

## Study of Arbitrability in the Generations of Oil Agreements

Sayed Mohamad Hassan Malaekhepour Shoushtari<sup>1\*</sup>, Ammar Jasemi Zergani<sup>2</sup>

<sup>1</sup>Department of Law, Shahid Chamran University, Ahvaz, Iran

<sup>2</sup>Persian Gulf International Educational Center

\*E-mail: s.m.h.malaekhepour@gmail.com

### Abstract

Petroleum and its related issues have always been important matters worldwide and of course in oil states including Iran which has tied up closely to this important good. Oil agreements, which are regarded as a chain that connects both parties in this industry, have evolved greatly requiring deep research in its different sectors for better understanding of these agreements. Besides, this extensive changes and contractual disputes should be considered in these agreements. This study considered arbitrability in the generations of oil agreements considering both subjective and objective criteria and Iran's law. The results showed that there is no road block in settling down oil disputes according to Iran's law and article 139 of constitution, which is mostly viewed as the main road block for arbitration is not regarded as a road block for arbitration. Therefore, excluding this industry from referral of arbitration is clearly against its benefits.

**Keywords:** Arbitrability, oil agreements, dispute, article 139, road block

### Introduction

More than one hundred years ago, many changes have taken place in oil industry. These changes have occurred in the way of contracts. The concession contract began with the passage of time and changes in the bargaining power of the parties to the contract to whatever went on to become more balanced. Also, there have been different generations of contracts, each has its own unique characteristics and the main duty of the contracting parties is to create different conditions. This change occurred in different generations in different parts of the contractual obligations and contracts of ownership to other sections.

Iran, which is known as one of the largest oil producers in the world that possesses huge oil tanks in the world cannot not be deprived of these developments. From the first oil concessions as Darcy's where the oil concession was granted to William D'Arcy, the ownership was also provided to the state pension with various titles as a special form of buyback contracts that was prepared due to its unique features to Iran's oil industry. This leads to further improvements and changes in the balance going into Iran's oil contracts, and the freehold owner of the oil until the next contract in which foreign party just works as the contractor.

The contract is potentially possible to deviate from the initial agreement, which can lead to a conflict. So, thinking about the future and the possibilities of its contract is necessary. A common way to address and resolve any difference in judicial nature of the court is by the judge. Business investment, due to its importance, and the velocity component in the business world, has undeniable flaw and weakness in a manner that it does not normally deal with and is also suitable for the business world; Moreover, given the importance of capital to businesses that are exported to vote, which should be most fairly and it is issued with respect to various aspects of the professional class. It happened that the judge is likely a little far-fetched to alienate the various aspects of the field.

There are different ways to deal with disputes such as mediation, negotiation, compromise, peace, etc., which are very common in today's world. One of the ways to deal with a very long history in the world today is "judgment" (arbitration). It has some features like being in force, speed and course in handling more accurately than other methods of investigation.

Likewise, it is also an international scale and it happens because the parties in a contract can be entered from two different legal systems, and are willing to resolve their differences on any of the courts, which are not our accommodation and a solution is needed to be replaced. Therefore, the best solution to the problem must be sought in arbitration. The institutional framework to address the causes of conflict and Judicial Procedure also regulate the relations of the International provide.

Oil industry also considers having both commercial and international arbitration matters in its own will. With regard to the unique characteristics of oil as a strategic business asset for many manufacturers and oil contracts that parties often do not have the same power, Arbitration proceedings oil has faced with its own complexities. On the one hand, the sovereign power of the state deems necessary for the public interest to changes in the contract and may be terminated unilaterally with confiscation of property to the opposite side. On the other hand, it is predominantly private, not much power against the government.

The first issue that should be considered is that judging any subject and any litigious situations require arbitration, and it is basically a matter of judgment. In other words, the judge will have the ability to fight. These issues are not capable of arbitration at both the international and domestic arbitration of issues for various reasons, and the arbitration agreement is null and void in this matter is concluded that the issue has no legal value.

In this article, we have tried to peer review and scrutiny of the types of contracts that exist in the world's oil industry, and make a judgment of the types of oil contracts with Iran regarding the legal framework of the study. For example, the traditional concession contracts currently in place does not check the oil industry. These contracts include a concession contract (modern), cooperative agreements and service contracts that are discussed in the article.

#### **Concession contract (Modern)**

In modern concession contract as traditional concession contract, foreign companies are allowed to explore and extract oil reservoir of host countries, and in this regard there are considerable powers granted to the development of oil reservoirs. The company also provides contract manufacturing, marketing and shipping of oil as it is common. However, compared to the traditional type of contract, and the contract declined through duration and the geographic area, ownership oil belongs to the Thai government and nobody has the right, without the privilege given to him by the Government; act to exploration or extraction, whether or not he is acting in their national courts.”(Amani, 2010, p. 87). This part of the oil law, which was Thailand's ownership, is silent about the ownership of oil after extraction, although most agree that ownership of oil extracted from the reservoir to the property owner in the traditional style of this agreement comes as usual. Checking the judgment of these contracts require that the angle of the two criteria are considered in a personal subject matter. More importantly, the parties are aware of the prohibition, or limitation which is based on a different subject (Chovanoca, p.2).

#### ***The first argument: Personal criteria***

As previously mentioned in the first part of this study, it is expressed in Article 454 of the Civil Procedure Code that all persons, including legal and can be used to refer to arbitration to resolve their disputes. Ali al-Qaida in the contract that has been signed and the parties is made to the profit and loss negligent care of each side seeks to limit the use of most of the agreement. The time of negotiating a contract between the will and the desire is obvious. As a result of their natural wealth, little value has been given to the opposite side. But as mentioned before, with little time to balance the scales of the company's equity and balance, the weight of the guests went even further. Therefore, it is reasonable to think that the parties fail to address this issue. One of the most

common ways to predict the dispute to arbitration in relation to the possibility of recourse to arbitration is a private company for which there is no complexity. This means that if someone in the benchmark company in the field when the statute does not forbid the judgment, it may refer to the judgment. In fact, most of the possibility of recourse is an arbitration unless the contrary is proved. Complexity of the government side is a little more. Since the oil law reform legislation passed in 2011, which states: "All oil resources are as public wealth". The exercise of sovereignty and public ownership of the oil ministry are responsible on behalf of the Islamic state because the public agency is responsible for the maintenance of the oil ministry and oil contracts in various sectors of the industry including upstream of the duties of the ministry and of course it is a subsidiary of leading function (section 16.18 of the Act amending the 2011 oil and 19). This creates uncertainty whether the Ministry of Petroleum and its subsidiaries to refer to arbitration or not? In this regard, it should first be noted that the statute of National Iranian Oil Company Act of 1977, which explicitly stated in Article 35 of this Law: "The Board has the authority to perform the duties of the provisions of the constitution stipulated in the Constitution, including the following tasks, the discretion to adjust and set the referee in disputes and litigation firm and generally whatever is necessary to protect the rights of the company." The statute was given expressly and explicitly allowed to refer to disputes to arbitration. Before the revolution, there was no title called the Oil Ministry and the nation's sovereignty and was awarded ownership of "NIOC" to Iran. This is reflected in the last Article 4 of the Statute of the National Iranian Oil Company Act of 1977, as reflected in the old house after the revolution and the establishment of the Ministry of Petroleum Council the subsequent passage of the oil law in October 1987 operated tasks and the rule was clear. According to the statute which NIOC were created a kind of interference in the work of these two institutions.

Moreover, due to the lack of adoption of a new constitution and to acknowledge the fact that there is no statute, this could be another reason for the implementation of the Constitution. Although it seems the amendment of Article 16 of the Petroleum Act 2011 states: "From the date of enactment of this Act, the Petroleum approved Act in 05/08/1974 was cancelled "and in accordance with Article 1 of the Statute, the rule-based and oil was based on the 1974 rule. It seems that, due to the cancellation of the law, the Statute of the accessory consequently is the first to be canceled. Skini (1992), with a particular interpretation of Article 139 of the constitution, recognized resulting in a ban on the principle of qualification. However, it seems that even in France, which has been affected by it, has also been excluded (CD, 2013, p. 108). Lack of capacity in civil law is to protect the ward, but this is the principle of local Arabs. Another issue is that the original sentence is directly related to certain categories of claims with regard to public property, and the name of the State Institute are not accessible, as stated in the judgment of the conditions of the contract and not of the parties (CD, 2012, p. 108). In general, regardless of the laws and regulations that prohibit any recourse to arbitration and according to the principle of the possibility of recourse to arbitration in law, it can also refer to the judgment initio mainly in oil contracts, which is recognized under the law of institutions and companies, and public institutions.

### ***Criteria subject***

Review of arbitration proceedings for future vision requires attention to oil and the dominant theme of the oil expropriation and breach of contract claim form (Movahed, 2005, p. 19), expropriation and breach of contract by the host which is usually done by the concessionaire. In other words, one must consider the various oil contracts in which the concession contract is and continues to other contracts, mainly as a potential opportunity for the development of the oil dispute and thus it is the possibility for us to review the judgment of the contract according to the criteria provided subject.

***First speech: Arbitration claims of expropriation***

In many cases, in Iran's rights, there is a precedent for its oil Expropriation and nationalization debate is the subject of the dispute. Other claims that were the consequence of the fight in the courts of Eden, Rome and Tokyo were brought against Iran. Also, there were other claims against Iran since the Islamic Revolution and Claims Court judge in America were introduced. It should also be mentioned that in Safayr dispute, American companies in the Court's judgment - was brought America and other companies that were non-US citizens outside the Court stated their claims (Movahed, 2005, pp. 221-219).

The confiscation of any contract with any model may occur and does not point to any contract. Therefore, the discussion of all models for the same contract, is known as Amoco, which is between the companies for Amoco International, owned by American citizens and the National Petrochemical Company of Iran oil deal signed and was not basically considered and the issue was related to the construction of a petrochemical plant. There were confiscated and the case was referred to the Court of Arbitration. The main arguments of the lawsuits and judgments issued by companies deemed to be an investor or a guest breach, while the legal action by the host, and the legal rights of their own in order to maintain maximum benefits can be considered. Usually, it is the other party to the arbitration agreement and the confiscation act done. As the company claims, B.P. Topco and Liamko against Libya taht Libyan government did not participate in any of these judgments and even the referee refused to participate in the selection and presentation of the results of calling the International Court of Justice ICJ) and asked the person appointed as a judge and despite the verdict in favor of the applicant, the dispute ended with a compromise (Mohebbi, 2006, pp.25-23). In this case, we can refer to Safayr conflicts, in which the Iranian side that did not participate and jurorgave a vote without paying attention to the opinion of the Iranian side. Of course, as in the case of Libya, the parties' dispute ended in compromise (Movahed, 2005, p. 220).

Regarding these cases, it can be concluded that the accuracy of the other categories of oil can be expected, given that it is a debatable subject to claims of expropriation and breach split as is usual in the famous books, in each case the arbitration of disputes concerning the predictability is unpredictable as the confiscation of national claims.

***Speech II: Breach of contract points (Modern)***

Future point model, like any other contract commitments and obligations scenes that take on both sides of the contract and violations and deviations from the obligations led to the dispute and litigation. In order to examine the judgment of the criteria, for concession contracts, we should be aware of the obligations of the contract and the ability to follow up on that judgment. Therefore, more contracts with features enumerate the duties of the parties, and the issue of arbitration should also be examined.

***First part: Ownership***

In this model, ownership belongs to government but in extracted oil case, the contract is silent. In fact, according to Thai law, that the contract was applied, the oil extracted belongs to its holder.

Here we are faced with two forms of ownership. The first property is the way the land lies before extraction and belongs to the people and the government to control the action on behalf of the nation, In this case, the state-owned oil and the property are public. Ownership after its extraction is not considered to be required to comply with Article 139 if the contract will be taken by the concessionaire and therefore the government should be removed from public property. So, if the dispute occur about the ownership of oil after extraction in this area and the agreement is between the concessionaires transfers, the question that arises is whether in this case the method by Article 2

of the Law amending the Law on Oil where oil was regarded as one of the public wealth conflict or not.

In order to answer this question, under this contract, in the state-owned oil and the extraction step is no longer owned by the government under the agreement on behalf of the owner and proprietor of oil as some lawyers of oil contracts have been likened with "special presented" (Amani, 2010, pp. 149-141). Initially, the government and the property are located within a designated contract if that is usually 4 years and the other two 2-year period after it is extended, oil property awarded to the concessionaire and if that is not oil, it is affected by the concessionaire and the cost and time lost if the government does not lose anything.

***Second part: the obligation to produce***

To study this phase, the contract should be considered. First stage of its production is specified in the limited timeframe. Within the period specified, usually there are 4 years and up to two 2-year period is extended, if the product does not arrive within a period specified by the concessionaire contract is deemed to be completed. The second condition is unilateral risk (solo risk clause) for the contract in which the right holder ends and state representative or another person may be appointed to run the ball. If the government fails within two years from the date of Expropriation Company began to produce, the company can demand a return to the field. If the company fails to produce within the prescribed time limit is reached, and after taking the government to reach profitability in such circumstances, the Company is entitled to charge fees that are incurred therefore, if the government refuses to pay The Company can submit the dispute to the competent authority that has been set before it. Arbitration of such claims, given that the amount of money and expensive litigation that one party has undertaken, No objection can be referred to arbitration. In such circumstances, there is no plenty of space for the possibility of a dispute with the company performance, Judgment of more focused debate on this issue is ownership and the financial claims that they should also ban lack of judgment are possible; Because of the prohibition specified in the Act and of the possibility that the judgment can also be picked up the Civil Code, Article 455.

***Chapter II) Production Sharing Agreement***

Another batch of oil contracts, partnership agreements are in production some countries of the conventional method in order to get the most from their resources. Although it seems that way in first contract after the nationalization of the oil industry in Iran was signed between the National Iranian Oil Company and consortium but in the legal literature of oil contracts in Indonesia to introduce the first examples of this contract. (Amani, 2010, p. 102) In case of successful exploration and mining operations, give the benefits from mining, or receive a share of oil and gas products. Venture out to reconnoiter the risk of it is that all costs of compliance with the conditions and with the host government foreign corporate income tax and state ownership is based in certain contracts to pay for the full cost of the compensation. In this type of contract, the foreign investor is required to pay tax on the host. However, the tax rate is typically lower than the concession contracts. In such contracts, the state ownership of oil are located. The state's right to exist prior to the extraction of oil and even then it is an objective truth. Unlike the other side of his property right to the root of the contract. Unlike oil even after extraction concession contract described in the first chapter, the conventional model is presented that is not dissimilar to the contract, ownership of oil is placed in the hands of the government. And what the investor is entitled to charge done and the operation has been paid, however, that the parties agree to a concession contract after oil extraction from state ownership to reach the Owner In this case, the ownership will change As a result, the condition is referred to arbitration, but the partnership agreement has been dominated by the state. By virtue of Article 139 of the ownership dispute arise either before or after extraction requires the observance of

this principle is the constitution. The contract refers to the participation in production, without forming a legal entity that results in the formation of a hypothetical independent corporate legal personality is not and the assumption that the system does not act as a consortium to carry out the operation, it is useful to transfer ownership of the vessels was not absolute. (Iranpour, 2008, p. 34). Production Sharing Contracts have been two developments: the first and second end of the market from an operational perspective. Today you can see the evolution of the production sharing contracts with profit sharing agreements face in which one or more foreign investment in the share of operating costs in the end, instead of sharing production, accounting profit from the sale will be divided among the companies. (Rabie, 2008, p. 63) On the other hand, from an operational perspective, this kind of partnership agreements with major development has been and to engage in investing in companies' legal partnership ») (joint venture have new legal process. In these types of contracts, participation in profits and losses in proportion to the share of investment and practically with the host government's foreign investment company is constantly involved in the exploration and mining operations or in terms of exploration and mining operations in the form of "contract operations» (operating agreement) a foreign company operating as a company is transferred. (Iranpour, 2008, p. 35)

Form of legal partnership agreement where the host government and foreign companies to establish a legal entity to party and in that case the legal person party to carry out the exploration and exploitation. In this case, both sides are actually the third company shareholders and this should be referred to arbitration is not required to follow the procedures of Article 139. As well as other types of partnerships that lead to the formation of an independent legal entity is another form of partnership agreements that are beneficial ownership, "profit sharing" (profit sharing agreement) in which the property is located to the interests of the underground. Profit sharing agreements aimed at sharing the interests of the parties And the contract that seeks to profit from exploration and mining operations are divided between the parties. This type of contracts also appears to have beneficial ownership refers to the underground resources are partners. Because if the target host governments and foreign companies for exploration and mining operations, profitability and dividend is Nevertheless, profitability and dividend interest in the property and if the matter is referred to arbitration It is likely that the right partners to address the jury as to the underground resources of the chart property. (Iranpour, 2008, p. 36) According to Article 2 of the Law amending the 1390 Act petroleum oil is known as the public wealth In such circumstances, the management and ownership by the state and is therefore how the partnership agreement that the types mentioned above may condominium there In addition, Article 125 of the Law of the fifth non-ceding ownership to consider. However, further analysis can be represented This is when the government and foreign companies together make up a third legal person And the third company to develop oil exploration and production deals, Naturally, the company will be owned by its shareholders, The government also established that the company has made it, and let's leave it to the private ownership of the data, So in this sense it can be evidence of ownership possible for him, and went on to refer to arbitration procedures of Article 139 is unobstructed. The fact of the matter is that although the interpretation of high strength is required and an agreement cannot be otherwise closed for a private party ownership is not consistent with the government's legitimacy you cannot even vote on its invalidity.

### ***Chapter III) service contract***

Futures contracts are considered to be third-generation service for the first time in 1958 in Argentina were signed. (Amani, 2010, p. 109) Some believe the first time in 1962 in Venezuela and some are of the opinion that the first was signed in 1966 in Iran. (UNCTC, 1983, p.9) a type of

contract in the contract or lease contract of service as well remembered. A contractual relationship that is based on the fees paid for services performed.

Contracts of the kind that are used in the exploration and development of simple contractual agreements differ slightly. The contracts, which are called "risk service contracts» (Risk Service Contract) will be remembered, This is the way in which this contract the contractor is committed to providing financial resources, operations and bear all risks associated with the exploration and development of this step. Cost of services and repayment of loans from commercial production of oil production from the field to open cash or paid.

### ***First topic) Ownership***

Under this contract, the contractor's commitment, commitment to the oil extraction business and the condition of the oil delivered to the Employer, the Contractor will be spent undertakes to pay the fees and funds. Ownership in the same contract participation in production where the ownership remains in the hands of the government, In fact, the agreement is presented to the legal nature of the obligation to conclude a contract term is denying and oil plants remain the property of the original owner. (Amani, 2010, p. 113-112) As explained that the judgment was used in the production of oil in the partnership agreement in this part, due to the identical nature of the contract, which is also used as presented. The contractor has the right oil relative to the religious right and not objective Therefore, the government is obliged to seeking the Contractor for costs incurred to pay for oil extraction this payment can happen from the sale of oil to the contractor, what the so-called cross-sell or buy (Buy-Back).

### ***II) Risk conditions***

Note that such contracts should be considered risky bets that can be included in the contract. And the Contractor undertakes to provide, in the sense that the contractor's obligation to make a commitment to be considered this is essentially the same as its obligation not to do something is not done to receive any payment. After the contractor to perform its obligation to produce oil, Contractor comes time to pay the costs can be divided into three groups:

1. Reimbursement of the costs of exploration costs has been done to explore the commercial field, without any benefit to be paid to the contractor.

2. The cost of the development, the amounts paid by the contractor to the commercial field development agreement with the accrued interest will be paid annually. Bidding increments are subject to the employer's decision about it. But normally the profit rate of Bank of America (Prime rate of the bank of America), plus a percentage to be determined.

3. The fees for services performed as well as base pay, employers pay a fee depending on the duration of the project as a pay service. This amount is calculated according to the formula specified in the contract for this purpose is predicted. If the case to which the provision of financial risks in the contract or any part of the contract occurs, Since Article 139 shall be subject only to their own state property, Claims related to property requires permission of the House is known So part of the contract that the contract is at risk if as a result of the referral of the dispute to arbitration, and issues related to Article 139 of the state property not owned by the government and referred to the immediate figures.

### **Conclusion**

1. Nowhere in any of the rights and claims referred to arbitration does not ban oil and only some of which of course is not just for oil contracts it require referral to the Council, or Cabinet is known for approval referred the matter to arbitration. Indicates the presence of Iran's oil industry is

the industry-wide arbitration proceedings to confirm the permission of the judge's salary, which is something will have in the business world today is that oil is no exception.

2. A review of all the contracts can be concluded that basically any contract of two sections for review of the judgment is made, The first part is related to ownership Where the owner of the oil contracts in different parts of the contract is clear, If you belong to the state ownership of oil is required to comply with the formalities of Article 139 and if this would not be required to comply with this principle. The second part of any contract relating to other parts of the financial system of the contract and the terms of the contracts, mainly which are defined for each of the parties and the differences that may occur in this area. Therefore, factors such as method of payment or other obligations of the parties that are not public property, and it is removed.

3. The evaluation involves investigating judge of oil contracts with the two criteria is a matter of personal In which case personal criteria which may be real or personal references Or legal judgment regarding If it possible, refer the matter to arbitration in particular, of the judgment may otherwise be impossible.

4. Other subdivision that should be considered in judging the overall visibility of oil contracts that require the issue is Classification of claims in lawsuits "foreseeable" and claims "unpredictable" is That review of arbitration proceedings oil only for those issues that are already on the dialogue, debate and consensus reached Issues and conditions that are included in the contract. Deviation of the difference and ultimately lead to the referral of the matter to arbitration.

However, the purpose of the proceedings "unpredictable" issues and differences that are not primarily about the parties have agreed Basically, it is thought not to occur. Claims should confiscated as a result of the occurrence of such litigious events that control is in the hands of any of the contract Therefore, the inclusion of such violations committed matching funds litigious irrational and review of the judgment is incorrect. In the rest of the contract, there is no prohibition on arbitration.

5. Property in modern concession contract prior to the extraction of the government, then the owner is, naturally, the subject of arbitration in compliance with Article 139 requires state ownership and then it does not matter. In the rest of the contract, there is no prohibition on arbitration.

6. Participation in contract manufacturing and contract service, both in the case of transfer of ownership refers not helpful Therefore, in the case of both contractual disputes Article 139 is required to have due process other parts of the contract as a concession contract with the prohibitions referred to arbitration are not met.

7. Production Sharing Agreements or create consortium as well as ownership is not transferred to the third party as a result, Article 139 shall be binding due to process.

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