Fisheries Development Projects

Presentation to the PILON Annual Meeting
Frank McLaughlin, Partner and Maree Newson, Solicitor

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Who we are

- Chapman Tripp
- PIC Fisheries development experience (2009-2011):
  - Assisted FSM preparing for and negotiating a fisheries development proposal with a vertically-integrated fishing company
  - Advised the FFA on a range of fisheries proposals and drafted template terms sheet, and JV contracts for FFA
  - Project assistance for Solomons, Kiribati, Nauru and Tuvalu and Te Vaka Moana Group
  - Presented on benefits of PIC co-ordination for fisheries development negotiations
Scope of Presentation

- Identify some key elements of fisheries development proposals
- Identify risks and steps to mitigate risks
- Outline documentation resources available through the FFA
- Take questions at any time

- Not covering the regulatory framework
Significance of Fisheries

- One of the most important resources in the Pacific
- Protein being repriced upwards
  - Increases in population
  - Increase in wealth
  - Increased demand for protein
  - Fish as healthy source of protein
  - Pressure on fish stocks

- Trends
  - For PIN: fisheries access linked to onshore developments
  - For counterparty: long term security of supply

- PINs involved as recipients of or active participants in proposals
Map of FFA members and their Exclusive Economic Zones (EEZ)

Source: http://www.fao.org/docrep/007/y5718e/y5718e07.htm
Significance of Fisheries

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Significance of Fisheries

- Report to FFA “Market and Industry Dynamics in the Global Tuna Supply Chain” (June 2011)
- PINs involved as recipients of or active participants in proposals
- Several stages to a fisheries project:
  - Business case proposals from potential investors
  - Formal proposals from potential investors e.g. Memoranda of Understanding
  - Complete documentation
Framework for approaching a proposal

Objectives
- Tax / Economic
- Social
- Commercial

Getting to know your counterparty
- Sustainability alignment

Structure
- Project
- Joint Venture
- Harvesting
- Processing
- Distribution

Counterparty risks
- Vertical integration
- Related party transactions
- Transfer pricing
- Common requests

Mitigating the risks
- Arms length contracts
- Related party dealing protocols
- Active state board representation
- Assurance processes

Terms/contracts
- Template contracts
- Key requests from counterparty
- Regulatory checklist
- Implementation
- Compliance
- Enforcement
Objectives

1. Support economic activity
   Employment
   Tax

2. Social objectives
   Up-skilling local staff
   Local infrastructure development

3. Profit share objective
   Joint Ventures
   Government as co-investor
   Oversight of social objectives
Getting to know your counterparty

- Counterparty and Sustainability movement
  - Eco-labels
    - Dolphin-safe
    - Marine Stewardship Council
  - International Seafood Sustainability Foundation
  - Environmental NGOs
    - Consumer Recommendation Campaigns
Structure

- **Project Agreement**
  - Links licensing to onshore development
  - Sets expectations for revenue contribution
  - Legal framework/Regulatory checklist
    - Identifying relevant laws and authorities
    - Identifying necessary permits/licenses
    - Identifying any resourcing requirements
  - Can set social objectives
  - No involvement in day to day management or governance
**Structure:** Joint Venture State Role

- Joint Ventures – Government as equity partner
- State participates in profits and operation of business
- Dual roles as investor/regulator
- Effective state board representation
Structure: Joint Venture Scope

- **Harvesting**
  - Purchase or charter of Vessel
  - Sale of catch

- **Processing**
  - Transhipment
  - Loin processing factories
  - Cannery

- **Share in distribution**
  - Managing risks and returns
  - (Not aware of yet being achieved)
**Structure: Joint Venture Counterparty Profile**

- **Counterparty features:**
  - Often vertically integrated
  - JV a “cost centre” for counterparty
  - Related party/transfer pricing risks
Related party interface

Pacific Island State

Company operating in the Pacific Island Nation

Loan
 Buying or Chartering Vessel
 Equipment
 Management
 Services
 Sale of catch
 Processing
 Distribution
 Marketing

Company
 Company
 Company
 Company
 Company
 Company
 Company
 Company
 Company

Vertically integrated counterparty
Common Counterparty Requests

- Most Favoured party clauses
- No hindrance clause
  - Domestic and International
- Expansion clause
- Long-term assurance about catch rights
- Regulatory relief
- Tax relief
Mitigating the risks

- Seek to manage but not preclude related party dealings
- Arms-length contracts which unbundle functions
  - Explicit management terms and standards e.g. counterparty required to
    - exercise due diligence, skill and care
    - at all times act in the best interest of the JV
    - provide regular reporting to the JV Board in a timely manner
    - otherwise act on the directions of the JV Board
  - Only government board members can vote on “related party” issues
  - Active & appropriate government representation on board (Examining accounts/processes, reporting)
  - Cost effective “assurance” processes
- Valuing any access assurance
- No policy limitation clause
- Personnel clause
Mitigating the risks continued

- Contract for duties of loyalty, transparency, fairness in dealings, and good faith
  - Note: depending on the Governing law.
- Greater co-ordination between applicable PICs
  - Common legal terms/templates
  - Common experts/assurance processes
  - Separate projects but common tender documents
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  - Single/joint project
Template Terms and Contracts

- Templates we have prepared:
  - Joint Venture documents
    - Joint Venture Agreement
    - Wet Charter
    - Dry Charter
    - Vessel Purchase Agreement
    - Management Agreement
  - Project Agreement
    - Where PIC is not an investor
- Key aspects of the templates
  - A tool for developing appropriate agreements
Any questions?