foreign companies may wish to ring fence their liability in Iraq with the establishment of a limited liability company or a joint stock company. Most companies will prefer to set up a limited liability company to avoid the added complications of a public offer.

Many of the foreign companies currently operating in Iraq are set up as branch offices, however, new regulations have come into force recently that impose a requirement that the company establishing the branch office has a contract with a term of at least six months with the Government of Iraq or a governmental entity in Iraq. Therefore new entrants to Iraq without any such governmental contract are increasingly taking the incorporation route to establish themselves in Iraq.

Registration Procedures for Establishing a Limited Liability Company in Iraq

- 1) **Proposed Name:** The company's proposed name must be submitted to the Baghdad Chamber of Commerce (the "BCC") for approval. On approval, the BCC issues a reservation letter which must be authenticated by the Union of the Chamber of Commerce.
- 2) **Share Capital Requirement:** The share capital of the proposed company must be deposited at an Iraqi bank, which must issue a deposit letter addressed to the Ministry of Trade.
- 3) **Submission of Documents:** The following documents must be submitted to the Registrar of Companies in Arabic or translated into Arabic and certified:
 - A Memorandum of Association for the proposed company, duly signed by the founders, and includes the following information:
 - Company name
 - Company's head office address, which must be in Iraq
 - Company's type of business activities
 - Capital of the company
 - A completed application as prescribed by the Registrar of Companies
 - Copies of the founders' passports
 - Deposit letter issued by an Iraqi Bank
 - Documentation acknowledging the reservation of the company's name issued by the Chamber of Commerce
 - If the founder is a corporate entity, an authorization letter designating the manager or any other member to undertake the procedures of establishing the company on behalf of the corporate entity

Registration Procedures for Establishing a Branch Office of a Foreign Company in Iraq

An application to establish a branch office must be submitted to the Registrar of Companies. Once approved the Registrar will issue the applicant a registration license with a permanent and unique identification number. The following documents in Arabic or translated into Arabic and certified must be included with the application to Registrar of Companies:

- Registration certificate, issued and authenticated by the competent authority in the home country of origin
- Copy of the foreign company's certificate of incorporation, or equivalent, authenticated by the competent authority in the home country of origin
- Letter from an officer or director of the foreign company, on letterhead paper:
 - Authorizing the registration of the branch office in Iraq

- Identifying the chief management official in Iraq, the authorized agent for the service of legal process in Iraq and the representative for filings with the Registrar of Companies in Iraq, each of whom must reside in Iraq.
- The financial statement of the foreign corporate entity for the most recent fiscal year
- A copy of the passport (for a foreign citizen) or identification card (for an Iraqi citizen) of the authorized representative for filings with the Registrar of Companies.
- Granting a power of attorney to the individual registering the company in Iraq.

Liability under the Companies Law for operating in Iraq without obtaining the required licenses

Any economic project that does not take the form of a company shall be subject to daily fines. If payment of the fine is delayed by more than three months, and no steps were taken to rectify the conditions and obtain a license, the Registrar of Companies will request that the competent authorities take appropriate measures against the defaulting parties or individuals.

Conducting business in Iraq in the name of a joint stock company, limited liability company, joint liability company, sole owner company or branch office without properly establishing and registering the company or branch office will be subject to a fine. The amount of the fine is dependent on the severity of the violation.

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