

# Kluwer Arbitration Blog

## Is Iraq Fully Open for Business? Not Yet, But Very Soon | Iraq Energy Conference 2018

Noor Kadhim (Armstrong Teasdale) · Saturday, April 7th, 2018



The 4<sup>th</sup> Iraq Energy Forum (IEF), coinciding with the 10th anniversary of the Iraq Energy Institute, took place this year on 28-29 March at the Rasheed Royal Tulip Hotel. Politically and economically, the context of this IEF was important. The context was that the global reconstruction package in Kuwait had been agreed with the IMF and others merely two months prior to the IEF, and the country is preparing for national elections. My intervention at the forum, upon the invitation of the IEF founder, Luay Al Khateeb, was to speak about the consequences of a development that many in the global legal community have been long been waiting for: Iraq's future accession to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) which I have discussed in an [earlier blog post](#), also in the context of the implications that Iraq's membership of the treaty may have on foreign direct investment (FDI) and on improving Iraq's business environment. The Iraqi cabinet's welcome announcement that Iraq will finally join the New York Convention has surprisingly been under-publicised outside of national borders. However, it is not an insignificant decision, and Iraq is aware of this.

The IEF 2018 once again brought together many (over 400) participants ranging from Iraq's economic and political decision-makers (government Ministry officials and representatives) to private sector companies (multinational banks and oil companies, and electricity and power companies). Besides the various international delegations, OPEC's Secretary, Dr Barkindo, was the Forum's guest of honour, as in 2017. His participation was key to the event as he commented on oil market share and added some insightful views on the OPEC/Non-OPEC Accord with respect to oil production cuts to balance market supply and demand.

Globally, the IEF again addressed oil (upstream and downstream) policy, and electricity/power policy, and to a lesser extent than in 2017, regional issues and the divergences between Kurdistan and federal Iraq oil policy.

In his interview with John Defterios (CNN's anchor and emerging markets editor in the Middle East), the Prime Minister emphasised four main objectives during this critical time for Iraq: (i)

encouraging Iraq to move from a purely oil-based economy (over 85% of its revenues are from crude oil) to a more diversified one, (ii) supporting and increasing private sector business and jobs (Iraq's public-to-private sector jobs ratio (a massive 80/20), is probably the highest in the world), (iii) combatting corruption at all levels, and (iv) attracting foreign direct investment (FDI).

There was much optimism at the IEF 2018 for Iraq's future thanks to the Kuwait conference but there was also some tension. This is only natural, given that the elections are imminent. There is a sense of urgency amongst the foreign and local businesses attending the forum, which was not as obvious in 2017. Last year, there was impatience amongst investors that transactions move quicker, and a desire that terms (at least with the international oil companies (IOCs)) be renegotiated to provide more balanced solutions for all stakeholders (government and business counterparties). This year, the impression was that it truly is now or never for Iraq to capitalise on the momentum generated by the Kuwait reconstruction conference and goodwill of the international community. As Alan Eyre, the Director of the Office of the Middle East and Asia for the US Department of State's Bureau of Energy Resources, emphasised ([hear his talk here](#) (after 11:30 minutes)), Iraq cannot afford to procrastinate. It must get down to the business of concluding contracts with those states and companies willing to invest in rebuilding its infrastructure. There is no room for complacency because if Iraq does not deliver, investors will go elsewhere. One of my co-panellists for the Iraq Economy session expressed his view that the "jam tomorrow" attitude of the government towards private investors (where everything is promised but nothing delivered) should change. His concern was the bureaucracy surrounding what should be straightforward commercial transactions, leading to a stifling and strangling of the private sector. Indeed, the possibility of even more red tape was hinted at, at an energy conference held [in Berlin earlier this year](#). In addition to releasing new oil blocks to investors for exploration, Iraq's ministry of oil has unveiled plans for a new that it would create a "National Oil Company" to which operational decisions on international oil policy would be entrusted. Questions remain over the legitimacy and independence of such an entity (whether it truly can be separated from the Ministry of Oil, which has so far made all decisions on oil policy). Time will tell.

And yet, despite these concerns, the outlook for Iraq at the IEF 2018 remained optimistic. Capacity building has started already, with the recent recruitment of young, talented and ambitious Iraqi nationals to the Economic Reform arm of the Ministry of Finance. These hires are for the most part alumni of the world's most established and respected investment banks. They will have a hand in forming the country's economic policy.

The political backdrop of the IEF 2018 was important for another reason. The IEF 2018 is recognised to be a great networking opportunity for which senior staff from companies such as Honeywell, Siemens, Crescent Petroleum, Uruk, LUKOIL, BP, Deutsche Bank, JP Morgan, Petronas, Total, Exxon Mobil, General Electric and many others make a considerable effort to travel to. As such, it may have been used as a tool to facilitate and organise meetings 'off-site' between government and contractors/ investors to conclude or renegotiate deals. Some important meetings were happening on the fringes of the IEF 2018, such as the unforeseen meeting to which the Ministry of Oil invited investors on Day 2 of the conference. In that meeting, the MoO allegedly brought forward a deadline for the receipt of tenders for new oilfield concessions which were to be subject to a revised contract. According to the anecdotal evidence, the IOCs now have a challenging period of only 2 weeks (ending before the elections take place) to comment on the new contract and submit their bids. It is a process that would normally take not less than 6 weeks.

But attracting FDI to Iraq depends not only on meeting halfway with investors on contract terms

and being reasonable. It is also crucial to provide investors with a stable legal framework for dispute resolution if those contracts are not respected, either by the government or by the private sector. In earlier posts, I highlighted (what for many readers of this Blog are obvious) [implications of the ICSID Convention](#) (for investment disputes) and the New York Convention (for commercial disputes) for Iraq. But what was interesting in IEF 2018 is that the same audience before whom I spoke last year, who were curious to know more about how arbitration (especially investment treaty arbitration and structuring) worked, now displayed a more savvy attitude. Between sessions, businesses approached me explaining issues they faced with certain government ministries (such as loss-causing delays on certain projects, cancelled licences) and with certain private companies (joint venture disputes, shareholder gripes). These companies are much more aware of the arbitral process; indeed, even the Iraqi state cannot be said to be ignorant. All parties are now looking for a way to solve the issues – which could involve a carefully considered and strategic arbitration, designed either to place pressure for settlement purposes, or be followed through to award stage.

I believe that on balance, the IEF 2018 was a success. As far as I am aware, unlike any other Iraqi global conference, it attracts a large and important cross-section of stakeholders who are interested and invested in Iraq's future. The IEF 2018 has generated some important discussions. The mood at this year's forum was even more positive that such discussions would soon translate to actions after years of stagnation at high-level. The Kuwait conference has spurred this. Iraq's ambitious plans to ramp up its non-oil (power generation and communications, and construction) sectors are also a driving force. Its legislative activity (signing up to international conventions that have long gathered dust) are great indicators of the state's eagerness to improve. For the arbitration community, this means not only acceding to important treaties like the New York Convention, but increasing capacity building in the institutions and relevant government departments. It is easy to forget how much this country has suffered in the last 45 years – under Saddam's rule and in the aftermath of the war that followed. No other country has suffered such a brutal sanctions regime. As John Defterios said, the resilience of the Iraqi people is truly astonishing. Hopefully, in time, Iraq will find its feet again, and truly be open for business.

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