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## Sales, Investment and Establishment in Iraq イラクにおける販売、投資および事業設立

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## Topics to cover 本日の内容

- Distribution Agreements and Sales into Iraq  
イラクにおける販売契約および商品販売
- Business Establishment and Practical Considerations  
事業展開の選択肢と実務上の留意点
- Joint Ventures and M&A in Iraq  
イラクにおける合併事業・M&A
- Investment Law and Investor Protections  
投資法および投資家の保護
- Dispute Resolution  
紛争解決
- Electricity, Oil & Gas Sectors  
電力、石油・天然ガスに関する法令

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## Other Topics in the Iraq Investment Guide イラク投資ガイドの内容

- Overview of Iraqi Legal Framework  
イラク法制度の概要
- IP regulation,  
知的財産法制
- Real estate Law  
不動産法
- Labour law  
労働法
- Contract law issues  
契約法の論点
- Environmental laws and regulations  
環境関連法規制
- Taking security in Iraq  
イラクにおける担保の取得
- Bribery and corruption legislation  
贈収賄と汚職に関する法律

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## Distribution Agreements and Sales into Iraq イラクにおける販売契約および商品販売

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## Sales and Distribution into Iraq (1) イラクに対する商品販売 (1)

### Agency laws not restrictive 商事代理法は非限定的

- Unlike many other Middle Eastern countries, Iraqi law does not require local commercial agent for import and sale of goods in Iraq  
多くの中東諸国と違って、イラク法上、現地の商事代理人を利用せずにイラクに商品を輸入できる
- No requirement for distributor to be granted exclusive rights  
専属的な販売業者として選任する要件がない
- Few protections for agents  
代理人の保護も少ない

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## Sales and Distribution into Iraq (2) イラクに対する商品販売 (2)

### Freedom of Contract for Sales 販売において契約の自由

- Contract with distributor can be written to protect foreign principal's rights  
販売業者との契約は、外国会社の権利を保護
- Compensation upon contract termination can be limited  
解約による補償請求も契約上限定できる
- Direct sales from overseas into Iraq also possible  
海外からイラクに対する直接販売も可能

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## Business Establishment in Iraq イラクにおける事業設立

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## Establishment options in Iraq (1) イラクにおける事業展開の選択肢 (1)

- **In principle, no foreign investment restrictions**  
原則として外国投資の制限がなし

- No legal prohibition on 100% foreign owned company  
100%外国資本に所有される会社が法律上許される

- **Primary Options Available**  
主なる事業設立選択肢

- Representative Office  
駐在員事務所
- Branch of Foreign Company  
外国会社の支店
- Iraqi LLC  
イラクに設立される有限責任会社

Other options include a Joint Stock Company (JSC), Sole Ownership Enterprise, and Joint Liability Company  
その他、株式会社、一人事業、共同責任会社などがある

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## Establishment options in Iraq (2) イラクにおける事業展開の選択肢 (2)

- **Representative offices**  
駐在員事務所

- Simplest form of business establishment  
もっとも基本的な事業展開
- No separate legal personality from the foreign company  
外国の会社から独立した法人格を有せず
- Representative office is restricted to marketing, promotional, and information collection activities  
駐在員事務所の活動はマーケティング、販促および情報収集に限定

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## Establishment options in Iraq (3) イラクにおける事業展開の選択肢 (3)

### • Branch of Foreign Company 外国会社の支店

- No separate legal personality from the foreign company  
外国の会社から独立した法人格を有せず
- Branch offices only used where foreign company has entered into a contract with an Iraqi government entity  
支店の設置は、外国の会社がイラク政府機関と契約を締結している場合のみ可能  
EX) 入札成功
- Simplified conversion from representative office to branch upon executing government contract  
政府契約を締結してから、駐在員事務所から支店への変更手続きは省略されている
- Companies Registrar in Kurdistan allows branch establishment without a government contract  
クルディスタンの会社登記局は政府契約なしに従来から支店開設を許している

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## Establishment options in Iraq (4) イラクにおける事業展開の選択肢 (4)

### • Limited liability company (LLC) 有限責任会社

- Limited liability of the LLC's shareholders  
LLCの株主が負う責任は有限
- 1 to 25 shareholders  
株主は1人以上25人以下
- Company is managed by a "managing director"  
「代表取締役」が会社を経営
- No board of directors  
取締役会はない

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## Practical considerations (1) 実務上の留意点 (1)

- **Role of the Companies Registry**  
会社登記局の役割
  - By law, companies registrar must approve many actions  
イラク法により、会社登記局は多くの事項を承認しなければならない
  - Generally 2 to 3 months required for establishment procedure  
通常、設立の手続は2、3ヶ月かかりえる
- **Establishment of a bank account in Iraq commercial bank**  
イラク民間銀行における銀行口座の開設
  - A requirement in order to deposit the company capital  
会社資本の預け入れのための要件
- **Signed lease for business premises also required**  
事業用地にかかる署名済みの賃貸借契約書も要件

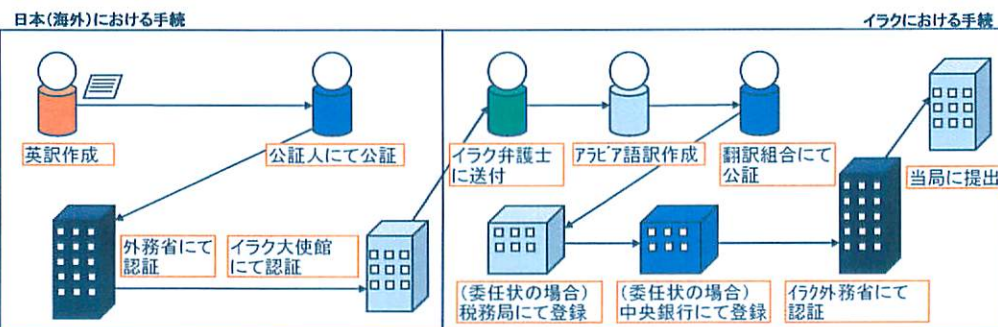
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## Practical considerations (2) 実務上の留意点 (2)

- **Document Notarisation and Consularisation**  
書類の公証および認証
  - Document notarisation, consularisation, and authentication is required, similar to other Middle Eastern countries  
多くの中東諸国と同じく、海外発行の書類の海外公証、大使館による認証、そして国内における手続は必要



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## Joint Ventures and M&A in Iraq イラクにおける合併事業・M&A

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## Joint Ventures and M&A in Iraq (1) イラクにおけるM&A・合併事業 (1)

- **Increasing cooperation between multinationals and Iraqi businesses**  
日本企業をはじめとする外国企業とイラク事業者との協力事業が増えている
- **LLC most commonly used entity**  
有限責任会社(LLC)はもっとも良く使われる事業形態である
  - Capital investment possible  
資本投資可能
  - No Iraqi ownership required, so full options of minority shareholder protections can be incorporated  
イラク国民の資本所有が要件でないため、合併事業の構成は原則制限されなく、少数株主の保護条項は可能
  - Loans in any currency possible through offshore accounts  
海外銀行の口座を通じてすべての通貨によるローンも可能
- **Legal due diligence is critical**  
法的デューデリジェンス(監査)は重要

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## Joint Ventures and M&A in Iraq (2) イラクにおけるM&A・合併事業 (2)

### • Shareholder Pre-Emptive Rights 株主の新株・譲渡引受権

- Advantage of early investment—existing shareholders have pre-emptive rights on new share issuance and transfers  
早い投資の特権: 既存の株主は株式の新株発行と他の株主の株式譲渡に関して引受権をもつ

### • Joint Venture Management 合併事業の経営

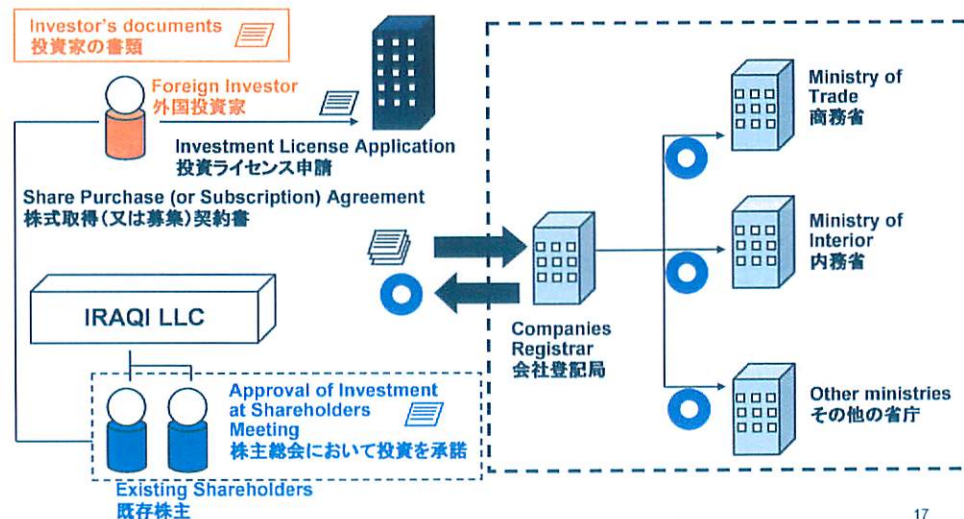
- No board of directors legally permitted for LLC  
LLCにおいて取締役会を設置することは法律上できない
- If concerned about managing director taking action alone, can require shareholder approval for certain actions  
代表取締役の単独行為に心配があれば、多くの商業行為に株主総会の議決を要することができる

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## Simulation of Iraqi M&A/Joint Venture イラクのM&A・合併事業のシミュレーション



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## Investment Law & Investor Protections 投資法および外国投資家保護

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### 2006 Investment Law (1) 2006年投資法 (1)

- **Investment Law**  
投資法

- Aim is to promote investment with incentives and protection  
目的は、インセンティブや保護を与えることによりイラクに対する投資を促すこと
- New 2009 change for foreign ownership of land  
2009年には外国人による土地保有にかかる新たな改正

- **Investment License Awarded to "Projects"**  
投資ライセンスの付与対象は「プロジェクト」ごと

- Not to the operating entity  
プロジェクトを実行する企業ではない
- Minimum capital requirement is US\$250,000  
最低資本要件は25万米ドル
- Practically, required by Iraqi Companies Registry for any new project  
原則、会社登記局は必ず投資ライセンスの証書を求める

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## 2006 Investment Law (2) 2006年投資法 (2)

### • Key Benefits and Protections 主なメリットと保護

- Easier repatriation of capital and profits  
資本と利益の本国への送金がより容易に
- Certain protections from seizure and nationalisation  
収用や国有化に対する一定の保護
- Right to lease land  
土地を賃貸借する権利
- Easier employment of non-Iraqi nationals  
非イラク人の雇用がより容易に
- Tax exemptions  
租税の控除

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## 2006 Investment Law (3) 2006年投資法 (3)

### • National Investment Commission 国家投資委員会 (NIC)

- Body which awards investment licences  
投資ライセンスを付与する機関
- Need to submit to NIC report on financial competency, details of past and current projects and details of proposed Iraqi project with timescales  
NICに対して経済的能力、過去および現在のプロジェクトの詳細、ならびに新規プロジェクトの詳細(作業予定表を含む)を提出する必要あり
- NIC liaises with other relevant authorities on behalf of the investor  
NICは、投資家のため、他の関係機関と連携する

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## 2006 Investment Law (4) 2006年投資法 (4)

- **Obligations on the Investor**  
投資家の義務

- Training Iraqi workforce, and NIC will look for at least 50% of workforce to be Iraqi nationals  
NICは、イラク人の労働者の訓練やプロジェクト要員の50%以上をイラク国民が占めることを条件とする
- Information requirements  
情報届出義務
- Adherence to timeframes and schedules stated in license; and lateness of more than six months can result in cancellation of license  
計画に忠実な実行義務、6ヶ月以上の遅滞はライセンスの無効事由
- Follow Iraqi laws and meet reporting requirements  
イラク法の遵守や報告義務

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## Dispute Resolution 紛争解決

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## Dispute resolution in Iraq (1) イラクにおける紛争解決 (1)

- **Court structure**  
裁判所制度

- Three tiered system  
三審制
- Some specialised courts  
専門裁判所もある
- No jury trials  
陪審員による裁判はなし
- Constitution states independence of the judiciary  
憲法は司法の独立を言明

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## Dispute resolution in Iraq (2) イラクにおける紛争解決 (2)

- **Court proceedings**  
裁判手続き

- Inquisitorial system  
職権主義
- Mainly written pleadings and evidence  
主に書面形式の陳述と証拠
- Limited interim remedies available  
限られた仮処分的な救済措置
- Full range of substantive final remedies  
幅広い実体法上の救済措置

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## Dispute resolution in Iraq (3) イラクにおける紛争解決 (3)

- **Arbitration**  
仲裁

- No specific arbitration law  
特別な仲裁法はなし
- Civil Procedures Code allows the parties to choose the form and rules  
イラク民事手続法に基づき当事者らは仲裁の形式と規則を選択できる

- **Enforcement of foreign judgments**  
外国判決の執行

- Generally, Iraqi courts will only enforce if there is a bilateral treaty or international treaty in place with the relevant country  
通常、イラクの裁判所は当該国間で二国間協定または国際条約が締結されていなければ執行しない

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## Dispute resolution in Iraq (4) イラクにおける紛争解決 (4)

- **Riyadh Convention**  
リヤド条約

- Iraq is a signatory  
イラクは締約国
- Provides for mutual enforcement of judgments between signatory States  
締約国間で相互に判決の執行を認める条約
- Must conform to the principles of Shari'ah  
シャリーア法の原則に則っていなければならない

- **Enforcement of foreign arbitral awards**  
外国仲裁判断の執行

- Iraq is not a signatory to the New York Convention but is negotiating entry  
イラクはニューヨーク条約の締約国ではないが、締結を交渉中
- Riyadh Convention applies to arbitral awards  
リヤド条約は仲裁判断にも適用される

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## Dispute resolution in Iraq (5) イラクにおける紛争解決 (5)

- **Foreign Investor Dispute Resolution**  
外国投資家の紛争解決

- Specialist court opened in late 2010 to handle disputes involving investors  
2010年後半に投資家の紛争を管轄する特別裁判所が設置された
- Specialist judges will rule on disputes, designed to reassure foreign investors that Iraqi law will protect their investments  
外国投資家にイラク法は投資を保護するとの安心を与えるために特別な裁判官が裁判することになる
- Two more specialist courts planned for Mosul and Basra  
モースルやバスラにも設置する予定

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## Electricity, Oil & Gas Sectors 電力、石油および天然ガスセクター

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## Electricity sector (1) 電力セクター(1)

### • Highlights 重要事項

- Proposed Iraqi electricity law currently before the Parliament  
電力法の法案は現在イラク議会で検討中
- The Iraq Electricity Master Plan  
イラク電力マスタープラン
- Designed to increase electricity generating capacity in Iraq  
イラクにおける発電量を増やす為に設計されている
- Projected investment (short and long term) in electricity generation and improvement and expansion of transmission/distribution networks  
計画されている 発電並びに送電ネットワークの改善および拡大に関する(短期および長期の)投資

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## Electricity sector (2) 電力セクター(2)

### • IPPs in Iraq イラクにおける卸電力事業(IPP)

- Tender process and bids submitted with regard to four gas-fired IPPs  
4つのガス火力による卸電力事業(IPP)に関する入札
- To add a total of 2,750MW in electricity generation capacity  
合計2750メガワットの発電能力を加える
- Bids to be assessed on multi-pronged criteria such as tariff, experience, financial strength and development plans  
入札は料金、経験、財務力や開発計画等の複合的な基準によって評価される
- Financial close expected later this year  
ファイナンス・クローズは今年中の予定である

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## Oil and gas sector (1) 石油・天然ガスセクター(1)

### • State organisation

国の機能

- 16 State owned oil companies  
16の国営石油会社
- State Oil Marketing Organisation (SOMO) responsible for marketing  
国営石油販売機構(SOMO)が販売を担当
- Petroleum Contracts and Licensing Directorate (PCLD) controls tenders and bidding  
石油契約・ライセンス局(PCLD)が入札プロセスを管理

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## Oil and gas sector (2) 石油・天然ガスセクター(2)

### • Draft Petroleum Law

新石油法案

- New independent holding company  
新たな独立した持株会社
- New High Federal Oil and Gas Council  
新たに設置される高等連邦石油ガス評議会
- Production sharing agreements  
生産物分与契約

### • Kurdistan

クルディスタン地域

- Passed a regional Petroleum Law and has signed a number of production sharing agreements  
地域の石油法を成立させ、いくつかの生産物分与契約を締結済み

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## Oil and gas sector (3) 石油・天然ガスセクター(3)

- **Iraq licensing rounds**  
イラクの入札ラウンド

- Three to date (June 2008, December 2009 and October 2010)  
今まで3つ(2008年の6月、2009年12月、2010年10月)

- **First round contracts**  
第1次入札ラウンドの契約

- Two types of contract: gas service development and production contract  
and oil technical service contract  
二種類の契約: ガスサービス開発・生産契約と石油技術サービス契約

- **Second round contracts**  
第2次入札ラウンド

- Single model contract, close in form to the first round gas contract  
形式的には第1次入札ラウンドのガス契約に類似した、単一のモデル契約

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## Oil and gas sector (4) 石油・天然ガスセクター(4)

- **Third round contracts**  
第3次入札ラウンドの契約

- For gas fields only  
天然ガス田のみ
- Service contract, similar to the contracts in the first two rounds  
形式的には第1次入札ラウンドのガス契約に類似した、単一のモデル契約

- **Fourth round contracts**  
第4次入札ラウンドの契約

- For gas fields; to be held in November 2011  
天然ガス田のみ、2011年11月に予定されている
- Number of sites offered stated as being 12  
12ヶ所が入札対象となる
- Possible variation from the service contracts in the previous three rounds  
今までのサービス契約の異なる形態の可能性あり

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### Partner, Corporate

David has been a partner in Herbert Smith's corporate division since 2001, and has specialised in the energy, natural resources and infrastructure sectors for over 12 years. David lived and worked in Japan for 10 years and has advised on transactions in some 30 jurisdictions, predominantly in Asia and the Middle East. David has worked on numerous projects, covering upstream oil and gas developments, power projects, water projects, pipelines, refineries and petrochemical facilities. He also regularly advises on mergers and acquisitions in the energy sector.

Key transactions include advising:

- **Gazprom Neft** in its role as operator of the Badra field in Iraq
- a **confidential client** in relation to the Mansuriya gas field during the first Iraq oil and gas bid round
- a **confidential client** in relation to the second oil and gas bid round in Iraq
- a **confidential client** in relation to a short term service contract in Iraq
- **Sumitomo Chemical** in connection with its role as developer, together with Saudi Aramco, of the \$9.8 billion Rabigh Refinery Expansion and Petrochemical project, winner of the IFLR Middle East Project Finance Deal of the Year
- **Japanese Trading Companies** in relation to power and water projects in India, Iran, Pakistan, Saudi Arabia, the UAE and Taiwan

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## Christopher Gunson



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### Associate, Corporate

Christopher is admitted to the New York Bar and has been based in the Dubai office of Herbert Smith since 2009. He moved to the Middle East after practicing in Tokyo. Christopher is fluent in Japanese and his experience focuses on advising Japanese clients on investments and business across the Middle East.

Key transactions include advising:

- **Gazprom Neft** in its role as operator of the Badra field in Iraq
- a **confidential client** on its equity investment into an Iraqi company
- **Mitsui E&P ME** in its acquisition of an interest in an oil field in Oman
- a **Japanese media company** on its investments and business into Saudi Arabia and the UAE
- a **Japanese chemical company** on its investment into a petrochemical plant in the UAE and export to the regional market
- **Japanese companies** on all aspects of distribution and sales agreements in the Middle East

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