Iraq Energy

George Booth – Partner

Zainab Al Qirnawi – Senior Associate (English Solicitor and a Member of the Iraqi Association)

Clyde & Co
Clyde & Co

- Global law firm
- Expertise:
  - Energy;
  - Infrastructure;
  - Insurance;
  - Marine;
  - Trade
- 1400 lawyers
- 31 offices
- 6 continents
Clyde & Co: Middle East

- Abu Dhabi; Dubai; Doha; Riyadh; Tripoli
- 160 lawyers across the region
- 2012 Winner of International Law Office Client Choice Award for UAE
- 2012 Winner of Asian-MENA Counsel Magazine In-House Community Law Firm of the Year UAE
- 2011 Winner of Who’s Who Legal Law Firm of the Year UAE
Our Presence in Iraq

- Our team in Iraq is supported by our Middle East and London offices
- Led by George Booth and supported by dual-qualified Zainab Al Qirnawi
- Local law expertise
- Experienced in cross-jurisdiction matters in the region
- In-country experience with both IOC’s and Government entities
George Booth

George joined the firm in 2010. Prior to this he was partner with another leading City law firm working in its London, Abu Dhabi and Dubai offices.

Before working in private practice, George was legal counsel at Halliburton Energy Services and related companies for over three years, responsible for legal affairs in the UK, Norway, North Africa, and Central and Southern Europe. He has also spent time on secondment to Exxon Mobil.

He is currently based in both the London and Dubai offices of Clyde & Co. He is a member of the Law Society of England and Wales, the International Bar Association, the Association of International Petroleum Negotiators, the Dubai Petroleum Club and is a Board Member of the Iraq Britain Business Council.

George has been ranked as a leading energy lawyer in *Chambers & Partners, Legal 500, Who's Who Guide to the World's Leading Energy Lawyers* and *PLC Which Lawyer? 2012* and has spoken at numerous conferences and published articles on various corporate and energy related matters.
Zainab is both an English and Iraqi qualified lawyer who joined Clyde & Co in July 2012 from Shell EP International Ltd, after completing her training contract with Clyde & Co in 2005. With a specific focus on the energy sector within the Middle East & North Africa region, Zainab has held positions both in-house with international and national oil companies and with external law firms, giving her a detailed understanding of the needs of businesses within the region.

Zainab has extensive experience advising clients in relation to Iraqi law issues under the following Iraqi laws: Iraq’s draft oil and gas law and related petroleum regulations, Civil Code, Companies law; Employment law; Civil Servants law; Civil procedures rules; Evidence law; Enforcement law; Tax law; Investment law; Free Zone law; Commercial agency law; Trade law; Hydrocarbons law and other related oil and gas regulations; Government procurement regulations; Travel law and visa regulations; Traffic law; Drugs law and Alcohol law.

Zainab Al Qirnawi
Agenda

1. **Setting up in Iraq**: Outlining the relevant steps and practical aspects / guidelines with reference to company registration and implications of tax law.

2. **Investment Protection**: Identifying how investors in Iraq can protect their interests through the use of Iraqi laws, international investment agreements and risk mitigation and structuring.

3. **Upstream acquisitions in Iraq**: Overview of the licensing rounds to date and issues surrounding the existing oil and gas contracts in Iraq; industry developments in the upstream sector.

4. **Midstream sector in Iraq**: Overview of the industry developments in the midstream sector with reference to a planned new crude oil export pipeline to be implemented on a build, own, operate and transfer (BOOT) contract basis.

5. **Downstream sector in Iraq**: Overview of the industry developments in the downstream sector with reference to the power and refinery sectors in Iraq and the related financing aspects.

6. **Pre-qualification and the contractor registration process in Iraq**: Identifying the pre-qualification requirements in respect of main contractors contracting with the Iraqi Government and the related registration process.

7. **Subcontracting**: Overview of the rules relating to sub contracting in Iraq with reference to the relevant Iraqi laws and regulations.
Setting up in Iraq

Outlining the relevant steps and practical aspects / guidelines with reference to company registration and implications of tax law.
Setting up in Iraq

1) Choosing an appropriate business medium

a) Companies: there are different types of companies in accordance with Companies Law No.21 of 1997, as amended, including:
   • Joint stock companies (JSC)
   • Limited liability companies (LLC)
   • Joint liability companies (Partnership)
   • Sole owner enterprise
b) Branch Office
c) Representative office
d) Commercial Agency and Distribution

Among the main features of LLC (i) no board of directors is permitted. Instead it has a general assembly and a managing director, and (ii) Companies Law only allows one class of shares to be issued and the concept of authorised but unissued shares doesn’t exist.
2) Registration Procedures of a legal entity

The two most common entities that are used by foreign companies in Iraq are LLCs and branch offices. The registration process with the Companies Registry involves various procedures and requirements including:

**LLC**
- Reservation of name (must be an Arabic name if the LLC is to be registered in Federal Iraq).
- Deposit of the minimum capital (Iraqi Dinars 1 million)
- Notarisation, consularisation, authentication of documents and translation.
- Lease of premises.
- Certain ministerial approvals (the “sectorial quarter”) may also be required.
- The approval of the Interior Ministry if the new LLC involves foreign shareholders.
- Tax and social security registration are also required.
Setting up in Iraq

Branch Office

- Notarisation, consularisation, translation and authentication of the required documents such as the constitutional documents and financial statements of the parent company.
- A contract signed with the Iraqi government.
- Lease of premises.
- Authorisation and undertaking letters from the parent company.
- Power of attorneys to the MD of the branch and the local legal attorney.
Setting up in Iraq

- There are 3 company registries ("CR”) in Iraq, one in Baghdad and two in Kurdistan (one in Erbil and one in Suleimaniah).
- The CR plays a significant role in the establishment and ongoing monitoring of companies and branches in Iraq.
- Companies Law 21 of 1997 (as amended) applies to the whole of Iraq including the Kurdistan Region but the application of the law may vary in Kurdistan and Federal Iraq.
Main Tax Rates

Corporation tax
There is a flat rate of 15% on profits with the exception of oil companies and their subcontractors which pay 35%. In Kurdistan a flat rate of 15% is applicable to all industries.

Withholding tax
For every contract which is taxable in Iraq, the paying party has to deduct a “deemed tax” according to the “deemed profits” which the recipient is assumed to be making. This deemed tax withholding ranges form 1.8% to 3.75% (e.g. 1.8% for supply of foodstuffs), 7% for oil and gas sector, and 15% for interest and royalties paid to non-residents.

Income tax
Progressive rates apply to individuals (3% - 15%) in Federal Iraq (imposed on both Iraqi and non Iraqis who are resident in Iraq). Kurdistan applies a flat rate of 5% on individuals.

Stamp duty
De minimis stamp duty payments apply to specific contracts and procedures and 0.2% on contracts of fixed value (Stamp Duty Law No. 71 of 2012)
Main Tax Rates

Social Security
The total contributions amount to 17% of the employee's income being 5% employee contribution; 12% employer contribution. 30% for oil and gas companies being 25% for the employer and 5% for the employee. In Kurdistan the contribution is 17%.

Employer has an obligation to calculate, withhold and remit.

Real estate
A tax of 10% on the annual revenue raised from real estate.

Customs duty
5% rebuilding levy

Sales tax (VAT)
10% on hotels and restaurants only
Main Tax Rates

Others


Payments to non-residents under contracts which are considered “trading in Iraq” (as opposed to “trading with Iraq”) are taxable. Applicable rates of tax retentions vary depending on the nature of the contract.

Exemptions

There are certain exemptions from taxes which are granted under, for instance, the investment laws and free zone law.
Investment Protection

Identifying how investors in Iraq can protect their interests through the use of Iraqi laws, international investment agreements and risk mitigation and structuring.
Anti-Expropriation Rules

Article 23 (Second section) of the Iraqi Constitution (as amended on 28/12/2005) Expropriation is prohibited except:

- for the purposes of public benefit
- in return for just compensation
- and as regulated by law
Article 12 (Third section) of the Federal Investment Law No 13 of 2006 (Law No. 13): A guarantee that an investment project will not be seized or nationalized without a final judicial decision.

Article 10 of Law No.13: “The investor irrespective of its nationality shall enjoy all privileges, facilities and guarantees and shall be subject to the obligations stated in this law”

Note that pursuant to Article 29, investments in the following sectors are excluded from Law No. 13’s coverage:

- investment in oil and gas extraction and production, and
- investment in the banking and insurance sectors
Anti-Expropriation Rules

**Article 22 of Law No.13**: stipulates that additional protections will be granted to foreign investors if Iraq enters into international agreements that provide for such additional investor protection.

**Read together with Article 110 of the Constitution** (the exclusive right of the federal government to formulate sovereign economic and trade policy) this shows that national treatment of investments may be extended to a foreign investor subject to the relevant international investment agreement.
Anti-Expropriation Rules

Law No.4 of 2006, Law of Investment in the Kurdistan Region- Iraq

Treatment of foreign investment – Article (3)

Article 3 of the Law of Investment: “Foreign Investors and Foreign Capital shall be treated the same way as national investors and national capital. A foreign investor shall be entitled to own all the capital of any project that he sets up in the Region under this Law.”
Bilateral investment treaties (BITs)

Effectively there are no BITs in force

BIT with Kuwait (in force from 7 June 1966) has never been tested and some experts question its validity following the First Gulf War

BIT with Morocco signed on 18 July 1990 but not given effect
Iraq is a member of the Multilateral Investment Guarantee Agency (MIGA), the political risk insurance arm of the World Bank Group.

In order to be eligible for a guarantee granted by MIGA, a MIGA member must comply with the 1992 World Bank Guidelines on the Treatment of Foreign Direct Investment.

The Guidelines:

- prescribe fair and equitable treatment of foreign investment by member States,
- require full protection and security to investor’s rights regarding ownership, control and substantial benefits over his property, including IP,
- in a number of areas treatment of foreign investment must be as favourable as that accorded to national investors;
Multilateral Investment Guarantee Agency (MIGA)

- Contains anti-expropriation provisions;
- promotes ICSID Additional Facility for dispute resolutions where the State is not a party to the ICSID convention

In October 2010 MIGA provided a guarantee of US$5 million to underwrite a Turkish investment in a Baghdad industrial plant

The guarantee covers the risks of currency inconvertibility and transfer restriction, expropriation, war and civil disturbance
International investment agreements: Arab League


Unified Agreement for the Investment of Arab Capital in the Arab States 1980: provisions on national treatment, free transfer and expropriation (subject to exceptions); dispute resolution through Arab Investment Court

Greater Arab Free Trade Area (GAFTA): it is a programme to implement the Trade Facilitation and Development Agreement that has been in force since 1 January 1998. Includes 17 Arab countries and Iraq is a member.
Iraq has bilateral free trade area (FTA) agreements with: Algeria, Egypt, Jordan, Lebanon, Oman, Qatar, Sudan, Syria, Tunisia, Yemen, and the United Arab Emirates.

Iraq is a member of the Council of Arab Economic Unity (CAEU) which was established in June 1957 by resolution of the Arab Economic and Social Council of the Arab League.

Iraq is a party to the following multilateral investment protection agreements deposited with CAEU:

- Agreement on the Settlement of Investment Disputes in Arab Countries (2000)
The Energy Chain

**IRAQ**

**Oil/Gas Reservoir**
Ambitious targets for production ramp up
Capturing Flared Gas

**Oil/Gas pipeline**
Monetisation of reserves (export pipeline)
Getting product to consumers

**Power Stations**
Huge and immediate power deficit

**Refineries**
Meet local demand
Monetisation of reservoirs
The Energy Chain

Oil/Gas Reservoir
- Concession
- Joint venture
- Production sharing contract (Kurdistan)
- Service Contract (Iraq excluding Kurdistan)

Oil/Gas pipeline
- Concession
- PPP
- Direct procurement

Refineries
- Concession
- PPP
- Direct Procurement
Overview of the licensing rounds to date and issues surrounding the existing oil and gas contracts in Iraq; industry developments in the upstream sector.
Upstream Investment in Iraq

Proven reserves: 142 billion barrels of oil (incl. Kurdistan) acc. to Oil and Gas Journal (Jan 2013)

IEA Study of Iraq Energy Outlook 2012:
The Central (moderately optimistic) Scenario is that Iraq’s oil output will reach 6.1 m b/d by 2020 and 8.3 m b/d by 2035

Challenges:
- Constitutional ambiguity
- No federal Oil & Gas Law in place
- Legislative impasse, security and red tape
- Water injection, pipelines, power and other infrastructure.
Upstream sector: legislation

The Constitution:
– Article 111: “oil and gas are owned by all the people of Iraq in all the regions and governorates”;
– Article 112(1): “The federal government, with the producing governorates and regional governments, shall undertake the management of oil and gas extracted from present fields, provided that it distributes its revenues in a fair manner in proportion to the population distribution in all parts of the country”
– Article 110: list of powers reserved to the Federal Government (IFG) - does not include oil-related powers
– Regions are given broad powers to make decisions on all matters not reserved to IFG

Law No.84 of 1985 “The Conservation of Hydrocarbons Resources”
– Governs the role of the Ministry of Oil in the upstream sector, including the power to approve operators (Art.2(2))

Draft Oil and Gas Law 2007 – said to be the basis for further lawmaking process
Federal Draft Oil and Gas law 2007

The 2007 Federal Draft Oil and Gas Law

Article 1, **Ownership of Petroleum**: “oil and gas are owned by all the people of Iraq in all the Regions and Governorates” as per Article 111 of the Federal Constitution.

Article 9 (First): **Competitive Licensing Rounds** determine who is awarded an Exploration and Production Contract.

Article 11: **Revenue** is to be deposited into a Federal account for national redistribution.

Article 12 B: **State Oil Company** (INOC) is created and granted exploration and production rights in respect of existing producing fields and future fields, the policy for which is to be implemented by the Federal Oil and Gas Council (FOGC).

Article 12 D, **State Participation**: Iraq reserves the right to participate in Petroleum Operations at any time.

Article 13: **Exploration** is split into a maximum of 3 periods of 4 years + 2 years + 2 years. In the event of Discovery, an additional 2 years is granted to assess and determine commercial value (4 years for Non-Associated Natural Gas Discovery).

Article 13 F: **Production period** is not more than 20 years, extendable by 5 years.

Article 34: **Royalty** on Petroleum produced from the Development and Production Area is at the rate of twelve point five percent (12.5%) of Gross Production.

Article 39, **Dispute Resolution**: a dispute is first progressed to a discussion between the Minister and the senior officers of contractors, and/or referred to an independent technical expert (where appropriate). Disputes between Iraq and a foreign investor are then escalated to arbitration in accordance with Rules of Procedure for Arbitration Proceedings of Paris, Geneva or Cairo for the Settlement of Disputes between States and Nationals of other States, based on Iraqi law (unless otherwise agreed by the parties in the contract).
Types of oil & gas contracts in Iraq

In the absence of the Oil and Gas Law the development of the upstream sector has taken 2 different directions.

**TSC (Federal Government):**

The host state retains full ownership of the hydrocarbons

The IOC performs the exploration and production work as a service to the state on fee a per barrel basis

**PSC (Kurdistan Regional Government):**

IOC receives a stipulated share of the oil produced as a reward for risks taken and services rendered

The IOC carries the entire exploration risk and only receives compensation if oil is discovered
Upstream Investments in Iraq

Methods of entering the market

- Bidding round – new interest
- Acquisition of an existing interest
Licensing Rounds in Iraq

Technical Service Contract (TSC) or Development and Production Service Contract (DPSC)

Contracts are awarded through public bidding rounds

- 1st round: producing fields
- 2nd round: developing & production
- 3rd round: gas fields
- 4th round, May 2012: only 3 exploration blocks out of 12 were awarded (fees were USD5-6/barrel); Winners forbidden to deal with KRG
- 5th round believed to be for gas blocks, expected to be scheduled
## Licensing Round 1

<table>
<thead>
<tr>
<th>No.</th>
<th>Licensing Round No.</th>
<th>Contract Area</th>
<th>Consortium</th>
<th>Participation % Plus 25% for State Partner</th>
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<td>1</td>
<td>Rumaila</td>
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<td>PetroChina</td>
<td>37%</td>
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<td>Zubair</td>
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<td>Eni</td>
<td>32.81%</td>
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<td>Occidental</td>
<td>23.44%</td>
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<td>KOGAS</td>
<td>18.75%</td>
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<td>3</td>
<td>West Qurna (Phase 1)</td>
<td>ExxonMobil</td>
<td>60%</td>
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<td></td>
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<td>Shell</td>
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In May 2012 Statoil completed the transfer of its stake in West Qurna 2 to Lukoil

<table>
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<th>Licensing Round No.</th>
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<th>Consortium</th>
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<td>West Qurna (Phase 2)</td>
<td>Lukoil</td>
<td>56.25</td>
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<td>Statoil</td>
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<td>Shell</td>
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<td>PETRONAS</td>
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<td>TOTAL</td>
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<td>JAPEX</td>
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<td>Gazprom Neft</td>
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<td>Akkas</td>
<td>KOGAS</td>
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<td>TPAO</td>
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<td>12</td>
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<td>TPAO</td>
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<td>Kuwait Energy</td>
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<td>KOGAS</td>
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# Licensing Round 4

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<td>Kuwait Energy</td>
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<td>Dragon Oil</td>
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<td>13</td>
<td>Block 10</td>
<td>Lukoil</td>
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<tr>
<td></td>
<td></td>
<td>Inpex</td>
<td>40</td>
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</table>
Model TSC Assignment Provisions
Article 28

“No assignment of any rights or obligations under this contract, in whole or in part, without the prior written consent of Regional Operating Company (ROC)” (Art 28.1)

To assign to a wholly-owned and controlled affiliate – provide 1 month written notice of intent (Art 28.2)
Assignor shall remain jointly liable for execution of the contract

Direct/indirect transfer of shares or other ownership interest shall constitute an assignment
Model TSC Assignment Provisions (2)

To assign in whole or in part to a third party must submit (Art 28.3) -
Request, including detailed evidence of the technical and financial competence of recommended assignee
ROC will consider within 3 months of receipt
An affiliate of the Assignee will need to provide a guarantee to ROC (releases assignor from obligations)

If a Company wishes to assign part of its Participating Interest ROC has the option to assign it to a nominated Iraqi entity on the same terms (Art 28.4)
Entering the Upstream Market - Lukoil

On 31 January 2010 Lukoil signed a Technical Service Contract (TSC) whereby they obtained a 56.25% operator stake in the 20-year TSC for the West Qurna 2 Field.

Statoil took a 18.75% stake, while two state-owned companies, South Oil Company and North Oil Company shared the remaining 25%.

Statoil agreed to sell its stake in the West Qurna 2 Project to Lukoil and Iraqi authorities have approved the sale.

The sale has been completed in May 2012.

Lukoil is the sole foreign partner in one of Iraq’s biggest new oil projects.
The Kurdistan Region: Legislative Framework

The Oil and Gas Law of the Kurdistan Region- Iraq, Law No. 22 of 2007

Article 3 (First): Ownership of Petroleum is consistent with Article 111 of the Federal Constitution: “oil and gas are owned by all the people of Iraq in all the Regions and Governorates.”

Article 3, Revenue: the Regional Government is entitled to share in revenues from existing and future fields.

Article 3 (third), Federal Cooperation: the Regional Government will oversee and manage Petroleum Operations under Federal jurisdiction jointly with the Federal government, as per Article 112(1) of the Federal Constitution.

Article 3 (Fourth) and Article 7, Role of the State: the Regional Government shall oversee and regulate all Petroleum Operations not under express Federal control as per Article 115 of the Constitution, and the Minister of Natural Resources of Kurdistan can exercise his powers to ensure sound management of the Petroleum industry (respectively).

Article 11: State Oil Company (KEPCO) may compete with other companies to obtain a contract in respect of fields which are not yet in production.

Article 24: Exploration and Development contracts will be available to qualified contractors who demonstrate capacity and good corporate citizenship. They must enter into a Petroleum Contract with the State, usually on the basis of a Production Sharing Contract (PSC).

Article 37 (First): Exploration is split into a maximum of 2 periods (3 years + 2 years), extendable by 2 years for a maximum of 7 years. In the event of Discovery, Development Period is 20 years with possibility of a 5 year extension.

Article 37(6): Royalty on Petroleum produced is at a rate of ten percent (10%) of Gross Production.

Article 50, Dispute Resolution: the Minister may decide all disputes. In the event of a dispute between the Minister and a contractor, disputes are resolved by arbitration with regard to the 1965 Washington Convention or the regulations of the International Centre for the Settlement of Disputes between States and Nationals of other States, or other specified regulations.
In the Kurdistan Region, there are no bidding rounds and the Government privately negotiates with bidders. Few unlicensed blocks remain forcing new-comers to acquire existing interest.

Methods of entering the market:
- Assignment of an existing interest by an existing PSC contractor
- Acquisition of [an interest in] a PSC contractor
- Assignment of the KRG Government Interest
- Assignment of the Third Party Interest (TPI) held by KRG

Many of the PSCs have been published on the KRG’s website: http://www.krg.org/pages/page.asp?lngnr=12&rnr=296&PageNr=1
Overview of the industry developments in the midstream sector with reference to a planned new crude oil export pipeline to be implemented on a build, own, operate and transfer (BOOT) contract basis.
Midstream: Legislation

Constitution
- Gives power to the federal government to “undertake the management of oil and gas”

Hydrocarbons Law No. 84 of 1985
- Article 47: The Minister will issue regulations defining the appropriate technical specifications required for designing, operating and maintaining installations related to transport. This will include:
  - Permitted pipeline routes
  - Prohibited areas
  - Required distance between pipelines and buildings
  - Specific design standards

Federal Oil & Gas Draft Law 2007
- Article 18: Pipelines are the property of the Federal Government
- Article 21:
  - Pipelines will be constructed and operated by an INOC subsidiary
  - Construction and operation of pipelines must be approved by the MoO
  - All activities must be carried out in accordance with international petroleum industry standards
  - Co-ordination of tasks related to transportation of oil outside the Iraqi territories is the responsibility of the MoO. The follow up of such operations is the responsibility of INOC.
- Article 22:
  - E&P contract will provide a non-exclusive right to access pipelines on reasonable commercial terms. It will also confer the right to construct and operate field pipelines to allow for transportation of oil to the main pipelines.
  - Holders of E&P rights must negotiate with INOC or its subsidiary for the right to use the main pipeline.
Midstream Industry Developments
Iraq Export Pipeline Infrastructure Project (IEPIP): Case Study

- Ageing infrastructure
- Iraq-Turkey pipeline has 0.6 million b/d capacity; today’s production rate is 3.4 million b/d
- Urgent commercial need for pipeline infrastructure investment
- IEPIP is Phase 1 of the Ministry of Oil’s Export Plan
- Pipeline from Basra, Iraq to Port of Aqaba, Jordan
- Project divided into two sections, making the size and investment more appealing to investors

Basrah, Iraq → Haditha → Port of Aqaba, Jordan

EPC → 680km → 2.25 million b/d → BOOT → 1000km → 1 million b/d
EPC: Definition

- Engineering, Procurement & Construction
- An EPC contractor will receive a fixed price to cover all matters related to the design, procurement and construction of the project and related infrastructure (including materials and labour).
- The EPC contractor will be expected to execute and deliver the budget within a specified time frame and budget.
- An EPC contract will detail, amongst other things:
  - Contract price
  - Scope of work
  - Damages payable in the event of delay
  - Bonus payments
BOOT: Definition

- Public-private partnership arrangement
- Concession contract: enables the developer to recover its investment, operating and maintenance costs
- Contractor/Project Company:
  - Designs and **builds** the project at cost
  - **Owns** and **operates** the facility for an agreed period
  - **Transfers** the facility to the government entity at an agreed price at the end of that period
- Advantages:
  - No direct control by government bodies
  - Control over time frame and budget
  - Commercial incentives e.g. tax breaks
- Disadvantages:
  - Upfront capital contribution
  - Risk and responsibility for day-to-day operations
  - Contractor is responsible for obtaining approvals and permits for the Project (subject to specific contractual provisions)
IEPIP: The EPC Parties

**Owner/Employer:**
- Ministry of Oil

**Project Company:**
- SPV owned by the Ministry of Oil

**EPC Contractor:**
- Responsible for the engineering, procurement and construction of the project
EPC: Envisaged Project Structure for IEPIP

**Project Structure:**
- Ministry of Oil is responsible for this section of the project and its arrangements
- MoO will invite tenders for the works

**Project Requirements:**
- Two parallel pipelines:
  - A crude oil pipeline with a 56” diameter; and
  - An associated fuel gas pipeline
- Tank Farm with 7 days of crude oil storage
- 3 intermediate pump stations

**Financing:**
- The MoO will finance the EPC contract through its annual budget

**Status:**
- The EPC Contract’s Feasibility Study, including technical specifications, Environmental and Social Constraints Assessments and the Concept of Security Reports has been conducted.
BOOT: The Parties

- **MoF**
  - Government of Iraq
  - Host Government Agreement (HGA)
  - US$ Guarantee in relation to Service Charge under Transportation Agreement

- **MoO**
  - Government of Jordan
  - Intergovernmental Agreement

- **MoO**
  - Government of Iraq
  - 100% owned
  - Oil Purchase Agreement

- **SPV**
  - Concession Contract

- **SGC**
  - Fuel Supply Agreement

- **SOC**
  - Transportation Agreement

- **SOMO**
  - Offtake Agreement

- **Offtaker**
  - US$ Payments

- **Project Company**
  - Contract for Services
  - Financing Documents
  - Security Documents
  - Direct Agreement(s)

- **Contractor(s)**

- **Lenders**

- **Development Fund of Iraq Account (DFI)**
  - held with the Federal Reserve Bank of New York (Iraq’s Offshore account)

- **Shareholders**
  - Shareholders’ Agreement
BOOT: Envisaged Project Structure for IEPIP

**Project Structure:**
- The Haditha – Port of Aqaba section of the project will be tendered under a BOOT scheme, whereby the contractor build, own and operate (and finance) the pipeline and associated pumps in return for a Service Charge.
- The contractor will operate and own the facilities for 20 years
- At the expiration of the 20 year concession, the ownership of the pipeline will be transferred to an SPV, wholly owned by the MoO.

**Project requirements:**
- Two parallel pipelines:
  - A crude oil pipeline with a 42” diameter; and
  - An associated fuel gas pipeline
  - 2 main pump stations
  - 4 intermediate pump stations
- Branch tie-in connecting the pipeline to the Zarqa Refinery in Jordan

**Payment:**
- Capacity Charge
- Throughput Charge
Overview of the industry developments in the downstream sector with reference to the power and refinery sectors in Iraq and the related financing aspects.
Power Plants: Legislation

Constitution
• No specific information

Legislation
• Iraqi Investment Law Amendment 2009
  – National Investment Committee can license ownership and operation of power plants larger than 30MW.
• Draft Electricity Law
  – Would allow domestic and foreign private companies to produce electricity (subject to Ministry of Electricity approval)
• Draft Electricity Regulatory Law
  – Allows for the establishment of a Regulatory Office which would govern all regulation and contract work for IPPs and PPPs.
Power Projects

Direct Procurement
- Government utility companies use their own resources to build and operate the power plant by contracting directly with contractors (EPC and O&M contracts)

Independent Power Projects (IPPs)
- A private entity agrees to finance, build, own and operate a power plant in return for the buyer (usually a government utility company) agreeing to buy the power produced on a long term basis (commonly 15-25 years)
Power Plants – Direct Procurement Contractual Structure

- **Distribution Company**
  - Bulk Supply Agreement

- **Procurer (Government Authority)**
  - Fuel Supply Agreement
  - O&M Contract
  - EPC Contract

- **Gas Supplier**
  - Fuel Supply Agreement

- **O&M Contractor**

- **EPC Contractor**
Power Plants – IPP Contractual Structure

- **Distribution Company**
- **Shareholders (Consortium)**
- **O&M Contractor**
- **EPC Contractor**
- **Procurer (Government Authority)**
- **Project Company**
- **Gas Supplier**
- **Government Authority (ie Lessor)**
- **Project Finance Banks**
- **Various Parties (e.g. Project Company Shareholders, Lessor, EPC Contractor)**

- Bulk Supply Agreement
- Shareholders’ Agreement
- O&M Contract
- EPC Contract
- PPA/ECA
- Land Lease
- Financing Agreements
- Direct Agreements

Various contracts and agreements are depicted including:
- Fuel Supply Agreement
- Land Lease
- Financing Agreements
- Direct Agreements
IPP Programme Iraq

Launched a tender for a series of IPP’s in 2010

Was cancelled in mid-2011 because of disappointing bid submissions and poor quality of bidders

International developers cited 3 key concerns

- Security issues;
- Lack of financial guarantees from the Government for the project; and
- Obligation to assume fuel risk.

Iraqi domestic electricity generation is estimated at less than a third of actual demand
Between 2012 and 2017, Iraq’s Electricity Ministry plans to spend about $38.1bn on new power generation, transmission and distribution projects.

The Electricity Ministry’s allocation in the country’s 2012 budget was $5.6bn.

An estimated $1.5bn of the total has been set aside for operating expenses and $4.1bn is to be spent on capital investments.

The majority of spending has been on EPC Contracts.

MOE is now also considering reviving IPP programme.
Refineries: Legislation

Constitution
• No specific reference

Federal Oil and Gas Draft Law 2007
• Article 2: Expressly excludes refining from its scope

Law of Private Investment in Crude Oil Refining 2007
• Article 1: Aimed at encouraging the private sector to participate in crude oil refining in order to promote the economic development of Iraq
• Article 2: Private sector can establish refineries and possess, operate and manage their facilities and market their products. However, they cannot own the land.
• Article 3: Must employ not less than 75% Iraqi personnel
• Article 10: The investor can determine the price of its oil products and sell them inside Iraq or export them to foreign markets

First Amendment of the Law of Private Investment in Crude Oil Refining
• MoO will provide the refineries with crude oil at international prices less 5% for a period of 50 years.
Refineries Standard PPP/PFI Structure

- Contracting Authority
- Shareholders
- Shareholder Support
- Project Agreement
- Shareholders Agreement
- Loan Agreement
- Security Package
- Construction Contract
- Operating Contract
- Direct Agreement
- Oil Supply Agreement
- Refined Product Purchase Agreement
- NOC

- Lenders
- SPV (Refinery Owner)
- Construction Contractor
- Operating Contractor
- Refined Product Purchaser
Iraq’s Refineries

Existing Refineries:
- Three main refineries: Baiji, Daura and Basra; total capacity: 567,000 b/d. This is substantially below Iraq’s oil production ambitions.
- These refineries:
  - Are poorly maintained
  - Have been neglected during a decade of war and sanctions
  - Suffer from irregular deliveries of crude oil
  - Encounter frequent interruptions due to operational/security issues

Planned Refineries:
- Five planned refineries: Karbala, Kirkuk, Missan, Ninewa, Nasiriyah
- Estimated $41bn worth of refining projects planned; yet less than 9% of these projects are under way
- Lack of government commitment and investment means only Nasriyah is likely to proceed, largely because it is tied to field development works.
- The ‘Iraq National Energy Strategy’ is due to be published in June 2013 and is expected to detail plans for the oil, gas and power sectors
Nasiriyah Integrated Project: Case Study

- First integrated oil field + refinery project in the region
- Companies invited to bid to develop the existing Nasriyah field and construct and operate a 300,000 b/d refinery; these two elements will be undertaken simultaneously
- The estimated capital investment required is $15bn
- IOC’s have been shortlisted for the project and were assessed on technical, financial, legal and health & safety criteria
- The qualified firms are expected to from consortia amongst themselves
- Foster Wheeler have completed a Front End Engineering and Design (FEED) Study
- The final tender protocol is expected to be released on 15 November
Some Key Criteria for Developing Energy Projects in Iraq

- Constitutional basis
- Legislative basis
- Contractual basis
- Appropriate risk allocation
- Ability to structure
- Ability to enforce:
  - Security
  - Judgments/Arbitrations
- Local participation
- Transparency
- Anti-corruption
Identifying the pre-qualification requirements in respect of main contractors contracting with the Iraqi Government and the related registration process.
Pre-qualification: legislation

Law No. 84 of 1985 (Hydrocarbons Law):
- No details of specific pre-qualification requirements
- The Minister of Oil has authority to determine “The authorized operators inside and outside the Ministry”

The Federal Oil & Gas Draft Law (the Council of Ministers version of 2007):
- Article 24 (3) provides that the criteria for prequalification shall be specified in the invitation to bidding according to the regulation and instructions issued by the Federal Oil and Gas Council. There is however no indication as to when these instructions will be issued.

Oil & Gas Law of the Kurdistan Region No. 22 of 2007:
- In order to be eligible to enter into an agreement, a company must demonstrate:
  – Financial capability
  – Technical knowledge
  – Technical ability (including direct experience in similar petroleum operations
- The company must also submit reliable documents as proof; and
- A record of compliance with principles of good corporate citizenship and a commitment to the Ten Principles of Global Compact.
Pre-qualification: in practice

- Each licensing round has particular pre-qualification requirements.
- **Fourth licensing round for 12 exploration blocks (2011-2012):**
  - Initially only IOCs which had qualified for one of the previous three rounds
  - Later extended to IOCs who had not previously qualified.
  - Criteria: Technical, legal, financial, training and health & safety
  - Previously qualified IOCs who had not entered into service contracts were re-evaluated on legal and financial criteria.
  - Points based assessment
  - A non-recoverable “qualification fee” of ID18mn to be paid in cash by each IOC.
  - In this round contractors were expressly excluded from signing contracts with the KRG.
  - Fifth licensing round is expected to be announced in mid-2013.
Companies interested in investing in the fourth licensing round who had not qualified for the three previous rounds were required to complete a pre-qualification questionnaire, providing details of their legal, technical and financial status, as well as their health and safety and training records. Such details include:

**Legal:**
- Establishment documents
- Statement of financial support
- Record of past works (completed and uncompleted)
- Legal cases in the preceding three years

**Technical:**
- Company’s projects
- Company’s proven reserves
- Experience in Technical, Economic & Environmental challenges
- Capital investment in upstream applied research activities in preceding three years
- Industry recognition awards for technical excellence
Pre-qualification Questionnaire Extracts

**Financial:**
- Audited financial statements for preceding three years
- Company credit rating for long term debts
- Size of upstream capital investment for each of the last three years
- Total assets and net profits for each of the preceding three years

**Health & Safety:**
- HSE Policy
- Relevant documents showing adopted emergency plans
- Relevant documents showing the basis of sub-contractor selection procedures and monitoring their compliance with HSE standards
- Relevant documents showing HSE incidents and their causes, results, and remedies during the preceding three years.
Pre-Qualification Questionnaire Extracts

Training:

- Total number of company employees
- Number of participants and duration of courses given for their employees
- Number of courses which were held for the hosted countries related to the exploration and development contracts
- Number of courses organised by the company for the Iraqi Ministry of Oil
- Number of postgraduate scholarships offered to different Iraqi Ministries.

The pre-qualification requirements for the as yet un-announced fifth licensing round have not been released. However, the above may be indicative as to the nature of information required from companies seeking to pre-qualify.
Overview of the rules relating to sub contracting in Iraq with reference to the relevant Iraqi laws and regulations.
Sub-contracting: Legislation

- Law No. 84 of 1985 (Hydrocarbons Law): No specific provisions regarding sub-contracting
- The Federal Oil & Gas Draft Law (the Council of Ministers version of 2007): Oil companies must announce public tenders on a competitive basis
- Regulation No. 1 of 2008 of Implementing Government Contacts, as amended, (Federal Iraq)
- Regulation No. 1 of 2011 of Implementing Government Contacts (Kurdistan)
- Iraq Civil Code No. 40 of 1950: Outlines the main principles with respect to construction and engineering contractors and sub-contractors
The terms on which a contractor may employ a sub-contractor are detailed in the Iraqi Model Technical Service Contract (“TSC”). Similar terms are also reflected in Development and Production Service Contracts (“DPSC”).

Operator may use sub-contractors of “proven capability and professional experience” on a competitive basis.

Preference must always be given to Iraqi entities provided that their experience and capabilities are competitive with those available on the international market.

Tendering for such sub-contractors must take place in accordance with the TSC, best International Petroleum Industry Practices and Iraqi law.
Federal Iraq TSC/DPSC terms

• Prior approval must be obtained:
  – From the Field Operating Division (i.e. Operator) if contract values up to or equal to $20 million;
  – From the Joint Management Committee (“JMC”) if exceeds $20 million and up to or equal to $100 million;
  – From the Iraqi Ministry of Oil if contract values exceed $100 million.

• Any sub-contracted work must be within the proposals of the approved Work Programs and Budgets

• Under the model TSC, the JMC can review the award of sub-contracts

• Contractor and Operator will have the right to terminate the sub-contract in case of violation of general business ethics by the sub-contractor. This may be either at the discretion of the Contractor or if requested by the Ministry of Oil.
Sub-Contractors: Rights & Obligations

Rights of sub-contractors under the model TSC include:

- Right to open and maintain bank accounts in foreign and/or local currencies in Iraq
- Import equipment required on a temporary basis and re-export once utilised
- Sub-contractors may import equipment for the use of Petroleum Operations exempt from customs duties to the extent they are imported in the name of the Iraqi Ministry of Oil.
- Employees of sub-contractors can import household goods and personal effects exempt from customs duties

Obligations of sub-contractors under the model TSC include:

- Must adequately insure their risks under the sub-contract
- Must employ Iraqi nationals having the required qualifications and experience where possible
Sub-contracting in Iraq

**Issues should be considered:**

- Do the Government’s Procurement regulations No. 1 of 2008 apply?
- What percentage of the contract can be subcontracted?
- Should there be a declaration of possible subcontractors prior to the bid evaluation?
- Is the subcontractor itself allowed to sub-contract?
Sub-contracting in KRG

KRG Model Production Sharing Contract (“PSC”):

- Contractor must ensure the subcontractor has all requisite experience and qualifications
- Contractor must give priority to subcontractors from Kurdistan and other parts of Iraq to the extent that their services are comparable with those provided by foreign companies

In practice:

- The Ministry of Natural Resources (MNR) requires that all sub-contractors be sourced from a list of authorised sub-contractors
- Contractor must provide Management Committee (MC) with details of subcontractor selection criteria (commercial and technical); and the estimated value of contract
- Selection of subcontractors must be approved by the MC
- May be possible to incorporate other sub-contractors onto the list of authorised sub-contractors with use of a pre-qualification questionnaire or by assisting in their registration with the MNR
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