



CPTHORPE

TRAINING • PUBLISHING • CONFERENCES • LEGAL



COMMERCIAL FUNDAMENTALS OF THE UPSTREAM

Speaker Mr C.P. Thorpe MA. LLB.

Duration - 2 Days

COURSE OVERVIEW

The course is a foundation course looking at the legal/commercial function which is absolutely central to any upstream company.

Simply, how do you get the right deals and projects on the right terms? A company's future depends on this, and it has always seemed that this vital function is neglected.

There are very few books on the subject, and while courses on technical subjects are numerous, courses on the commercial function are very few. That may be why many companies are much better on the technical side of operations than on the commercial.

OBJECTIVE

The objective of the course is simply to give a greater awareness of the commercial process. I would hope that delegates will gain a deeper understanding of the topic, and that it should improve their negotiating skills and lead to better and more effective deals.

The course focuses on less tangible but equally important issues - how these deals are actually made, negotiation, bargaining power, drafting, personalities and the problems of dealing across cultural boundaries.

WHO SHOULD ATTEND

The course will benefit people employed in the legal/commercial departments of oil companies and contractors, senior and middle managers, asset managers, project managers and the like.

TOPICS

- **The aggressive commercial culture of the upstream**
 - **Finite resources and the end-game of the global petroleum industry**
 - **The key importance of the commercial function in any upstream company**
 - **The significance, use and abuse of bargaining power**
 - **Drafting and the use of standard forms**
 - **The effect of oil price volatility on commercial arrangements**
 - **Dealing across cultural boundaries**
-

COMMERCIAL FUNDAMENTALS OF THE UPSTREAM

COURSE CONTENT

Origins and Culture of Industry– US Onshore 19th Century

Colonel Drake and the early Buccaneers
John D Rockefeller and Standard Oil
Acquisition and standardisation
Questionable commercial practices
Breakup and introduction of competition law
US technology, terms, culture, language, contract forms

Disciplines and Technical Competence

Specialisation is the key
Large number of specialisations
Technical competence assumed

Downsides of the technical approach

Rise of the International Oil Companies 1900-1970

Standard Oil's successors, Shell, BP
Search for reserves internationally
D'Arcy concession in Persia 1901
Socal concession in Arabia 1933
Gulf/BP concession in Kuwait
Passage of time and changing perceptions
Nationalisation

Rise of the National Oil Companies 1970 onwards

IOC's and NOC's
Similarities and differences
NOC's at home and abroad
End game of the upstream industry

Outline of Upstream Industry Today

Resource Holders
 Governments, NOC's
Oil Companies
 Majors
 Large independents
 Small independents
Contractors
 Large – KBR, Baker Hughes, Schlumberger, Halliburton
 Medium – numerous, specialised
 Small – even more numerous, specialised, including one-person businesses

Global Petroleum Practice

Freedom of contract, but:
Preference for familiarity
Existing practice extended to new situations
International companies and operations
Staff move internationally
Essentially American practice; cf gas
Regional variations
Contrast the four main types of contract:
 Grant of rights

Joint venture arrangements
Supply and construction
Transportation and sale

The Legal and Commercial Function

All big oil companies and contractors have legal/commercial departments

Legal/commercial distinction often unclear

Function is clear:

- Progress and protect company's commercial position
- Identify projects
- Get the projects and deals that company wants
- Take internal and external advice as required
- Produce and negotiate draft agreement
- Obtain best possible terms
- Monitor and enforce if necessary

About Upstream Transactions

Upstream technical realities

- Reservoir decline inevitable
- Reserves limited
- Many reserves difficult to access
- "Running to stand still"

Right at the heart of company strategy

Size, value and duration

Always private – no spectators

Confidential

- Confidentiality provisions included
- All agents bound

Almost always formal written agreements

- No small print

Most personal of all transactions

Bargaining Power

Tacit, but critical

Situation specific

State of the market

Internal considerations

Various mistaken assumptions:

- Governments have power over IOCs
- Operators have power over contractors

Large have power over small
Improving your bargaining position
Various methods
 Tendering etc
Proof of bargaining position
Bluff
Outright commercial aggression
Symbiosis – saving grace of the upstream

Outline of Contract Negotiation

Initial contact at high level
Are there the makings of a deal?
 Confidentiality Agreement
 Exclusivity Agreement
More detailed discussions between management, legal and commercial reps
 Interim Agreement – HoT, LoI, MoU etc
 Issue: is Interim Agreement itself binding
Draft of final Agreement produced
 Timing of the draft
 When all major commercial issues agreed
 Which side produces the draft?
 Conventions on this
 Arguments about which side drafts
One-sided drafts, the draft as an obstacle
Negotiation now centres on successive drafts
Draft refined and finalised
Final approvals
 Beware cultural differences
Signature ceremony

Full procedure often truncated if:
 Deal is minor
 Parties know each other well
 Previous similar transactions
Drafts exchanged by email
Parties meet only if there are unresolved issues

Major new business, country, partner – always meet

Economics and economic analysis

The value of a project

What it will cost
What it will yield
Value of future production
All discounted over time
Return on project
“Net Present Value”

A purely internal consideration – or is it?

About Negotiation

Team needed that covers all likely issues
Choosing a lead negotiator
 Must have full understanding of the issues
 Must be a good negotiator

You know your own position
Issue is to understand the other side’s position
Process is each party adapting to other’s position
May involve repeated meetings, reduced expectations

Process is “live”
Negotiators must have room to negotiate
Undue restrictions a mistake
Scripting is impossible
“No plan of battle survives the first encounter with the enemy”

Approach
Persuasion is always personal
What’s best is what works
 Sense of perspective
 Honesty
 Humour
 Persistence

Touchstone of negotiation is reason
Must have justification for what you ask for
Without justification the answer is no

Drafting and the Use of Standard Forms

The draft is critical
Deal stands or falls on this

Premature drafts

Many drafts are poor, some disastrous

- One-sided standard form
- Standard form not tailored to the transaction
- One size fits all
- Draftsman not adequately instructed
- Too much haste
- Lack of drafting skill
- Legal culture
- Deliberate obfuscation

Standard forms are useful

The ideal terms

If sufficient power, may impose

Generally a poor starting point

Tailor-made drafts

Industry Standard Agreements

Industry itself settles on form

Never compulsory

Useful, time-consuming, fair

Quite different from internal standard forms

Examples:

- AIPN – JOA, others
- CAPP – various
- UK
- CRINE

Cultural Boundaries

International nature of business

Issues with cultural differences

Older cultures negotiate better?

Downside of the technical approach

Implementation and Enforcement

Agreement in force when executed

Governs future rights and obligations of parties

Can be undermined by future events
Flexibility required

Best agreements stay in a drawer?

Problem of litigation and enforcement

NB Content subject to change and variations.....

TRAINING · PUBLISHING · CONFERENCES · LEGAL

24 Maple Road, Ashted, Surrey KT21 2LX United Kingdom
Office +44 (0) 1372 270160 Fax + 44 (0) 1372 271002 Email info@cpthorpe.com Web www.cpthorpe.com