

A M E R E L L E R

Kurdistan Business Law

Breakfast Seminar – Dubai Capital Club

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Dubai Capital Club

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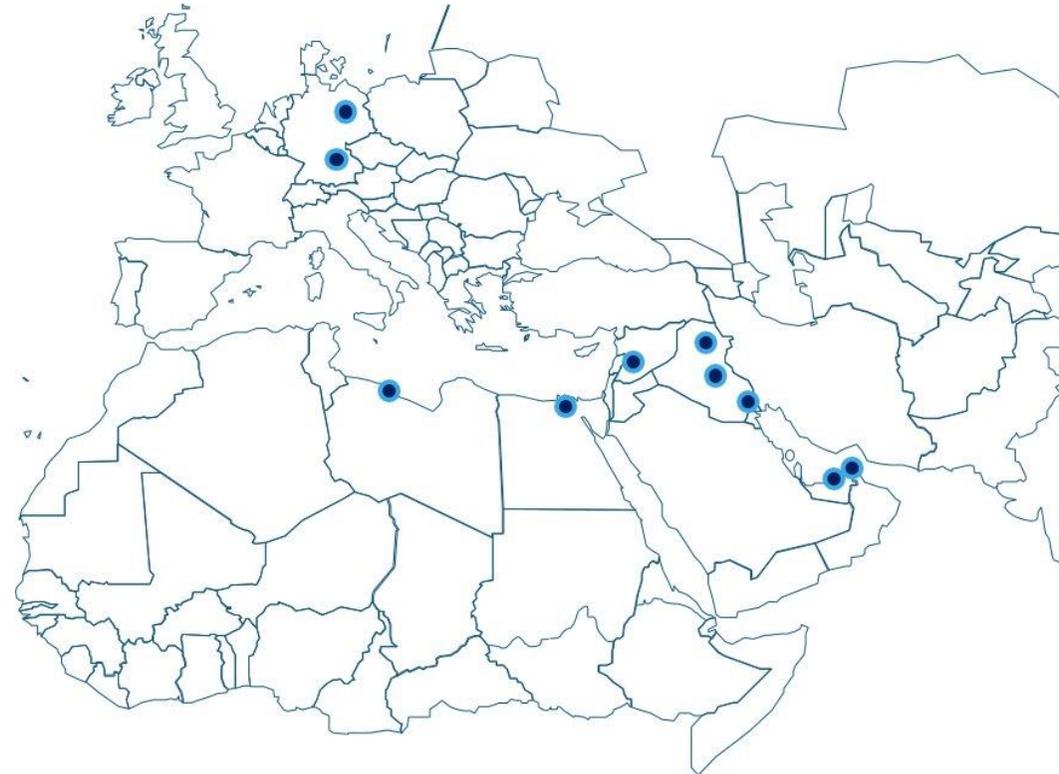
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Today's Presentation Topics

1. What is Kurdistan?
2. Legal System
3. Company Law and Foreign Investment Law
4. Oil and Gas Law
5. Commercial Agency Law
6. Labour Law
7. Tax Law and Social Security

About AMERELLER

- **AMERELLER** is an international law firm with a focus on the Middle East.
- 11 offices across the region.
- More than 70 lawyers
- Lawyers fluent in all regional languages.
- Firm ranked as tier one in lawyer rankings in many of our core regions (including Iraq)



● AMERELLER Office

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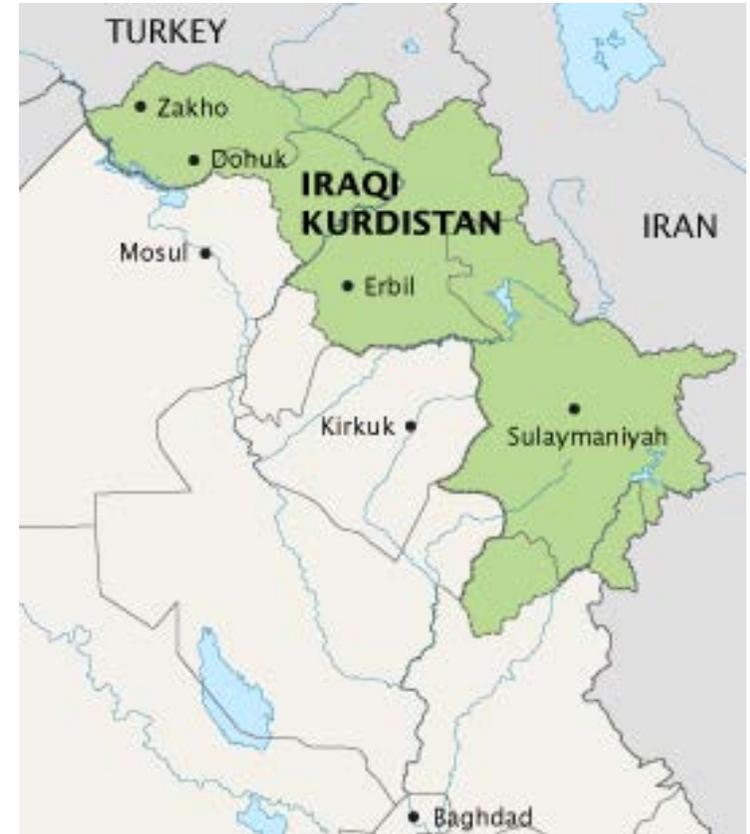


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WHO'S WHO
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What is Kurdistan? (1)

- 1992 de facto autonomy
- 2005 legal autonomy
- “Federal region” with four provinces, referred to as Kurdistan Regional Government (“**KRG**”)
- Separation of powers - executive, legislative, and judicial powers
- Democratic elections
- Parliamentary representatives from main Kurdish political parties and minorities
- Head of Government - Prime Minister
- 23 Ministries, plus Department of Foreign Affairs (technically not a “Ministry”)



What is Kurdistan? (2) Political Economy Overview

- Gateway into Iraq
 - Safety and security
 - Ease of access
- Population: 5.1 million
- GDP: approx. US\$23.6 billion
- 2005 – 2014: economic growth
- 2014 – 2018: challenges (ISIS and drop in oil price)
- From 2018: signs of growth! ISIS essentially defeated and improving relationship with Baghdad

← → C <https://www.thedailymeal.com/travel/50-safest-cities-world-gallery/slide-47>

 **The 50 Safest Cities in the World Gallery**

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#5 Erbil, Iraq

Unfortunately, stereotypes and skewed media coverage would lead many to be surprised to see Iraq on this list. But the city of Erbil, located in northern Iraq and capital of the autonomous region of Iraqi Kurdistan, makes it into the top five safest cities in the world. Also one of the [world's oldest cities](#), Erbil is a diverse city full of different religions and ethnicities that you can explore in its many bazaars, parks, mosques, and museums.

Erbil - capital of the Kurdistan Region

What is Kurdistan? (3) Federalism in the Constitution

- 2005 Constitution established Federal system
- Gave Kurdistan power and regional independence
- Balance between “exclusive” and “shared” competencies

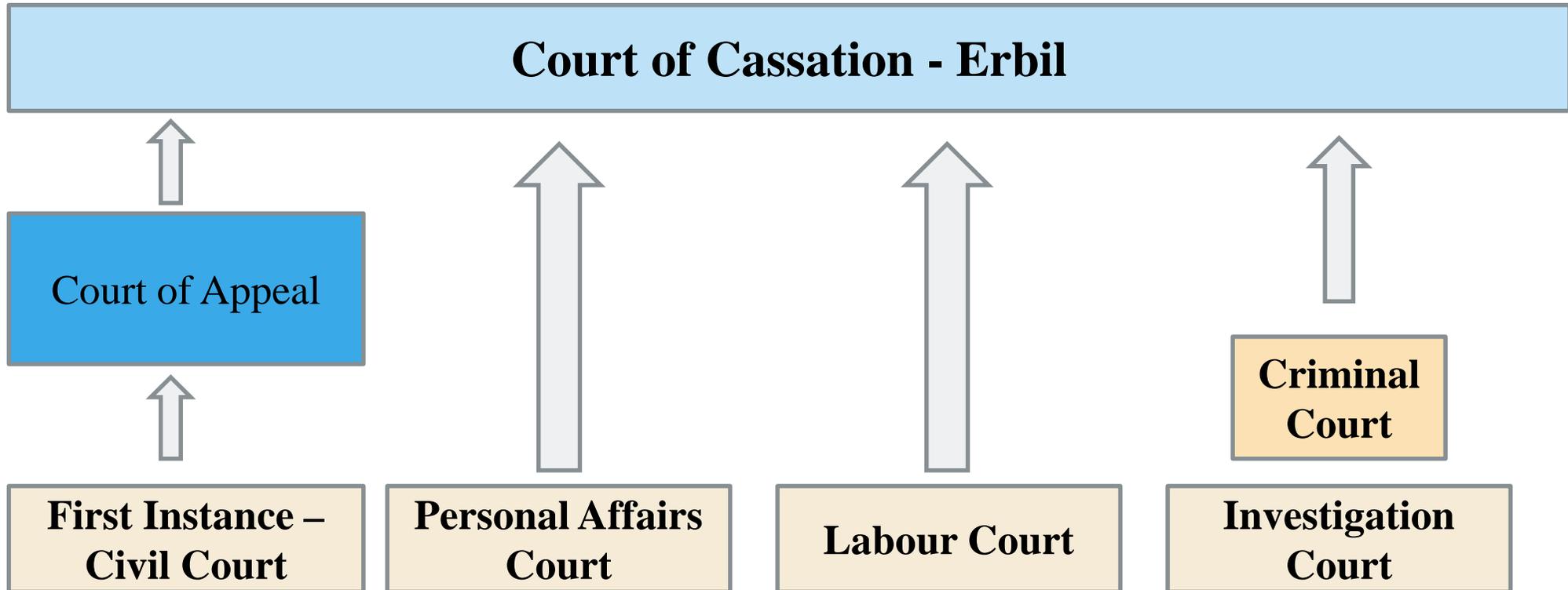
Federal Government	Shared Competencies	Regional Government (KRG)
National Security Policy	Manage Customs	All other matters
Fiscal and Customs Policy	Regulate electricity	
Foreign Policy	Regulate internal water sources	
Policies relating to water sources from outside Iraq	Manage “present” oil fields	
Issues of citizenship, asylum, etc..		
Telecommunications policy		

Legal System (1) Commercial Legal Framework

- KRG and Iraq mainly identical commercial legal framework
- Important exceptions

Federal Law that applies in Kurdistan	Repealed Federal Law that still applies in Kurdistan	Kurdistan Specific Laws
1951 Civil Code 1971 Social Security Law 1984 Commercial Code 1997 Companies Law	1987 Labour Law 1989 Regulation regarding Representative Offices and Branches 2000 Commercial Agency Law	2006 Investment Law 2007 Oil & Gas Law 2011 NGO Law exemption Amendments: a. Property rent law clauses b. Penal code clauses c. Social security law clauses

Legal System (2) Dispute Resolution



Legal System (3) Court Litigation Experience

Language

- First instance courts
 - Kurdish - submissions and proceedings
 - Arabic – court’s judgment
- Court of Appeals and Court of Cassation
 - Kurdish and Arabic - submissions and proceedings
 - Arabic – court’s judgment

Time Frame

- Civil or commercial dispute - 6 months to 2 years
- Labour case - 3 months to 1 year

Legal System (4) Arbitration

- Arbitration clause is common in commercial contracts
- 1983 – Riyadh convention is ratified and applied in Kurdistan
- 2015 – Iraq joined the ICSID Convention
- 2018 – Iraq signed the 1958 New York Convention, ratification is pending in the Iraqi Parliament.
- Foreign arbitral awards may be enforced by Kurdish courts but judges will review certain conditions such as:
 - Not contrary to public order
 - No Kurdistan court judgment contrary to the award
 - Parties were duly notified

Companies Law

- 1997 Companies Law applies in Kurdistan and mainland Iraq
- Registration of legal presence in Iraq required

LLC	Branch
<ul style="list-style-type: none">■ Takes longer to establish■ Initial capital required (minimum USD 850)■ 4-8 weeks■ Liability shield■ Governance simplified	<ul style="list-style-type: none">■ Easier to establish■ 4-6 weeks■ Parent company will be fully and directly liable for the branch■ Governance can be more burdensome (regular need for foreign resolutions to be notarized)

Foreign Investment Law and License

- 2006 Investment Law for the Kurdistan Region
- 791 licenses granted by the Kurdistan Region Board of Investment
- 100% foreign shareholding of a company allowed (like Federal Iraq)
- Property ownership allowed (unlike Federal Iraq)
- Employment of foreign staff generally allowed
- Equal treatment under the law of foreign and national investors
- Tax incentives and benefits:
 - tax exemption benefits;
 - exemption from import duties;
 - access to land; and
 - ownership and easy transfer of capital.

Oil and Gas (1) Developments - Kurdistan

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WEEKLY MIDDLE EAST OIL & GAS NEWS, ANALYSIS AND DATA

31 August 2018 - VOLUME: 61 ISSUE: 35

Kurdistan Oil Sector Outperforming Expectations in 2018



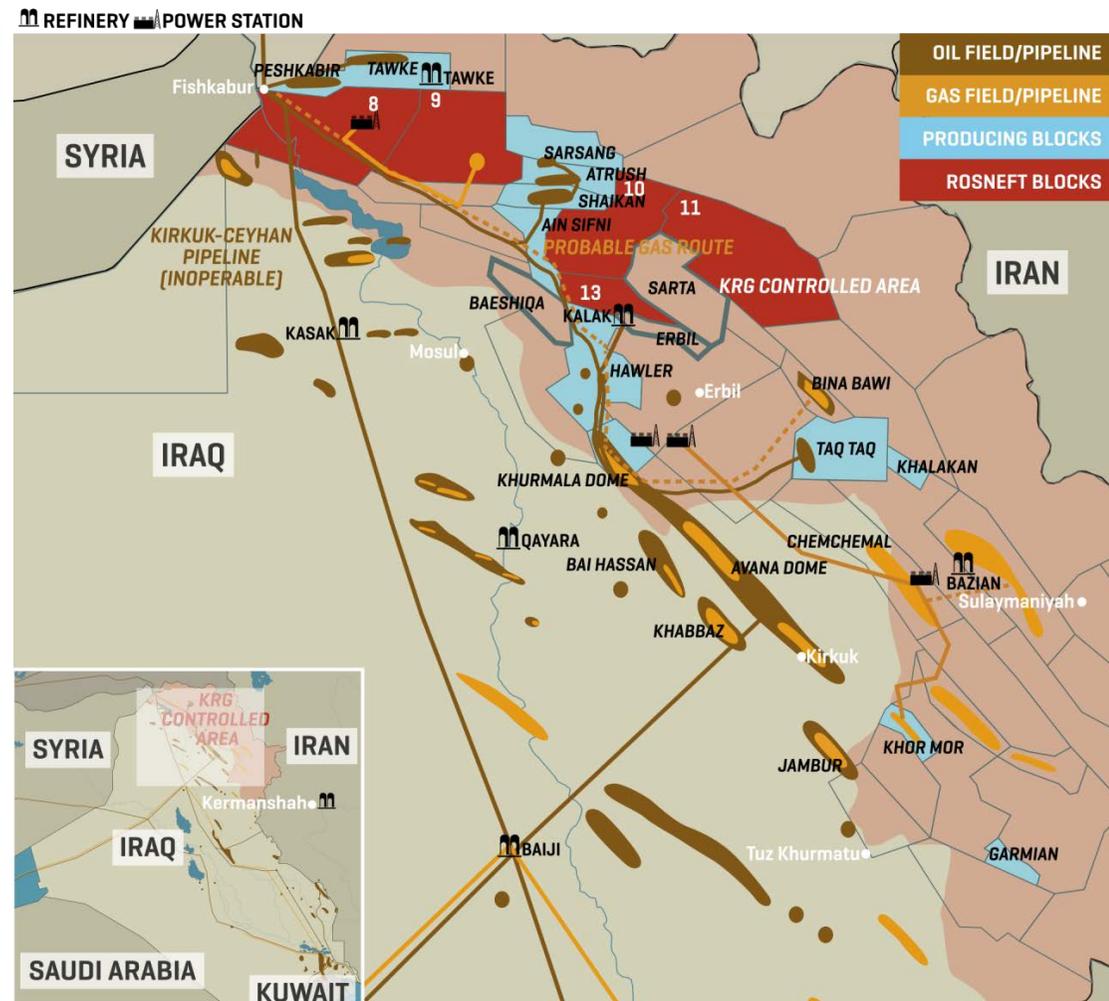
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Estimate of reserves of 41 billion barrels of oil and natural gas liquids and 54 trillion cubic feet of gas.



Middle East Economic Survey (MEES) 2018

Oil and Gas (2) Overview - Kurdistan

- **Ministry of Natural Resources (MNR)** oversees oil and gas matters
- Oil and gas matters not expressly enumerated as federal, local, or shared, and are to be administered “*in co-operation*”
 - Much debate on the form of cooperation
- Constitutional matters
 - *Article 111: Hydrocarbons are a national asset and belong to the Iraqi People*
 - *Article 112: Federal Government has management control over oil and gas extracted from present fields with the regional governments*
- Key question: What is a “present field”?
- No federal oil and gas law in Iraq
 - 2007 - KRG passed legislation to govern petroleum operations
 - Based on Kurdish interpretation of the Constitution

Oil and Gas (3) Production-Sharing Contracts (PSC)

- 2007 KOGL – Oil and Gas Law of Kurdistan Region of Iraq
- More than 50 PSCs signed between IOCs and KRG
- MNR discretion to invite applicants for licensing or direct negotiation
- No restrictions on exploration, development and production

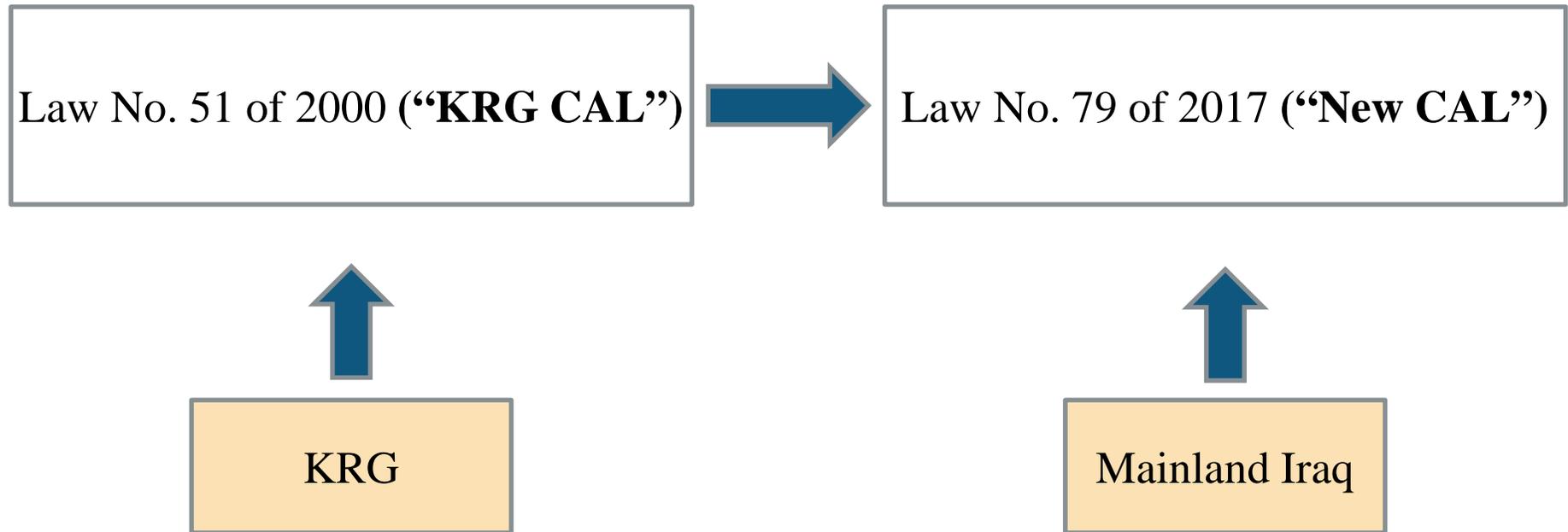
<p style="text-align: center;">KRG Production Sharing Contract (PSC)</p>	<p style="text-align: center;">Mainland Iraq Technical Service Contract (TSC) and Development and Production Services Contracts (DPSC)</p>
<ul style="list-style-type: none"> ■ Signed with the MNR ■ Provides the contractor with a share in the petroleum discovered and value produced ■ Increase in profit as oil prices rise 	<ul style="list-style-type: none"> ■ Signed with the federal Ministry of Oil ■ Provide fixed per-barrel price regardless of international oil prices

Oil and Gas (4) Gas Resources

Kurdistan is rich in gas resources

- More non-associated gas than in mainland Iraq
- Gas production in Kurdistan currently entirely for domestic use
- Major lack of power generation in Federal Iraq
- Ideally, Kurdistan could supply gas for power generation in Federal Iraq
- Complications: lack of pipeline infrastructure and political issues

Commercial Agency Law (1) Overview



- New Law not being reviewed by the Kurdish Parliament

Commercial Agency (2) How Necessary is an Agent?

- Discrepancy between law and practice
- KRG CAL : “*An agent must register and obtain a license in the form of a certificate issued by the Registrar of Companies.*”
- Reality: Kurdish authorities do not require agent registration
- Registration provides ability to prevent parallel imports for some products

Commercial Agency (3) Registration

- The KRG CAL as applied in Kurdistan - commercial agent should be:
 - Iraqi citizen;
 - at least 25 years of age; and
 - a member of one of Kurdistan's Chambers of Commerce.

- An agent must also:
 - fulfill certain requirements (e.g. not convicted of certain crimes);
 - carry out the commercial agency within Kurdistan; and
 - not be an employee in the public sector;
 - etc.

Commercial Agency (4) No Agent Protections

No Exclusivity Requirement

- Neither Commercial Agency Law nor the Civil Code require exclusivity
- Exclusivity left to agreement between parties

No Statutory Restriction on Termination

- Agents do not have protection from termination or rights to compensation for termination or non-renewal, unlike many other MENA countries
- Key terms for an agency or distributor contract should expressly provide for termination:
 - fixed sales targets, and right to terminate for failure to meet target
 - fixed term contract, with no automatic renewal without agreement

Labour Law (1) Overview

- 1987 Labour Law applies in Kurdistan

Gap between written law and actual practice:

- *Article 23: No foreign worker may be engaged before having received a work permit.*
- **Reality: Foreign workers are regularly employed in Kurdistan without obtaining a work permit.**

Labour Law (2) Rules and Disputes

- Working hours: no longer than eight hours per day - six days a week
- Overtime allowed in exceptional cases
 - Wage increase by 50% to 100% depending on type of work
 - Cannot exceed 4 hours per day and 300 hours per year
- Annual leave is allowed at 20 days per year, with an additional 2 days for each five year period.
- **Employee-friendly labour law**
- An employee cannot be dismissed except for exceptional cases
- Labour Court decides employment disputes
- Appeals are direct to the Court of Cassation

<5 years	20 days vacation
5-10 years	22 days vacation
10-15 years	24 days vacation

Labour Law (3) Visa and Residency

- Sponsorship requirement foreign employee visa and residency permit
- Entry visa on arrival in Kurdistan for favoured nations (e.g. EU states, the US, Canada, Mexico, Australia)
- Pre-arrival visa required for other nations
- Visas issued by KRG are only valid within the Kurdistan Region
- **Travelling from KRG to mainland Iraq requires an additional Federal Iraq visa**

Tax Law

- 1982 Federal Income Tax Law (“ITL”) - ratified with some amendments
- Income Tax Directorate KRG – corporate income tax registration
- ITL: corporate income tax rate = 15%
- Personal income tax for employees = 5% on income exceeding IQD 1 million (US\$850)
- Expats for IOCs exempted from paying personal income tax

Social Security

- Social Security and Pensions Contributions (“**SSPC**”) for employees in Kurdistan
- Calculated from the employee’s monthly wages:
 - Employer pays 12% contribution
 - Employee pays 5% contribution
- Foreign nationals can apply for a formal exemption

Thank you

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