Cards from Kurdistan #2: Banking on a Boost from a new Investment Law

The **Kurdistan Investment Law** passed on the Fourth of July 2006 won't technically be law of the land until published in the regional government's gazette, but to hear officials, legislators and business representatives in Irbil a month after its passage, a rush of investors into the region should be at hand. Such is the enthusiasm for the law and the region's commercial prospects, generally. By completing legislative action on the regional law three weeks before the National Assembly in Baghdad began its first reading of the equivalent federal investment law, the north may emerge as Iraq's welcoming first stop for fresh foreign and national investment, but results will hinge on implementation of this law by Kurdish officials and sensitive hydrocarbons legislation, as well as broader security developments countrywide.

New directions? KNA Deputy Speaker Kamal Kirkuki before Mullah Mustafa's portrait.

FUNDAMENTALLY FRIENDLY: An unofficial English translation of the KRG's new law embodies the basic tenets of today's open investment regimes: national treatment of foreign investors, up to 100% foreign ownership in non-restricted sectors (which exclude, notably, oil and natural resources), provisions for the **outright ownership of land by foreigners**, and the repatriation of both corporate profits and the earnings of foreign nationals. A concluding paragraph to the text underscores the grounds for optimism: "This law is issued for the purpose of creating a attractive, investor-friendly and encouraging environment for investment in the Kurdistan Region – Iraq to eliminate the legal hindrances … to allow the national and foreign capital to be able to work collectively or individually in the investment projects in a manner that will effectively help the process of economic development…"

Beyond a generally open framework, the drafters have added a number of incentives that they hope will draw fresh inflows of foreign capital ("to give inducements, render facilities, support and encouragement, as well as the exemption from the payment of taxes on the invested capital.") Among the incentives enumerated:

1. Option to lease or sell land to the investor by the KRG at concessionary prices:
2. The provision of utilities (if budgeted for by the KRG) to the investor to include water, electricity, sewerage, roads, communications, etc.;
3. Holiday from all tax and customs charges for ten years from entry in operation;
4. Duty free entry of capital equipment for start up and expansion – if entered through one of the customs points controlled by the KRG;
5. Duty free entry of other inputs for five years;
6. Duty free entry of spare parts up to 15% of value of equipment initially entered;
7. Extra incentives for investment projects in underdeveloped parts of Kurdistan or for projects entailing Kurdish-foreign collaboration.

The legislature of the recently unified Kurdistan Regional Government in Irbil.

NO MEAN FEAT: Passing innovative legislation in the current environment in Iraq is no small challenge, doubly so where private interests in the economy and the participation of foreigners are at issue. The effort to draft a new law for the Kurdish region also had to contemplate a parallel central government effort on new investment legislation, as well as a body of existing law. In addition to a 2004 Kurdish law on promoting investment, the province of Sulaimaniyah had adopted its own investment code. Also on the books were pre-2003 Iraqi law and the overlay of Coalition Provisional Authority orders, especially #39, which covered a variety of aspects of commercial practice. The new law supersedes the investment laws in effect in both Kurdish jurisdictions. Prior to the July draft came a December 2005 version. According to legal specialists on contract to USAID (the Izdihar program) who reviewed it, the December text diverged significantly from the version just passed. The earlier text draft reportedly provided greater detail and included positive elements such as dispute resolution options, including disputes between investors and the governmental Investment Commission called for under the draft law. It was also more specific on the function and structure of the Commission than is the new law on its comparable **Investment Board** and the **Supreme Investment Council**. On the other hand, exclusions of investment in the retail trade sector were not carried over into the new law.

Kurdish hospitality has renown; openness to outside investment is to be tested.

Both the Deputy Speaker of the Kurdistan National Assembly (KNA), which passed the law and the Deputy Prime Minister (whose administration backed it), recently described the legislative debate on the law as entailing some opposition and controversy. They both underscored what a major departure the new law signals from socialist command-and-control to free market principles. Conservative Islamists and others in the KNA reportedly had reservations, in part, because of their lack of familiarity with the idea of actively courting foreign investment, as well as specific suspicion of transferring public lands to private hands, whether foreign or domestic. Both deputies and the KRG's Minister of Trade spoke of the need to safeguard against shell companies, unknown foreign interests, and land speculators. Notwithstanding their pro-market rhetoric, even the backers of this new approach seem to be viscerally uneasy about ceding government direction or planning of even privately financed investment. It appears that much of the legislation's impetus came personally from **Prime Minister Nechirvan Barzani**, who declared at the 30 July event announcing the law that, while the government will continue as a major employer and rehabilitator of infrastructure, "the most dynamic aspect of our economy must be driven by the private sector and investors." PM

Barzani also aims to position the Kurdish Region "as the gateway for the rest of Iraq," and sees the instrumental role which a proactive, welcoming foreign investment regime must play in that gateway strategy.

Apart from the officials and legislator, the take on the new investment law by a few dozen Iraqi (Kurdish and non-Kurdish) and third-country businessmen encountered on a brief visit to Irbil was generally positive, although many admitted a need to learn more about its specifics and, crucially, its implementation. Many seem to feel that clarification of the investment rules and incentives through this new law, on top of the more permissive security environment the region already enjoys, should clear the way for U.S. and other foreign investors to quickly step up their presence in the region.

Primarily fueled by local public and private funds to date, the construction boom is likely to be a target of external investment to the region.

THE DEVILISH DETAILS: One of the general concerns for foreign businesses looking at the new law will likely be the **relatively high degree of governmental control over both investment approval and facilitation**. To the degree that centralization means a streamlining of decision-making, it can be a positive for the investor. However, the concept of a one-stop-shop, while apparently contemplated in the discussion of the law, is not explicitly called for. The law does establish a governmental Investment Board headed by an appointed chairman that responds to an inter-ministerial Supreme Investment Council, headed by the KRG's Prime Minister. **The first Board chairman is Herish Muharram Mohammad Amin.** (Mr. Herish is an electrical engineer who most recently worked for the government in Sulaimaniyah as chairman of the electricity board. He has also been program director at Save the Children Fund and headed the planning department for Habitat).

The Board will have considerable discretionary powers in granting licenses and the mandate to consult with "all concerned entities," including the line ministries with authority for taxation and other functions. It appears that all land acquisitions (and not only those of subsidized governmental plots) by foreign investors are subject to Board approval, and cannot be transacted directly between private parties. Nor are the governmental (Board) and political (Council) interests leavened by **private sector representation**. While private parties may be called on to advise on an ad hoc basis, their role in shaping investment policy or assisting prospective investors is absent from the text. The law does not allow for investment in publicly traded companies. Other critics might look for yet more in the law in eliminating constraints on investment and pro-active facilitation. For example, perhaps as part of a **"one-stop,"** assistance to the investor with visas and work permits would be a useful.

Banking on business to come: a financial services office in one of Irbil's top hotels. Corporate and project finance remain bottlenecks in this part of Iraq, too.

On the positive side, the law embodies **the key framework principles of an open investment regime** while adding tax and tariff incentives. On the negative side, the law **might have been weighted more toward promotion** than control, featured fewer tiers of bureaucracy and potential for political interference, and injected greater private sector participation in the Board. No doubt some of the concerns that have been surfaced can be addressed in the implementation phase or by subsequent fine-tuning of the law.

Another important aspect of the new investment law will be its interplay with the corresponding federal legislation currently before the National Assembly in Baghdad. The Kurdish officials encountered in Irbil are of the opinion that the KRG law is consonant with where the federal government is headed. They note, moreover, that since the Iraqi constitution does not establish investment promotion as a competence reserved to the federal government, in any conflicts that might result, regional law would hold sway. While this may be the case in most aspects of the law, **customs administration** (relevant to the KRG's incentives) is one area where a divergence of regional and federal regimes may create difficulty. To mention another contentious area, most observers feel that allowance for direct ownership of land by foreigners will prove politically unpalatable at the current time for the federal Council of Representatives. The KRG seems to be banking on its odds to end up with the more open framework and attractive incentives. It will be fascinating to watch whether and how the federal legislators take up the challenge when they return to their debate of the draft federal investment law in late September

Businessmen and women from around Kurdistan and the north gather for an animated discussion of the new investment law and business prospects for Iraqi and foreign firms.

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