

The Baghdad commercial Court: What you should know

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In late 2010 the Ministry of Justice established a new court in Iraq one in Baghdad, Basra and Najaf, now known as the Commercial Court.

The court was established under article 22 of the Judicial Regulation Code 2010. Article 22 allows for the creation of first instance courts that specialize in certain types of cases. The commercial court has jurisdiction to handle commercial cases with a foreign element, it does not handle domestic commercial cases.

The court came into existence to meet the growing demand by foreign investors for more specialized courts, which increased after Iraq welcomed greater foreign investment following the 2003 gulf war. However the court is not limited to investment disputes. There are two basic requirements for accepting a case: (1) it must have a foreign element; and (2) it must be commercial in nature. Once met, any party can file a case, including foreign government entities and other non-private parties.

As a court of first instance, the court follows the same procedure as normal courts but with an emphasis on speed and transparency. One way in which it achieves this is that the court does not require notices to be sent through the Ministry of Foreign Affairs, which is the normal but slow method of service when a non-Iraqi party is involved. Registered mail is used instead. Another improvement over the normal courts is that judges of the Commercial Court have a smaller caseload and so are able to resolve disputes faster than regular courts of first instance. Judges of the Commercial Court also receive special training to aid them in resolving often complex international disputes.

Commercial Court decisions are still subject to appeal, which is handled by the Court of Appeals along with normal cases. This can hinder timely enforcement of court decisions, but at present cannot be avoided.

Many have showed interest in the Commercial Court and it is generally seen as a promising step in providing an adequate medium for the resolution of international disputes. Notably the "Commercial Law Development Program" of the US Department of Commerce has helped set up several workshops aimed at helping the Iraqi judicial system realise its aims and establish other similar courts.

Since its establishment the court has been used by the Iraqi state, private parties and foreign parties alike, and has resolved an impressive amount of cases. The success of the Commercial Court, and the trust it has quickly earned from foreign investors and other foreign entities, has prompted the Higher Judiciary Council to promote other commercial courts of a similar nature. To date, two other courts have been established, one in Basra and another in Al Najaf.