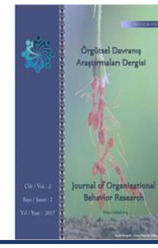
2528-9705

Örgütsel Davranış Araştırmaları Dergisi

Journal Of Organizational Behavior Research

Cilt / Vol.: 3, Sayı / Is.: S2, Yıl/Year: 2018, Kod/ID: 81S2266



BUY-BACK AND IPC IN OIL CONTRACTS

Mohsen ESMAEILI

Justice Lawyer, BA in Judicial Law, University of Tehran, MA in Private Law, Law Department, Islamic Azad University, Tehran, Iran.

ABSTRACT

After Islamic Republic of Iran was established, Iran's oil contracts were signed in the form of project financing during 1979 to 1992and then in the form of buyback contracts up to 2015. Buyback contracts are a special form of the risky purchase of service (POS) contracts in which the contractor performs the exploration and development operations in return for a given wage.Buyback oil contracts were practically rendered inefficient considering their being the cause of instigation of many criticisms in jurists and the country's scientific society and that they never led to the reservation of interests in operating phase and, on the other hand, they never resulted in Iran's attainment of its codified oil objectives and programs. In the turn of the 2010s, the elites doubled their efforts to transform the oil contracts from buyback to partnership. This group of the individuals underlined that the second party has to be sufficiently motivated to transfer technology and prove a basic and long-lasting presence in the second place and pinpointed production sharing contracts as the best method for accomplishing such an objective and these contracts were called win-win by them. Such a mindset gave rise to the emergence and enactment of a special type of oil contracts known as IPC. The drafters of such contracts believed that IPC would meet the shortcomings of the buyback contracts but the opponents used to speak of the legal conflict of IPC to the upstream regulations in oil industry.

Keywords: *Buyback, IPC, Oil Contract, Iran's Laws.*

INTRODUCTION

After the establishment of Islamic Republic of Iran, the oil contracts were signed in the form of project financing during the 1979-1992 time span followed by their transformation to buyback contracts up to 2015.

Buyback contracts can be considered as the continuation of the changes that have been brought about in various kinds of Iran's oil contracts from concession system to agency and thence to partnership, particularly in purchase of service (POS) contracts. In fact, the current buyback contracts are the transformations of these same POS contracts. Historically, it was in 1901that a 60-year concession was granted for the first time to the English William Darcy for the exploitation of oil fields (except in the five Northern Provinces). In return, he became committed to pay 16% of the interests as royalty to Iran's government. A step was taken towards exertion of national governance over the oil resources after passing through various stages and, finally, upon the nationalization of oil industry and evicting the England and Iran's oil company in May, 1951.

Since then and with the enactment of oil regulations and other rules, the government entered various contracts as agent or partner to exploit the oil resources.

In 1974, the national governance exertion peaked as caused by the enforcement of an oil law based on which Iran's National Oil Company took possession of the petroleum products and the foreign companies' services and technologies were hired for a specified wage.

Geliş tarihi/Recieved: 24.10.2017 – Kabul tarihi/Accepted: 07.01.2018 – Yayın tarihi/Published: 21.08.2018

After the Islamic Revolution and with a relatively long pause and subsequent to seminars held in Tehran (in 1995) and in London (in 1998) under the title of "Iran's oil and gas buyback projects", contracts were signed with foreign companies the most important of which were:

1) Oil and Gas projects within the format of buyback contracts: Siry A and B Fields Development Project that was signed with Total France Company and Malaysian Petronas Company in 1995 for a 3-year period.
2) In 1997, a contract was signed for Iran's biggest gas field, the largest gas resource in the world (Southern Pars), between national oil company and French Total Fina A, Russian Prome Gas and Malaysian Petronas Companies for an 11-year period.
3) In 2000, a contract was signed between national oil company and a consortium comprised of an Italian Egip Company, with a 60% share, and Iranian PetroPars Company, with a 40% share, for a 5-year period to develop Phase 4 and Phase 5 of Southern Pars Gas Field. The capital return has been set to take place in a 7-year period.
4) In August 2000, a contract was signed between national oil company and PetroPars Company for the development of phases 6, 7 and 8 of the southern Pars field.
5) Also, in 2001, an oil contract was signed for the development of Darkhoin Field within the new buyback form with the Egip Oil Company, a subsidiary to the Italian Enni Company.

In contrast to the former ones, this contract featured more distinct characteristics. For example, the intended gas level set in the contract with French Total Company for Southern Pars Field development was 120 thousand oil barrels per day but no sanction had been specified in consideration of adherence to the contract's conditions and this paved the way for the emergence of inter-party disputes. This is while reward and fine conditions had been specified in Darkhoin Oil Field Development contract and it had also been stipulated that the Egip Company will be penalized for producing less than agreed (160 thousand barrels) and rewarded for producing higher (it was supposed to receive more oil in proportion to the increase in production).

In all of the abovementioned contracts signed whether in the form of former buyback format or new buyback form, one essential condition was the repayment of the entire capital and noncapital costs, wage and interest to the contractor from the productions (gas and oil) of the same field.

Such a trend was also continued in 1974 POS contracts. Such expressions as contractor, subcontractor, employer or contracting party and service contract, in particular, in the majority of the buyback contracts are indicative of the idea that the buyback transactional system is rooted in POS contracts and, with a little ignorance, it can be realized as risk-free POS financed by the foreign party.

Buyback contracts are special cases of risky POS contracts in which the contractor carries out the exploration and development operations in return for a wage. These buyback contracts can be classified into three generations considering the changes that have been made in them from the onset till now:

First Generation: these are contracts the most prominent attribute of which is the determination of a fixed ceiling for the capital costs when being signed.

Second Generation: concomitant field exploration and development contracts based on which the exploring contractor had the right to directly and within the format of the previous contract shoulder the development operation if a hydrocarbon field was found and deemed commercial.

Third Generation: these were the contracts the capital cost ceilings of which were specified after secondary contract biddings were held.

1. Buyback:

Jurists enumerate 12 types of buyback transactions: barter, mutual purchase, compensation, offset, buyback, transfer, parallel and mutual cooperation, mutual transactions, bilateral transactions, trilateral transactions, conjoined transactions (Mafi and Karimpour, 2007).

Buyback is a form of mutual contract. Buyback has been defined differently as stated in the following statements:

1) Buyback is a collection of contractual methods by means of which a party provides the other with production facilities and becomes committed in return to purchase all or part of the products resulting thereof (European Economy Commission, 1993, 2-6).
2) Buyback is a contract wherein a party supplies the production facilities (machinery, factories and technology) and the parties agree on the purchase of the products by the supplier of the facilities or any other person introduced by the supplier (UNCITRAL, cited in Azizollahi, 2005, 11).
3) Buyback includes the sale of equipment and technology and factory in return for the seller's contractual obligations indicating the purchase of the products yielded from the use of equipment and technology. In other words, the parties agree on the investor's commitment to repurchase the products obtained in the process of contract enforcement (Sadeghi, 2004, 122). Such a transaction and investment is a combination of factory and business operation during which the price is paid not in foreign currency but in the delivery of the yielded products (Shapira, 1992).

Therefore, it can be stated based on the aforementioned definitions that buyback is a contract wherein a party provides the other with production facilities and becomes committed to buy the yielded products in person and/or on behalf of the first party.

Buyback method was first employed by countries practicing centralized economies (socialists) so that they could gain access to the technology and technical knowledge of the industrial countries and also to be able to dispatch their own made goods to the industrial countries' markets. In our country, the first buyback-based contract was signed between Iran's National Oil Company and the American Conoco Company. The contract was revoked before operationalization due to US's anti-Iran embargoes during Klinton's presidency. The French Total Oil Company entered the former Conoco contract under different conditions and it in fact operationalized the first project of this type (Moghaddam and Mazra'ati, 2007).

1.1. Buyback Contract Description:

The followings are characteristics of buyback contracts:

1) Contractual Nature:

It is stated in defining contract that it is an agreement reached by two mutual volitions for the creation of a legal effect. Therefore, there is no doubt that the buyback is a sort of contract signed between two parties. In the first place, one party becomes committed to offer facilities and then in a second stage, it becomes committed to buy the products yielded from the utilization of the facilities.

2) **Indispensability:**

Indispensability means that the parties' agreement alone cannot suffice the creation of such contracts rather these contracts are rendered indispensable when being authorized by the legislator.

Some jurisprudents know contracts as being dependent (on the law-maker's text) (Helli, 1993; Qomi, 1992). It means that the contracts authorized by the lawmaker are deemed legitimate and indispensable. In this group's ideas, only the specific contracts (like sale and rent) are binding and any other contract signed within a format other than the specific ones cannot be considered legitimate and binding even if required by the society. This group of the jurisprudents realize the honorable AYA "**keep your promises**" (MA'IDA: 1) as reflecting the binding nature of the contracts authorized by the canonical rulers. But some other jurisprudents believe that the generalities and considerations like the foresaid AYA or the honorable AYA "O', you who have found faith, do not take possession of each other's properties in fraud unless in transactions based on both parties' agreement" (NISA'A: 29) cover all the contracts (whether be it specific or be it other contracts created according to the needs of the Muslims (Saiwari Helli, 1964; Mohaqqeq Ardabili, 1991; Hosseini Maraghi, 1996, and Mousavi Khomeini, 2000). In other words, the parties' agreement is considered sufficient even if it is not within the format of no contract of the specific type provided that it is not found against the holy Quran and the tradition hence such contracts are not repudiated solely for being unprecedented. Quoting the sayings by various canonical scholars, Imam Khomeini (may Allah consecrate the soil of his tomb) orders regarding "contract" as introduced in the abovementioned AYA that:

4/27); one of the most clear extant probabilities and the closest saying to the appearance of the AYA is that the term "contract" incorporates the transactional and promissory agreements such as sale contracts and common obligations between the governments or individuals.

Thus, the theory of contracts speaks of all contracts and obligations common between all individuals and even governments and not specific to the specific contracts of the canonical ruler's time. Ayatullah Khou'ei is of the belief that:

The AYA introducing "keeping contractual promises" means that any agreement characterized by the common specifications holding true for contracts is binding. (3/95)

In other words, the AYA generally encompasses the entire specific and nonspecific contracts and any agreement that can be commonly described as "contract" and is not contradicting the canonical rules is correct and indispensable.

Article 219 of the civil law stipulates in reference to the aforesaid topic that:

"The contracts that are signed based on law between the contractors and their deputies are indispensable unless they are revoked by the parties' consent or for a legal reason".

Therefore, all of the contracts enjoy a binding nature unless otherwise is stipulated by the law. The parties' objective in entering a contract, especially in international contracts like buyback, has been in conflict with the permissible contract cases. These contracts have been set in opposition to intellectual considerations.

So, it can be concluded that buyback contracts are nonspecific contracts and the sole agreement of the parties suffices the authenticity and necessity of them; because, each of the parties become committed to certain obligations which are commonly called the bilateral duties hence they are embraced by the generalities of the AYA "**Keep your promises**", meaning "keep your promises" and become binding and legitimate.

3) **Definitiveness:**

Article 189 of the civil law states that:

"In a definitive contract, the effect willed by the parties does not depend on another matter in which case it will be rendered conditional". Meanwhile expressing their volitions in a definitive manner in suspended contracts, the parties make the outcome pending over another issue that can only be actualized after the condition was met. The suspended contracts do not differ from the other contracts in their composition and agreement stages and it is the existence of commitment in these contracts that is made pendant over an external issue. Conversely, in definitive contracts, the parties' requirements are not suspended to any other issue and they both become obliged to certain duties upon reaching an agreement (Ansari, 1997; Esfahani, 1997; Mousavi Khomeini, 1997and Rouhani, 1989). One example is technology or equipment sale contract which is definitive but suspended to the payment of the products' price. It is worth mentioning that there is a difference between the conditional and suspended contracts; in suspended contracts, the will of the party is made pending to another issue but in conditional contract, the will of the parties are definitive but there are conditions set during the signing of contract that are envisaged external to the contract's nature. The jurisprudents and jurists have differently defined will. Sheikh Ansary states that:

"Will is a word that generates meaning in itself and it does not signify the actualization and proof of meaning in the mind or in an objective manner so that it can be characterized by truthfulness and falsity (1997).

Assume a person who asks for the sale of a house. His willful statement indicates the demand for the sale of a house. But, if he says "I do not have money", one can consider it likely that the statement might be false or right (Emami, 1996). Although the price in buyback contracts is made conditional on the yield of products, the contract is not rendered suspended rather it has to be considered as definitive and the best reason why it has to be considered so is the separation between the sale, purchase and protocol contracts in buyback.

4) **Swapping Nature:**

The swap contracts are naturally composed of two parts: each party acquires a property or makes the other party obliged in exchange for the property s/he invests or the obligation s/he shoulders. There are two mutual obligations in swapping contracts and each of the two parties simultaneously becomes both the creditor and the debtor of the other very much like the buyers and sellers in sale contracts: the seller is obliged to submit the sale item and becomes the creditor of a price and the buyer receives the sale item in exchange for the obligation to pay the price. The difference in the value of the exchanged items does not bar the recognition of such contracts as swaps unless the price is so trivial and of little value that is commonly considered as nothing and there comes about deception doubts for pretending the existence of a swap contract (Borujerdi, 2002).

Conversely, in gratuitous contract, one or several persons become committed to one or several others to fulfil an obligation or provide a property free of charge with none being required to give or receive anything in return; for instance, in donations, the donor gifts a property to a designated person who will not be obliged to perform anything in return or permission is granted in borrowing to a borrower to take advantage of a thing. So, obligation is imposed unilaterally in gratuitous contracts and the other party is to accept the obligation or possession.

The recognition of the swap and gratuitous contracts is followed by many advantages and effects as explained below:

Because every party's intention in swap contracts of accepting the obligation is acquiring a thing to which the other party has been obliged, a relational commitment emerges between them the being of each depends on the other's existence. Such a swapping relationship is accompanied by a great many of outcomes that are well clear in discussions on the gratuitous contracts. As an example, when a party refrains from performing its duties in a swap contract, the other party has the right to retaliate and postpone his or her fulfillment of his or her promise to the other party's fulfilment of obligation; this option is so-called as "lien" (article 377 of the civil procedure); now, the only way to fight back the unfulfillment of the promise in gratuitous contracts, if not revoked, is forcing the obliged party by an order of a court.

Undoubtedly, buyback is a type of swap contract in which an article has to be set for the determination of the value of buyback obligation, i.e. the value of products purchase by the buyer. The sum can be equal, lower and or larger than the price of the equipment or technology sold within the framework of a preliminary contract. The value of the buyback obligation can be agreed in the form of a specified amount of money or based on a percentage of the total price of the equipment or technology sold under the preliminary contract. The buyback obligation's value can be set as a percentage of equipment or technology price if it is mentioned unambiguously. It might not always be the case. As a specimen, the value of technical aid might not be considered as a part of the preliminary contract's value rather it might be reflected in a separate document based on time duration. In this case, the value of buyback obligation has to be determined in such a way that the final price of the technical assistance can be accounted for. It can be in sum concluded that buyback is a swap contract with the condition that the price is paid as a share of the products yielded from the invested tools and equipment.

1.2. Buyback Contract in Nature:

The jurists and law authors opine in regard of buyback nature in legal terms that it is the closes to the contract of reward (for instance, refer to Izadi 2010; Moghaddam and Mazra'ati, 2007). Based on article 561 of the civil law, "contract of reward includes requiring an individual, specific or otherwise, to pay a certain wage to an action". As for the nature of contract of reward, there is a discrepancy between the jurists and jurisprudents. Shahid Sani describes contract of reward in Masalek Al-Afham as unilateral acts of the valid consequences (Ameli Jaba'ei, "Masalek Al-Afham", no date). But, it has been recounted in "Lam'ah explication" as a contract (Ameli Jaba'ei, "Al-Rowzi Al-Bahiyah, no date). In this same book, he quotes the antecedent jurisprudents, like Allameh Helli citing in Tabsarri Al-Mota'allemin and Sheikh Tusi citing in Al-Mabsut, to have stated that contract of rewards are to be treated as contracts and that the actualization of contract only suffices the acceptance of an action" (Ibid). Saheb Jawaher has also accepted that contracts of rewards are unilateral acts of valid consequences". He believes that there is no symmetry between requirement and acceptance in contracts of reward. However, if reward was to be considered as a contract then it required such symmetry. He justifies the statements made by the other jurisprudents like Shahid Sani indicating the contract nature of reward and states that they might have intended the use of the term "contract" to refer to "promise" and not contract as it commonly considered and then he mentions several narrations in this regard. Imam Khomeini (1987) and Ayatollah Mousavi Khou'ei (1989) believe that reward is a kind of unilateral action of the valid consequences. Some of the jurists also believe that the reward is a sort of unilateral action of the valid consequences (Ja'afary Langarudi, 2000) and some others consider reward as a sort of contract (Emami, 1996; Shahidi, 2003, and Katouziyan 2004). the characteristics of reward has to be investigated to see to what extent buyback can be justified by reward contracts:

1) **Accepting the Ambiguities in Reward Contracts:** since there are found abundant cases in which the people need to sign contracts that are not in compliance with the limits and criteria specified for the contracts, the canonical ruler has come to confirm contracts that are of legal effect despite their ambiguities regarding the contractors and the amount of the required service and its wage; for example, some people lose their precious tools and prepare reward announcements and expose them to everyone's eyes. In these cases neither the person who has lost his properties is clear (because the announcement is generally publicized) nor the other party and it is also unclear how much work is needed to find the lost property and finally the phrase "a good reward" signifies the blurriness of the wage. But, in spite of all these ambiguities, the legislator has accepted such a contract and knows it of legal effects (Ameli Jaba'ei, Masalek Al-Afham, no date, 2: the book on reward contracts".
2) **Permissibility of Reward Contracts:** contracts of rewards can be revoked by the rewarder and the designated person for no specific reason but it does not mean that the designated person's wage after performing an amount of work can be left unpaid by the remunerator if s/he decides to revoke the contract (Helli, 1989; Helli, 1999, and Korki, 1988). It is understood from the articles 565 and 566 of the civil law that in case that a given deed is found composed of several parts each originally intended by the remunerator then the designated person is entitled to an assize wage proportionate to the amount of action s/he has carried out if the remunerator revokes the contract otherwise the designated person will be entitled to an exemplary wage. Of course, the fact that the remunerator is required to make such a payment is in line with the intended result's accomplishment and not making efforts to do so or performing preparatory works. The result has to be submitted by the remunerator so that s/he can be entitled to a certain wage. Thus, the job is not finished until the work ends in the desired result and the remunerator can revoke the contract at any time s/he wishes.
3) **The Vast Generalizability of Reward Contract:** unlike the other contracts that have certain limits in terms of parties and subject, the scope is very vast in reward contracts; for instance, a sale contract is the possession of a certain property for a given return and it is called rent when the interests of a certain property are exchanged or contracts like farming and irrigation have certain definitions and subjects while a great many of the contracts can be incorporated by reward contracts as specified in articles 561, 563 and 564. It can be understood from the term "action" mentioned in article 561 of the civil law that the reward contracts can be extended to things other than service such as the delegation of superstructures or others of the like. Due to the same reason, such a type of contract is frequently employed in non-usurious banking for granting of the loans.

   Considering the abovementioned descriptions, buyback can be well corresponded to one of the reward contract types. The existence of such descriptions as generalizability of the reward contracts considerably helps justifying the buyback. For instance, based on UNCITRAL's definition of buyback, the supply of equipment and technology by one party and the repayment of the price through the sale of the products yielded by them are the foundations of buyback that can be encompassed by reward contract. The only difference lies in the revocability of the buyback which is not permissible in absolute terms rather the designated person is entitled to the receipt of a given wage for the amount of work s/he has done and also fines can be set to compensate any unfulfillment of the obligations.

It can be noted using a little scrutiny that buyback differs from reward because the former, as clear from the name, is consisted of two separate contracts and the parties are specified or at least determinable and their obligations and rights are also clear and there are no ambiguous cases. Also, in reward contracts, the designated person can refrain from the rest of action after parts of it are done and s/he cannot be held liable. Article 565 of the civil law states that "reward is a revocable obligation that can be nullified by either or both of the parties, even if it is half way to the end". But, the duties and rights of the investor company have been specified in buyback and it cannot withdraw from accomplishing its duties for no justifiable technical excuse. So, the buyback is not a reward contract of a type.

2. ***Buyback and IPC:***

In such types of contracts, the foreign companies play the role of contractor and their duty is supplying the entire capital for the renewal and reconstruction of the fields. On the other hand, the projects are devoid of exploration risks because they are all implemented in fields possessing well-established reservoirs of oil and gas. The supply of the entire instruments for the implementation of development operation is to be shouldered by the foreign company (contractor) in buyback contracts, as special method of POS contracts. The entire costs are made under the supervision of Iran's National Oil Company. The noncapital costs include tax, social security costs, custom tariffs as well as the Iranian staff instruction costs. The contract prices are not fixed and the capital costs and subsequently the capital supply interest might undergo considerable reduction if it is deemed necessary in the inspections. After the successful accomplishment of the development operation, the field production affairs will be assigned to Iran's national oil company following which the latter has to shoulder all the operating costs. During this period, the contractor only receives a share of the financial interests of the field till the contract is expired. The rights that the contractor are entitled to are the petroleum expenditures plus the corresponding interest determined based on libor rate in addition to a favorable interest and also the reward or the very wage for the development operation accomplishment.

The repayment of the petroleum expenditures and reward to the domestic contractor for a given year is made through debt depreciation and the debt is financed via selling crude oil, gas and/or natural gas condensates and so forth of a certain project.

It is emphasized in the buyback contracts that the contractor's total annual receivables should not under any condition exceed 60% of the total annual production income of the field or project being developed and the extra amounts will be belonging to Iran's national oil company under certain conditions. This paragraph of the contract has been set to ensure Iran's interests if severe reduction is brought about in oil price.

Iran's buyback contracts have been composed in such a way that the contractor is held accountable to the operation risks (cost and timing risks) but the contract is not held responsible for any oil price reduction. It is the contractor who shoulders any increase in the costs for the accomplishment of the objectives specified in the contract unless otherwise is agreed. It is noteworthy that the budgetary requirements urge the transferring of the operational risks to the contractor. Such a transfer is practically obtained at the cost of risk acceptance. However, the cost repayments to the contractor have nothing to do with the price that can only be effective when the contractor's income from the earnings of the corresponding project's production becomes so low that it causes deferral of the contractor's outstanding claims that had been set to be paid in installments. Under such conditions, the contractor can receive its outstanding claims in regard of the costs and rewards based on the monetary conditions of the day but since no interest has been set on the deferrals the contractor will be influenced in the amount of interest it was going to receive. The country's share, as well, is very high, over 90%, within the framework of these contracts in contrast to production sharing contracts in its investment from the project incomes in regard of the entire corresponding field.

2.1. Shortcomings of Buyback Contracts:

Iran's pattern of oil contracts has taken one of the threefold buyback form for about twenty years. These patterns were viewed inefficient according to the great many of the criticisms by the country's elites and scientific society to such contracts and considering the fact that these contracts never succeeded in preserving the country's oil interests and, on the other hand, because they never resulted in Iran's attainment of its codified oil objectives.

The most important objections to buyback contracts are as listed below:

1) The short length of the contract and experimental terms for keeping the production in "plateau production target" level.
2) The lack of proper distribution of various risks between the parties
3) The foreign party's lack of direct and indirect motivation for using and transferring advanced technologies
4) The lack of appropriate interaction between the employer and the contractor during the contract enforcement
5) Contract's inflexibility to the oil price and related costs
6) The lack of a clear recognition over the extant domestic facilities and capacities to be used in the project
7) The lack of sufficient motivation for capital costs' savings and making use of domestic capacities and, contrarily, the existence of a direct relationship between contractor's reward and capital costs
8) Employer's lack of exercising sufficient supervision over the project and the approval of the field's comprehensive development plan proposed by the contract with no extensive investigation of the oil fields.

It was made clear considering such conditions that the buyback contract not only fails responding to the country's needs in such areas as developing separate fields and exploitation of the shared oil fields but also it will result in technological laggardness and in the catastrophe of oil reservoirs' entrapment in a more pessimistic look at the issue followed by the reduction in the useful life of the active oil wells (Farahnakiyan, 2016).

In the turn of 2010s, the elites increased their efforts to transform the oil contracts from buyback to production sharing. This group emphasized that the second party has to be given the required motivation for the transferring of technology and, in a second place, the fundamental and long-term presence and production sharing contracts were, as they claimed, the best way to achieve such goals and they were called win-win contracts (Ibid).

In 2013, one member of the oil contract revision committee, meanwhile admitting the shortfalls of the buyback contracts, confirmed the critics' opinions regarding the comprehensiveness of the production sharing contracts and their fascination to the foreign oil companies:

"Noratullah Espiyary, a member of the oil contract revision and reformation committee, asserted that: Iran's National Oil Company has to look at the foreign companies and investors as its foreign partners not contractors. The contracts have to be composed in a manner that they are seen win-win for both of the parties; this is while the foreign parties expect the contractual risks and obligations placed on their shoulders to be sensible and reasonable and they especially expect higher returns on capital and shorter capital return terms so that they might be able to increase their stock shares in their own countries and provide themselves with the financial (banks and financial institutes) and credit resources".

Emphasizing on the idea that one of the most important duties of the oil contract revision committee is drafting the contracts' texts aiming at the preservation of the two parties' interests, he also remarked that "the contracts should be in such a manner that not only comply with the regulations of Islamic Republic of Iran but also be sufficiently fascinating and safeguard the interests of both the parties (investor and employer)"

It was with such a perspective that the Command Headquarter of the Resistive Economy enacted a new form of oil contracts known as Iran's Petroleum Contracts (IPC) in July, 2015.

2.2. IPC Advantages from the Perspective of the Government Experts:

IPC planners believe that the objections to the buyback contracts can be satisfied in the following order by IPC:

1) **Lengthening the Contract Term:** since IPC is a long-term contract spanning over the development and production terms and also because the production wage is paid per barrel in IPC, the contractor tries holding a long-term look at the reservoir. Thus, the contractor requires itself to a maximal production so as to maintain a maximal profit and also adopts protective approaches to the field so that it can actualize maximal production and seeks maximum retrieval of the reservoir in long term. Thus, unlike in buyback, the contractor is looking for a protective production and maximal retrieval from the reservoir in IPC.
2) **The Contractor's Wage Dependency on the Production Rate:** in IPC, the contractor's wage depends on the production rate and it is paid per every oil barrel or per every cubic meter gas produced. Hence, unlike the buyback contracts wherein the wage was paid based on capital costs and the contractor was made willing to increase the costs, IPC suspends the wage over the production rate and binds the contractor's higher profits to the actualization of higher production rather than to the heightening of the costs.
3) **Reduction in Employer's Supervisory Role:** according to the fact that IPC is a long-term contract and the payment of wage is based on production rate, the contractor seeks to actualize maximal production so as to maintain its profits and it will make its best in supplying all the required costs hence there will be no need for the employer's supervision for the adherence to the protective production. Therefore, in such contracts, unlike in the buyback contracts, the employer plays a less accentuated role and it finds its supervisory roles decreased so the employer's weakness in managing the reservoir will be dismissed.
4) **High Flexibility of the Contract:** IPC has actualized the stepwise development in practice. There is not considered any ceiling in these contracts for the capital costs and the contractor makes investments in the field in proportion to the field requirements and the amount of the

required costs is annually suggested to the joint management committee to be approved. Thus, the development operation in these contracts is advanced gradually and the contractor manages the costs proportionately according to the reservoir's behavior during the field development process.

2.3. Critics' Ideas:

With the enactment of the new form of the oil contracts by the government, there were heard whispers of opposition to them from the critics.

The objections to these contracts are directed at:

1) Inherent Faults: the new oil contracts' violation of the high-level documents and upstream regulationsFormative Faults: ambiguities regarding the advantages of IPC in respect to buyback
2) Executive Faults: technical, financial and structural ambiguities of IPC

The vast and extensive criticisms became so serious that the phrase "return to the period before oil industry nationalization" was repeatedly uttered by the critics in discussions on the inherent faults of these contracts.

At the same time with the criticisms, these contracts were realized as a special form of the production sharing and POS contracts featuring inherent faults added to its substantive form.

Also, other executive pitfalls and ambiguities in the organizational structure, lack of correct elaboration of the investor companies' relationships with the employer as well as with the national companies were also pointed out and warned (Farahnakiyan, 2016).

According to the fact that the IPC contracts are considered as a novel form of the oil contracts that are referred to as an initiative measure by the government's oil experts, it is therefore necessary to note that the exploration of the issue is rather new in the area of publications and academic and scientific circles. In this regard, besides the few articles being released within less than a year after the unveiling of the aforesaid contracts, there are other antecedent researches available on the extant standard oil contracts in an international level. These researches are published within the format of books and articles and available to all. Also, the most substantial part of the analyses and researches have been offered as interviews with specialized, occasionally political, journals and leaflets.

It seems that "although the oil contracts include three main activities, namely exploration, development and production, they have been limited in subcontracting subjects introduced in oil law, passed in 8th of August 1974, to two stages, i.e. exploration and development.

Paragraph 2 of article 3 of the law solely specifies rules regarding exploration and development: "Iran's national oil company can draft and sign contracts deemed expedient in line with the implementation of oil exploration and development operations".

After the actualization of commercial production, the contractor was obliged to delegate the project to Iran's National Oil Company for exploitation.

Corresponding to paragraph 1 of the article 14 of the aforesaid law:

Upon reaching the production phase, every field is excluded from the contract and contractor agreement set based on article 11 of the law reaches its termination point for the corresponding field.

In paragraph 2 pf the aforesaid article, it is stipulated that "the implementation of all operations in every commercial field from the beginning of the commercial production will be immediately shouldered by Iran's national oil company".

Since the oil law enacted in 1987 had not provision regarding the revocation of the oil law enacted on 8th of August, 1974, it was decided that the latter can still remain in effect till it is rendered invalid by the former or by other statutory provisions.

Finally, the oil law enacted on 8th of August, 1974, was explicitly abrogated in whole with the reformation at 2nd of June, 2011, of the oil law enacted on 9th of October 1987," (Shirawi, 2008). Article 16 of the oil law amended on 22nd of June, 2011, states that "the oil law approved on 8th of August, 1974, will be revoked since the enactment of this statutory provision".

With the abrogation of the oil law enacted on 8th of August 1974 and the absence of any provision indicating any sort of prohibition in this regard in oil law passed on 22nd of June, 2011, the delegation of all the production chain activities of an oil field, including exploration, development and exploitation, is now legalized but within the format of a contract devoid of any prohibition (Farahnakian, 2016).

Muhammad Reza Akbari, the dean of the oil, the thinking center of energy analysts, as one of the main critics of these contracts states that: "one problem of these contracts is that it has proposed the arrangements of the contracts with the second party companies on its own. It means that the problem here is the weakening of the governance. A company is formed within the format of an Iranian private company composed of another private company and a foreign company; now, the question is that what process does an Iranian exploitation company with a hundred years of experience in the field of oil production have to go through to enter the activities in this field? It can be somehow said that there has come about a serious legal issue and the domestic exploiter companies are most likely deposed and the foreign companies are allowed to enter the field as one side of the contract. One topic most often posited in the contractual conditions is that joint committees are going to be formed that have members equally from both sides. The discussion arises as to how can the disputes on the technical issues as sure parts of the contracts for the diversity of the perspectives be resolved now that there are equal numbers of participants constituting the joint committee and who shall speak the last word? Finally, in case of discrepancies between the committee members the issue will be referred to senior managers amounting to two persons! In other words, the problem here like Iran's joint comprehensive plan of action is arbitration that can be taken abroad in its best case.

The other problem is the lack of transparency in reward and punishment system; the formula used in these contracts is that rewards and wages are assigned to every barrel extracted from green and brown fields but no punishment has been set for the company that is going to perform development operation. Out officials reason that these companies do not receive reward rather it is per se a punishment while a company leaving a duty undone has to be penalized? The foreigners gain considerable profits upon increase in oil price and out country has to suffer price reduction losses. Another problem is the unsuitable formula we have; government experts say that IPC contracts are of the service model in which the oil price risk has been considered in them. It means that if the oil price increases by over 50% then the payment rate of the developing contractor company will be increased and the risk distribution has also been considered inappropriately here again. In case of increase in the oil prices, the contractor company acquires a considerable amount of profit but the losses resulting from the price reductions are incurred by us. The new contracts have been designed in such a way that they cannot preserve the national interests under embargo conditions. In the emergence of force majeure conditions in the implementation course of these contracts and we are obliged to reduce productions (as caused by various reasons including OPEC's decisions that have urged us to reduce our productions by 2 million barrels), it is stated in the new contracts that the reductions have to be made in other fields in our hands and not in the fields worked by the foreigners and if we are forced to do so then we would have to compensate for their losses while the issue has been moderated in the Iraqi model of oil contracts and it is stated that the reductions, if any, have to be made in all the oil and gas fields; one of the objectives mentioned in the IPC contracts is that the foreign companies' interests have to be intertwisted with those of the Iranian party and this can counteract the bans that might come about in future and we could have taken a better advantage of these contracts. We will surely face problems in the next ten years in the execution of joint comprehensive plan of action and the situation will even get worse with the west in regard of the embargoes and these huge international companies definitely enjoy a large deal of influence in their own home countries; Total France Company in France's government and Shell in England's government. If a condition was added in the contracts that the Iranian party will cut off all the other party's gains in case of new sanctions then these companies could have put their countries under pressure so as to refrain from the exertion of bans against Iran but, quite surprisingly, we have ensured them to compensate their losses in case of force majeure of any type.

But, Dr. Mahdi Pazuki, an economist and a proponent of IPC contracts, states in a conversation with Fararoo Newsbase in rejecting the opponents' ideas that:

"The most important reason why we find foreigners present in Iran's oil industry is our need to financial sources. Based on the Sixth Development Plan, the Oil Ministry needs financial resources equal to 134700000000 dollars. 60900000000 dollars of the aforesaid amount is provided through interior oil Ministry's resources and about 73500000000 dollars are to be provided from exterior sources". He continues that "out of the aforesaid 134700000000 dollars, some 15 billion dollars are spent on buyback contracts and 600 million dollars are allocated to this same new oil contracts (IPC). Also, 17 billion dollars are supplied via the nongovernmental resources and 200 million dollars are financed through foreign and domestic currency corporate bonds. So, those who oppose the oil contracts can enter the course of activities if they have financial resources available". Pazuki stated that "before now, Phases 2 and 3 of Southern Pars Field had been accomplished by Total France Company. Phases 4 and 5 of the Southern Pars Field, as well, had been carried out by Italian Enni Company through spending 2.5 billion dollars plus the interest rate that had to be paid to the foreign party. But, Phases 15 and 16 were accomplished by the domestic company by a cost value equal to 7 billion dollars. Therefore, the objections to new petroleum contracts are completely political.

CONCLUSIONS:

As for the legal and inherent conflicts of the IPC contracts to the regulations, many of the experts have opined their ideas and written materials that are predominantly examinable in political terms. The followings are the considerations of these types of contracts' legal contradictions:

1) In regard of the article 2 of the Act 44 of the constitution on the implementation of the general policies, passed in 8th of February, 2007, and the later reformations: "the economical activities in the Islamic Republic of Iran include production, purchase and/or sale of goods and/or services that are assigned to one of the following three groups:
   Group One: all of the economical activities except cases mentioned in groups two and three

Group Two: economical activities mentioned in the beginning of Act 44 of the constitution except the cases mentioned in the group three of the article

Group Three: activities, institutions and companies included by this group are: … Iran's National Oil Company and crude oil and gas extraction and production companies, oil and gas mines

Corresponding to paragraph (F) of the article 3 of the same law: "investment, ownership and management of the activities and business entities included by the group three of the article 2 of the same law are exclusively vested in the government".

According to paragraph (B) of the article 129 of the Fifth Development Plan, enacted in 15th of January, 2010: "exploitation license without ownership entitlement to the produced oil and gas is issued for the oil and gas exploration, development, extraction and production activities of the oil ministry's subsidiaries and the other qualified companies and the oil ministry supervises, based on the enacted plan, the exploration, development and production operations of the aforementioned companies in terms of their production rates and protection of the reservoirs and as well as their observance of healthcare-safety and bioenvironmental measures".

Based on part 5 of paragraph (C) of the article 3 of the law on oil ministry's duties and authorities, enacted on 19th of May, 2012, "the issuance of activity license and exploitation permit for the legal persons qualified for the exploration, development, extraction and production in all of the gas and oil fields of the country".

According to absolute specification of "the qualified companies" in paragraph (B) of article 129 of the Fifth Development Plan, approved on 15th of January, 2011, and/or "qualified legal persons" in part 5 of paragraph (C) of article 3 of thee law on the duties and authorities of the oil ministry passed in 19th of May, 2012, it is sometimes reasoned that paragraphs 4 and 5 of the article 2 and paragraph (F) of the article 3 of the Act 44 of the constitution on the implementation of general policies, ratified on 8th of February, 2006, have been implicitly abrogated with the forthcoming amendments.

"Abrogation" includes elimination of a former provision that is apparently deemed expedient through canonization of another provision in such a way that the latter replaces the former and it is not possible to sum the two.

By the inability to sum the two here the existence of conflict between the former provision and the latter provision is intended that is commonly termed "general contradiction".

But, if two provisions can coexist simultaneously, no abrogation comes about and it is termed specialization.

The difference between abrogation and specialization exactly lies in the idea that abrogation is the exclusion of the provision from all the subjects it covers and specialization is exclusion of the provision from some subjects therein while being held true for some others (Shirawi, 2014).

The necessary condition for abrogation does not exist between paragraph (B) of article 129 of the fifth development plan, enacted on 15th of January, 2010, and part 5 of the paragraph (F) of article 3 of the law on the oil ministry's duties and authorities, passed in 19th of May, 2012 with paragraphs 4 and 5 of article 2 and paragraph (F) of article 3 of the Act 44 of the constitution on the implementation of general policies, approved on 8th of February 2006 and the later amendments because the two provisions stipulated in this regard still feature simultaneous coexistence.

A general provision was later on added in paragraph (B) of the article 129 of the Fifth Development Plan, enacted on 15th of January, 2010, and then in part 5 of the paragraph (F) of article 3 of the law on the duties and authorities of the Oil Ministry, passed in 19th of May, 2012, on the absolute qualifications of the legal persons for performing upstream oil and gas activities; whereas in a special provision, ratified previously, the private sectors have been excluded from the same activity titles based on paragraph 4 and 5 of article 2 and paragraph (F) of the article 3 of the Act 44 of the constitution on the implementation of the general policies, enacted in 8th of February 2007 as well as based on later amendments.

The conflict between the specific and general provisions takes various forms since the issuance date:

Form One: the dates of issuing the general and the specific provisions are symmetrical.

Form Two: the date of issuing the general provision precedes that of the specific one

Form Three: the date of issuing the specific provision precedes that of the general one

Form Four: the dates of issuing both of the general and specific provisions are anonymous

Form Five: the issuance date of one is clear and that of the other is unclear

This way, the conflict between the specific provision mentioned in paragraph 4 and 5 of article 2 and paragraph (F) of the article 3 of the Act 44 of the constitution on the implementation of general policies, enacted in 8th of February 2007, with the later amendments as well as the conflict between the general specifications mentioned in paragraph (B) of article 129 of the Fifth Development Plan, passed in 15th of January, 2010, and the part 5 of the paragraph (C) of the article 3 of the law on the duties and authorities of the oil ministry approved on 19th of May, 2012, are both of the third form, i.e. the issuance date of the specific provision precedes the issuance date of the general provision.

The precedent specific specifications introduced in paragraph 4 and 5 of article 2 and paragraph (F) of the article 3 of the Act 44 of the constitution on the implementation of general policies, enacted in 8th of February 2007, have been made more specialized with the later amendments indicating the disqualification of private sector legal persons for the undertaking of upstream oil and gas field activities; the subsequent general specifications mentioned in paragraph (B) of article 129 of the Fifth Development Plan, passed in 15th of January, 2010, and the part 5 of the paragraph (C) of the article 3 of the law on the duties and authorities of the oil ministry approved on 19th of May, 2012, have been made more specialized with the later amendments indicating the absolute qualification of various types of legal persons for undertaking upstream oil and gas field activities.

At present, the separate and/or concomitant actualization of each of the investment, ownership and management of the legal persons from private sector for the undertaking of upstream gas and oil field activities is disallowed and these cases are exclusively in the hands of the government as stipulated in paragraph (F) of the article 3 of the Act 44 of the constitution on the implementation of general policies, enacted in 8th of February 2007, as well as in the upcoming amendments.

2) The conflict between paragraph (28) of article 1 of the enactment on "the general conditions, structure and pattern of the upstream oil and gas contracts" enacted on 8th of October, 2015, and the article 2 of the amended oil law, approved on 22nd of, June, 2011:
   Based on paragraph (28) of the article 1 of the enactment on "the general conditions, structure and pattern of the upstream oil and gas contracts" enacted on 8th of October, 2015: "the annual operation plan is the program prepared within the framework of the operational plans and revisions and reformations required as a result of project realities and the real behavior of the field by the second party to be approved by the first party. The enactment of the program is announced by the first party of the contract to be implemented by the second party".
   It can be concluded from this legal text that the annual financial-operational program is seminally passed by the second party and then the first party makes the final decision.
   This legal text does not make it clear what would be the destiny of the discrepancies arising from the rejection of the proposed financial-operational program by Iran's national oil company or its subsidiaries on behalf of national oil company, as the first party.
   The enactment's silent stance regarding the method of resolving the disputes upon the rejection of the proposed financial-operational program by Iran's national oil company or its subsidiaries on behalf of national oil company, as the first party, leads to some sort of oil ministry's barring of the exertion of production governance principle stipulated by the Islamic government in article 2 of the oil law amended on 22nd of May, 2011 and opening the way to future abuses to the integrity thereof and the violation of this recently mentioned article.
3) The conflict between the paragraph (A) of article 3 of the enactment on "the general conditions, structure and pattern of the upstream oil and gas contracts" enacted on 8th of October, 2015, and article 2 of the oil law amended on 22nd of May, 2011:
   Based on paragraph (A) of article 3 of the enactment on "the general conditions, structure and pattern of the upstream oil and gas contracts" enacted on 8th of October, 2015, "the following principles govern all the contracts that are endorsed based on this enactment: a) preservation of Islamic Republic of Iran's governance and the right to exert proprietary possessions by the oil ministry over the country's natural gas and oil resources and reservoirs".
   This is while based on article 2 of the oil law amended on 22nd of May, 2011, "the entire oil resources are to be considered as parts of the public wealth and possession. The exertion of the right to govern and possess the aforesaid resources is the duty of oil ministry on behalf of the Islamic Government".
   The term "Islamic government", specified in article 2 of the oil law amended on 22nd of May, 2011, has been transformed into "the government of Islamic Republic of Iran" in the enactment on "the general conditions, structure and pattern of the upstream gas and oil contracts", passed in 8th of October, 2015; whereas, the "Islamic government" includes the government of the Islamic Republic of Iran as one pillar thereof and not exclusive thereto. The change in paragraph (A) of article 3 of the enactment on "the general conditions, structure and pattern of the upstream oil and gas contracts" enacted on 8th of October, 2015, has been done ignorant of the past history and the aforesaid difference and with no legal justification.

4) The conflict between the last part of the note 2 to the paragraph (b) of article 6 on the "enactment of the general conditions, structure and pattern of the upstream oil and gas contracts", approved on 8th of October, 2015, and the articles 190 and 233 of the civil law and article 14 of the tender law, passed in 25th of April, 2004:

   According to note 2 to the paragraph (b) of article 6 on the "enactment of the general conditions, structure and pattern of the upstream oil and gas contracts", "considering that all the risks of the exploration contracts are to be shouldered by the second party and that the costs will not be repaid in case of failure in discovering a commercial reservoir or field, the reassigning of the exploration operation to the same second party can be set as a condition in the contract".

   As it is stipulated, it has to be defined in the tender documents that whether the second party will be reassigned to a new exploration operation on a specified and determined field or reservoir after its failure in discovering a commercial field or reservoir within the format of a preliminary contract, so the contractors have to be normally selected based thereon.

   But, it is only sufficed, as stipulated, to expressing the idea that in case of the contractor's failure in discovering a commercial field or reservoir, another exploration block will be delegated with the same condition to it and it is legally problematic and such a vague obligation is invalid and devoid of effect.

   Corresponding to civil law, the conditions set in a contract have to feature the essential prerequisites like the major obligations as mentioned in the article 190 of the civil law. One such a prerequisite is the specification and clarity of the transaction subject (as the primary obligation) and the conditions set there in (as the ancillary obligations). In other words, the obligations inserted in a contract, including the primary and the secondary ones, have to be mentioned in the contract in such a way that their quality and quantity are well determined and not agreed in an ambiguous manner.

   Therefore, setting as a condition in the contract that another exploration block will be provided to the contractor with the same conditions as before in case of its failure in discovering a commercial field or reservoir is invalid due to its being deficient in one of the authenticity conditions (specification and clarity of the subject).

5) The Conflict between paragraph (D) of article 8 of the enactment on "general conditions, structure and pattern of the upstream oil and gas contracts", passed in 8th of October, 2015, and the article 2 of the oil law amended on 22nd of May, 2011:

   Based on paragraph (D) of article 8 of the enactment on "general conditions, structure and pattern of the upstream oil and gas contracts", passed in 8th of October, 2015, "a joint management workgroup is formed in every contract that is responsible for supervising all the project operations and makes the final technical, financial and legal decisions within the framework of the contract and decides the delegation of second-bad contracts and arranges the annual operational-financial plan. The second party is assigned to the implementation of the operations within the framework of the operational-financial plan. The workgroup is constituted of an equal number of members from both sides enjoying identical voting rights. The decisions of the workgroup are made in consensus and the senior managers and higher officials from both sides intervene to resolve the disputes".

According to paragraph (D) of article 8 of the enactment on "general conditions, structure and pattern of the upstream oil and gas contracts", passed in 8th of October, 2015, on the one hand, the joint management workgroup has been generally qualified to make final decisions on technical, financial and legal issues within the framework of the contract as well as to delegate second-hand contracts and arrange annual financial-operational plans and, on the other hand, specification of an equal number of representatives from the first and the second parties with identical voting rights and then basing the decisions on the workgroup's reaching of a consensus provide for the maximal decline of the production governance exertion reserved for the national oil company and the oil ministry by the Islamic government as stipulated in article 2 of the oil law amended on 22nd of May, 2011. This is while based on the exertion of the general principle of production governance stipulated in article 2 of the oil law amended on 22nd of May, 2011, neither the cabinet, in general, nor the oil ministry, specifically, could have issued an enactment to take measures in line with the formation of a joint management workgroup on behalf of the Islamic government with the second party and assigned it to make final decisions regarding the matters the majority of which are inherently within the jurisdiction of the Islamic government as stipulated by the general principle of governance enforcement hence nontransferable to others. It was for the same reason that the joint management workgroup's duties and jurisdictions had been explicitly specified in buyback contracts.

On the other hand, based on the last part of the paragraph (D) of article 8 of the enactment on "general conditions, structure and pattern of the upstream oil and gas contracts", passed in 8th of October, 2015, "the decisions of the workgroup are reached in consensus and the senior managers and higher officials from both parties intervene to resolve the disputes.

Based on the last part of the paragraph, the problem arises where the law text does not clearly specify what would happen if the workgroup followed by the senior managers from both sides could not reach an agreement over an issue.

The lack of specifying the method of resolving the disputes is considered as some sort of oil ministry's barring of the exertion of production governance principle stipulated by the Islamic government in article 2 of the oil law amended on 22nd of May, 2011 and paving the way for future abuses to its integrity and the violation of this same recently mentioned principle.

This is why it had been specified in buyback contracts in case of discrepancies that "if the parties could not resolve their disputes through the aforementioned committee or the appointed representatives, the last working program and confirmed budget would be used as the base of future operations".

6) The conflict between the beginning part of the note to paragraph (A) of the article 11 of the enactment on "general conditions, structure and pattern of the upstream oil and gas contracts", passed in 8th of October, 2015, and the paragraph (R) of the article 35 of the law on national oil company's statute, approved on 17th of May, 1977:

According to paragraph (A) of the article 11 of the enactment on "general conditions, structure and pattern of the upstream oil and gas contracts", passed in 8th of October, 2015: "regarding the fields and reservoirs under production and exploitation, in case that the first party finds it necessary in production stage to perform the exploitation operation in participation with one of its subsidiary companies and it is confirmed by the oil ministry, a joint operation agreement is to be signed between the second party and the subsidiary of Iran's National Oil Company".

This is while based on paragraph (R) of the article 35 of the law on national oil company's statute, approved on 17th of May, 1977, "the board of managers is authorized to perform the duties stipulated in the oil company's charter, including the followings:

"(R): investigation and authorization of signing contracts as determined in the oil law and exertion of the rights and authorities stipulated for the company by law". This way, limiting the authorities of Iran National Oil Company's board of managers in entering contracts specified in the note to paragraph (A) of article 11 of the enactment on "the general conditions, structure and pattern of the upstream oil and gas contracts", passed in 8th of October, 2015, to prior attainment of a permit from oil ministry is illegal and contradicts the stipulations of paragraph (R) of the article 35 of the law on national oil company's statute, approved on 17th of May, 1977.

7) The conflict between the last part of the note to paragraph (A) of the article (11) of the enactment on "the general conditions, structure and pattern of the upstream oil and gas contracts", passed in 8th of October, 2015, and the article 2 of the amendment to the oil law approved on 22nd of May, 2011:

Based on the last part of the note to paragraph (A) of the article (11) of the enactment on "the general conditions, structure and pattern of the upstream oil and gas contracts", passed in 8th of October, 2015, "this operation is carried out jointly with the reservation of the second party's support and complete technical, financial, legal and specialized inspection along with its supply of the equipment and the required consumable parts and materials. The corresponding subsidiary company is obliged to observe and execute all the technical and professional instructions as well as operation programs of the second party in utilization of the facilities specified in the contract otherwise, the intentional unfulfillment of the aforementioned measures is considered as breach of the contractual obligations by the first contract party.

Here again, the insertion of the second party's "complete inspection" on the oil company's subsidiary operations, obliging the latter to "observation and implementation" of the former's technical and professional instructions as well as operation programs and then incurring of "contractual liability" by the subsidiary company in case of its leaving them undone all contradict the "production governance" of the national oil company and the oil ministry on behalf of the Islamic government as stipulated in the oil law amended on 22nd of May, 2011.

The enactment composers have inferred that "the subsidiary companies of Iran's national oil company absolutely lack the specialty and knowledge and they can be used as agents by the foreign company. The complete technical, specialized and even legal inspections have been assigned to the foreign company and the subsidiaries of Iran's national company have to work as simple laborers having no specialization for the foreign companies.

"Although the subsidiary companies participate in the production but it is undertaken under the inspection of the foreign company and the subsidiaries have to observe and implement all the technical and professional commands as well as the operation programs of the foreign party. Even if the prescribed operations are deemed against the country's interests and the protective production principle, the subsidiaries have to act out as the foreign party orders. This is not production sharing but laboring and peonage".

References

Ameli, Jaba'ei, Zain Al-Din Ibn Ali (Shahid Sani), (no date), "Al-Rawzah Al-Bahiyyah fi Sharh Al-Llam'ah Al-Dameshqiyyah", Beirut, Dar Al-Elm Al-Eslamiyyah.

Ameli, Jaba'ei, Zain Al-Din Ibn Ali (Shahid Sani), (no date), "Masalek Al-Afham fi Sharh Al-Shara'e'e Al-Islam", two volumes, Qom, Dar Al-Hoda.

Ansari, Morteza, (1997), "civil law, Tehran, Eslamiyyeh.

Borujerdi, Abdeh, Muhammad, (2002), "civil law", Raham.

Emami, Sayyed Hassan, (1996), "civil law", Tehran, Eslamiyyeh.

Esfahani, Muhammad Hussein, (1997), "Hashiah Al-Makaseb", five-volume course, researched by Sheikh Abbas Al-e-Muhammad Al-e-Saba'a, Elmiyeh press, Mohaqqeq.

European Economy Commission, international buyback contracts, translated by Hamid Reza Ashrafzadeh, (1993), Tehran, commercial studies and researches institute.

Farahnakian in interview with journal of Edalatnameh, no.5, August, 2016.

Helli, Hassan Ibn Yousef Ibn Motahhar (Allameh), (1989), "Ershad Al-Azhan Ela Ahkam Al-Iman", Qom, Islamic Publication Center.

Helli, Hassan Ibn Yousef Ibn Motahhar (Allameh), (1992), "Qawa'ed Al-Ahkam", Islamic Publication Center.

Hosseini Maraqi, Mir Abdulfattah, (1996), "Al-Anavin Al-Fiqhiyyah", Qom, Islamic.

Ja'afary Langarudi, Muhammad Ja'afar, (2000), "an eclectic selection of civil law", Tehran, Ganj-e-Danesh.

Katouziyan, Naser, (2004), "Civil Law: specific contracts (partnerships-settlements", 6th ed., Tehran, Ganj-e-Danesh.

Korki, Ali Ibn Hussein, (1988), "Rasa'el Al-Korki", Qom, Ayatullah Mar'ashi Al-Najafi's Library.

Mafi, Homayun and Karimpour, Muhamamd Taqi, (2007), "the legal nature and effects of the contingent inventory in buyback contracts", journal of law and politics, Mazandaran University, 2(7), Winter.

Mohaqqeq Ardabili, (1991), "Majma'a Al-Fa'edi wa Al-Borhan", researched by Eshtehardy, Araqi and Yazdi, Qom, Islamic publication center affiliated to the society of seminary teachers.

Moqaddam, Muhammad Reza and Mazra'ati, Muhammad, (2007), "modeling and analyzing buyback contracts and offering a buyback contract optimization method in Iran", journal of economical research, No.76, December and January.

Mousavi Al-Khomeini, Sayyed Ruhollah, (2001), “insurance”, explicated by Muhamamd Mohammadi Gilani, seasonal journal of Ahl-e-bayt jurisprudence, 1(1).

Qomi, Mirza Abolqasem Ibn Hassan, (1992), “Jame’e Al-Shattat”, Tehran, Kaihan, spring.

Rohani, Sayyed Muhammad Sadeq, (1989), “Minhaj Al-Salehin”, 28th ed., Madini Al-Elm, Mehr Publication center.

Sadeghi, Javanmard, (2004), “legal aspects of investment buyback contracts”, journal of law studies affiliated to Shahr-e-Danesh journal of law studies and research, 3(5), Spring and Summer.

Saiwary Helli, Jamal Al-Din Meqdad Ibn Abdullah, (1922), “Kanz Al-Erfan fi Fiqh Al-Quran”, revised and compiled by Muhammad Baqer Sharifzadeh and Muhammad Baqer Behboudi, Tehran, Al-Maktabi Al-Mortazavi Li Ehya’a Al-Athar Al-Ja’afariyahh.

Shahidi, Mahdi, (2003), “civil law 6”, Tehran, Majd.

Shapira, Jean, (1992), “international commerce law”, tr. Rabi’a Eskini, Islamic Revolution Instruction and Publication.

Shirawi, Abdulhussein, (2004), “various methods of buyback contracts”, journal of legal thoughts, 2(7), Fall and Winter.