



Iraq – an analysis of the opportunities
and challenges generated by the war

MAYER
BROWN
ROWE
& MAW

Introduction

Imagine a country with no national mobile phone network but with 11% of the world's proven oil reserves, the world's 10th largest natural gas reserves and fertile soil ideal for productive agriculture. Imagine a country crippled by the effect of economic sanctions, starved of any substantial investment in transportation and infrastructure, suffering from a lack of power generation and distribution infrastructure and where substantial damage to major buildings has been inflicted by the ravages of war. Finally, imagine the potential future oil revenues, add to that immediate funds available from the United States and the potential of finance from the World Bank, the International Monetary Fund and a wealth of private finance.

It is little surprise that companies the world over are beating a path to the door of Iraq, hoping to profit from the apparent commercial opportunities implicit in such a unique situation. How real are these opportunities, and will Western companies be able to share in them? Who is awarding the contracts for the rebuilding of Iraq, and what law will govern them? With the potential rewards will there be risks? If so, how can these be managed?

For some companies whose business and commercial contracts may have been adversely effected by the “war”, what redress can they seek and against whom? These are the issues that this paper considers briefly below.

Sanctions – UN Resolution 1483

Sanctions have been in place against Iraq since the invasion of Kuwait in 1990 by virtue of UN Resolution 661 and subsequent resolutions which prohibited trade with Iraq and the provision of financial or economic resources to Iraq. The opportunities for US and other western companies to do business in Iraq have, therefore, been extremely limited for the past 13 years. Such investment which has taken place was largely under the Oil for Food Programme (UN Resolution 986), which authorised Iraq to export oil in exchange for food and other humanitarian necessities paid for by the income of authorised oil export.

The UN Security Council adopted Resolution 1483 on 22 May 2003. In summary, this resolution :

- ended sanctions against Iraq established by resolution 661 and subsequent resolutions (save with the exception of prohibitions related to the sale or supply of arms and related material);
- gave the UN Secretary General authority to appoint a Special Representative to work with the occupying forces in rebuilding Iraq;

- lifted the restrictions on oil exports, but provided that the revenues from the sale of petroleum, petroleum products and natural gas from Iraq shall be deposited in a Development Fund for Iraq held by the Central Bank of Iraq; and
- provides for the termination of the Oil-for-Food programme within six months.

Legislation in the United Kingdom is being prepared to lift economic sanctions and to implement the new measures outlined above. To remove the need for exporters and suppliers to continue to apply to the Export Control Organisation for individual licences until such time as the legislation comes into force, the Department of Trade and Industry has issued two open general licences which came into force on 23 May 2003.

The comprehensive U.S. economic embargo against Iraq was imposed thirteen years ago pursuant to Executive Orders 12722 and 12724 issued by former President Bush. The Iraqi Sanctions Regulations, 31 C.F.R. Part 575, administered by the Treasury Department's Office of Foreign Assets Control (OFAC), implement the Executive Orders.

On 27 May 2003, OFAC announced the issuance of a general license authorizing commercial transactions that were previously prohibited by the Iraqi Sanctions Regulations. This action followed OFAC's issuance on 7 May 2003 of general licenses permitting activities related to humanitarian relief and reconstruction efforts in Iraq. OFAC's actions, along with the U.N. Security Council Resolution of 22 May 2003 lifting the multilateral embargo of Iraq, will open up significant business and trade opportunities for U.S. companies.

Several restrictions remain on doing business with Iraq, however: transactions involving stolen Iraqi cultural property, and other items of archaeological, historical, cultural, rare scientific, and religious importance are prohibited. Trade in arms is prohibited. Transactions with certain parties and entities, such as Baath party officials and certain other Iraqi officers and agents, are prohibited.

Export and re-export of certain goods and technology (including technical data) still require a license from the U.S. Government. Applicable regulations must be reviewed prior to any export or re-export to Iraq.

What commercial opportunities may be available in Iraq to western companies?

The general advice from western governments at present is that the security situation in Iraq remains dangerous and fluid. In the United States, for example, passport restrictions remain in place. Commercial opportunities in the short term appear to be limited mainly to contracts to be issued, and which have been issued, by the United States Agency for International Development (USAID) and the Department of Defense (US Army Corps of Engineers). In the long term, however, once a competent Iraqi government has been established, it is likely that it will take the lead in procuring the rebuilding, upgrading and modernisation of the country's infrastructure. In part this will be paid for by the United States, but oil and natural gas revenues and possibly finance from the World Bank and the International Monetary Fund are considered vital. Indeed the UN has called on the World Bank and the International Monetary Fund to assist in the redevelopment and rebuilding of Iraq. Given the extent of the rebuilding required and the size of some of the likely projects, it is highly likely that private finance will also play a large part in years to come.

The key industry sectors which are considered likely to provide commercial opportunities for western companies in the future are agriculture, petroleum and construction.

Agriculture

Iraq has two major rivers and fertile soil in much of the country. Major agricultural commodities include wheat, barley, rice, cotton and dates – about one fifth of Iraq's territory consists of farmland. However, not surprisingly, due to lack of investment and poor technique, the resources are far from being fully utilised and there is a need for significant investment to increase crop production.

Oil

Iraq is probably best known for its oil fields which are second only in size and capacity to Saudi Arabia. The two major oilfields are Rumalia in the south and Kirkuk in the north. Revenues from the sale of oil will, in the future, undoubtedly play a huge part in financing the rebuilding and modernisation of Iraq. UN Resolution 1483 provides that the future revenues from the sale of petroleum, petroleum products and natural gas from Iraq will be deposited into a development fund for Iraq (to be held by the Central Bank of Iraq) and audited by the UN. Such funds shall be distributed for the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, and for the continued disarmament of Iraq.

Considerable investment is needed to upgrade Iraq's oil sector infrastructure to increase production to pre-1991 levels but also, equally importantly, to improve safety standards. The neglected state of the oil sector infrastructure in Iraq has long been appreciated, and, indeed, part of the revenues generated by the Oil for Food programme were earmarked for oil industry spare parts and equipment to increase production and export of oil.

The Iraq Oil ministry and Iraq National Oil Co (INOC) have intimated that post-sanctions, Iraq should return to its status of a major exporter and although activities are underway to attract foreign investment, existing Iraqi institutions will still play a vital part in that process. The oil industry board is being formed under the leadership of Phillip Carroll (former chief executive of Shell Oil Corporation) and the proposed appointment of Thamir Ghadhban (a key industry player) to head the Oil Ministry suggests that foreign investment for energy projects is a priority.

Construction

The construction opportunities presented by the lifting of sanctions are many and varied and can be summarised as follows:-

Ports – The ports at Umm-Qasr and Basra are in urgent need of significant upgrade and development. Significant dredging is required in the approaches to the ports. Indeed, Bechtel (who have been awarded an emergency infrastructure repair and rehabilitation contract by USAID) have already let sub-contracts to Great Lakes for the initial emergency dredging of Umm-Qasr port and for a marine survey of abandoned dredges at Umm-Qasr port.

Transportation - Construction works will be required at Iraq's two international airports at Baghdad and Basra, and major infrastructure projects on railways and roads are also likely.

Power - It is expected that the poor state of Iraq's power generation and distribution infrastructure will present numerous opportunities in the power sector. Iraq's power generation capacity has traditionally failed to keep up with demand. The electricity output in early 2003 stood at roughly 4.5 gigawatts, and is derived primarily from the Baiji and Mosul thermal plants and the Saddam Hydroelectric dam on the Tigris. It is estimated that the current demand for electricity in Iraq is approximately 6.6 gigawatts. To give some idea of current problems, according to the Office of the Coalition Provisional Authority (OCPA), 46% of the required demand for power is currently being delivered to Baghdad, although this is estimated to improve when power transition lines are repaired in due course. The opportunities for the major manufacturers of power generation equipment and EPC contractors are readily apparent.

Water - The most urgent works required are to Iraq's water and sanitation infrastructure which are in dire need of repair. Due to lack of investment, lack of maintenance and training and the absence of professional operating personnel, water and sewage treatment plants have deteriorated. Less than half of the rural population has direct access to piped water, and only half of the country's sewage treatment plants are operational. As a result, it is understood that nearly 500,000 tons of raw or partially treated sewage are discharged daily into Iraq's rivers, leading invariably to water borne diseases.

Other industries - There are many other opportunities in Iraq. For example, there is currently no mobile telephone network in Iraq, and there is very limited access to the Internet due to the lack of computers in the country. The industrial sector includes such industries as petrochemicals, phosphate, cement, paper and textiles.

Who awards the Contracts?

To date, USAID (a US Government Agency), has awarded eight contracts for work in Iraq. The President's budget request contained a figure of US\$1.7 billion for the reconstruction of Iraq. The prime contracts will be awarded to US firms. USAID chose to limit competition (in compliance with the Federal Acquisition Regulation) for the Iraq reconstruction contracts, to certain US companies that were considered to have a combination of demonstrated technical capability, proven accounting mechanisms, and the ability to field a qualified technical team on short notice. Non-US companies were not eligible for these prime contracts.

The capital construction contract awarded to Bechtel provides for the following:-

- emergency repair and rehabilitation of power generation facilities, electrical grids, municipal water systems, sewage systems, airport facilities;
- the dredging, repair and upgrading of the Umm-Qasr seaport; and
- the reconstruction of hospitals, schools, ministry buildings, irrigation structures and transportation links.

The goal is to repair, or to rehabilitate, up to 100 hospitals, 6000 schools (out of approximately 25,000), up to six airports and one southern seaport. The contract is worth up to US\$680 million over 18 months.

The US Corps of Engineers is also awarding contracts for restoring oil production, oil refining and gas processing. Indeed, it has already awarded three contracts in anticipation of potential contract requirements in US Central Command's area of operations. These

contracts were awarded to Washington Group International, Fluor Corporation and Perini Corporation. It is also understood that a contract was procured with Kellogg Brown & Root (a subsidiary of Halliburton Co.) in relation to the potential restoration of Iraqi oilfields, to production levels attained prior to the outbreak of hostilities with Iraq.

Subcontracting

Whilst it appears that the award of contracts from USAID and the US Corps of Engineers will be limited to US companies, there is no such restriction on subcontracting. Thus, prime contractors such as Bechtel, Fluor Corporation, and Washington Group International will be able to award subcontracts to qualified US and foreign companies. The latter will include – but not be limited to – companies located in coalition partner countries. In January 2003, USAID waived a standard procurement provision known as “source and origin” to allow a greater number of companies to compete for subcontracts. Applications should be made direct to the prime contractors, all of whom are named on the USAID website (www.usaid.com). Bechtel is understood to have received nearly 5000 enquiries as of May 2003.

Indeed, Bechtel has already entered into a number of subcontracts, and it is reported that it may subcontract up to 90% of the work. The form of subcontract and applicable law will be matters to be negotiated in the usual way, but it is expected that subcontractors will have to contract on the standard terms and conditions imposed by the prime contractors, and will have to comply with US and international law. The procurement of such contracts will be governed by US procurement rules and regulations, and legal advice may need to be sought in relation to such matters.

What are the risks of working in Iraq?

For western companies operating in foreign countries, there are often perceived to be increased risks. Such risks typically include changes in laws, increased taxes, burdensome regulations and red tape and, on occasion, the appropriation or nationalisation of assets without compensation. Those types of risk can of course be managed in a variety of ways, whether by political risks insurance or more recently with the protection afforded by bilateral investment treaties entered into between two states and providing for the protection of the investment of a company from one contracting state made in the territory of the other contracting state.

However, in the short term at least, the risks of doing business in Iraq are likely to differ from the above. Funding is in place from the US Government and the future Iraqi Government is likely to be US backed. So what are the legal issues and risks which are likely to arise when western companies are considering doing business in Iraq?

There are a number of factors to consider:-

1. Most of the prime contracts will be with large American contractors (such as Bechtel, Fluor Corporation, Washington Group International).
2. Subcontractors will, therefore, initially be contracting directly with US companies and not with the US or Iraqi Governments. These companies are in very strong bargaining positions, not just because of the anticipated competition for each subcontract but because of their sheer size and reputation. The negotiation of the subcontracts and the allocation of risk therein are matters which will need to be carefully considered.
3. It is highly likely that most subcontracts will be subject to US law and it is important that western companies are familiar with US law and its implications before entering into such contracts. There are some key differences to, for example, English law and specialist advice should be sought.
4. The US prime contractors will seek to incorporate into the subcontracts regulations found in the prime contracts, and subcontractors will be expected to comply fully with procurement regulations in the United States. Those subcontractors not familiar with such rules and regulations should seek specialist advice regarding the Federal Acquisition Regulations and the USAID Supplements.
5. Cumbersome import and customs regulations and delays are likely whilst the new Iraqi government is in transition, and subcontractors should carry out their due diligence on these matters before signing up to tight and (potentially) unachievable construction programmes – the USAID contracts issued to date cover such matters as airport administration and logistical support for reconstruction, but the ports and airports require major work before they are operating at full capacity, and it would not be a surprise to find that this leads to significant delays importing goods, materials and equipment into Iraq. Subcontractors should consider, when negotiating subcontracts, whether potential delays which are entirely outside of their control (but which might be foreseeable) should be “force majeure” events, or matters entitling them to time and compensation. This will possibly be the most important area of contract negotiation that subcontractors face.
6. The greatest risks are likely to be physical – terrorism and sabotage against western companies are considered likely, and the effect of such activities should be dealt with up front in the contract documentation. Standard forms of contract (such as FIDIC) usually make the employer bear the risk of war, terrorism and hostilities, but it would be no surprise if such risks are sought to be passed onto subcontractors on the grounds that such events are foreseeable in Iraq.

7. Security of the subcontractor's personnel will of course be a key issue to consider, and it is likely that subcontractors will have to provide their own security arrangements which may be problematic and costly and should be properly investigated before contract sums are agreed. The security situation in Iraq remains unstable, and the possibility of terrorist attacks against western citizens and facilities remains high. Lawlessness continues in many parts of the country. Police forces are emerging under the supervision of Coalition Forces. Nevertheless, employers have a duty to look after their workforce, and a higher degree of security than would be usual will be required.
8. Insurance – the insurances that will be required are considered below, but once again, as with security arrangements, the cost of insurance is a matter which should be priced up front prior to agreement of the contract sum. Further, many insurers may still not insure business activities in Iraq.
9. Whilst construction subcontracts may not be subject to Iraqi law, it will be important for some western companies doing business in Iraq to have at least knowledge of the local laws and requirements, which may nevertheless impact on the construction works.

Insurance

For companies involved in the reconstruction of Iraq, insurance will be of prime importance. The types and level of insurance required by the construction contracts will of course vary according to the scope of work and services to be provided. In relation to the construction contracts, it is likely that the usual types of basic insurance will be required, such as:-

- Third party liability insurance
- Construction All Risks – for contractors and large subcontractors
- Professional Indemnity Insurance – for consultants or contractors carrying out design work
- Employer's Liability Insurance.

Of course, other types of insurance will come to the fore, given the peculiar situation in Iraq, and it is likely that political risk insurance and other forms of business interruption insurance may be offered by insurance markets at the request of construction companies. The sorts of risks that insureds may look to cover will include expropriation, contract frustration, forced abandonment, selective discrimination and perhaps also non-honouring

of guarantees and arbitration awards. Premiums may at first be high, but the insurance industry has shown itself willing to quickly reassess country specific risk if there is the spectre of real stability on the horizon. OPIC, for example, is exploring political risk and expropriation coverage for exporters and contractors involved in the reconstruction of Iraq.

Policy wordings will need to be checked closely for any exclusions and employers will need to check that any employees sent to do work in Iraq are covered by existing policies and do not fall within a restriction or exclusion – the same can be said for other policies such as travel insurance, group personal accident and medical, and aviation and marine policies.

Financing development

Finance for rebuilding Iraq will come from a variety of sources. Oil revenues will, in the long term, fund most of the reconstruction. Currently, the US is funding the contracts already in place and will continue to do so for some time and the EU has allocated money for humanitarian relief. It is possible that the World Bank and International Monetary Fund will also become involved in the not too distant future although it is likely they would need to see a government in place before loans could be made. Private financing institutions have also expressed interest, although it is thought unlikely that there will be any major private project financing from non-Arab institutions in the next few years.

Currently the Iraqi constitution prohibits private ownership of natural resources, including foreign ownership of real estate and foreign investment by non-Arab countries. Iraq's large international debt is also a factor to consider for lenders participating in reconstruction projects, although the effects of this may be mitigated by UN Resolution 1483 with the proceeds of oil revenues being safeguarded as explained above.

Other factors likely to restrict project financing in the short term may include difficulties obtaining adequate project risk and commercial insurance, or cover from export credit agencies, as well as the lack of multilateral lender involvement or a reliable local banking sector. The political situation and legal environment will also have to improve before commercial or official lenders will commit funds to long term projects.

In the meantime, sponsors will have to bear the financing risk, although export related industries may be able to raise structured trade credits, such as pre-export financings and buyer and supplier credits.

Claims against the State of Iraq

It is not altogether clear at this juncture quite how many claims there are likely to be against the new Iraqi Government which, for the purposes of international law, will be responsible for any contracts entered into under the former Iraqi Government led by Saddam Hussein.

It is inevitable that companies will attempt claims against Iraq, for contracts entered into by the previous regime. Given the economic sanctions, relatively few western companies contracted with Iraq, but German, French and Russian companies had dealings and interests, particularly in the oil sector, with the former Saddam regime. These companies will want their arrangements honoured by the new regime, and it is inevitable that disputes will arise if they are not.

Iraq is not party to any bilateral investments or multilateral agreements and, therefore, it seems that claims against Iraq under such agreements will not be possible.

It is also possible that there will be claims arising out of the Oil For Food programme, which has now been terminated by UN Resolution 1483.

Another consideration for private interests will be the extent to which any judgement can be enforced against Iraq. Whilst Iraq has civil remedies for domestic business disputes, it is not party to the New York Convention or Washington Convention, and there is no provision for the recognition or enforcement of non-Arabic foreign civil judgements or arbitral awards.

Further, Resolution 1483 provides that all funds or financial assets of Iraq located outside of Iraq and funds removed from Iraq by the former regime shall be frozen and immediately transferred to the Development Fund for Iraq, meaning that the enforcement of judgements against assets outside of Iraq may be difficult. Claims will have to be presented to the new government of Iraq. Resolution 1483 also provides that petroleum, petroleum products and natural gas are all immune from legal proceedings and cannot be the subject of any attachment, garnishment, or execution.

Much has been written about the legality of the war with Iraq. This has led to speculation that there may be claims against the US or UK Governments in due course by companies whose business has been adversely affected by an illegal war.

Further, it is possible that claims will arise out of the procurement process of the reconstruction contracts. Indeed, it is possible that the European Commission will investigate the legality of the US contracting process for Iraq. Whilst there do not appear to have been any complaints from members of the European Union at this stage, it has

been reported that the EU Commission expressed concern that the United States was breaching World Trade Organisation rules and discriminating against European companies when awarding contracts.

On any view, issues of public international law and private law will be of paramount importance.

Our Experience

Mayer, Brown, Rowe & Maw is among the world's leading international legal advisers – providing local insight with a global perspective through commercially astute and approachable lawyers who have a passion for client relationships. In 13 offices worldwide, the combined practice has over 400 partners, 1300 lawyers and nearly 3000 staff. Mayer, Brown, Rowe & Maw won The Lawyer Magazine “Management Team of the Year” in 2002 and the “Most Enterprising Law Firm” at the 2003 Legal Business Awards. We have considerable experience of advising clients on doing business and projects in the Middle East and have been shortlisted by the Lawyer Awards for Global Law Firm of the Year (2002).

With particular strengths in construction and engineering, energy and infrastructure, international arbitration and dispute resolution, insurance/reinsurance, project finance and US government procurement and trade sanctions, we are perfectly placed to advise on the various issues contemplated by this paper as likely to arise in post-war Iraq. Further details of our experience in the Middle East is listed below in Appendix 1 and office details are provided in Appendix 2. We are also able to draw on specialist advice from consultants based in the Middle East where necessary.

Construction and Engineering Group

Mayer, Brown, Rowe & Maw has one of the leading construction and engineering practices in the world and have many years of experience acting for owner/developers, architects, engineers, EPC contractors, construction managers, major suppliers and specialist subcontractors. We regularly advise companies involved in construction around the world on the drafting of their contracts, procurement issues and regulations and matters such as construction insurance and health and safety.

We can advise on a wide variety of court litigation, domestic and international arbitrations, dispute review boards, and mediations around the world, involving contested claims for delay, disruption, loss of productivity, out-of-scope work, excessive change orders, design errors and omissions, and contract breach. Our lawyers include former engineers and surveyors who have a wealth of industry knowledge and understanding that is invaluable in the preparation and negotiation of complex engineering and construction contracts and

disputes. The Construction team works closely with the project finance teams on major infrastructure projects around the world.

“A first rate construction team... one of the best in the business”

(Chambers & Partners Guide to the Legal Profession 2002)

US Government Procurement and Trade Sanctions

Mayer, Brown, Rowe & Maw has extensive experience in advising companies wishing to obtain or challenge US government contracts. We are familiar with the complex regulations applicable to the award of such contracts, as well as with the procedures for protesting unfairness in the procurement process. The Firm also has very considerable experience in advising on the variety of US trade sanctions that may still restrict certain business activities relating to Iraq, including restrictions enforced by the Department of Commerce, the Treasury and State.

Dispute Resolution

Mayer, Brown, Rowe & Maw has one of the largest dispute resolution practices in the world.

With over 300 specialist litigation lawyers worldwide, we are well placed to offer our clients an invaluable depth and breadth of experience across all areas, including international construction and project finance.

“Peers commend this firm for its involvement in matters of considerable size, complexity and commercial sensitivity”

(Chambers & Partners Guide to the Legal Profession 2002)

We also specialise in all forms of alternative dispute resolution and have one of the leading International Arbitration practices in the world.

Our lawyers have immense knowledge and experience and our clients benefit from seamless legal representation and the highest quality advice, to enable them to make the best commercial decisions.

The Finance Group

Mayer, Brown, Rowe & Maw’s finance group advises on all aspects of domestic and cross-border financing transactions. We have teams that specialise in syndicated lending, securitisation, project finance, PPP/PFI, acquisition finance, capital markets, trade finance, tax based lending, leasing and asset finance and real estate finance. Moreover, with over

200 hundred lawyers throughout the firm, the finance group can provide all the support and expertise that our clients require. The group represents financial institutions in a full range of transactional activities and is recognised as an industry leader in particular fields such as securitisation and project finance.

Mayer, Brown, Rowe & Maw is also active in project financing transactions around the world and in all major sectors, including power, oil and gas, telecom, mining, transport, water/wastewater, as well as PFI/PPP, hotels and sports and exposition facilities. We represent commercial and investment banks, multilaterals and ECAs, sponsors/developers, suppliers and other transaction participants. We also have particular strengths in securitisation, cross-border leasing and capital markets transactions, and therefore provide clients with services across the full range of project finance structuring options. Our multi-jurisdictional capabilities, varied practice strengths and depth of experience make us ideally placed to advise on project finance transactions in the Middle East.

Insurance/Reinsurance

Mayer, Brown, Rowe & Maw's Insurance and Reinsurance Group has extensive experience of litigating and arbitrating complex and multi-jurisdictional disputes arising from all forms of reinsurance contracts underwritten in the London and international insurance and reinsurance markets. We have had practical experience of advising on and resolving disputes arising from the Iraqi invasion of Kuwait in 1990 and the resulting first Gulf war; in particular, the application of war exclusion clauses and "event" based aggregation clauses. We are well placed to advise on the likely insurance requirements/consequences of doing business in post-war Iraq, arising not only from our own expertise and experience, but from our understanding of regulatory regimes and contacts with local law firms based in the region.

Energy, Oil and Gas

Mayer, Brown, Rowe & Maw has been advising clients in the oil, gas and energy sectors for decades and has developed an in-depth understanding of the issues facing all involved in the industry. Our experience includes advising operating companies, lenders, sponsors, governmental/public sector bodies and others on a worldwide basis including the Middle East.

Our range of experience includes advising companies on a wide range of concerns including:

- Exploration & production;
- Refining and marketing;

- Transportation & pipelines;
- Chemicals;
- Alternative energy;
- Co-generation plants;
- Power development; and
- Energy management outsourcing.

Exploration and Production We represent producers of oil and natural gas in regulatory and operating matters. Clients also rely on us to advise in negotiating, drafting, and reviewing leases, assignments, pooling and unitisation matters, operating agreements, joint venture agreements, property acquisition, and exploration and development agreements.

Refining and Marketing We represent refiners and marketers of petroleum products in matters including environmental compliance and litigation, commercial litigation, franchising, labour and employment, pricing, antitrust, and trademarks and trade dress.

Transportation/Pipelines We represent owners and operators of pipelines and other transportation facilities, on matters including project finance, joint venture structuring, transactions, environmental law, and litigation.

Chemicals We represent major petrochemical and chemical companies on transactional, environmental, and litigation matters, among others.

Alternate Energy We represent various companies involved in developing alternative energy sources such as solar, wind and geothermal.

Co-Generation Plants We advise petroleum companies on developing co-generation facilities throughout the world and are experienced in negotiating, structuring, and arranging financing for co-generation facilities.

Power Development We have represented numerous energy companies in the development of fossil fuel and renewable energy power facilities.

Energy Management Outsourcing Our Energy Management Outsourcing (EMO) practice serves both vendors and customers in what has become the highly competitive wholesale energy market created by the deregulation of traditional energy services. Like more traditional outsourcing transactions, EMO deals can take many forms. We have advised on single or multiple vendor, outsourced or out-tasked, or customer/vendor joint venture agreements.

Contacts

For further information on the issues raised herein, please contact your usual partner or alternatively:-

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Washington, tel 001 202 263 3214

Links and Further Information

There is a wealth of information on the opportunities in Iraq on the Internet and we list below some helpful websites which contain up to date information and guidance:-

www.tradepartners.gov.uk

www.usaid.gov/iraq

www.export.gov/iraq

www.un.org

www.bechtel.com

www.dti.gov.uk/export.control

APPENDIX 1

MIDDLE EAST EXPERIENCE

- Advice to insurance underwriters concerning claims arising out of an explosion of Ahamadi Refinery, Kuwait. (2002)
- LCIA Arbitration proceedings for Arabian Oil Company arising out of a construction project in Kuwait.
- Represented Ex-Im Bank in a \$435,000,000 project financing of a 1,250 tbd anhydrous ammonia plant in Suez, Egypt. Borrower is Egypt Basic Industries Corporation. EPC contractor is Kellogg Brown & Root. (2001)
- Represented IFC in connection with limited recourse financing of the Khalda oil and gas concession development in the western desert of Egypt. (2001)
- Represented IFC in connection with the limited recourse financing of Qarun oil and gas concession development in the western desert of Egypt. (2001)
- Represented the senior management of Al Ahram Beverages Co. (ABC) in the sale of the Egyptian brewer to Heineken International B.V. in a transaction valued at approximately US\$350 million. (2002)
- Advising on a very substantial arbitration against a Turkish state owned company, sited in Switzerland. (2001 – 2002)
- Represented United Pan-Europe Communications, N.V., in its claim against a state for expropriation of assets. (2002)
- Represented a major Turkish bank in a \$200 million securitization of MT100 payment flows. (December 2002)
- Defended AIG Europe (UK) against a claim by the United Bank of Kuwait in relation to a claim for wrongful purchase of securities. (2002)
- Represented Capital Market Authority of Oman, an agency of the Sultanate of Oman, in identifying and pursuing claims against the Oman National Investment Corporation. (2002)
- Represented BA Leasing & Capital Group in connection with a U.S. leveraged lease with Cyprus Airways Limited as lessee capitalized by a combination of debt and a U.S. originated equity investment. (2002)

- Represented Sloutsker, Olga and World Fitness Corporation in breach of joint venture agreement in Cyprus. (2002)
- Acted for Bank of America, N.A., in connection with its arranging and participating in a US\$24 million credit agreement for the Republic of Turkey. (2001)
- Acted for Bank of America, N.A., in connection with its arranging and participating in a US\$40 million credit agreement for the Republic of Turkey, and in respect of its fee arrangements with Mapa Insaat Ve Ticaret A.S., a Turkish contractor. (2001)
- Assisted Case Corporation in connection with the establishment of a proposed Joint Venture in Turkey. (2001)
- Pursued an administrative claim for property damage to a maternity hospital in Bethlehem, West Bank, arising from Israeli military operations. (2001)
- Advised Cargill on antitrust issues in connection with the possible formation of a joint venture involving the Turkey Hatcheries Of Cargill and AG Forte llc. (2001)
- Represented Bank of America Securities, as arranger, and the purchasers, in the issuance of \$100,000,000 of trust certificates by a New York trust created by Akbank T.A.S. to own Akbank's current and future credit and debt card voucher receivables. The transaction was insured by MIA Insurance Corporation. (2001)
- Assisted FMC Corporation in appeal concerning the Hague Commission for Resolution of Iranian Claims. (2000)
- General representation of Surface Technologies Ltd., an Israeli company, in the friction reduction industry. (2000)
- Represented J.P. Morgan Securities, as arranger, in the issuance of several series of OPIC - insured trust certificates (benefiting from an OPIC political risk guaranty) by Ford Otosan OPIC Insured Certificates Grantor Trust. (1999-2000)
- Represented Credit Suisse First Boston and Merrill Lynch International, as underwriters, in a secondary offering of 36.4 billion shares of Garanti Bank. (2000)
- Assisted Deutsche Telekom AG in acquiring a stake in Telsim Mobil, one of Turkey's two GSM 900 Operators. (2000)
- Represented Bank of America Securities LLC as underwriter in the Rule 144A/Reg S issuance of \$50,000,000 and Euro 75,000,000 of trust certificates of Finansbank Trade and Diversified Payment Rights Master Trust, a master trust created by Finansbank A.S., secured by trade payment rights. (2000)

- Acted for Bank of America, N.A. Structured Trade Finance in connection with it arranging and participating in a US\$25 million credit agreement for the Turkish Municipality of Iskenderun Guaranteed by the Republic of Turkey. (2000)
- Represented Soros Fund Management in its investment in Israeli Venture Fund. (2000)
- Assisted Marconi PLC with creation of a new company to develop software in Israel, transfer of employment and initial capitalization. (2000)

APPENDIX 2 – List of Offices

BEIJING

MBP Consulting Limited LLC
1504 China World Trade Center
No. 1, Jianguomenwai Avenue
Beijing, 100004
PEOPLE'S REPUBLIC OF CHINA
Main Tel Number 00 86 10 6505 5319
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