

# Overview of commercial activities – what you need to know

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## **Penetrating the Iraqi market**

Iraq places no constraints on foreigners selling products. However, many foreign companies choose to contract with a local partner to penetrate the Iraqi market. Indeed, accessing the market through a local person is a safe option for foreign traders or investors, since the local person will provide them with useful support and cultural knowhow. Some organisations offer the possibility of matching a foreign firm with a local partner, be it a firm or physical person. Some examples include the Baghdad Business Centre, the Kirkuk Business Centre, the Ninevah (Mosul) Business Centre and the Basra Business Centre.

A foreign principal that wishes to export its merchandise and sell it in Iraq can enter into an agreement with an agent, distributor or representative, or even start trading itself. However, the trend is towards establishing distribution agreements or commercial agencies. Although very similar, the two regimes are not the same.

## **Regimes**

### ***Distribution agreements***

In a distribution agreement, the distributor acts on its own account, and is solely liable for its actions. The distributor is liable towards the customer or end user and makes a profit by adding a profit margin on the principal's price for the goods. Whereas an agent is considered to be an intermediary or a third party between the customer or end user and the principal, its profits are paid on a commission basis by the principal. In an agency agreement, the liability towards customers and end users lies with the principal.

### ***Commercial agencies***

Whereas distributors can be foreigners, the Commercial Agency Law<sup>(1)</sup> states that agents must be:

- Iraqi nationals;
- established in Iraq;
- at least 25 years old; and
- members of the Chamber of Commerce (which proves their capacity as a trader).

Agents must obtain a licence and renew it every two years (it will be cancelled if not renewed in time) and be legally competent to act as an agent. Agents cannot be government officials or persons working in a field directly associated with public service. Commercial agencies must be registered at the Company Registry. Appointed agents cannot represent more than three principals and must declare on a yearly basis all of their financial benefits realised through their position as an agent. No further restrictions apply to, for example, the number of agents that must be appointed, the commissions that must be paid or their geographic repartition.

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The laws regarding commercial agencies were never clear and constant. At first, the Civil Code of 1951 regulated the relationship between principals and agents. In 2000 the Commercial Agency Law was issued to regulate commercial agencies. On June 9 2003 the Coalition Provisional Authority (CPA) issued a public notice(2) stating as follows:

*"The CPA recognizes and supports the law permitting Iraqis to establish direct trading agencies with international trading companies. However, the CPA has suspended the former Iraqi regime's administrative procedures regarding this law. Iraqi business people are now free to negotiate trade relationships directly with international trading companies, without the administrative constraints imposed by the former regime."*

Afterwards, CPA Order 39 nullified the Commercial Agency Law. However, this order was revoked by the Investment Law 13/2006.

Despite the pattern of boom and bust experienced with regard to commercial agencies, the Commercial Agency Law continues to apply in Iraq and the Iraqi Kurdistan Region. Company registries in Baghdad, Erbil and Sulaymaniyah apply the Commercial Agency Law.

The Commercial Agency Law in Iraq is far from being what it is in most Middle Eastern countries. Whereas in most Middle Eastern countries, the role of an agent is considered exclusive and the non-renewal of an agreement can lead to compensation, nothing in the Iraqi law implies that the agent's position should be exclusive or that mere termination makes the principal liable. That said, the parties are free to organise their relationships. The only protection provided to the agent is the right to ask for compensation in case of termination of the agreement at an inopportune moment and without just cause.

## **Structural options**

### ***Regulatory framework***

The rules and regulations governing companies doing business in federal Iraq include:

- the Companies Law 21/1997;
- CPA Order 64/2004; and
- Ministry of Trade Instructions 149/2004 and 196/2004.

In addition, company registrars in the Iraqi Kurdistan Region and federal Iraq provide for some directives that should be observed. If a company wishes to have a presence in federal Iraq and the Iraqi Kurdistan Region, it must register in both regions. The registration of a company in Iraq is conditional on the approval of the relevant ministry.

### ***Representative office***

Overseas principals may choose to establish themselves in Iraq without operating and carrying out commercial activities. This option could be used if, for example, the foreign entity has already appointed a distributor, agent or representative to promote, sell and distribute its products, but wishes to be in proximity of the market. This option is also useful if a principal wishes to study the Iraqi market before deciding whether to access it. The law enables the foreign manufacturers to do so. In these cases, they establish a representative office for business development and market research only. The documents that need to be gathered, prepared and submitted in order to establish the representative office are the same as those required to open up a branch of a foreign company:

- a board resolution;
- the parent company's certificate of incorporation;
- a certified copy of the parent company's articles of association;
- a letter from the parent company authorising the opening of a representative office and naming its manager (the latter should be a resident of Iraq); and
- the parent company's audited financial statements for the last fiscal year.

All of the above documents must be authenticated and legalised by the Iraqi Embassy in the country of origin.

### **Other entity forms**

Foreign distribution companies can establish themselves in Iraq as business entities in the form of limited liability companies or branch offices. Joint stock companies are infrequently used for this purpose. The following remarks and distinctions are of practical relevance:

- The registration of a branch office in Baghdad is conditional on obtaining a contract with a federal authority. The related government entity must certify the existence of the contract. In contrast, the establishment of a branch office in any of the company registries in the Iraqi Kurdistan Region does not require the signature of any contract with any federal or local government.
- Branch offices and representative offices have no legal personality independent of the parent company. Branch offices will:
  - have the same name as the parent company;
  - carry out the same activity; and
  - have the same articles of association.

The parent company is liable for any breach of the branch office's financial obligations.

- Foreign entities may prefer to be operational in Iraq by collaborating with a local party. This collaboration may be contractually determined by sharing revenues and expenses, as well as the control of the enterprise. Iraqi law does not recognise this form of joint ventures, in the sense that no particular law governs the effects of such collaboration. While all companies are subject to the Companies Law, it does not tackle incorporated joint ventures. No other provisions exist regarding the establishment of a joint venture, its management or liquidation. Despite this, joint ventures have been created and this has led to their *de facto* recognition and submission to the Civil Code.

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### **Endnotes**

(1) Law 51/2000.

(2) CPA Public Notice 3.

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