



Principles of Arbitration in Oil Contracts

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ABSTRACT

In this article, the principles of governing arbitration in oil contracts are investigated. The subject matter of arbitration related to this area, and all of them, the bases governing such types of arbitration, in particular arbitration in oil contracts, are issues. The various jurisdictions of "private law" and "international investment law" have been influenced by the analysis of the relationship between the National Oil Company and the international oil companies and, on the other hand, by the field of public law as an analysis of the relationship between the International Oil Company and the host government or host country. Due to the intrinsic and international characteristics of oil and gas law, issues can be applied more quickly than other purely legal issues. On the other hand, due to the interdisciplinary nature of oil and gas rights, research tools in this field are diverse. Among legal issues, only the oil and gas rights can be explored in research-based methods, because in the interests of the fundamental rights of the investigation, the legislator is the ruler. But the texture of oil and gas, and in particular of oil contracts, are not the laws of the parliament, but the legal literature governing this science. In the field of oil and gas, scientific literature has been able to rule the legislature of the host country in many cases. Legislation related to the oil industry, in the absence of attention to the scientific literature of the opposing party and the international procedures for settling disputes, can lead to the result of the image of what they are thinking. Undoubtedly, it is not possible to win and succeed politics in this area without the backing of "scientific literature". And the element of persuasion of thoughts, which is the main and fundamental power in political and economic contexts, has rooted in its scientific literature and methodology in dealing with and analyzing issues relating to the legal aspects of oil and gas.

Keywords: Oil Contracts, Dispute Resolution, Private Law, International Investment Law



1. INTRODUCTION

In its most recent official report, Iran's National Oil and Gas Organization (NIGC) reported an estimated 33.7 trillion cubic meters of natural gas and more than 33.7 trillion cubic meters, and the country's conventional and estimated oil reserves were about 157 billion; overall, Iran's total oil and natural gas reserves It is estimated to be 400 billion barrels, and this means Iran has become the largest holder of the world's oil and gas reserves. According to the official OPEC report, Iran's petroleum status has been upgraded from fourth to third since the Venezuelan and Saudi Arabia. Iran, despite having huge oil and gas reserves, faces a deep vacuum in investment in the oil and gas industry. In the present study, the principles governing arbitration in oil contracts are examined. Paragraphs 14 and 15 of the general policies of the resistance economy emphasize the two principles of "increasing the country's oil and gas resources ... and developing production capacities ..." and the " perception of resources". Sustainable development is a necessary policy for balancing economic, social and environmental considerations. Investment contracts and sustainable development have complex relationships. Several aspects of investment contracts have a direct impact on sustainable development goals such as poverty reduction and environmental sustainability. From the perspective of sustainable development, in order to arrive at a good contractual provision, one must balance accurately all the above issues along with the conventional concerns about government revenue. The numerous process, economic, and environmental issues associated with investment contracts in natural resources indicate that these contracts are not only commercial transaction documents but these are also public policy instruments. This consideration has important implications that we are going to study here on the types of oil contracts. The requirements for sustainable development determine the indicators for the optimization of contracts, from which point out, contracts and methods for resolving disputes that may exist in national and international legal systems can be studied. Iran's policies and behaviors during the oil industry with international oil companies, as well as the multiplicity of decision-makers, and the diversity of laws, including constitutions and general and specific laws, generally violate, instead of complementary laws. The rules were the previous one, and some remained silent, and some were not implemented. Instability and misunderstandings of laws, oil traders and contractors have been confronted with ambiguities and thus hindered the prosperity of foreign investment and economic development. The analytical-descriptive study method



is based on the library method. The only sources of official and available documentation on the content of oil contracts are the Government's Statement on the General Conditions, the Structure and Model of Oil and Gas Contractors, and other documents issued by the relevant organs that are considered in this study.

2. STATEMENT OF PROBLEM

It is clear that hydrocarbon resources are considered as vital and important sources of the country. In fact, the issue of oil and gas has been around for 150 years, which has dominated the minds of the men's government and raised the issue of tension between countries. And subsequently, lawyers have focused on solving these challenges, and they have always focused on how to resolve the issue of oil disputes, as well as the best legal mechanism to investigate the differences between oil and gas. In the 1960s and 1970s, the peak of the nationalization of oil and mines and foreign investment by oil-rich countries, including Latin American countries and African countries and the oil-rich countries of the Persian Gulf, was an important discussion of the design process Fighting and claiming rights among legal communities and all oil companies was arranged and the procedure was dealing with the resolution of disputes in all jurisdictional courts of the competent oil company, and usually when dealing with lawsuits in judicial courts Investable governments were introduced; foreign investors and companies belonging to them were not satisfied with the outcome of the proceedings. As a result, the alternative was to replace alternative dispute resolution procedures and the best way was to resolve oil disputes. It is worth noting that arbitration, a privately-settlement of disputes, was accepted by foreign investors, and in fact, with the development of this, two fundamental goals were realized. Firstly, investment in the field of oil and gas has been developed and improved, leading to economic prosperity and financial prosperity. Secondly, investors chose the arbitrary agreements with the perfect mind and relaxed, hoping that at least the referees would refrain from bias, many issues that were ambiguous in this regard remained unanswered. For example, whether the issue of arbitration on oil contracts is compulsory or optional, and whether the resolution issued by the oil companies is an executive nature, etc.

3. DEVELOPMENTS IN INTERNATIONAL OIL CONTRACTS

Internal revolutions

According to statistics, the oil industry is the main supplier of foreign exchange earnings in the country, and, ahead of the intensification of Western sanctions in recent years, more



than 80% of foreign exchange earnings from export was provided by oil and gas export earnings. The presence of foreign companies with the condition of developing a suitable contract model can be a good basis for implementing paragraph 14 of the general policies of the strength of the economy and maintaining and developing the capacity of oil and gas production, especially in joint areas by using the technical and financial capacities of international oil companies. The Iranian oil industry has experienced various types of oil contracts from privilege to service purchases. Changing these types of contracts has been in proportion to the level of political developments and emotions of the country's various eras. Unfortunately, in making these changes, the national and international economic and political necessities and the technical capabilities of the oil industry experts have been underestimated. Of course, the will of the Iranian nation is increasing its powers in the field of the oil industry and has played an important role in this issue, in that will and the founder of some important and influential events in contemporary Iranian history, such as the nationalization of the oil industry and the victory of the Islamic Revolution, Despite the fact that more than 100 years have passed since the establishment of the oil industry and more than 55 years since its nationalization, this industry is still one of the most important industries in the country from an economic and political point of view. One of the most important economic developments in recent years, especially after implementation Finally, reforming the model of oil contracts with foreign countries. The evolution of the 115-year-old uprising of the country's oil and gas industry; since 1280 (granting Darcy's license to William Knox Darcy) can be based on a time division from the point of view of the rule of the Islamic Republic of Iran and also on the approach The contractor employed in the upper hand of the country's oil and gas industry identified in the following times:

Before the establishment of the Islamic Republic of Iran:

1901 - 1950: concession of contracts

1954-1974: Participatory Contracts

Consortium Contract of 1954: This contract, although it was in its nature a form of production partnership, was not awarded as a partnership contract.

Investment Partnership Agreement

Includes three contracts in 1957-1958 and six other contracts in 1964-1965.

Vulnerable Services Contracts



This type of contract was based on the oil law of 1974, and from that date until the Islamic Revolution in 1979, six service contracts were concluded.

After the establishment of the Islamic Republic of Iran:

Project financing contract from 1979 to 1992

Service contracts known as BITs from 1993 to 2013

IPC contracts since 2014 till now

International development

Oil contracts generally have an international dimension and, considering the changes in these contracts due to the political and economic developments in the world, the study of the developments in these contracts is of great importance and study. The history of the oil and gas industry in the world proves that the benefit of energy-consuming countries is also to balance of the contract, not to obtain long-term monopoly concessions. Before the conclusion of an oil contract, steps and points are made as the conclusion of the contract. Issues such as the type of crude oil and gas and how they can be achieved, the life of the oil and gas project, the price of hydrocarbon resources, technology, political relations and the laws governing the country are among the factors contributing to the formation of specific forms of oil contracts internationally. At the international level, all host countries usually assign oil companies to one of the three existing oil contracts that are currently known.

- Assignment systems (concessions)

these types of Contracts are the first form of oil contracts in the world. These contracts were created during the period of the US oil prosperity in the 1800s. And then the concept was contracted by oil companies to oil-rich countries. This type of contract was based on the concept of American ownership. In this ownership system, the person is owner of a land, owning rights to existing reserves, and owner of property. Therefore, if there are civil and mineral deposits such as oil and gas, it belongs to the owner of the property. Due to that historical root, the transfer agreement, in the case of oil contracts with international companies, induced the concept of ownership of oil and gas reserves in the scope of the contract to the contracting party. Therefore, a company that explored and extracted operations and discovered the industry was the owner of oil. In addition, the company had its own exclusive right of discovery in the scope of its assignment. The grantor country benefits from obtaining taxes and interest (equity), and can also indirectly engage in the creation of a joint venture during the operation of the contract. A decade after the



end of the Second World War, the initial formulation of these conventions was used, and then all sorts of it became more diverse or changed. contracts that became popular in the 50-50s formulation after the 50's. Also part of this group is a concession. Currently, 120 foreign countries operate jointly with foreign companies within the framework of new concessions. These types of concessions are mainly made in forms such as permission to exploit, grant licenses and leases, and the general agreements are as follows:

1. excavation of the wells to a certain date
2. Return of areas under a contract to the contracting state on a specified date
3. Ownership interest payment
4. Considering the legal material in order to determine the ultimate owner of each of the fields

This contractual system has been very different from traditional form in four axes: time period, concessional area, interest sharing, and production planning.

- Collaborative and Service Contracts

These contracts are different from the system of concessions, as no proprietary rights to oil and gas tank which are created for the contractor, which means that the host government is the owner and possessor of the underground storage and must contact the contracting party that owns the exploration operation, receives a share and a salary. Indonesia, in 1966, invented this type of contract and presented it to the global oil and gas industry. Under the terms of participation in the production, the state-owned oil company entrusts the exploitation license to the oil company, and the oil company carries out all necessary production and utilization operations, and produces the production of oil Which is specified in the partnership agreement, in accordance with the contract between the government and the investor. In such contracts, the foreign company, such as the concession contract, is required to pay tax (with a lower rate), and the owner possess a small amount of revenues. In the case of tank discovery, the duration of the contract is 5-6 years, and if the field is discovered, the duration of the contract is equivalent to a lifetime of about 25 to 40 years. Service contracts are in fact a kind of partnership agreement, but with the difference that the partnership agreement amounts to the contract, the oil and gas obtained is owned by the oil company, but in the contract for oil and gas services in any Quantities and amounts do not belong to the ownership of the oil company, and only rewards are required in accordance with the agreement.

There are several types of cooperative and service contracts that we will mention below:



1. Contracts for participation in production
2. Contracts for investment
3. Only service contracts
4. Purchase contracts for risky services
5. Mutual Service Contracts

Mutual investment contract

Joint venture contracts are a new type of oil contract, and, with concessional systems, cooperative contracts and service contracts are known as the fourth group of oil contracts. In this joint venture, the government will enter into a partnership and joint venture with its national oil company with one or more foreign oil companies. Rarely, an oil contract is concluded in the form of one of the aforementioned contracts, but most of the contracts have elements of each of these contractual forms.

Legal system of foreign oil investment contracts

Since 1950, the issue of the nature of the contract between governments and a foreign investor has been the subject of the mind of lawyers. There are not many problems with the contracts that governments have instructing the operator. Often these contracts are subject to international private law. The main controversy over these types of contracts is in the financial rules and legal jurisdiction of the host government.

- Internal Legal System

Oil-rich countries have been contracting with major oil companies over the history of their oil industry. Regarding the type of contracts that started from traditional points and in the period of the peak of the nationalization of the resources and the oil industry of those countries, they became contracts of participation and, finally, service contracts or partnerships of a new type or unmatched rating, the role of the contracting party has also changed to Sometimes the sovereignty of the contracting party has been with it, and when the government has been involved in the role of public interest representative, and sometimes in the role of commercial affairs operator or purchasing a service with them. In order to clarify the nature of foreign oil investment contracts, it is necessary to consider the process of concluding foreign investment contracts in the upstream of the Iranian oil and gas sector in the history of the Iranian oil industry, which suggests the government's view of oil resources. Prior to the constitution and the formation of the National Assembly, the privilege of assignment to foreigners was not a specific process. For example, in the first award given to Baron Julius Yuzu Reuter, the contract was signed



by the king. The second letter of Reuter, which is in fact a controversy about the disagreement arising from the termination of the first grade, was signed by the king and the legal representative of Baron Jolie Reuter in the presence of the British Minister of the Kingdom of England as witness and signed by the British Embassy. In the score of the Darcy contract, it is stipulated that the parties are the privilege of the Imperial Government and William Knox Darcy. After the constitution and the formation of the National Assembly, all the privileges were first granted by the foreign party and the government, and below it, a clause was inserted that the agreement would be applicable after the approval of the parliament and by the king. As long as the upstream and downstream sectors were handed over to the National Iranian Oil Company. But at the same time, only one contract was held in upstream and downstream oil fields of Iran, and it was approved in the single article titled "The Law on the Permitting of Exchange of Oil and Gas Sales and its Operating Procedures" of 1333.8.6 The Iranian congresses have returned Iran's oil products with the phrase "all laws and regulations that are in accordance with this law" before the nationalization of the oil industry. The agreement resulted in the formal and legal acceptance of the condition of stability that deprived a part of the sovereignty of a non-legislative act contrary to the treaty. Infraction of the sovereignty in Article 1 of the "Law on exploration and exploration of oil throughout the country and the continental shelf "It was also announced on 1336.5.7. In that article, all upstream and downstream oil issues, with the exception of these matters, were assigned to the National Iranian Oil Company outside the consortium's operations area. The first foreign investment contract was signed by the Italian company Agape Mina aria in accordance with the law as the Oil Law of 1336. From that date onwards, the two articles of the "Oil Exploration and Exploitation Act throughout the country and the continental shelf", passed on July 20, 1957, stated that "the National Iranian Oil Company may, in order to enforce the provisions This law shall be negotiated with anyone, such as Iran and foreign, whose technical and financial competence is established, and any agreement it deems appropriate, in accordance with the provisions of this Law and other terms not in conflict with the laws of the country, and the relevant agreement and Signature and submit to the Council of Ministers, if approved, to be submitted to the Houses for approval. Agreements signed in this way will be enforceable after approval by the Houses and from the date of the enactment. "In the" Law on the Exchanging and Execution of Oil Exploration and Production Contract with the ERAP ", the first contract of service contracts in The



upstream oil sector in Iran was that it would allow the government to exchange and execute it. The same term was explicitly stated in the contract for the contract for exploration and production between the National Iranian Oil Company and the European Companies, approved on April 31, 2013, "... it is approved and authorized to be exchanged and executed." This procedure continued until the adoption of the 1353 Oil Act. In that law, only upstream contracts were allowed. In addition to the restrictions on the types of contracts in the upstream area as foreseen by the 1353 Act, a change was also made in the process of concluding contracts. For example, in the second paragraph of Article 3, "The National Iranian Oil Company may enter into the activities of exploration and development of oil in free parts of the oil with any person, both Iranian and foreign, agree on the contracts that it considers appropriate, on the basis of the contract and in compliance Regulations of this Law will be signed, after the approval of the Cabinet of Ministers, the contracts will be put into effect. " According to this paragraph, Iran's parliaments were withdrawn from the process of concluding oil investment contracts. But Article 2 of the law stated: "... The National Iranian Oil Company is responsible for performing the duties and exercising the rights and powers stipulated in this law and monitoring its implementation. The said company shall, in the manner prescribed by its statutes, will act ". The National Oil Company Statute of 20.5.1353 also stated that the subject of the National Iranian Oil Company would be to exercise the right of the Iranian nation to own oil and gas resources throughout the country and the continental shelf. In addition, the General Assembly appointed the government's stockholders to be the Prime Minister and the six Cabinet Ministers, as foreseen in Article 60. The sovereignty and oil affairs of this law were separated and merely the exercise of the right to property was transferred to Company. After the victory of the Islamic Revolution, with the adoption of the constitution of the Islamic Republic of Iran, and based on Article 44, Iran's economic system was based on the three pillars of the state, cooperative and private sectors, including mines including oil and gas and large industries, including the oil industry in the public sector. But in Article 45, mines, including oil mines, were part of the public wealth, and were at the disposal of the Islamic government, in accordance with the public interest. In Note 38 of the 1978 budget bill, oil sales contracts by the National Iranian Oil Company were signed by the government and the proceeds from the sale of crude oil in any case and export oil products were directly charged to the Treasury account at the Central Bank of Iran. This was the beginning of the change in the legal nature of the



National Oil Company from a commercially-owned company to an agency and the agent was the executive branch's objectives, not the government, and not a state-owned corporation. On 8/7/1358, the "Legislative Bill of the Ministry of Oil" was approved by the Revolutionary Council. According to its first article, "National Oil Company, National Petrochemical Company and National Iranian Gas Company, and subsidiaries of the Ministry of Petroleum and its subsidiaries". In 1987, the "Oil Law" was approved, in Article 2 of which it was based on Article 45 of the Constitution. "The country's oil resources are part of public wealth and are in the hands of the Islamic government in accordance with Article 45 of the Constitution, and all Facilities and equipment and assets and investments made and / or received by the Ministry of Petroleum and its subsidiaries, both inside and outside the country, will be owned by the Iranian nation. The exercise of sovereignty and ownership of resources and oil facilities owned by the Islamic government, which, according to the provisions and powers conferred by this law, are the responsibility of the Ministry of Oil, which, according to the principles and plans of the whole Country act ". After the end of the imposed war, a solution was needed to rebuild the oil industry and increase its ability to produce more reserves to sustain the OPEC quota. This strategy was to conclude a mutually exclusive agreement on the upstream field and the possibility of other investments in the form of contractual arrangements, such as civil and non-governmental partnerships. Iran has been able to do this in the past two decades. Attracting funds and wealth to the oil industry. The solution was the following: 1. Preparation of a technical report on the project by the Ministry of Petroleum 2. The second tender for the international tender 3. Evaluation and approval of the proposal received at the Ministry of Oil's Interdepartmental Negotiation Commission 4. Fourth adoption The board of directors of the National Oil Company was the fifth meeting of the Supervisory Board for the approval of the Intergovernmental Plans, which included three parliamentarians, deputies from four ministries of economic affairs, finance, foreign affairs, oil, industry and presidential affairs. Sixth, its approval by the Economic Council and Central Bank 7. Seventh Signature of the Ministry of Oil Representative in concluding contracts. Given this process, it turns out that an oil-rich country, such as Iran, which in most cases has surpassed other oil countries, does not have the same and even evolutionary view of the nature of oil contracts, and this process leads to a dispute and disagreements.

General Principles of Oil Contracts in the International Legal System



The general principles of law are the principles that are universally accepted by all nations. These principles may be considered as the result of the legal convergence of governments. This co-integration, while creating and developing these principles, can in some cases also be affected by the development of other principles. The most important legal principles cited in international oil contracts are as follows:

- 1- Principle of the rule of the host government on natural resources and its extension
- 2- Principle of ownership of natural resources (prohibition of the granting of its sovereignty to foreigners)
3. Principle of Contract Freedom (Governance of Will)
4. The principle of foreign investment and the creation of a healthy competition in the field of oil and gas
5. Achieving national self-sufficiency in the fields of economics and energy
- 6- Generating diversity in fuel sources as well as maximizing revenue for host government
- 7- Development, transfer and training of technology in the oil and gas industry
8. The need to comply with legal and budgetary requirements.

The backgrounds for the occurrence of petroleum claims and the need to resolve disputes by way of arbitration in international oil contracts

4. FIELDS OF OIL CLAIMS INDICATION

The main source of disputes and claims arising from oil contracts since the 1950s was the vital value of this resource and its replacement with coal in factories and railways. But in contrast to Western-owned oil and gas companies that already needed more oil, they began to consolidate their contractual position and, with the help of their legal advisers, launched new theories. Their main purpose was twofold: One removing the contract from the scope of domestic laws (and the decisions of the contracting authority's with the help of the theory of "internationalization of the contract"), and inducing and attaching a special legal nature to oil contracts as "economic development contracts". Second, the consolidation of the principle of the obligation to pay compensation as an independent commitment to the state and, in particular, the establishment of a full compensation indemnity as a criterion for compensation. The oil-rich states that recognized the importance and value of this vital property (petroleum) recognized oil contracts as their domestic rights, and sought to consolidate the role and effect of the sovereignty of the state as the representative and protecting the public interest in the contracts. According to



these governments, oil contracts are of an administrative nature, and the state party's obligations in oil contracts are so far as to prevent the government from exercising sovereignty and ownership of oil as the most important natural resource of the people, whose economic development and prosperity are affiliated with it. Therefore, if there is a conflict between the private law of the foreign corporation and the government's sovereignty, government law is preferable. Moreover, in the opinion of the oil-producing state, even the contracting party's obligation to compensate the foreign company is not absolute, but it is a function of the same sovereignty and public interest, and it is only necessary to the extent that the payment is appropriate and necessary. In fact, the oil-rich governments that became aware of the value and importance of oil, have just found that the former governments, which were affiliated with the colonial states, did not, as against the principle of the sovereignty of the state over natural resources, what material value they have sold drugs and accepted restrictive obligations on one side. The oil-rich governments tried to nationalize the oil or to terminate oil contracts in order to revive their sovereignty. Oil companies, on the other hand, began to litigate and claim compensation. The formation of the League of Nations in 1922, after the end of the First World War, the right to self-determination, the process of decolonization, as well as the victory of the socialist revolution in Soviet Russia and the peasant revolution in Mexico and its spread to other Latin American countries, states The proprietor of the oil has stagnated in his vote and gave them more confidence. These governments, as a first step in the right to self-determination, have been struggling to moderate unequal conditions of concessions and the right to abolish them and nationalize their natural resources, and to restore and preserve their sovereignty and ownership of natural resources such as oil, in front of oil companies. Some Latin American countries went so fast that they even rejected the government's commitment to compensate for the nationalization of foreign property. From what we have said, it turns out that in legal matters, claims have been made in petroleum claims, a state party's act of violating the contract or its nationalization, and the arbitration procedure has also arisen in cases where oil companies have contravened the contract or nationalized the oil on behalf of the parties The government has proposed a contract against the government.

- The necessity to resolve disputes through arbitration in international oil contracts

Although the establishment of international courts for the referral of disputes between governments is a twentieth-century phenomenon, the idea of referring international



disputes to a third party authority for the issuance of votes based on international law is well known. Examples of this can be found in ancient Greek history. The result of this review is the usefulness of the referral of the dispute to the arbitration. In the years that followed, more international disputes were resolved through arbitration and seasons. The modification or termination of a concession contract is limited by unilateral measures by governments, unless it is proved that changes have really occurred in their public interest. One of the best ways to resolve disputes throughout history and in all religions. arbitration is rooted in the meaning of justice as one of the parties and is among the peaceful means of disputes. This method is more accepted globally than other method, to the extent that it is rarely possible to find a contract for commercial transactions (domestic and international) in which the resolution of disputes through arbitration is not foreseen, The benefits of arbitration are as follows: 1. The speed at resolving disputes. 2. Ease and simplicity for the parties in terms of non-compliance with complicated procedures. 3. Cheapness. Due to the fact that today the costs of proceedings, such as the cancellation of a stamp, have a preliminary appeal. The lawyer's, etc., is very expensive and unbearable for most people. 4. The development of arbitration leads to the flow of capital. Due to the lengthy judicial process, many projects that are subject to dispute are delayed and cause a recession in capital. 5. Judgment keeps the secrets of the parties, as usually, businessmen do not have their own issues. This is an idea, and keep the judgment.

5. INTERNATIONAL ARBITRATION ON SETTLEMENT OF DISPUTES

The role of international arbitration in resolving disputes over oil contracts and contractual terms reflects the evolution of contractual structures between oil-rich countries, developed or developing, and international companies was investigated, and as a result of this evolution and development of oil contracts, arbitration clauses in these contracts, developments have evolved. In this way, the judgments and its disturbing procedures are redirected to regular institutional judgments or roughly identical procedures, and the evolution is evident. In this way, both the legislators of these countries and the practice of the private actors of the oil and gas sector, with the preference of the framework for arbitration in the form of referral of their differences to the rules and possibly arbitration centers such as the International Chamber of Commerce and the International Center for the Settlement of Investment Disputes Trying to manage deserving disagreements and refusing to enter the special disturbances of previous



judgments. In the positions of the last decades of the past century, it seems that in referring disputes arising from international oil and gas contracts to institutional arbitration (as the dominant form of contracts of this kind), in the current century, in order to be more in line with legal techniques based on the experience of judging and the developments of this global industry.

6. IMPLEMENTATION AND CANCELLATION OF ARBITRATION JUDGMENTS IN OIL CONTRACTS

Oil contracts often contain parts where conflict resolution and dispute resolution provisions are foreseen. This part of the contract is known as the "rules of dispute resolution" or "arbitration". Contract conflicts are resolved in several methods:

1. The parties reach a reciprocal agreement.
2. The parties resort to an official mediation process.
3. The parties refer to an expert to resolve the disputes and his views are firmly in dispute.
4. With the prediction of arbitration in the contract, the settlement of the disputes shall be made to the arbitral tribunal.

Of course, a contract can be in the form of all four of these contractual disputes, that is to say, from the requirement for a new agreement, or by referring to the arbitration and acceptance of the judgment and executing it, or protesting against the decision and canceling it. The arbitration of the process used in oil contracts is to resolve serious disputes and conflicts that cannot be solved in other ways, and they will inevitably resort to this solution through the three methods mentioned above. Of course, in the absence of an acceptable outcome of the arbitration, the parties will inevitably return to the foreseeable judicial authorities. So the preceding stage of our dispute is in ways of resolving disputes and contractual conflicts. Arbitrating parties and, in particular, the international oil company, have privileges to refer to the judicial authorities; first, that arbitration is not conducted in the courts of the host country; secondly, the reference to arbitration is at least theoretically confidential. And even in addition, arbitration under political pressure also enforces the law applicable to the contract, which is uncertain about the courts of the host country.

7. ARBITRATION AGREEMENTS

Contract freedom is a basic principle and the basis of most legal systems. Based on this generally accepted rule, all individuals are legally capable of referring arbitration disputes to their international commercial transactions. An arbitration agreement whereby two or



more persons commit themselves to refer to arbitrations and claims that are commercial and international to one or more persons other than the government courts. International commercial arbitration usually involves contractual relations between the parties to a contract. The arbitration agreement may also be entered into in the contract and in the form of the terms of the contract or on the basis of a separate agreement between the parties. International commercial arbitration often relates to disputes arising from an international agreement. The reference to the arbitration shall be agreed upon in the original terms of the contract. Of course, in some cases, this arbitration agreement is signed in accordance with a separate document and agreement between the parties.

The model law in segment 1 of Article 7 stipulates: "An arbitration agreement is an agreement between the parties, according to which all or some of the disputes arose in respect of a given legal relationship, whether contractual or non-contractual, or disputes which may arise in connection with that, a certain legal relationship will be referred to arbitration. " Clause (c) of Article 1 of the International Commercial Arbitration Act explicitly states that "the Arbitration Agreement may be arbitrary in a contract or in a separate contract." When the parties enter into the arbitration clause in the main contract, they agree to refer the dispute arising from the contract to arbitration. In this case, the arbitration clause will form part of the original contract and will be required to comply with the remaining terms of the contract. Regarding the terms of the arbitration agreement, it is a condition that the condition for the validity of the contract is subject to the original contract and, if the main contract is null and voided or terminated, the condition is also invalid. However, the arbitrators shall be competent to review the invalidation or termination of the contract. The International Commercial Arbitration Rules of Independence explicitly provide for the arbitration clause in accordance with article 16, segment 1, of the International Commercial Arbitration Law: "An arbitrator may decide, in respect of his competence, as well as on the existence or validity of an arbitration agreement, the arbitration clause A partial form of a contract is deemed to be an independent agreement in terms of implementing this law. " The arbitrator's decision regarding the invalidity and termination of the contract in itself shall not be in the nature of the invalidity of the arbitration clause contained in the contract. Independence of the condition of arbitration means that the arbitration agreement cannot be used to void the contract. However, the terms of the arbitration may, as in any other contract, be invalid. Independence of the condition of arbitration from the main contract means that the



invalidity of the main contract by itself does not invalidate the arbitration clause; however, if the main contract is invalid due to lack of occupation, the arbitration clause, of course, is arbitrary even if it is considered independently. The defect is not immune and it will be invalid. Article 16 of the International Commercial Arbitration Rules explicitly states that the judges can comment on the validity of the arbitration agreement. However, if the arbitrators decide on the validity of the arbitration agreement, the party who claims to have disputed the arbitration agreement. And even if there is no objection at this stage, the convicted person can apply for a cancellation because of the cancellation of the arbitration agreement after the issuance of the arbitration. The important point to consider when negotiating an independent arbitration agreement is that the relationship of the arbitration agreement with the disputes and contracts must be clearly stated in the arbitration agreement, and there is a risk that it will later claim that the arbitration agreement concerned with certain claims.

8. REFERRING TO ARBITRATION

When disputes arising from a contract are referred to arbitration, it means that all disputes and claims, or some of them, are referred to arbitration. Of course, the form, type and amount of this referral depend on the terms and expressions used in the Arbitration Agreement. The Arbitration Agreement may cover, to a large extent, all disputes and claims arising from the Contract, or limit the dispute only to arbitration. In addition to the cases where the parties to the contract, by their will refer the dispute to arbitration, sometimes the court decision may provide grounds for resolving a dispute by the arbitrator, so arbitration may be arbitrarily mandated. The arbitration agreement may be added to the contract or in an arbitrary agreement to settle the dispute through arbitration. However, in some cases, upon referral by the parties to the competent authority, resolving conflicts with regard to the circumstances of the case and the court shall be considered by the court through referral to the arbitration, and the court shall refer the matter to the arbitral tribunal. This is compulsory arbitration because the parties to the dispute do not play a role in this regard. However, such an option is not justifiable to the judge, so this type of arbitration will only be used if the legislator has determined it. In accordance with the Iranian Arbitration Law and the Model Law, the Arbitration Agreement may, in respect of the subject, be based on all or any of the disputes relating to one or more legal relationships. Obviously, the agreement must explicitly specify the disagreement, in order to avoid ambiguity regarding the limits of the referee's eligibility. The first condition for



settling disputes arising from a legal relationship (international commercial transactions) through arbitration is the prior agreement of the parties on this matter. If there is no arbitration clause in the "Private Law" clause, or revoked or terminated, there will be no arbitration. Therefore, contrary to a judicial procedure that does not require the prior agreement of the parties to refer the dispute to court, and either party can request a dispute by referring to the court, the dispute between the parties is necessary to resolve the dispute through arbitration. Except in exceptional cases, no one can be forced to accept arbitration without his consent. Generally, all arbitration rules emphasize the need for an arbitration agreement to initiate arbitration proceedings, and this arbitration agreement is only an agreement between the parties, which at the time of concluding the arbitrator is not one of the parties and is not alone enough to conduct arbitration. For this, the selected judge must have accepted. When the referee's notice came to the notice and he accepted it, the arbitration agreement was signed. The arbitration agreement shall be arbitrary or an independent arbitration agreement. In the first case, an agreement on arbitration is an integral part of the original contract and its compliance with the contract is mandatory. An independent arbitration agreement on a contractual legal relationship is usually where the parties have not made an arbitration clause or specified details or have agreed otherwise. Most international arbitration judgments arise under the terms of the contract. The condition stipulates that the parties agree to refer their dispute to arbitration. Of course, according to general and comprehensive rules in Iran and in international contracts, one of the controversial issues is the possibility of using alternatives to resolving disputes. Under Article 139 of the Constitution, peace of laws regarding public and state property or the referral of it in any case is subject to The approval of the Cabinet of Ministers is to be announced to the Parliament. In cases where the lawsuit is foreigner and in the important internal matters, it must also be approved by the parliament. Prior to the general version of the 1353 Oil Law, Article 23 of this law was an authorization to refer to arbitration, and this law authorized a general arbitration. Disputes between the National Iranian Oil Company and contracting parties will be resolved through arbitration through friendly negotiations in a manner that will be avoided in any contract. The rules governing the referral of disputes to arbitration in each contract are appropriately anticipated. The court of arbitration will be in accordance with Iran's laws and the Tehran Arbitration Tribunal. Unless otherwise agreed upon by the parties to the dispute. The validity and interpretation of the execution of contracts will be subject to the laws of Iran.



The government always argues in the implementation of Article 139 of the Constitution that this principle relates to cases where the dispute arises in the contract and after the dispute, the parties intend to arbitrate. Governors believe that this principle excludes from the cases when at the time of the contract, the parties agree on the lack of competence of the local court by the inclusion of the condition of the arbitration. In resolving the problem of the matter under Article 139, it should be noted that the inclusion of the condition of arbitration in the contract does not refer to the reference of the current dispute to the arbitration because there has not yet been a contradiction. Because if there is no difference, there will be no problem and it is not necessary to obtain the permission of the authorities mentioned in Article 139 of the Constitution. Even in the event of a dispute, if the other party is the arbitrator, the government contracting company may be a party to the arbitration and Niels is not licensed by the government or the parliament because he is in defense. However, if the state-owned enterprise is a party to the contract, they must obtain a permit from the government or the parliament for an application for arbitration. But another issue to be addressed is that, under the statutes of the subsidiaries of the Ministry of Petroleum, the inclusion of the condition of arbitration in contracts is allowed.

9. CONCLUSION

In this article, the basics of arbitration in oil contracts were reviewed. Important discussions arise in disputes arising from oil contracts, such as: the issue of expropriation, the termination of the foreign investment contract, and, consequently, the issue of compensation to be paid to the foreign company. Although it must be acknowledged, the differences that may arise in oil contracts are very diverse, yet diverse. And this is due to the connection of the contract with numerous and numerous agents outside the contract. International Dispute Resolution, now available to resolve disputes in the case of petroleum claims, they are: a) judicial procedure B) quasi-judicial

Judicial method

Judicial resolution of international disputes is a form of legal nature. These methods include referral to courts, both internal and international. Courts have certain characteristics and responsibilities that should be addressed in a particular study. The judicial procedure is initially implemented in international courts.

Quasi-judicial method (referral to arbitration)

The establishment of international tribunals for the referral of disputes between States or among other international institutions is a 20th century phenomenon. But the idea of



referring international disputes to a third party is long before issuing a ruling based on international law. Arbitration is a peaceful solution to disputes, which is nowadays more than ever globally welcomed. To the extent that it is rarely possible to find a contract for commercial transactions (internal and international) in which the resolution of disputes through arbitration is not foreseen, the benefits of arbitration are summarized as follows:

1. Speed in settlement of disputes
2. Ease and facility for the parties in terms of non-compliance with complicated procedures
4. Development of arbitration leads to the circulation of capital, because due to the length of the judicial process, many projects that are subject to dispute are delayed and cause a recession of capital.
5. Judgment keeps the secrets of the parties, as usually the businessmen and companies The great internationalists are reluctant to address their internal issues and this idea is preserved by arbitration.
6. Resolving disputes through arbitration leads to greater trust and certainty as the judge is elected by the parties while the judge is non-selective.

In a historical review of this method of resolving disputes between international companies and host countries, if we take the eye over some of the judiciary's or lower-ranking arbitration judgments that may have already been adopted by the judiciary, it would extract the contemporary international arbitration procedure in relation to the suit of the oil investment contracts and the expectations of the parties. And even in cases such as "compensation," there are solutions and findings that, if properly analyzed, can help foreign investors and oil companies treat these treaties as well as treat contracting parties in anticipating the effects of measures They help themselves against the contracts. Apparently, oil contracts are related to public property, and it is common practice that judgments concerning public and state property are not judged. In accordance with Article 139 of the Constitution and Article 457 of the Civil Procedure Code, the referral of such claims to arbitration shall be possible only with the approval of the Council of Ministers and the information of the Assembly, and in cases where the foreign party or matter is relevant to the determination of the law, by the approval of the Assembly. A significant part of our economy is government, and if we interpret the rule of principle of Article 139 of the Constitution comprehensively, many of the property and, consequently, many contracts are subject to this ruling, and for this reason, the peace of the claims to the government, Public institutions and public corporations or their referral to arbitration in each case will be subject to approval by the Cabinet of Ministers and, in some cases, by the Assembly. In the judicial process, there is a difference between the terms "public and national" and



"referral" in Article 139 of the Constitution: Or, the legal personality of the dispute will not matter in this regard. There are two perspectives in this regard; one is that public and government in the meaning of Article 139 of the Constitution are property devoted to sovereign affairs, such as government accounts and garrison house and parks, and the building of ministries. If this is confirmed, the property of state-owned companies that deal with business will be excluded from the application of Article 139 of the Constitution. According to another view of the concept of public property, if the government has acted as a private sector and performs a contract or business, this property is not considered as a government and is not subject to article 139 of the Constitution. Perhaps in this case, the correct interpretation is that we consider the principle of Article 139 of the Constitution concerning sovereignty and, therefore, especially with regard to state-owned companies, which carry out a contract or commercial operation, there is no need to obtain permission under Article 139 of the Law Essential exists. In the recent hypothesis, the arbitration clause is correct even without the permission of the Cabinet of Ministers, and the state apparatus must enforce the arbitration agreement and, at the time of dispute settlement, and seek permission. If the government acts as a private sector and performs a contract or business, this property is not considered a government and is not subject to article 139 of the Constitution. The procedure of jurists is that it is not necessary to obtain this permission and authorization at the time of the conclusion of the arbitration agreement. But at the time when the lawsuit and disputes are found to have been brought to arbitration, a necessary authorization must be obtained. Looking at the legal framework of the country and the compilation of various laws, we are confronted with challenges that make it difficult for arbitration to be resolved, which is due to the internationalization of oil contracts, the contractor is a foreign company or even removes the attraction of engagement and work in Iran, even with the assumption that the company is a party of the contract. To solve this problem and to examine this issue, we need to analyze the oil contracts, and their analysis leads us to know that the contract for the exploitation of oil in the upstream sector is private or public contract, and how it can be referred to the possibility of referral to judge? oil contracts, on the one hand, are the same as those of other private-law contracts, in which both parties ultimately agree on a subject and in all aspects, and this contract is binding and, as such, necessary for the parties to the contract. In a different direction, one side of these contracts is the government, which represents the people and therefore the contracts are called the "public law" or "contract", the parties



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in such contracts They do not have the same position, and at any time, the government can change or even break up the contract on the pretext of the public interest.



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