



AN INTRODUCTION TO LEGAL MATTERS RELATING TO DOING BUSINESS IN IRAQ

Salem Chalabi

Tokyo

14 June 2010

REVIEW OF PRINCIPAL BUSINESSES AND LEGAL ISSUES



- OIL SECTOR
- INFRASTRUCTURE
- PRIVATE SECTOR OPPORTUNITIES
- OVERVIEW OF LEGAL ISSUES

- UPSTREAM
 - Features of Existing Service Contracts from the Licensing Rounds and other Contracts
 - First Licensing Round
 - Second Licensing Round
 - Features of service contracts

- New Opportunities for Upstream Development
 - The Ministry of Oil has announced a new licensing round for certain gas fields;
 - The Ministry of Oil has tentatively indicated that it intends to enter into bilateral negotiations or limited bidding processes with respect to certain oil and gas fields; and
 - Very recently, the Ministry of Oil has announced that it may have a third licensing round for certain oil fields.
 - In order to be able to bid in the licensing rounds, the bidders must have been pre-qualified by the Ministry. To date, the Japanese oil companies that have been qualified are Inpex Holdings, Nippon Oil, JOGMEC, Japex and Mitsubishi Corporation.
 - With respect to the bilateral negotiations, the companies do not need to be pre-qualified but at the very least they would need to meet certain requirements such as minimum production (this is not a specific figure but estimates are 50,000 barrels per day).

- Key issues facing the oil companies and Opportunities in the Sector:
 - Drilling expertise and production:
 - There is a shortage of drilling expertise and rigs in Iraq.
 - There are a number of international oil services companies that are operating in Iraq but are focusing on the oil companies rather than the government sector.
 - There is an opportunity for joint ventures with Iraqi companies operating in the oil services sector. The key legal issues relating to these joint ventures would likely be:
 - Certain key legal features to be aware of for foreign companies:

- compliance with foreign corrupt practices act or similar anti-corruption regulations (these exist in Iraq also and a foreign entity must be aware of this and must conduct diligence on their local partner and put in place manuals to ensure compliance);
- taxation: parliament has passed Law No. 19 for 2010 (Taxation of Oil Companies), which is applicable to oil companies as well as companies that contract with oil companies. The regulations have not been released and therefore companies involved in the services sector must be aware of significant tax burdens that may be imposed;
- Iraqis would contribute local know-how, employees and local relationships;
- Foreign companies would likely be required to contribute either rigs, equipment or capital, plus drilling know how;
- Certain private equity companies involved in the oil sector are interested in entering into these joint ventures and contributing capital;

- title to assets: prior to entering into a joint venture with any local company, and due to the difficulties relating to the registration of title to assets (including equipment), due diligence must be conducted on the assets of the potential companies;
- operations in Kurdistan: on the whole, conducting oil services activities in Kurdistan could impact a company's ability to conduct oil services activities for the government sector in Arab Iraq;
- If contracting with the Iraqi government, one needs to be careful about methods of payment as the government is notorious for delayed payments; and
- need to ensure that cash receivables come from the Development Fund for Iraq (and therefore protected by UN Security Council Resolutions) and oil-in-kind would not be in jeopardy.

- Workovers on existing fields
 - Iraq has a significant number of oil fields that have been abandoned or have wells that have been capped. This is partially due to bad practices by the previous regime (and its contractors).
 - The Ministry of Oil is interested in entering into service contracts with a number of oil service companies, including for example Weatherford.
- Pipelines
 - One of the key problems that the Ministry of Oil is concerned about relates to the existing pipeline distribution system. This is barely meeting current production. With the contemplated increase in production, the existing pipeline infrastructure would be unable to meet such increase.
 - On the whole, the Ministry of Oil has put a portion of the costs of building these pipelines onto the oil companies.

- The ministry is preparing a number of tenders for pipelines in which foreign entities, including Japanese companies can participate.
- Certain key issues for participating in tenders with the Ministry of Oil:
 - One needs to develop a relationship with the Ministry of Oil and its staff. Although simply sending tender documents has worked, it is rare. Rather, the successful tenders have been the result of long term relationships developed with key members of the Ministry, or its sub-divisions;
 - There is a shortage of capital on the part of the government and therefore pipeline tenders, though they do come out, take time;
 - Some key characteristics of tenders:
 - each tender has a bid bond (1%), which has to be issued through an acceptable Iraqi bank - usually the Trade Bank of Iraq;
 - if successful, a performance bond will need to be issued by the same bank for between 3% and 5% of the overall amount of the tender; and
 - Other issues.

- Ports for export of oil:
 - Iraq exports its oil in one of two ways - either through the Umm Qasr Port (formerly known as Mina al-Bakr) or through the Northern pipeline to Mersin, Turkey.
 - Both modes of export are operating at near capacity, and if there is an increase in production and exports, there may be difficulties in meeting such capacity. Accordingly, the Ministry of Oil and Ministry of Transportation have commenced studies to increase port capacity.
 - One of the key legal issues relating to the export of oil through the Umm Qasr port relates to the legal difficulties between Iraq and Kuwait, and the overarching United Nations resolutions that govern Iraq. Until such time as these issues are resolved, Iraq's capacity for deep water ships may be limited.
 - There was a pipeline from Iraq to the Syrian port of Ladakia, which was closed off in the early 1980's by Syria (which was allied to Iran during the Iran-Iraq war). There have been recent discussions to reopen this pipeline, which requires a significant amount of investment to revamp it.

- Water for drilling:
 - One of the shortages that currently exists relates to the need for increased water capacity for drilling.
 - The nearest significant available water to the fields in the South is in the Shatt-al-Arab. There are issues relating to the purity of this water and the significant need for filtration. Again, for the fields that the Ministry of Oil is currently exploiting, it has barely sufficient capacity. But if it wants to increase production of these fields, additional reservoirs of water need to be addressed and solutions prepared.
- Inexperienced staff:
 - In the second licensing round, the Ministry of Oil, recognising the shortages of experienced staff has requested oil companies to spend significant amounts for training of Iraqi workers, both in the Ministry and outside;
 - There are a number of ideas relating to the establishment of training centers in the South. Any Japanese companies that can focus on this training would be able to get significant good will from all the parties in Iraq, especially the government.

- **Logistics Capabilities:** Due to the fact that oil companies are only recently beginning to operate in Iraq, there is not a significant logistics capacity to meet the requirements of the oil companies. Such logistics needs include:
 - Sufficient warehousing for storage of equipment and chemicals;
 - Difficulties in clearance of goods through Iraqi ports and, to a lesser extent, customs. Accordingly, companies are using Kuwaiti ports to get equipment through.
 - Shortages of camps and offices for employees and staff. There are a number of companies trying to develop camps and warehousing but, if successful, these will not be sufficient.
- **Refineries:**
 - One of the key features of Iraqi life today relates to the shortages of all types of refined products. This is demonstrated through shortages of petrol (with long lines at stations) and shortages of electricity (because of shortages of gas).
 - All the refineries in Iraq are currently owned by the Government, through the Ministry of Oil. Most of these refineries are old refineries and need significant update.

- Electricity:
 - Brief Overview of Electricity Sector:
 - Shortages
 - Purchases of turbines
 - Opportunities to Build Electricity Generation Plants:
 - Ministry has announced three construction contracts which have been awarded to two contractors;
 - The current Minister of Electricity prefers this approach as it is easier to integrate the plants into the Iraqi grid; and
 - The ministry of electricity may need about eight over the next three years.
 - IPP structures:
 - Since the Iraqi government has budget deficits, the Ministry of Electricity is considering establishing IPP structures with the private sector;
 - In March 2010, the Ministry of Electricity and the National Investment Commission announced a limited bidding process for seven IPP electricity generation plant projects. Over forty applicants sent expressions of interest and, because of the significant interest, the Ministry added three more potential plants for IPP projects

- Discussion of Structure of the IPPs:
 - Main structure;
 - Specific issues:
 - Off-take agreements;
 - Gas supplies.
- Other construction opportunities in the Electricity Sector:
 - Renovation of existing plants;
 - Renovation and maintenance of electricity grid; and
 - Other issues.

- Health
 - Brief Overview of Health Care Sector:
 - Opportunities to renovate hospitals:
 - Trading opportunities:
 - Sale of pharmaceutical products;
 - Sale of equipment.
 - PPP structures:
 - In April 2010, the Ministry of Health and the National Investment Commission announced that they are considering a public private partnership structure for Ibn Sina hospital in Baghdad. This is a government hospital that was renovated by the Coalition Provisional Authority in 2003.
 - The Ministry is considering other hospitals also. However, they are not clear on the structures at this stage.
 - Discussion of legal structures for hospital PPP programs.

- Transportation:
 - There are a significant number of projects in the transportation sector and, again, due to budget deficits, there is a discussion of pursuing PPP structures in this sector.
 - The main contemplated projects are:
 - Ports, mainly the renovation and reconstruction of existing ports (including the Al Faw Grand Port and docks, the Umm Qasr port and docks and the Khowr Al-Zubair docks);
 - Airports (renovation of existing airports and one new airport, the Mid Euphrates Airport); and
 - Railways, in particular the construction of regional railway systems for both passengers and, mostly, for freight.
 - Discussion of the legal structure for these projects.

- Housing and Construction:
 - The National Investment Commission has announced a housing program to build 1,000,000 low to medium income housing projects.
 - Discussion of the main features of this project;
 - Discuss some challenges relating to this project, including financing.
 - Other contemplated projects in both Kurdistan and elsewhere in Iraq, including housing projects for various employees of ministries.
 - Various projects for development of industrial base for the construction sector, such as for cement plants and other types of construction focused plants for building materials. For example, there is a significant need for steel and therefore a need for steel plants. Moreover, the Ministry of Industry owns a number of state owned enterprises, including cement plants, that need renovation and the Ministry is contemplating entering into PPP projects relating thereto.

- Tourism
 - There is a significant shortage of good hotels in Iraq, especially in Baghdad;
 - Discussion of Baghdad hotels and possible cooperation (discuss the legal structures for joint ventures);
 - Discussion of Hotels in other areas, such as those close to religious centers.
- Telecommunications:
 - Discussion of the sector generally;
 - Discussion of existing opportunities; and
 - Discussion of regulatory structure and licensing requirements.

- Private Sector
 - Industry:
 - Discussion of available industrial opportunities, including legal structures and possible PPP possibilities;
 - Discussion of renovations of existing plants versus Greenfield opportunities.
 - Banking and Finance:
 - Overview of banking sector:
 - Government owned banks
 - Private banks
 - Regulation of banking sector
 - Opportunities in banking sector
 - joint ventures;
 - recapitalisation of banks.

- Trading Opportunities:
 - Opportunities:
 - foodstuffs
 - chemicals
 - agricultural products
 - Certain legal considerations relating to trading opportunities

- Legal Issues for Carrying Out Business in Iraq:
 - Types of Legal Entity:
 - Investment Law: confusion over land transfers and rights of local investment commissions and national investment commission
 - Employment Law:
 - Insurance Law:
 - Taxation:
 - Anti-corruption Legislation:
 - Intellectual property: