

Local Content Development Plan in Oil and Gas Industry: Opportunities and Threats

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Abstract

Since the nationalization of petroleum industry and recognition of the states' sovereign right over their reserves and underground resources, the "local content strategy" has become one of the main commitments of the international oil companies in the upstream oil and gas contracts. The rationale behind including such clause is to create jobs, promote enterprise development and to facilitate transfer of new skills and technologies to the host country. According to this provision, foreign investors are obligated to give priority to domestic goods and services as well as native workforce while conducting petroleum operations. Local Content requirement has become a customary rule in the industry and is implemented in different ways. While some of them are mandatory, others are voluntary. This provision increases the operators' motivations by means of fiscal incentives or tax reduction. Local content regimes entail risks and opportunities for both host government and oil and gas companies. The requirement yields benefit for host governments as well as foreign investors through providing easy access to affordable manpower and services. However, the economic and social impacts associated with such requirement are not always positive for all parties of the contracts, and in some cases serious challenges may arise in host countries and for companies. For example, operators and international contractors may face unrealistic expectations or targets from host governments or local communities seeking quick results. So before proceeding to implementation phase, any potential challenge should be analyzed and appropriate solutions should be found in advance.

Keywords: Local content policy, foreign investment, opportunities and threats, economic development, oil and gas industry.

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Peaceful Resolution and Alternative Conditions as Dispute Resolution Methods in Upstream Contracts for the Oil and Gas Industry with an Emphasis on IPC Contracts

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Abstract

The most important aspect is the distinction of the new IPC contracts with reciprocal contracts is the presence of the contractor during the operation period and a long-term contract length. In such situations, the probability of disagreement or legal, contractual, and technical litigation is increased. Therefore, it is only the method of arbitration and the foreseeable court do not respond to mutually exclusive contracts. The technical-financial complexities of the nearly 15-year period of exploitation involved designers of the new model in addition to traditional ways of resolving disputes, new practices such as referral to qualified experts in financial and technical disputes, such methods reduce the cost and timing of decisions that are critical to projects. Within the scope of this agreement, three methods of peaceful settlement, alternative conditions and ultimately arbitration are proposed. This paper proposes a peaceful solution method and alternative methods that are not limited to legal solutions.

Keywords: peaceful methods, alternative methods, arbitration, upstream contracts for oil and gas, dispute resolution methods.

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The Legislative Criminal Policies of Iran on Terrorism against Energy

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Abstract

Crimes against energy, in addition to the destruction of infrastructure, are a serious threat against national security. Oil, gas and electricity are among the most important energy and functioning of population activities. With this degree of importance, oil, gas and electricity infrastructure is highly appealing to terrorists and these sources are targets of terrorism operations. In order to prevent the fear of disruptions to energy infrastructure, those facilities must be protected through legislating suitable criminal policies. In this regard, the question of this research is whether terrorism against energy has any place in the Iranian legislative criminal policies. For this reason, analysis and evaluation of legislative criminal policy in confronting terrorism against energy is studied. Analyzing the existing legal articles in this area reveals the legislator's protection of energy in some of the legal articles has been trivial while in some other articles, this offence has been recognized as an act of the terror with the punishment the same as that of a Mohareb.

Keywords: Terrorism, Sabotage, Energy, Oil, Gas, Electricity.

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Comparative Analysis of Government Impact Level in Energy Regulatory Bodies' Independence in Electricity, Oil and Gas Sectors

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Abstract

Governments have traditionally undertaken regulation. However, while undertaking privatization measures in energy sector take place, energy regulatory authorities have been established. One of the factors that ensure the effectiveness of energy regulatory authorities is their independence from energy sector stakeholders, especially government. Energy regulatory body independence can be studied from structural, decision-making, and financial perspectives. As the most important governance and policy-making body in energy sector, government has a pivotal role in moving towards regulation in the sector. Hence, introducing regulatory bodies in oil, gas, and electricity sub-sectors of energy sector, this article aims to investigate the influence of government measures in structural, decision-making, and financial independence aspects of energy regulatory authorities in the selected countries. Presumption of this study is based on the fact that the independence degree of energy regulatory bodies is substantially affected by government interventions in energy regulation.

Keywords: Financial Independence, Structural Independence, Decision-making Independence, Energy Sector, Government, Regulatory Authority.

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Examination of the Approach of ICSID Arbitration Tribunals to Necessity Defense and Exception Clause: Contemplating on Argentine Gas Cases

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Abstract

In the late 90s and the early 21st century, Argentina faced a severe economic and social crisis, and to deal with it, the government took various measures. These actions have led to the formation of various claims by investors against that State in several arbitrations, including arbitration under the rules of the Investment Dispute Resolution Center (ICSID), hence tribunals that have considered the claims brought against Argentina, sometimes issued contradictory award, despite same facts and (almost) similar defenses of the country. The most important disagreements between the arbitration tribunals concerned with interpretation and implementation of the necessity defense by the Argentine government and its invocation to exception clause contained in some bilateral investment treaties as an excuse for its actions. Considering the importance of the issue and the possibility of occurrence of similar cases, in this paper, we considered the relevant awards in the light of necessity defense and exception clause. Finally it became clear that the mixing of necessity defense and exception clause was the most important factor causing differences in the above-mentioned cases and this was due to the lack of attention to the distinction of these two concepts and distinct effects of either of them.

Keywords: ICSID investment arbitration, Necessity defense, Exception clauses, Argentine economic crisis, Investment arbitration tribunals.

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Right to Development as a Human Right in the Context of International Energy Law

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Abstract

Development in international law has been propounded in the forms of economic development and human development. Achieving sustainable and comprehensive development in energy law requires policies which may bring forward economic development alongside human rights. In the context of international energy law, developing countries in order to achieving economic development ignore environmental principals which can subsequently lead to destruction of environment. These effects are against human rights. While energy strategies should respect environmental principals and increase human access to energy. The issue here is that in what ways the governments especially the developing countries should trace their energy law processes to achieve the both aspects of development? The study shows developing countries should change their paradigms. These states should apply strategies which prepare the primary grounds and capacities of economic development in a way that make them able to provide the preliminary substantial needs of the country. Subsequently by approaching the least measure of development, the energy policies must trace in a way that besides achieving economic development by increasing access to energy services, provide human development and other instances of human rights.

Keywords: access to energy, international energy law, human rights, economic development, human development, development right, right to development.

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The Challenges of the Common General Agreements on Development of the Shared Trans-Boundary Oil and Gas Fields - Move Toward Local Models

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Abstract

Common fields and their development method have been among the controversial issues in Iran's decision-making authorities, which have included some of these activities as legal acts. On the basis of the available information, there has been little success in exploiting these resources. This issue and its consequences, such as the sharing of benefits, have a history as long as oil. Various approaches have been selected from totally unilateral action to maximum coordination between the parties. Because of the importance of resources conservation, now the relationship between countries has led to the creation of the groundwork for further cooperation. These different approaches were affected by reservoir knowledge and the nature of the fluid and some other factors are shaping the relations between the parties. The available contractual tools played a fundamental role in mapping out the relationships between parties. In this paper, while briefly reviewing the historical trend, from the results of the reviews of the common frameworks of the agreements for joint development, several recommendations are presented for designing the local model.

Keywords: Shared oil and gas fields, Joint Development Agreements, Conservation of Oil and Gas Resources, Common Iranian Fields.

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Energy Dual Pricing in the WTO with an Emphasis on Permanent Sovereignty on Natural Resources

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Abstract

In the past decade, some developing countries, based on the principle of the PSNR as one of their inherent rights recognized by the international community and the United Nations, have engaged in Energy Dual Pricing in order to promote their economic level. On the other hand, developed countries were on the opinion that the actions of energy-holding states are in violation of the fundamental principles of the WTO, such as the principle of free trade, principle of commercial non-discrimination and the principle of national Treatment. Therefore, numerous cases were filed and engaged by the DSB of WTO. According to the DSB, the conflicts between the principle of free trade and the principle of the sovereignty of the state on natural resources are non-real and in fact there is no conflict between them. We thus, having respected the rules of general international law and also taking into account the fundamental principles of the WTO as special rules, make a balance between these two principles. Also the DSB of WTO states that none of the WTO's bilateral trade agreements have explicitly forbidden energy dual pricing, and to understand whether energy dual pricing violates the principles of the WTO or not, it should be considered in the light of all the circumstances, on a case by case basis.

Keywords: Dual pricing, Energy, Free Trade, Permanent Sovereignty over natural Resources, WTO.

JEL: K19, k33, k42.

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Comparative Study of the Dispute Resolution Boards of the Ministry of Oil and International FIDIC Contracts

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Abstract

Settlement of disputes in service contracts with regard to the economic importance of oil industry projects and the need for speed in settlement of disputes as well as the specialty of reviewing of dispute and reducing the costs of proceedings has particular importance for countries over the last few decades. FIDIC provides a unit model in service contract and launches a new institution called the “Dispute Board” in 1999 to resolve disputes. Iran’s Oil Ministry in four periods announced several instructions for resolving of disputes. The results of the comparative review of these instructions at the FIDIC Organization and the Petroleum Ministry indicates disadvantages such as the absence of Dispute Board members over the life of the project in the site, not mentioning specific dates for each process and also, failure to play the role of deterring these boards in the emergence of differences between the parties. the scope of this research is on general terms of contract in FIDIC for the settlement of disputes between contracting parties and Iranian models bugs. It should be noted that the present study has used a descriptive-analytical method.

Keywords: adjudication dispute board, FIDIC, contractor, ministry of oil.

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Analysis of the Nature of the Incomes of The National Iranian Oil Company and Its Legal System

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Abstract

The importance of government's income and its governance make legislators observe such income carefully and also determine the way that the government shall use its income. Depending on which category such income falls within, namely, public income, dedicated income, corporate income, the laws applicable to the income differ. National Iranian Oil Company (NIOC) is one of the main governmental companies, income of which constitutes a major part of the government's income. Thus, legislator enacted laws to govern income of NIOC. Now the question is within which category the income of NIOC falls and what is the scope of its authority to use such income? This essay is aimed to answer such questions using reasons and reviewing and interpreting the applicable laws.

Keywords: National Iranian Oil Company (NIOC), public income, dedicated income, corporate income, Government's income.

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Comparative Analysis of Buyback Contracts and Iran Petroleum Contract (IPC) Concerning Ownership Rights, Reserves Recognition and Fiscal Regime

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Abstract

After nearly three decades since the conclusion and implementation of Buyback contracts in the oil and gas industry in Iran, objections to this contract, particularly from the perspective of foreign investors has been revealed. Failure to allocate a share of the produced oil and gas to foreign investors and subsequently discussing possibility of reserve recognition, short terms of Buybacks and non participation of oil companies in production period, non admissibility of Buybacks fiscal system for foreign investors and the Iranian content are among many challenges which have been set forth by contractors. In order to solve such problems and attract expertise and financial resources to the Iranian oil and gas projects, a new petroleum contract has been introduced by Iran, the so-called Iranian Petroleum Contract (IPC). The present article will comparatively analyze Buyback and IPC in three aspects naming ownership, reservoir recognition and fiscal regime and will conclude that under IPC, the same as Buyback, ownership of petroleum *in situ* and produced oil and gas vest by the government. Also, IPC's contractor, the same as the contractor under the Buyback, is able to recognize oil and gas reserves in accordance with the PRMS guideline, and its fiscal regime although in some areas has been improved, some objections can be raised.

Keywords: Buyback, fiscal regime, Iran Petroleum Contract (IPC), ownership, reserve recognition.

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Anti-Competitive Conducts of Foreign Oil Companies at the IPC Tender Stage and Competition Law Sanctions in this Regard

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Abstract

Foreign oil companies' entry into IPC tenders has been made subject to conclusion of JVs with qualified Iranian E&P companies. However, the law does not require FOCs to select their IEPC by means of competitive methods. Moreover, as IEPCs do not possess the required abilities to independently enter major petroleum projects, it is inevitable for them to engage in JVs with FOCs. Meanwhile, due to sanctions imposed on Iran, the number of FOCs willing to enter the IPC tenders has decreased, and so there is a higher chance of abuse of dominance or collusion practiced by these FOCs during the course of IPC tenders. This essay serves as an endeavor to demonstrate the anti-competitive conducts likely to be pursued by FOCs against IEPCs (in the course of entering the JV) and against NIOC (in the tender process), and to clarify the competition law sanctions applicable to FOCs in this regard.

Keywords: Anti-competitive Conducts of Foreign Oil Companies, Tender Stage, Act on Implementation of the General Policies Pertaining to Principle 44 of the Constitution, IPC contracts, Cabinet's Directive on the General Terms, Structure and Model of Upstream Oil and Gas Contracts, Competition Law Sanctions Applicable to Foreign Companies.

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