

# Legal Investigation of Concession Agreements for Operation of Iranian Oil Companies

Hamidreza Afshari<sup>a</sup>, Abbas Kazemi Najafabadi<sup>b</sup>, Ali Emami Meibodi<sup>c\*</sup>, Nooshin Jabbari<sup>d</sup>

<sup>a</sup>Ph.D. Candidate, Allameh Tabataba'i University, Tehran, Iran

<sup>b</sup>Assistant Professor, Faculty of Law and Political Science, Allameh Tabataba'i University, Tehran, Iran

<sup>c</sup>Associate Professor, Department of Energy Economics, Faculty of Economics, Allameh Tabataba'i University, Tehran, Iran, emami@atu.ac.ir

<sup>d</sup>Instructor, Allameh Tabataba'i University, Tehran, Iran

## ARTICLE INFO

### Keywords:

Concession contracts  
Exploration and  
production  
Oil and gas  
Upstream

**Received:** 05 October 2021

**Revised:** 15 January 2022

**Accepted:** 09 February 2022

DOI:10.22050/PBR.2022.309154.1230

## ABSTRACT

Iran's Ministry of Petroleum due to empowerment of Iranian companies for executing local mega projects, regional and international markets penetration and upgrading national technology in petroleum upstream industry, predicted a competent Iranian partner called Exploration and Production (E&P) companies, for cooperating with the International Oil Company (IOC) in Article Four of the Cabinet Approval. Now considering the absence of IOCs, it seems that the capacity of other oil contract models to be used by Iranian oil companies should be examined. The purpose of this paper is to investigate the feasibility of Concession agreements' execution, by an E&P company in Iran's upstream industry. The research method is descriptive and analytical and governing laws of Iran are reviewed in this study. Since the host government makes the final decision on the conduct of oil operations, it cannot be described as domination of oil resources, and therefore does not seriously contradict the Iran's Constitution. Furthermore, E&P companies will not be subject to Article 81 of the Constitution. In the Oil Laws, the only restriction on the inflow of foreign capital in the upstream industry of Iran has been observed, which again does not apply to E&P companies. In the Laws of the Five-Year Plans, this restriction of oil laws has been adjusted too much in which it seems that the restriction has also been removed for IOCs. Finally, the investigation shows that there are no major legal barriers in applying Concession agreement in case that the operator is an Iranian E&P company.

## 1. Introduction

Since the discovery of oil in the Masjed Suleiman in Khuzestan more than a century ago until now, when the

main income of the country still depends on its sale, oil has played an important role not only in the economy but also in politics of Iran. For example, one of the biggest national movements in Iran was the nationalization of this strategic commodity in the last century. Iran's

\* corresponding author:

Email: emami@atu.ac.ir

foreign policy is so tied to this hydrocarbon product that the presence of international oil companies (IOCs) in Iran is still viewed with skepticism and increased risk of foreign domination. The history of oil exploration, development and production in Iran shows that it has taken more than a century for Iran to be able to maintain its share of oil revenue to some extent and fairly. Forms of international oil contracts in Iran during this period have been changed from a traditional Concession agreement in which Iran had a very small share of oil revenues to compensation of the services of IOCs whose exploration, development and production costs are reimbursed by the oil and gas field revenues.

Since the Iran's Islamic Revolution, the contract model used in upstream oil and gas operations has been Buy-back contracts<sup>2</sup>. It seems that this restriction is due to the prohibition of foreign investment in Iran's oil and gas industry according to Article Six of the Oil Law adopted in 1987. Based on this law, it can be understood that domestic investment in this field seems possible. Although, there are serious doubts in the ability of domestic Exploration and Production (E&P) companies to invest individually in upstream operations of oil and gas industries in Iran without foreign finance. According to the director of exploration of the National Iranian Oil Company, the discovery of large fields such as Azadegan and Yadavaran is far from expected and we should seek to discover small-scale fields<sup>3</sup>, which could mean reducing the amount of investment needed to develop the field. In this case, the probability of upstream finance by the domestic E&P companies will be improved. On the other hand, the escalation of international sanctions has made the presence of IOCs in the Iranian market very difficult, so that Total<sup>4</sup>, once a trading partner of Iran, has been forced to abandon the Phase 11 of the South Pars gas field development plan and Iran oil and gas market<sup>5</sup>.

According to the Buy-back single model approach, one of the topics discussed in the field of upstream oil and gas contracts in the academic literature is the possibility of using other contract models, especially Concession and Production Sharing contracts in Iran's oil and gas industry. Although Risk Service contracts, which include the risk of exploration, have not yet been used to develop oil and gas fields after the Iran's Islamic Revolution, the academic literature seems to have paid

less attention to them. It actually appears that Iran's laws do not explicitly allow the use of other contractual models except for Buy-back or its latest model called Iran Petroleum Contract (IPC). In this case, the existence of some divergences in the results of these studies may indicate a lack of transparency in Iran's laws regarding the legal contract model in order to carry out oil operations in Iran. For example, some believe that according to the laws of the Fourth and Fifth Five-Year Economic, Social and Cultural Development Plans and the Law of Duties and Authorities of the Ministry of Petroleum, applying a Concession agreement in the field of Iran's oil and gas industry is not prohibited by law (Gholizadeh and Foroumand, 2017: 62; Ameri and Shirmardi Dezaki, 2014: 101). While others, citing Articles 43, 44, 45, 81 and 153 of the Constitution of the Islamic Republic of Iran, believe that IOCs do not have the right to get the license and/or ownership right respect to Iran's oil and gas resources by investment (Ebrahimi and Shirijian, 2014: 27). In another study, because in Production Sharing Contracts (PSCs), ownership of oil and gas resources are still in the hands of the host government and oil companies recognize the right of any supervision and management of oil operations for the government, these contracts are considered fully compatible with the Iran's Constitution. (Amani and Hamidzadeh, 2015: 167). While according to some others, not only the use of PSCs in Iran is limited by the Constitution, but also the ownership of the oil company over the produced oil and gas is contrary to the principle of government ownership respect to ground resources and underground production (Montazer and Ebrahimi, 2013: 227).

Undoubtedly, in order to empower Iranian companies to execute large domestic projects and to participate in regional and international markets, as well as to transfer and upgrade national technology in the field of upstream oil operations, Article 4 of the Iran's Cabinet Approval<sup>6</sup> forecasts the presence of a qualified Iranian partner with the IOC. Researchers (Nikbakht and Arian, 2014: 116) have already recommended the subject. However, there is serious doubt whether the Buy-back model or IPC were successful in empowerment of domestic oil companies and realization of objectives in oil and gas technology transfer. For example, it is not clear how these types of contracts had the necessary capacities to

<sup>2</sup> [During a personal interview with one of the negotiators in the National Iranian Oil Company in December 2018, the IPC contract model with any foreign oil company has not been finalized so far.](#)

<sup>3</sup> <https://www.eghtesadonline.com>, Feb 14, 2017 [176721]

<sup>4</sup> [French multinational integrated oil and gas company](#)

<sup>5</sup> <https://www.shana.ir/news>, Aug 20, 2018 [284234]

<sup>6</sup> Approval on general conditions, structure and pattern of upstream oil and gas contracts approved by the Cabinet in 2015.



improve risk management capabilities in exploration phase as a key aspect of any oil companies. In this regard it would be considered that the exploration risk is far greater than development risk (Aminzadeh and Aghababaei Dehkordi, 2014: 20) and the scope of Buy-back model awarded so far was limited to the discovered fields and only included the development section (Manzoor, Kohanhooshnejad and Amani, 2016: 187-188). Therefore, considering the presence of domestic E&P companies as well as the possibility of domestic investment in the upstream oil and gas field, are Buy-back contracts (or IPC) still the best contract model? Considering that this action of the Ministry of Petroleum of the Islamic Republic of Iran has been done recently, it seems that no serious research conducted in this area to properly address the current concern. If another contractual arrangement is a better model, the consequences of insisting on Buy-back model can be costly for the country's oil and gas industry. On the other hand, the foreignness of the IOC is effective in choosing the contract model and determining its provisions, while the present research, considering the Iranian nature of the companies, does not have such limitation. Given the complexities and specific circumstances of the oil industry, relying on a legal system centered on one contractual model may not, as expected, cover all aspects and growing needs of such an industry. Therefore, adopting a multi-model contractual policy can more appropriately improve the maneuverability of the Ministry of Petroleum in order to achieve the long-term goals of sustainable development and protection of national interests (Nikbakht and Arian, 2014: 85).

The main question of the researchers is based on the fact that given the changing conditions in the oil and gas market of Iran if it is possible to use the Concession agreements approach to perform upstream operations by Iranian E&P companies or not. In response to the question why the Concession agreements has been examined, researchers believe that this model of contract is very close to the structure of operations in the country's mines. Since the separation of oil fields from the country's mines is not done in the Constitution, the path of the execution of Concession agreements can be provided more smoothly. Therefore, the purpose of this study is to investigate the application of this type of contracts in Iran's laws in case that the operator is an Iranian oil company.

In this paper, at first E&P companies and how the Ministry of Petroleum selected them are briefly explained. Then research background addresses the latest studies in this regard. In this section Buy-back contracts

challenges are shortly reviewed too. Concession agreement is described at the next section. Research methodology comes afterwards. The result of the study elaborates legal investigation of the applicable laws in oil and gas industries in case the operator is an Iranian E&P company. Finally, in conclusion, the paper concludes with a brief summary of findings. This research is quite new due to the presence of E&P companies since 2015. In other words, the focus of previous researches have been either on examining contractual models in the general sense used around the world or Buy-back /IPC. Furthermore, there is almost no academic legal studies to consider E&P companies as the sole operator in the oil and gas market of Iran and to investigate other oil contract models applicable for the said companies.

### **Exploration & production (e&p) companies**

There are different types of oil and gas companies that include national oil companies (NOCs), international oil companies (IOCs), independents, and oilfield services companies (Al-Fattah, 2013, 1). Due to increasing the oil and gas prices, the growing NOCs can control oil and gas resources throughout the world. Their ability to access capital, human resources and technical services directly from oilfield service companies, and to build in-house competencies, allows them to operate independently of investor-owned companies in most instances. On the other hand, the global oil and gas industry has long been dominated by vertically integrated multinational oil companies known as IOCs. Their control lies in the hands of private investors, not governments, and their objectives have always been to generate the greatest sustainable profitability over time. The term IOC is a bit confusing in practice, sometimes meaning international oil companies, sometimes integrated oil companies (Inkpen and Moffett, 2011: 13). Regardless of the words behind the acronym, IOCs are profit-oriented organizations that are global in reach and vertical in structure. At the other end of the scale, there are many smaller companies, which specialize in particular areas of the industry value chain. Examples include small and medium sized exploration and production companies (usually termed 'independents'). These smaller independent companies often work in joint ventures with the IOCs and NOCs (Clews, 2016, 94).

The first item of Article Four of the council of minister's approval regarding the general conditions, structure and model of oil and gas upstream contracts (2015), states that qualified Iranian companies should be the partner of reputable foreign oil companies in every single upstream contract. The objectives of this Article

are to transfer and promote of national technology in the field of upstream oil operation, execute mega projects, make Iranian companies capable to execute domestic mega projects, and be active in regional and international market. For the realization of these objectives, Iran's Ministry of Petroleum assessed prospective companies

in order to identify qualified partners. So far, the Ministry of Petroleum issued a short list of seventeen companies, deemed qualified as the Exploration and Production (E&P) companies. Table 1 shows the list of these companies.

**Table1:** The list of qualified Iranian Exploration & Production companies

No	Company's Name	Website
1	Petropars	www.petropars.com
2	Oil Industries Engineering & Construction (OIEC)	www.oiecgroup.com
3	Dana Energy	www.danaenergy.ir
4	Petroiran Development (PEDCO)	www.petroiran.com
5	Mapna Oil and Gas	www.mapnagroup.com
6	Khatam al-Anbiya Construction Headquarter	www.khatam.com
7	Industrial Projects Management of Iran (IPMI)	ipmi.ir
8	Persia Oil & Gas Industry Development	www.persia-oil.com
9	Ghadir Exploration and Production Investment	ghadir-group.com
10	Pasargad Energy Development	www.pedc.ir
11	Negin Afagh Kish Energy Development	www.petrotenco.com
12	Iranian Offshore Engineering and Construction (IOEC)	www.ioec.com
13	Kayson	-
14	Iran Ofogh Industrial Development Company	www.iranofogh.com
15	Pars Petro Zagros Engineering & Services	ppz.ir
16	Global Petro Tech Kish	fa.gptkish.com
17	North Drilling	www.ndco.ir

By reviewing the list of the companies in the Table 1, it seems that in best case scenario, few of them are categorized as independent oil companies. The rest of them are mostly oil service companies. The assessment process, conducted by the Ministry of Petroleum, included three phases:

1. Screening: In this phase, a questionnaire including two parts namely general information of the company (registration information, scope of work and references and CV of the BOD members) and screening criteria, was used.

2. Pre-qualification: In this phase, a questionnaire including eleven criteria was applied. These criteria are 1) vision and strategy development, 2) management of hydrocarbonate assets acquisition, 3) management of development and production of hydrocarbonate assets, 4) development and management of upstream petroleum-related technology, 5) development and management of human resources, 6) information technology management, 7) financial resources management, 8) acquisition, construction and management of properties, 9) enterprise risk management: accepting, mitigating and flexibility, 10) management of external relations of the



organization, and 11) development and management of business capabilities. Corporates, which gain at least 500 out of 1000 score, will be eligible for the third phase.

3. Qualification: In last phase a questionnaire including three broad categories titled leadership and management, financial and organizational services, and technical and expertise was used. Each category includes few sub-criteria having an accumulated score of 1000. Corporates, which gain at least 300 out of 1000 score, will be selected in the short list.

Ministry of Petroleum did not disclose the complete result of the qualification process to the public except a short list of seventeen companies. The main purpose of this qualification has been to identify Iranian companies in which they have minimum qualification requirements to be a partner of the IOCs. Considering the fact that IOCs have left Iran's oil and gas market due to international sanction, it is probably unknown that Iranian E&P companies have sufficient capability to be sole operator of the integrated upstream oil and gas projects. None of the exploration and production companies is real ones (A. Zargar<sup>7</sup>, personal interview, February 24, 2019). On the other hand, these conditions are necessary for the operation of an upstream project, including exploration, development and production, but will not be enough. For instance, there is serious doubt that the domestic oil company has the financial capacity to carry out an exploration project that is all risky and requires spending tens of millions of dollars (H. Roshandel<sup>8</sup>, personal interview, December 16, 2018). Therefore, it can be concluded that a minimum requirements of domestic oil companies has been done with the aim of finding a suitable partner for an international oil company, so that the burden of managing the main upstream operations has been borne by the foreign partner.

## 2. Research background

The most important reason that Iran referred to Buy-back contracts in the upstream sector of the oil and gas industry is financing and attracting investment, especially foreign investors (Montazer and Ebrahimi, 2013: 230). Other reasons are guaranteeing such contracts in the sovereignty and ownership of the Iranian government over oil and gas resources and need to interact with IOCs in the field of oil and gas. So far, three generations of such contracts have been concluded in Iran. Buy-back, considering its desirable function in the

history of contract law, is the most effective way of attracting foreign capital in the economies of countries. International Buy-back contracts, as the most important means of attracting foreign capital in accordance with Iranian law, have been the basis of legal interaction relations between Iran and oil companies for nearly two decades (Ramazan Nejad Kiasari and Bagheri, 2021: 370).

Buy-back contract model has also some major challenges. Term of Buy-back contracts for the development of oil fields is usually limited between 7 to 10 years in Iran. In such a situation, the tendency of foreign oil companies that provide capital is to use such methods to exploit the fields to achieve maximum return in a minimum of time. The weaknesses of Buy-back contracts listed by the Islamic Parliament Research Center (2016: 10-15) are possibility of non-compliance with optimal oil reservoir production policies, ignoring internal capacities in subcontractors, lack of transfer of technology in its true sense and non-flexibility of the contracts. The performance of oil contracts shows that foreign oil companies have not played an active role in the transfer of knowledge and technical skills and training of experts within the framework of concluded contracts (Emami Meybodi, Hadi and Ahmad, 2017: 3). Islamic Parliament Research Center (2016: 12-13) has also listed the most important barriers to technology transfer that exist in the structure of Buy-back contracts as follows:

1. Short contract period and non-participation of foreign companies in the operation period with domestic companies
2. Non-participation of the National Iranian Oil Company in project management
3. Lack of integration among exploration, development and production phases
4. Lack of sufficient motivation for a foreign company to transfer technology
5. Lack of relationship between the company's revenue and the type of technology used in field development
6. Incompatibility of Buy-back contracts in the field of exploration

Furthermore, all the Buy-back projects that have been signed in recent years, have been mainly based on water

<sup>7</sup> PhD in Geology; Head of Contracts Affairs in Persia Oil and Gas Industry Development Company

<sup>8</sup> Consultant of Dana Energy Company

injection or accelerating this process, which is very detrimental to the safe operations of oil fields (Hadi, 2018: 159). This legal structure has gradually evolved, so that today its advanced generation is emerging as the IPC. In this regard, the Iranian legislature has generalized the use of this contract in Iran from the stage of exploration and development to the stage of production (Ramazan Nejad Kiasari and Bagheri, 2021: 370). The most important difference between IPC and Buy-back contracts is the presence of the contractor in the operation period and the long term of the contract. This issue in comparison with Buy-back contracts creates sufficient incentive for the contractor to maximize cumulative production from the oil field according to the optimal oil reservoir production policies (Islamic Parliament Research Center, 2016: 28).

In her doctoral dissertation entitled *Legal / Contractual Analysis of Upstream Contracts of Iran's Oil and Gas Industry*, Sarir (2014) evaluated the evolution of upstream contracts of the country's oil and gas industry from a legal and contractual perspective, from the discovery of the first oil well in Iran until 2014. The result of his research indicates that except for Concession agreements that were awarded in the field of oil and gas in Iran until 1992, almost no conventional and long-term contracts were concluded. While between 1993 and 2014, three generations of Buy-back contracts were designed and executed. Then, the legal and contractual frameworks in future oil contracts and considering the necessity of designing new contracts are examined so that finally this type of new oil contracts can maximize Iran's interests. Finally, she concluded that Buy-back contracts are more compatible with the legal requirements of the oil and gas sector. By reviewing the strengths and weaknesses of this type of contract and based on existing legal capacity, new contracts should be designed to meet the needs of oil and gas fields of the country. Azimi Zarrin's dissertation (2016) entitled *Legal Analysis of the New Upstream Iranian oil contract* examined the IPC unveiled in 2015 in comparison with the Buy-back contracts. It is concluded that the IPC, despite some disadvantages such as assigning the operation to a foreign contractor, the transfer of ownership of the oil, the granting of a reservation to a foreign company and the long duration of the contract, have been able to partially resolve the problems of Buy-back. Another study conducted by Gholizadeh and Foroumand in 2017 on Concession agreements in Iran has shown that the Iranian legislature allows the use of Concession agreements to conduct oil operations in Iran and are interested in applying the contract model. This

conclusion is consistent with the use of Concession agreements in the exploitation of the country's mines.

In another study (Ameri and Shirmardi Dezaki, 2014), modern Concession agreement in the three areas of oil ownership, supervision and management of the host government and the fiscal regime of the contract were examined. The ownership of the oil in these contracts is the property of the host government until it is extracted. Furthermore, the host governments have explicitly addressed the oil ownership both in their laws and in the modern Concession agreement itself. They take ownership of the oil until it is extracted and do not grant any objective rights (whether oil ownership, profit ownership or usufruct) to a foreign company. In the modern Concession agreement, the ownership of the oil at the wellhead is transferred to the oil company only after production. Supervision and management of operations, as a manifestation of the exercise of sovereignty, is one of the concerns of the government and in various ways such as monitoring the choice of concessionaire and participation of the host government in the contract in the form of carried and working interest in the contract or related laws. The fiscal regime of these contracts are also more flexible than the other two models of Production Sharing and Risk Service contracts. In the end, it is summarized that according to the law of the Fourth and Fifth Development Plans, as well as the Law on Duties and Authorities of the Ministry of Petroleum approved in 2012, the use of Concession agreements in the country's oil industry does not seem to be prohibited by law.

Another study examining the historical and legal aspects of Concession agreements shows that the legal mechanism arising from traditional Concession oil contracts allowed IOCs to have exclusive access to all management rights and to decide how to develop oil and gas fields and consequently control of the oil market (Abbasi Sarmadi and Safakish Kashani, 2019: 20). After World War II, factors such as the founding of OPEC, the emergence of new individual oil companies, the formation of state-owned oil companies, and the issuance of Resolution 1803 on Permanent Sovereignty over Natural Resources by the UN General Assembly, forced the IOCs to accept fundamental changes in the structure of old contractual arrangements. The experiences gained from the revision and modification of traditional Concession agreements led to the development of a new model called Modern Concession agreements, which was free from all the disadvantages of traditional contracts.



## Concession agreement

A Concession is an agreement that transfers rights to a company in which the company that will bear all risks in the venture and has relative freedom on development of the venture (Smith et al., 2010: 448). In another definition, Concession is a special right that is usually, but not necessarily, exclusive and is granted to make an investment over a period and a specific area (Toriguian, 1972). Almost the first half of the twentieth century saw the granting of license to American and European IOCs for oil exploration and production in the Persian Gulf and some other regions. This generation of contracts is known as traditional oil Concession agreements. In traditional Concession contracts, the term of the contract, the contract area, how the resources are exploited and the right of the oil company holding the concession of oil resources have been very wide. In some of these contracts, the Concession term was 40 to 75 years and the concession area covered a large part of the geographical territory of the host government (Hatami and Karimian, 2014: 723). Common features of early Concession agreements are (Gao, 1994: 13):

- 1) The transfer of a very large area without the relinquishment clause of the contract area,
- 2) A long period and possibly no reconsideration,
- 3) The foreign company's exclusive right to conduct all aspects of oil operations,
- 4) The foreign company's ownership on oil resources,
- 5) Customs and tax exemptions,
- 6) Payment of relatively low royalties due to the volume of oil produced, and
- 7) Transfer of ownership of equipment to the government after the expiration of the concession.

The vast powers that foreign companies gained in the host country following the granting of traditional concessions, and the unfair distribution of benefits, have been challenged by governments, people, and jurists in the host countries (Ameri and Shirmardi Dezaki, 2014: 65). This challenge led to the transition from traditional to modern Concession agreement in the 1950s. The "modern" term not only indicates the new context in which the contract is concluded, but also refers to the inclusion of new tendencies in the contract and is an attempt to rationally develop the natural resources of the host country (ibid.: 68). The modern Concession agreements have retained the original form of traditional

ones but have undergone significant changes from their prototype. The most important change in traditional concessions was the change in the fiscal regime of the contract. The initial financial improvements that occurred in traditional Concession agreements can be divided into 5 categories: 1) equal profit sharing, 2) new royalty payments, 3) new payment of bonuses, 4) removal of tax holidays, and 5) price control (Gao, 1994: 14 - 15).

The characteristics of Concession agreements can be summarized in three sections: 1) sovereignty and ownership, 2) fiscal regime, and 3) supervision and assignment method. Governance is defined as policy-making, directing and monitoring by the host government in order to exploit its oil resources in a way that is consistent with the macro-development plans of that country (quoted by Ameri and Shirmardi Dezaki, 2014: 68). Although sovereignty is one of the key concepts of international law (De Alencar Xavier, 2015: 195), it seems that after repeated UN resolutions, at present the right of states on how to exploit natural resources, including oil and gas resources, is well recognized and respected by countries as well as IOCs. In this regard, the most important resolution is Resolution 1803 (adopted in 1962) entitled Permanent Sovereignty over Natural Resources. This right, which had been manifestly vested in the concession holder in the traditional forms, is now recognized for the host government acting on behalf of its people to develop the country's natural resources. Another issue is ownership, which is one of the salient aspects of exercising sovereignty over natural resources. Ownership of oil in Concession agreements remains the property of the host government until oil is produced. It is only after production that ownership is transferred to the concessionaire at the wellhead (Picton and Trebruville, 2009: 29).

The main revenues that companies pay to oil producing countries according to oil contracts include the four factors of bonus, surface fee, royalty and taxes (Gholizadeh and Foroumand, 2017: 52; Bret-Rouzaut, Favennec, 2011: 194). Bonus is usually a cash exchange paid by the concessionaire to the host country in exchange for the concession. The bonus that is paid to the host government by the concessionaire at the execution of the contract is called the signature bonus. Surface fee in Concession agreements is the amount that the concessionaire must pay to the host government for each square kilometer of the contracted area, as long as it owns the area for oil operations in accordance with the concession. This amount is usually small and is \$1 to \$10

per square kilometer (Bret-Rouzaut, Favennec, 2011: 195). Royalty is a percentage of production or operating profit that is paid annually by the concessionaire to the host government at the time of oil and gas production. Royalty rates vary in different countries and fluctuate between 10 and 20 percent, but typically 12.5 percent of production is considered as royalty (Ameri and Shirmardi Dezaki, 2014: 90). Income tax on foreign companies either is subject to the general laws of the income tax of the host countries or is subject to special oil tax laws such as Windfall Profit Tax. The tax rate can fluctuate between 35% and 85%, which in most countries is 50% (Ibid: 91).

According to Concession agreements, oil operations are divided into two stages of exploration and production (or exploration and development) in which the concessionaire must submit separate plans for both stages (ibid. 76). Under the modern Concession agreements, foreign companies are required to submit

periodic progress reports to the host government. Modern Concession agreements use the mechanism of work programs and budgets to force the concessionaire to perform operations more quickly (ibid. 78). In most countries, concessions are awarded for specific areas called Blocks. The size of the Block varies greatly depending on the country, the type of license granted, and the type of area covered. Blocks may be large in areas where exploration operations have not been carried out and are technically difficult to develop.

Although traditional Concession agreements have disappeared from the world oil industry today and are no longer a historical concession, its updated and improved model is still prevalent in many countries. At present, modern Concession agreements are used in 120 countries around the world (Saber, 2007: 275). For instance, all four North Sea countries offer similar licensing systems and basic license terms. Table 2 provides a comparison of the license provisions.

**Table 2:** Basic License Terms of North Sea Countries (cited in Smith, et al., 460)

Terms	Denmark	Netherlands	Norway	UK
Duration	6 yrs renewable for a further 30 yrs for production or for 2 + 2 yrs for further exploration.	Exploration license: 10 yrs; production license: 40 yrs maximum.	6 yrs renewable for further 30 yrs.	6 yrs renewable for a further 30 yrs; in frontier areas, 8 yrs renewable for a further 40 yrs.
Obligations	Performance of work program.	Performance of work program.	Performance of work program.	Performance of work program.
Relinquishment <sup>9</sup>	If license extended at the end of 6-yr period, area is delimited by minister & includes deposits found.	Between 47.5 and 50 percent of area surrendered after 6 yrs (exploration license).	At least 50 percent of area surrendered after 6 yrs.	At least 50 percent of area surrendered after 6 yrs.
State participation	Sliding scale, with min. 20% state interest in each license. Occurs on a carried interest basis, DONG [Danish Oil and Natural Gas] is national oil company.	Maximum 50% of participation in production of oil. Vehicle is at present the DSM [Dutch State Mines], now Danish North Sea partner.	Sliding scale, beginning at 50% and rising to 85% as production increases. Carried interest basis. Statoil is national oil company.	State is granted right to take 51% of any oil produced, payable at market price. BNOC is vehicle for participation.

<sup>9</sup> The concessionaire is obliged to return parts of the contract area (optional or mandatory) to the host government in accordance with the terms of the contract.



Applicants' qualifications	Financial and technical capability.	Proof of adequate financial and technical resources required; no limit on foreign ownership.	Incorporation in Norway; financial and technical capability to be shown.	Any person may apply for a production license; financial and technical capability to be shown.
Disposition	No landing requirement, but state company has option to purchase up to 50% of oil and natural gas produced, and all producing companies required to link up with pipeline system.	Ministerial approval required before licensee may sell petroleum or natural gas outside the Netherlands. Natural gas for domestic consumption must be sold to state gas company.	Landing requirement, but dispensations may be granted.	Landing requirement, but ministerial consent may be given for export (and usually is).
Method of award	General invitation to apply in rounds; award by ministerial discretion on basis of published criteria.	General invitation to apply in rounds; award by ministerial discretion on basis of published criteria.	General invitation to apply in rounds; award by ministerial discretion to consortia organized by Minister, not companies.	General invitation to apply in rounds; award by ministerial discretion on basis of published criteria. Some awards may be made by tender method.
Royalty	Sliding scale: from 2% (up to 5,000 b/d) to 16% (more than 20,000 b/d). May be taken in cash or kind.	Sliding scale from 0 to 15%, according to production.	Sliding scale from 8% to 16%, according to production. May be taken in cash or kind.	Two-tier system: no royalty on production from fields approved on or after 1 April 1982; flat rate of 12.5% on rest, including Southern Basin fields. Usually taken in kind, not cash.

The UAE also uses Concession agreements for the presence of foreign companies in the development and production of oil and gas fields<sup>10</sup>. Foreign companies are allowed to participate in these contracts up to 40%. The term of these contracts is a maximum of 40 years. In return for the benefits provided to foreign companies, the UAE government receives a combination of royalty and income tax from companies, requiring foreign companies to transfer technology and train local manpower. Modern Concession agreements have features that still distinguish them from other similar

contracts. The most important of these differences are: the independence of the oil company in conducting oil operations and operating at its own discretion, minimal government intervention and oversight of operations, simple fiscal regime based on bonus, royalty and taxes, lower government revenue and higher oil company's income, ownership of all the oil produced and has a production license for a relatively long time.

<sup>10</sup> Cited in: The effects of the recent UAE oil tenders in the form of concession contracts on Iran's economic security, Journal of Economic Security, August 2019, No. 64.

### 3. Methodology

The research method is descriptive and analytical. Legal sources governing oil contracts can be divided into three categories: domestic law, domestic regulations and international law (Ebrahimi, Taghizadeh and Sarir, 2014: 9-11), but according to the final aim of this study, in this research, only the first two categories will be applicable. Iran's laws and regulations governing oil contracts can be categorized as follows:

- 1) Constitution of the Islamic Republic of Iran,
- 2) Oil Laws and regulations, including the Oil Law adopted in 1987, the Oil Law Amendment Law adopted in 2011, and the Law on Duties and Authorities of the Ministry of Petroleum approved in 2012, and
- 3) Laws of Five-Year Economic, Social and Cultural Development Plan.

Efforts are made to explore the legal compliance of Concession agreement with the Constitution and the latest laws in the field of oil and gas, emphasizing their use by Iranian exploration and production companies. The method of collecting information in this research will be to study the related laws and its various interpretations. Descriptive method is used to analyze the data.

### 4. Results

#### 4.1. The constitution

Since the country's natural resources of oil and gas are referred to as mines in general in the Iran's Constitution, and concessions in this area can be made to a foreigner (IOC), Articles of the Constitution that can be related to the sovereignty and ownership of oil and gas and are referred in papers are 43, 44, 45, 81 and 153. Article 43 lists the criteria on which the Iran's economy is based on. Item 8 of this Article is the subject of the present discussion. This item prohibits foreign economic domination of the country's economy. This legal avoidance is repeated in Article 153, except that it is used as a more general term for foreign domination of natural resources, culture, military, as well as economic resources. Exercising sovereignty and reducing the dominance of foreign investors over the oil industry are among the main goals of other oil producing countries (Amani and Hamidzadeh, 2015: 154). If we assume the term "foreign domination" as the domination of a foreign party over natural and economic resources, in the sense that the foreign party is the final decision-maker over that resource, it seems that the law is clear. The only

ambiguity is in identifying examples of this law. For instance, it can be argued that traditional Concession agreements in which the concessionaire is the owner and ultimate decision maker of the oil field can be equated with foreign domination because the concessionaire, not the host government, determines key factors such as when to extract, how to extract and the pricing of the produced oil. But can the modern Concession agreements, which specify the sovereignty of the host state over the oil field and the concessionaire owns only part of the oil produced, be equated with foreign domination by the same argument? According to Amani and Hamidzadeh (2015: 167 to 168), the term "domination" mentioned in Article 153 [as well as Article 43] makes sense if special rights are granted to a foreign party in the contract. These special rights should be exclusive in a way that prevents the entry of other investors and actions of the public sector governance such as monitoring and managing the flow of investment. It is further concluded that merely undertaking foreign operations and investment in an oil Block cannot be called foreign domination. Because the host government can exercise sovereignty over oil resources in a variety of ways, such as emphasizing protective production, controlling and supervising oil operations, and agreement on pricing, the IOC no longer has the past authorities. In this case, there is a serious doubt to interpret an investment in an oil project with a new contractual mechanism equal to foreign domination.

The words oil and gas are not specifically mentioned in the Constitution, but it follows from these Articles that this part of the industry is addressed in the field of large mines. Article 44 of the Constitution of the Islamic Republic of Iran is based on three sectors: public, cooperative and private, and if we include oil and gas fields as large mines, these natural resources are located in the public sector, which is publicly owned by the government. From the word "possession" it follows that in this Article the sovereignty of the state, and not its ownership over the mines, is confirmed (Shiravi, 2014: 172). Article 45 lists mines as part of Anfal and public wealth, and although it does not specify which of them are mines, in any case they are all at the disposal of the Islamic government to use them for the public good. Although the term Islamic government refers to all the governing entities of the Islamic Republic of Iran, but considering the duties of other Iran's political structures such as the Legislature and the Judiciary in the Constitution, it seems that the Islamic government in this Article means the Government of Iran (Executive). The argument here is that the ownership of the mine alone



should be in the hands of the government, and if the government, according to Article 45 of the Constitution, wants to use it as public wealth, it must first extract the mineral and then sell it or use it in infrastructure and national projects. In the latter case, it means the sale of minerals to the project contractors. Therefore, it follows from the Articles that the ownership of a mine is not transferable, but the ownership of a mineral after extraction must necessarily be created (according to the Rule of Capture) or transferred in order to be used as public wealth in the public interest permitted by the Constitution. The Rule of Capture as a legal rule, while it is unusual, is also common (Kashani, 2008: 175). It seems that according to this rule, the mines' operators (excluded oil and gas reservoirs) of the country will benefit from the ownership of the mineral as soon as the mineral is extracted and subject to the payment of royalties<sup>11</sup>.

Another Article of the Constitution that could be proposed in case of transfer of upstream oil and gas projects in the form of Concession agreements to IOCs is Article 81. Article 81 of the Constitution strictly prohibits the granting of concessions to foreigners for the formation of companies and institutions in various matters, including mining. Although it seems that based on this Article, giving oil concessions to foreigners is prohibited, if it is examined more closely, another interpretation of it may be obtained. In Concession agreements, exploration and exploitation licenses are typically granted to a pre-established company, either separately or together. The same procedure applies in the Mining Law (Iranian Mining Engineering Organization, 2013). However, what is stated in Article 81 is the privilege of forming a company, which is different from giving a privilege to an established company. Although the result seems to be the same, and what the legislator sought was to prevent foreigners from entering Iran's various economic affairs. However, according to Article 81, the ban on granting concessions to foreign companies was explicit, but it seems that not all roads are closed to foreign companies and they have the right to form companies in Iran (Amani and Hamidzadeh, 2015: 167).

The primary reference for extracting legal rulings are laws. In case of deficiency of the law or conflict of laws or the absence of law on the subject, the court is obliged to determine the verdict according to Article 3 of the Code of Civil Procedure and based on valid

jurisprudential sources or valid Fatwas and legal principles that are not contrary to Islamic law (Kazemi Najafabadi, 2017: 142). Therefore, in order to get a correct understanding of Articles 44 and 45 of the Constitution regarding oil and gas resources, if we want to search for its jurisprudential roots, it seems that oil and gas mines are *Anfals* (and not public wealth) and the esoteric nature of these mines is cited. According to the same classification and Article 44 of the Constitution, the government can represent the public to *Iqta*<sup>12,13</sup> of the large mines (including oil and gas fields) to act in the public interest (Moradi and Ranjbar, 2017: 87). *Iqta* in territorial, tax and court affairs is in the realm of Islam, and it is the transfer of land, water, mines or its benefits, or the transfer of the right to collect tribute and taxes, or limited assignment of business location to someone for a limited time or indefinitely (Baramaki Yazdi and Manzoor, 2016: 148). Although it seems that the purpose is not to seize property and only to exploit by the competent persons (or the holder of the exploitation license) for a certain period, the holder of the exploitation must be able to own the property at some point in the exploitation in order to sell it, as applied in the mining law. In results, although according to some researchers materials extracted from the mine equal to mine itself (Yasrebi and Sabzevari, 2017: 498), a distinction must be made between the mineral and the mine. In this case, the ownership of the mine cannot be transferred and only ownership of the mineral can be created or transferred by the Islamic government after extraction. Then the *Iqta*, which is the exploitation of the mine for the public benefit, can be realized.

On the other hand, it has been stated that the condition of transfer of ownership in Iranian oil contracts, which is governed by Iran's law, was not valid, unless there is a legal regulation for it (Kazemi Najafabadi, 2017: 159). However, it seems that before the passage of the Oil Law Amendment Law in 2011, which repealed the Oil Law of 1974, there was a condition for the transfer of ownership in accordance with Article 19 of the 1974 Oil Law. This Article says that the National Iranian Oil Company (NIOC) owns the oil produced from Iran's oil resources. Afterwards Kazemi Najafabadi (2017) concluded that since the condition of determining the time of transfer of ownership is not mentioned in Iranian civil law, referring to Imami jurisprudence which is the main basis of its

<sup>11</sup> Ministry of Industry, Mine and Trade, Executive Regulations of the Mining Law approved in 2013.

انقطاع <sup>12</sup>

<sup>13</sup> Action of the Islamic government in allocating the exploitation of mines for the benefit of competent individuals.

rules, the condition of transfer of ownership from the time of contract does not seem acceptable (ibid: 159). Since the ownership of oil and gas in the reservoir is not necessarily the same as the ownership of the oil and gas produced, it seems that it is not correct to use the term “transfer of ownership of oil and gas” from the host government to the concessionaire at the wellhead. Some believe that the ownership of oil in traditional Concessions is transferred to the owner according to the Rule of Capture (Gholizadeh and Foroumand, 2017: 50). Assuming the wellhead is the boundary between the two properties, the host government cannot transfer ownership of the oil and gas in the reservoir because the concessionaire becomes the owner of the oil and gas produced according to the Rule of Capture. In other word, the host government does not own produced oil and gas to transfer it to the concessionaire. In this regard, by separating the ownership of oil and gas in the reservoir and oil and gas produced in Concession agreements, it could be concluded that the latter one is created for the oil company through its own efforts. However, in Iran's law, by having an explicit legal regulation stating that no right of ownership is created over the oil in place and the transfer of ownership can be done at the wellhead or export point and specifying this subject in the oil contract itself, ownership issues can be eliminated (Kazemi Najafabadi, 2017: 160).

So far, this constitutional review has been conducted in a situation where the contract party of NIOC is an IOC. Now, if one or more domestic E&P companies are parties to the contract for exploration and development of the country's oil and gas fields, what will happen in the analysis of the mentioned Articles of the Constitution? Although there are serious doubts about the application of Articles 153 and 43 to the IOC operating exploration and development of oil and gas fields under the modern Concession mechanism, it can be understood that the legal burden of these Articles will be much lower for the domestic E&P companies. Apparently, just because these companies are Iranian, there is no confidence that economic domination will not occur as the spirit of the law emphasizes domination rather than alienation. Instead, the legal path for the presence of Iranian companies is smooth and if there is a fair mechanism and the necessary preconditions for such companies, the concept of domination of Iran's natural and economic resources can be far removed. It seems that there is no ambiguity about Article 81 of the Constitution, which legally prohibits the granting of concessions to foreigners. Then, this Article is not applicable to the domestic E&P companies.

## 4.2. Oil laws and regulations

Since the Iran's Islamic Revolution, two Oil Law of 1987 and 2011 have been approved. According to the repeal of the Oil Law of 1957 according to Article 30 of the Oil Law of 1974 and the repeal of the Oil Law of 1974 according to Article 9 of the Oil Law of 2011, currently only the Oil Laws of 1987 and 2011 are valid as the Oil Laws. Article 2 of the Oil Law, approved in 1987, in accordance with Article 45 of the Constitution, while repeating Anfal and the public wealth of the country's oil resources, has added two items. The first is that all facilities, equipment, assets and investments made inside and outside the country by the Ministry of Petroleum and its subsidiaries are for the people of Iran and in the hands of the Islamic government. Article 5 declares that the contracts of the Ministry of Petroleum with states are based on Article 77 of the Constitution and need to be approved by the Parliament of Iran. Although most IOCs appear to be privately owned, some of them operate as the national oil company of their host government. For example, if Statoil (Norwegian National Oil Company), Pertamina (Indonesian National Oil Company), Petrobras (National Petroleum of Brazil) or Petronas (National Petroleum Company of Malaysia) enter into an oil contract with NIOC, will logically be considered a government contract and will need to be approved by the Parliament of Iran. Article Six of the 1987 Oil Law, which has been the subject of much debate, states that investments in this area must first enter the national budget, like other operating expenses, and in the next section states that the source of funding cannot be foreign investment. According to this Article, domestic investment to finance the upstream oil and gas projects by domestic E&P companies seems possible.

Article 2 of the Oil Law 2011 amends Article 2 of the Oil Law of 1987, while re-emphasizing Anfal and public wealth and exercising the right of sovereignty and ownership over oil resources, eliminating the exercise of sovereignty and ownership over oil facilities. Article 3 of the 1987 Oil Law did not mention oversight of the exercise of sovereignty and property rights. In its amendment to the Oil Law of 2011, this task was assigned to the Supreme Board of Oversight of Oil Resources, which consists of some high-ranking government officials. Article Six of the Oil Law of 1987 remained intact without any amendment to the Oil Law of 2011. Article Eight of this law obliges the Ministry of Petroleum to confidentially send contracts for the exploration and development of oil fields having more than five years commitments to the Parliament of Iran,



which seems aligned to monitor the exercise of sovereignty and ownership over oil resources.

Number Five of item C (Executive Affairs) of Article Three of the Law on Duties and Authorities of the Ministry of Petroleum, adopted in 2012, explicitly states that the issuance of operation and exploitation licenses to legal entities authorized to explore, develop, extract and produce from all oil and gas fields of the country is the responsibility of the Ministry of Petroleum. Although the law explicitly mentions the issuance of operation and exploitation licenses, which are features of the concession system, in practice it appears that exploitation licenses (without ownership of oil and gas produced) are issued only for production in some fields<sup>14</sup>. In the mentioned Article of the Law on Duties and Authorities of the Ministry of Petroleum, the term domestic investors and contractors are mentioned alongside international ones. It can be interpreted as domestic E&P companies like IOCs can participate in the upstream oil and gas industry, in case that they have the necessary conditions with the exception that there is no restriction on Article Six of the 1987 Oil Law for them.

### 4.3. Rules of the five-year economic, social and cultural development plan

Other laws that deal with the sovereignty and ownership of oil and gas include the laws of the Five-Year Economic, Social and Cultural Development Plan, which have been approved by the six laws after the Iran's Islamic Revolution. It seems that item H of Note 29 of the First Five-Year Plan Law (1990-1994) approved in 1989, was drafted in order to fulfill Article Six of the 1987 Oil Law. According to this item, the NIOC was allowed to meet domestic and export needs and exploitation of Pars and South Pars Gas Fields to conclude necessary contracts up to a maximum amount of \$3.2 billion with qualified foreign companies. However, this discrepancy cannot be ignored that the license given in the First Five-Year Plan law was a foreign investment license, which was explicitly prohibited in Article Six of the 1987 Oil Law. According to this Article, Iran's first Buy-back agreement was signed with Total for the development of Siri A and E fields. The second part of this item states that the conclusion of these contracts should be such that the investment costs are repaid from the production of the

mentioned fields. This was repeated in the Second Five-Year Plan (1995-1999) and according to item M of Note 22, the executive bodies (including the Ministry of Petroleum) were allowed to reach a ceiling of \$6.5 billion through the Buy-back of executive plans. According to the Table 13 of this law, most of them are of the development type.

Article 33 of the Law on the Third Five-Year Plan (2000-2004) states that policy-making and planning regarding the exploration, extraction and production of crude oil is the prerogative of the government, and since policy-making is the practical result of governance, the use of the term "government" can be interpreted as Islamic Sovereignty considered in Article 45 of the Constitutions. The Third Five-Year Plan Law no longer sets a foreign exchange budget ceiling for investment in the upstream oil and gas sector. Item B of Article 14 of the Law on the Fourth Five-Year Plan (2005-2009) again sets the ceiling for foreign investment that the NIOC is allowed to make to develop upstream oil and gas operations, except that a specific amount is not specified and only income from excess oil and gas production is planned. Another important point that can be seen in this item is the explicit use of the term different methods of international contract, which due to the Constitutional limitation in granting license to foreigners, one of these methods can be interpreted as the approach of PSC. The first condition for the application of this item is the preservation of sovereignty and the exercise of state ownership of the country's oil and gas resources. Considering other conditions such as repayment of principal, interest rate, rate of return and risk of not achieving the desired contractual objectives, it can be concluded that this action is a complete interpretation of foreign investment in the upstream oil and gas field, which is clearly in opposition to Article Six of the Oil Law adopted in 1987.

Article 125 of the Fifth Five-Year Plan (2011-2015), which is the first Article of the oil and gas chapter of this law, has mentioned the term exploration, development and production license for the first time. The said license is the main mechanism of the Concession agreements in the field of oil and gas. The ceiling set is the same as the additional production ceiling set out in the Fourth Plan. In addition, as in the Fourth Plan, the use of a variety of methods of exploration, development, and production while retaining ownership and exercising ownership of

<sup>14</sup> Hemmat, M.A. (2013), Inauguration of the presence of the National Iranian Oil Company in the commercial and

international space; Issuance of temporary exploitation licenses for 29 oil fields of the country, *Scientific Journal of Oil & Gas Exploration & Production*, 99, 3-4.

the property for the government is redefined. According to item A of Article 129, the Ministry of Petroleum, in order to exercise the right of sovereignty and ownership over oil and gas resources, while establishing the management of exploration, development and production, is obliged to employ the necessary experts. Pursuant to Article 125, in accordance with item 12 of Article 129, the Ministry of Petroleum is obliged to issue exploitation license without ownership respect to the produced oil and gas, for exploration, development and production by adopting optimal oil reservoir production policies. Since it is not explicitly specified in this Article, it can be assumed that exploitation licenses could also be issued to foreign oil companies. In item C of Article 48 of the Law on the Sixth Five-Year Plan (2017-2021), the Ministry of Petroleum is obliged to make the necessary arrangements to use its internal capacities and capabilities to invest in exploration, production and exploitation operations (not ownership) of oil and gas fields, especially joint oil fields aligned with the framework of the general policies of Article 44 of the Constitution. Pursuant to Article 4 (a) of this law, all executive bodies were required to make the necessary policy to attract the financial resources required for investment up to an average of \$30 billion annually in various forms, including foreign direct investment and foreign partnership contracts. According to the phrase of “all executive bodies”, it seems that according to this item, there is the possibility of foreign investment in the upstream oil and gas field, which is prohibited according to the Article Six of the Oil Law 1987.

## 5. Conclusion

One of the reasons that developing countries do not use Concession agreements is the historical mentality of these countries (Smith, et al., 2010: 501; Omorogbe, 1997: 67). Therefore, the refusal of developing countries to use the Concession agreement model in the development of their oil fields is more due to historical events and their previous mentality than to technical or economic reasons. For this reason, it seems that according to Article Six of the Oil Law approved in 1987, any foreign investment, including Concession agreements and PSC, in the field of oil and gas is prohibited. Here, a distinction must be made between a) legal feasibility, the results of which depend on legal sources and current laws and regulations, and b) the category of law enforcement, which is linked to the attitude and mentality of the law enforcer. In this regard,

it can be noted that although the use of Concession agreement, at least for the domestic E&P companies, is not a serious legal prohibition, but probably because of this mentality, the subject of Concession agreements was quickly removed from the agenda of the working group on IPC (Emadi<sup>15</sup>, Personal interview, February 29, 2019).

In terms of governance and ownership in Concession agreements, it can be summarized that control over oil and gas resources is still in the hands of the host government. The host government owns the oil and gas in the reservoir and the ownership of the produced oil and gas at the wellhead is created by or transferred to the oil company. The same approach is used in the Iranian Mining Law, so that the operator benefits from the ownership of the extracted mineral, if he pays royalties to the public treasury. Therefore, it does not appear that the ownership of the IOC over produced oil and gas, which is based on a modern Concession agreement for development of oil resources, includes any prohibition in the Constitution other than the prohibition of Article 81. In addition, since in the new approach of Concession agreements used in many countries, the host government is the final decision-maker on the progress of oil operations, it cannot be described as domination of oil and gas resources and therefore it does not have a serious contradiction with the Constitution. On the other hand, domestic E&P companies will not be subject to Article 81 of the Constitution, which makes restriction on granting concessions to foreigners.

In the Oil Laws of 1987 and 2011, only the restriction on the inflow of foreign capital in the upstream oil and gas industry of the country has been observed, which again does not include the Iranian E&P companies. In the laws of the Five-Year Economic, Social and Cultural Development Plan of the country, this restriction of Oil Laws has been adjusted largely as it can be understood that this restriction has also been removed for IOCs. The Fifth Five-Year Development Plan Law, as well as the Law on Duties and Authorities of the Ministry of Petroleum, authorize the Ministry of Petroleum to issue exploration, development, and production licenses, which are features of Concession agreements. Currently, Ministry of Industry, Mines and Trade issues these licenses for exploration and development of the country's mines. However, it seems that the licenses issued by the Ministry of Petroleum are only for the operation or production of oil and gas and this legal capacity is not utilized for the exploration and development of oil and

<sup>15</sup> Ex-member of Board of Directors of NIOC



gas fields of the country. In general, it can be said that there is no serious legal prohibition on execution of domestic E&P companies in the upstream oil and gas operations of the country based on the modern Concession agreement.

The results are aligned with the research of Gholizadeh and Foroumand (2017). However, in order to ensure this, the reform of the oil law and the emphasis on the possibility of using other contractual models in the field of upstream oil and gas industry are necessary only for qualified E&P companies. Obviously, this qualification is not the only competence that the Ministry of Petroleum has evaluated. The qualification assessment of E&P companies conducted by the Ministry of Petroleum certifies the minimum capability of domestic exploration and production companies and does not go into the nature of the formation and ownership of these companies. For example, it seems that the privacy and public ownership of these companies are among the most basic requirements that must be met. On the other hand, how is it possible that some of these companies, which are basically subsidiaries of the Ministry of Petroleum, despite having good experience in execution of upstream projects, can be in competitive environment that the employer of these projects actually owns these companies?

One of the concerns of the government regarding the use of other contractual approaches is the reduction of revenues that may be obtained as a result of the use of this type of contract. The fiscal regime of the Concession agreements, while simple, has the necessary flexibility to control the revenue of the oil company and maintain the expected government take. Furthermore, since the E&P companies are Iranian, government interaction with them will be logically faster and easier. The national interests that will result from the growth and development of domestic exploration and production companies can be of relatively higher stability than when one of the parties to the contract is an IOC. The main benefit that the government has considered so far from Buy-back contracts is more than monetary resources with relatively low stability. On the other hand, government was not very successful in achieving other comparative advantages such as technology transfer (Mirimoghaddam et al., 2015: 17; Derakhshan and Taklif, 2015: 78). While growth and development of Iranian E&P companies can act as the driving force of domestic industries and improve the economic conditions of the country (A. Zargar, personal interview, February 24, 2019). Finally, one of the current concerns of the government is oil exports, which is facing serious

problems during the imposition of international sanctions, and the oil exchange has not been able to meet government expectations. The sanctions strategy halts Iran's economic and industrial growth, restricts foreign investment, weakens the Rial, multiplies inflation, reduces oil and gas production and exports, and consequently has made the way to attract foreign capital uneven and investment and development very difficult (Shafe and Rahimi, 2014: 33). While in Concession agreements, the oil ownership can be realized by the E&P companies and the risk of selling part of the country's oil production will be transferred to the private sector.

Undoubtedly, domestic E&P companies have more capacity than the government to achieve goals such as localization of the oil industry in Iran. But this capacity will not be fully utilized until it becomes a necessity for these companies. For example, Engineering, Procurement and Construction (EPC) contracts are sometimes used in upstream industries such as contracts executed for the South Pars Gas Field Development Plans (Ghanbari Jahromi and Asgharian, 2015: 752). Although these are multi-billions dollar contracts, they cannot create the need for the oil company to pursue important goals such as localization. Because they are almost sure that they will receive the full amount of contract from the governmental employer. Therefore, assignment of such contracts will not lead to a real growth without transferring much risk to the oil company. Concession mechanism which are currently pursued in the Iran's mining sector, could be a suitable platform for the development of E&P companies and, as a result, the growth of the oil industry. Given the time it took for the IPC to be formulated and implemented, entering into other oil contract models and implementing them will not happen quickly. This may take at least several years to pave the way. Therefore, domestic E&P companies will have a multi-year opportunity to prepare for the entry into other contractual models by taking advantage of the capacity of IPC or Buy-back. In the next step, future researches related to the subject of the present study can focus on the two main parts of the views of officials and legislators in this regard and investigation of the ability of exploration and domestic production companies to carry out operations in the upstream oil and gas field.

---

## References

Abbasi Sarmadi, M.; Safakish Kashani, H. (2019). A study of historical-legal developments in

- international oil and gas concession agreements, *Journal of History, Spring, No. 52*, pp. 7-22.
- Al-Fattah, S.M. (2013). The Role of National and International Oil Companies in the Petroleum Industry, *SSRN Electronic Journal*, DOI: 10.2139/ssrn.2299878.
- Amani, M. and Hamidzadeh, M.H. (2015). Legal analysis of production sharing contracts in upstream oil and gas industries and its applicability in Iranian law, *Journal of Islamic Law, Vol. 16, No. 1 (41), Spring and Summer*, pp. 151-180.
- Ameri, F. and Shirmardi Dezaki, M.R. (2014). New concession agreements and the interests of oil-producing countries: an analysis of oil ownership, host government supervision, and contract fiscal regime, *Private Law Research Quarterly, Vol. 2, No. 6, Spring*, pp. 63-108.
- Aminzadeh, E. and Aghababaei Dehkordi, P. (2014). Examining the production sharing contract and comparing its efficiency with Buy-back. *Legal Journal of Justice, Vol. 78, No. 87, Fall*, pp. 7-29.
- Azimi Zarrin, H. (2016). Legal Analysis of Iran's New Upstream Oil Contract, M.Sc. Thesis, Allameh Tabatabaie University.
- Baramaki Yazdi, H. and Manzoor, D. (2016). Jurisprudential study and analysis of oil and gas field development contracts, *Islamic Economics Quarterly, Vol. 16, No. 62, Summer*, pp. 139-164.
- Bret-Rouzaut, N. and Favennec, J.P. (2011). Oil and gas exploration and production: reserves, costs and contracts. Third Edition, Editions Technip, Paris.
- Clews, R.J. (2016). Project Finance for the International Petroleum Industry. Elsevier Inc., London.
- De Alencar Xavier, Y.M. (2015). Energy Law in Brazil: Oil, Gas and Biofuels. Springer. Switzerland.
- Derakhshan; M.; Taklif, A. (2015). Technology Transfer and Development in the Upstream Sector of Iran's Oil Industry: Considerations on Concepts, Requirements, Challenges and Solutions, *Journal of Iranian Energy Economics, Spring, Year 4, No. 14*, pp. 33-88.
- Ebrahimi, S.N. and Shirijian, M. (2014). Upstream oil and gas contracts of the Islamic republic of Iran and explaining the legal implications and requirements of new contracts, *Iranian Energy Economics Quarterly, Third Year, No. 10, Spring*, pp. 1-39.
- Ebrahimi, S.N.; Taghizadeh, E.; Sarir, F. (2014). A study of legal principles governing upstream contracts of the oil and gas industry in Iran, *Civil Law Knowledge, Fall and Winter, No. 6*, pp. 1-13.
- Emami Meybodi, A.; Hadi, A. (2017). Investigating barriers to technology transfer in buy-back contract and assessing technology transfer risk in new Iranian oil contract (IPC) by FMEA method, *Journal of Iranian Energy Economics, Spring, No. 22*, pp. 1-43.
- Gao, Z. (1994). International Petroleum Contracts, First Edition, International energy and resources law and policy series.
- Ghanbari Jahromi, M.J. and Asgharian, M. (2015). A Comparative Study of the Financial Arrangements of the Iraq and Iran Oil Service Contracts, *Comparative Law Review, Vol. 6, No. 2, Fall and Winter*, pp. 751-771.
- Gholizadeh, M. and Foroumand, L. (2017). A study of the legal developments of the concession agreement in Iran, *Quarterly Journal of Legal Studies, No. 18*, pp. 45-65.
- Hadi, S. (2018). A study of investment buy-back contracts in the oil industry in Iranian law, *Legal Researches of Qanunyar, Winter, Vol. 1, No. 4*, pp. 145 to 162.
- Hatami, A. and Karimian, I. (2014). Foreign Investment Law in the Light of Investment Law and Contracts, Tisa Publications.
- Inkpen, A. and Moffett M.H. (2011). The Global Oil & Gas Industry; Management, Strategy & Finance. PennWell. Tulsa, Oklahoma.
- Iranian Mining Engineering Organization (2013), Mining Law, Iranian Mining Engineering Organization Publications, First Edition.
- Islamic Parliament Research Center (2016), Comparison of IPC Contracts with Buy-back Contracts, Deputy of Economic Research, Serial Number 15059.
- Kashani, J. (2008). Status of oil and gas resources rights located at the border of countries, *International Law, Vol. 25, No. 39*, pp. 165-219.
- Kazemi Najafabadi, A. (2017). Ownership of oil in international oil contracts from the perspective of



- private law, *Private Law Research*, Spring No. 18, pp. 131-165.
- Manzoor, D.; Koahnhooshnejad, R.; Amani, M. (2016). Financial evaluation of selected oil buy-back contracts and its comparison with production sharing contracts, *Iranian Journal of Energy Economics*, Vol. 5, No. 18, Spring, pp. 179-217.
- Mirimoghaddam, M.; Ghazi Nouri, S.S.; Tofighi, J.; Elahi, S. (2015). Technological learning in the oil industry: A case study of the South Pars gas field development phases, *Quarterly Journal of Science and Technology Policy*, Vol. 7, No. 2, Summer, pp. 17-34.
- Montazer, M. and Ebrahimi, S.N. (2013). The position of buy-back contracts in upstream Iranian oil and gas projects and its comparison with production sharing contracts, *International Law Journal*, No. 49, Fall and Winter, pp. 215-232.
- Moradi, A. and Ranjbar, M. (2017). Ownership of oil and gas resources in situ and its exploitation in Islamic jurisprudence, *Quarterly Journal of Islamic Jurisprudence and Law*, Year 13, No. 46, pp. 69-88.
- Nikbakht, H. and Arian, M. (2014). Designing new contract models for the development of Iran's hydrocarbon fields: a review of the new law of the ministry of oil, *Legal Research Quarterly*, No. 71, pp. 75-120.
- Omorogbe, Y. (1997). *The Oil and Gas Industry Exploration & Production Contracts*. Lagos State Nigeria: Malthouse Press Limited.
- Picton-Turbervill, G. (2009). *Oil and Gas: A Practical Handbook*, Globe Law and Business, London.
- Ramazan Nejad Kiasari, L.; Bagheri, S.R. (2021). Review of oil buy-back agreements, *Journal of Law Studies*, Spring, No. 48, pp 369 to 384.
- Saber, M.R. (2007). A comparative study of the legal nature of buy-back agreements and its legal status, *Journal of the Center for International Legal Affairs, Vice President for Legal Affairs and Parliamentary Affairs*, No. 37, pp. 243-295.
- Sarir, F. (2014). *Analysis of Legal / Contractual Developments of the Upstream Contracts of Iran's Oil and Gas Industry*, PhD Thesis, Payame Noor University.
- Shafe, M.; Rahimi, F. (2014). Transformation and step-by-step evolution of international oil buy-back agreements in the context of Iranian law, *Journal of Auditing Knowledge*, Spring, No. 58, pp. 29-64.
- Shiravi, A. (2014). *Oil and Gas Law*, Mizan Publishing, Second Edition.
- Smith, E.E; Dzienkowski, J.S.; Anderson, O.L.; Lowe, J.S.; Kramer, B.M.; Weaver, J.L. (2010). *Materials on International Petroleum Transactions*, Third Edition, Rocky Mountain Mineral Law Foundation.
- Toriguian, S. (1972). *Legal Aspects of Oil Concessions in the Middle East*, Hamaskaine press.
- Yasrebi, S.A.M. and Sabzevari, H. (2017). Ownership and management of oil and gas mines in Iranian jurisprudence and laws, *Jurisprudence and principles of Islamic law*, Autumn and Winter, Year 50, No. 2, pp. 495-517.