

New partnership contracts in international energy law in the oil and gas industry in Iranian law

Sheila Soltani¹

**1- Master's student in International Law,
Shiraz Branch, Islamic Azad University,
Shiraz, Iran.**

* Shilasoltani.13755@gmail.com

Abstract

Partnership contracts are considered the second generation of oil contracts and are the product of the joint will of the foreign investor company and the host government, and the contractual conditions, how to acquire oil and gas, and the time of ownership of oil and gas are among the issues that are checked and adjusted by both parties in the form of a contract. will be These contracts can be divided into production participation and investment participation contracts. In an oil investment partnership agreement, the host government or the national oil company as the reservoir owner partners with foreign investors as the owners of financial and technology resources and jointly operate upstream oil operations.

Keywords: new partnership contracts, oil and gas industry, international energy law.

1_ Introduction

The term "participation in investment" was first formed to meet commercial goals. The history of this type of partnership dates back to the time when several domestic companies combined their resources, skills and operations for optimal business management and influence in new

markets, and has undergone changes and improvements over time.

In the fields of mining and oil and gas, it means a coalition of persons (real or legal) for a joint activity in order to produce a product that is shared between the participants. In these types of agreements, often: 1- Special activities are carried out by a certain person (agent or manager) as a representative of the participants. 2- The power to decide on specific Issues is delegated to a committee (operational or management committee). 3- The contributors were present In the mentioned committee and have the right to vote due to their share in the Investment. 4- The rest of the rights and duties of the two parties are determined by the contributors first. 5- The relationship between the contributors is contractual and co-property. It is determined by the agreement of the parties, and the participants, as joint beneficiaries, take possession of usable assets.

In such contracts, the cost of exploration is fully covered by the international oil companies, and whenever the commercial field is not discovered, in this case the contract Is canceled, the risk will be fully borne by the foreign party. Also, If the commercial field is discovered, the related costs will be transferred to the development stage under the title of acceptable costs. After the discovery of a commercial field, the government may pay Its share of the development costs, in which case the government's share of the exploration costs Is included in the government debt account. In this way, the parties will share in the tank, production oil and facilities according to their share in the aforementioned partnership, unless otherwise stipulated. Therefore, participation in investment is similar to franchise arrangements, with the difference that in franchise arrangements, the foreign party was the total owner, but in this method, he is the owner of only the common part of It (Shiravi 2015, pp. 362-366).

2_ Participation in production

Participation in production Is a contract between the contractor and the host country (company) where the contractor pays all the costs of exploration, development, production and related risks in exchange for receiving a certain share of the production of the same field. The term of the contract, like concession contracts, is between five to six years If the reservoir Is not discovered, and If a field is discovered, it is about 25 to 40 years. The production participation contract has been used in agriculture before being used in the oil Industry. Participation in production Is a contract that is concluded between the government as the first party and an oil company or a consortium of companies with the necessary expertise and competence (Momini-Wasalian, Ghanimifard and Mahmoudi 2018, p. 139).

Usually, in developing countries, the National Oil Company or the Ministry of Oil, and in some models such as Syria and Egypt, the National Oil Company together with the Ministry of Oil conclude this contract on behalf of the government. By bearing the risks of the project, the contractor undertakes to provide financial and technical services in the form of exploration, development and extraction and marketing activities. Participation in production Is a method that has been used since the mid-1960s, first by Indonesia, and then in Southeast Asian countries, Latin America, and some Middle Eastern countries. The basis of this method Is based on the concerns of the oil-owning countries and based on the recognition of the permanent ownership rights of the countries on natural resources, and It is very similar in terms of provisions to the concession contracts of the new generation. The general difference between this method and the previous methods is that the host government or its national oil company acts as an employer and international oil companies act as contractors, and there Is no longer any Involvement in investment or concessions.

In these types of contracts, the contractor performs oil operations for the country that owns the oil without having ownership rights in the tank, facilities or oil. The contractor assumes all the costs of exploration, development and production and also assumes the risk of not discovering oil or not receiving the income. Against the produced oil, it is divided into two parts "expense oil" and "profit oil" according to the percentage stipulated in the contract. Oil is the cost to reimburse the costs that the contractor has accepted to complete the project. However, the profit between the government and the contractor is divided according to the percentage agreed in the contract. The contractor Is also obliged to pay the tax of his received portion to the government. Whenever 50% of the production is specified as cost oil in the contract, half of the produced oil Is allocated to reimburse the contractor's costs until all costs are amortized. With the amortization of the remaining expenses, the cost oil is transferred to the profit oil. Now, if the contractor's share of the oil profit is 50%, in this case, the contractor receives 25% of the total production as a fee and profit, and such Income is subject to tax and must pay the said tax at the contracted rate (Shiravi, Oil Rights and Gaz 2015, pp. 365-367). In a number of production participation contracts, the government, before dividing the production into "expense oil" and "profit oil", takes a part of the production as an ownership interest, in which case the production is divided according to the remainder (Pongsiri, 2004).

From a theoretical point of view, participation in production Is a type of service contract (service purchase) where the share paid to the oil company Is a type of payment (salary) that Is realized by the government to the oil company at the point of export. In this case, the essence of participation in production cannot be considered as a kind of privilege because in privilege, all produced oil as well as tools and equipment are owned by the company, but in participation In production, all produced oil and equipment are owned by the government. In

addition, In concession, the government's ability to control the oil company is limited, but in participation In production, the oil company operates under the supervision of the government.

Participation in production Is also not a type of partnership contract because, first, the risk of non-exploration is borne by the company.

Secondly, if the project Is successful, all costs will be paid by the government (amortized) and the contractor will not pay any costs at the end of the contract, and the host government, in addition to the costs, will also pay the price of the contractor's services and risk.

Thirdly, all produced oil Is owned by the government and the oil company has no ownership over the produced oil.

Fourthly, the rightful share of the oil company is not of the type of ownership, but this right Is a kind of religious right according to which the government Is obliged to pay a part of the produced oil to the company. In other words, produced oil is not a common property because the realization of his authority over the produced oil depends on the payment of the government and the oil company does not have any right of direct possession, priority and pursuit of the produced oil until payment Is made Katoozian, General Theory of Obligations 2015, p. 20).

In the following, we will make a mistake and answer. It seems that in some researches, the contract of participation in production has been considered as a type of contractual agreement, which is not dissimilar to the lease contract of civil law or marriage contract (Amani, 1389, p. 10), which is defined in the following, the jurisprudential nature of this contract.

In the service purchase contract, in addition to participation in production, there is also a risky

service contract, which Is not fundamentally different from participation in production, and the difference is secondary and in the financial regime. In other words, in participation in production, the payment to the company is in the form of goods, but in risky service contracts, the payment is in cash (Tavern, 1996, p. 43) .

۳_ The terms of the production participation contract

The conditions included in participation in production have two types of nature. First, many of the conditions of participation in production, apart from the financial regime, are subject to general conditions. General conditions are usually shared in the contract. Second, the financial regime of participation in production Is like specific conditions because the conditions governing the financial regime are usually written based on the negotiations of the two parties.

۳-1 -General conditions of production participation contract

The comparative study of production participation contracts shows the existence of many similarities. The generality of some conditions can be seen not only in participation in production, but also In other contracts. A correct understanding of the system of participation in production requires the knowledge of common conditions, which are stated in many contracts of participation in production, but there are also exceptions. In the following, an attempt has been made to examine a number of general terms that are effective in understanding participation in production:

1_ Ownership: Ownership Is important in four parts: First, the ownership of oil in place: Regarding the ownership of oil in place or oil

reservoirs, there are two opinions (in customary law): Public ownership, which is rooted in Napoleonic era law. According to It, private individuals do not have the right to own oil, and oil is owned by the government for public benefit. On the contrary, private ownership is expressed. This theory has its roots In Roman law (Kashani 2008, p. 12). As it has been said before, the system of participation in production has been aimed at attracting foreign investment while realizing public ownership, and countries that have declared their oil as national use this type of contract. In addition, in all production participation contracts, it is stated that the owner of the oil In the place is the host government.

Second, the ownership of the produced oil: it Is clearly stated in all production participation contracts that all the produced oil is owned by the government and the company's ownership of a part of the produced oil (which is in exchange for his cost and wages) Is realized at the point of export. As mentioned earlier, the right of an oil company to its share Is a kind of religious right, and being religious proves that allocating a part of oil to the contracting company is a kind of commitment and cannot be considered a kind of objective right. It was taken as the division of common property. This opinion will be criticized in future chapters.

Third, equipment ownership: The equipment used in the project Is of three categories: First, the contractor's equipment: all the equipment assigned to the service provider remains in her possession. Second, all the equipment that is rented by the contractor and temporarily imported into the country. Due to the fact that oil companies tend to rent equipment due to increased costs, governments refuse to approve rental budgets and force them to buy. Third, all the purchased equipment Is immediately transferred to the government after it Is used in the project, and the final owner Is the government. Of course, In some Indonesian models, the government would own the imported equipment, against receiving customs duties, at the point of importation. Fourth, the

ownership of data and information: in participating In production, all geological information, seismography, reservoir rock testing, the general shape of the reservoir, thrust mechanism, etc. are owned by the government, and the oil company Is required to provide them in the annual reports. The government will provide.

٢_ Term of the contract: Usually, the term of this contract Is 30 years, the first 10 years of which are related to exploration. If the discovery Is successful, the development phase begins, and If it Is not successful, the contract Is breached at the risk of the contractor. The development period is between two to three years and at this stage, the field is prepared for production. After development, the contract will continue for 15 to 20 years In the production phase. One of the issues raised during the exploration period is the release of areas from the scope of the contract. This action will be according to the predetermined plan and with the opinion of the contractor (in the selection of areas). The purpose of this Is the continuation of exploration activities in areas where oil has not been discovered (Smith, et al., 2000, p. 517).

The release should be done in such a way that by the beginning of the development phase, all areas except the area under production have been released. After the liberation, the contract is ineffective for the liberated areas.

٣_ Budget and work plan: It is up to the contractor to submit his work plan to the government or the joint committee every year along with the estimated budget for approval. In this plan, which is the contractor's roadmap for one year, all the necessary activities, tools, And the required services are written together with

the budget. All expenses outside the annual budget are non-depreciable. Of course, due to flexibility, there is the possibility of amending the budget or a limited deviation coefficient from the budget (Democratic Republic of Timor n.d., p12.).

ξ_ The minimum requirement of work costs: according to this condition, the contractor commits to spend a certain amount of money at a certain time. For example, In the Nigerian model, it is stated that the contractor must spend 24 million dollars by the third year, 30 million dollars by the sixth year, and 10 million dollars by the year. If the amount is not spent during this period, it may be awarded to the government as damages. This condition is a good characteristic to measure the contractor's performance. Since the minimum cost index is not sufficient and there is a possibility that the contractor will increase the costs due to wrong operations, therefore, in addition to the minimum cost requirements, the contracts stipulate that the contractor must perform certain activities within a certain period.

ο_ Project management and supervision: One of the obvious characteristics of participation in production and its distinction with privilege is the host government's management of the project. This condition in the contract is interpreted in such a way that management and supervision means that the budget and work plan must be approved by the government. Government management has always been on the side of companies' inconsistency, and they believe that the lack of management while bearing risks is a form of injustice, because this condition is a legitimate means for governments to exclude contractors. In addition, they believed that this condition causes the disclosure of confidential information of the contractor. The inconsistency of companies and the need of countries to attract investors caused a change in the way of managing and monitoring the contract project. After this development, the management and supervision was transferred to a joint committee. Of course,

in some models, the joint committee is a limited force and only a consultative pillar. (Democratic Republic of Timor n.d., p15). In the new models of participation in production, the responsibilities of the joint committee have increased, and in addition to approving the budget and work plan, it is responsible for submitting reports and conducting tender procedures related to subcontractors.

ϒ_ Supporting and strengthening the national economy: In oil contracts in general and participation in production in particular, there is a condition according to which the contractor undertakes to train local people and transfer technology. In addition, the contractor is required to use domestically produced goods and the services of contractors and local forces. These conditions are so important that they are emphasized a lot in the Chinese model contracts. Against this condition, the government is obliged to compensate the costs caused by it. Since these conditions, especially in the part of using local force, the contractor incurs risks whose implementation is suspended on the element of quality, in other words, if the contractor is forced to compete in terms of price, quality and availability have a foreign counterpart.

7_ Participation condition: In oil contracts in general and participation in production in particular, it is stipulated that the government (or its nationals) has the ability to participate in the operation of the project by providing a part of the costs without bearing the risk of the exploration sector. This condition is the context. It does not facilitate technology transfer.

^_ Marketing of products: In traditional examples of participation in production, marketing was the responsibility of the oil company, although this condition was removed in the course of developments in oil contracts, but it has been specified in the new example (Iraqi Kurdistan).

٩_ Obligations related to supplying the domestic market: according to this condition, the oil company must sell a part of its oil inside. The importance of this condition is important for two reasons: firstly, domestic sales were done with a large discount and secondly, in some models, payment was made In national currency.

10_ Ring fence condition: according to this condition, each production participation contract has its own financial regime, and if a company In a country has more than one contract, It cannot combine the costs and taxes of one contract with another contract. Oil companies tend to combine the costs of projects that have not been completed and projects that have reached production. First, they will destroy their expenses faster and secondly, they will pay less taxes in the short term. Of course, in some models, the government allows companies to combine costs in a limited way.

١١_ Resolving disputes: Although many international commercial contracts are carried out without revealing a dispute, the appearance of a dispute Is a common thing (Shiravi 1390, p. 473).

Resolving disputes in production division has three steps:

First, both sides try to resolve the dispute through dialogue.

Second, if the disputes are not resolved in the first step, arbitration is referred to. This arbitration may be organizational or case-based.

Third, if the arbitration Is not successful, the matter will be referred to the national court. Here the question arises, which national court should be referred to? Should conflict resolution rules be used? In response, it should be said that today, most of the world's legal systems have recognized the right to choose a competent court for both parties (Shiravi 2018, p. 521). In other words, in production

participation contracts, the competent court is chosen by both parties.

١٢_ Governing law: One of the important issues in International oil and gas contracts is determining the governing law. The governing law In the contract of participation in production Is usually the law of the host country, but since It is possible that the law of the host country is not advanced, and also because of the concern of companies about the Inequality of power of the parties, nowadays, by expanding the writing of contracts, the circle of maneuver of the governing law Is reduced and also, arbitrators have moved towards customary commercial law.

3_2_ Specialized conditions (financial system) of the production participation contract

One of the most Important parts of oil contracts Is the financial regime. The financial regime changes according to the countries because the conditions related to the financial regime are specific and are formulated based on the negotiations of the two parties. In production participation contracts, the financial regime plays a prominent role in the success of the contract and expressing satisfaction with it many of the concerns about the production participation contract are solved by the proper design of profit and risk in the financial regime.

The basic foundations of the financial system of production participation contracts are as follows:

Payment of bonuses (receipt in cash): Sometimes, during the negotiation and signing of the contract, a cash bonus is considered to be

paid, which is known as "contract conclusion bonus". The amount of this bonus depends on the size of the contract area and the competition between oil companies. After production starts from a field and reaches a certain level, rewards are paid to the government under the name of "production bonus". Rewards are not normally recoverable expense items. The oil company considers these payments as expenses and the government considers them as income.

Proprietary interest: Although it is not usual to pay proprietary interest in production participation contracts, in some contracts this cost item can also be observed. Ownership Interest is deducted from the gross income (the income obtained from the well head). This payment is either calculated purely or the transportation costs are deducted from it, the second case is done so that the place of production is far away from the place of sale. The proprietary interest rate is usually between 8 and 15 percent of the gross income, regardless of whether the oil operation is profitable or not, and it is paid to the government immediately from the point of sale of oil or gas.

Cost recovery: Before sharing the production, the contractor is allowed to recover his costs from the net income. Of course, in most production participation contracts, there is a limit for this recycling. The amount that remains after the cost recovery is divided according to the provisions of the contract between the government and the oil company. The upper ceiling of cost recovery, which is also known as the recovery ceiling, usually varies between 30% and 60% and is determined according to the agreement of the parties.

Recoverable costs arising from oil include the following:

Unrecovered costs that have been transferred from the previous year to the current year.

Operating costs.

Investment costs.

Depreciation costs of resource depletion and loan installments.

Financing interest (which generally comes with restrictions).

Investment credits and discounts.

Dividend profit oil and tax method: The amount that remains after deducting the ownership interest and recycling costs is called oil profit. These amounts are divided according to the provisions of the contract between the host government and the oil company. In many countries, profit oil is divided in such a way that between 10 and 55 percent of it goes to the contractor. The method of oil profit sharing has been agreed upon between the parties before the contract is concluded and in general sources of geographical conditions; weather conditions, potential costs, infrastructure, political stability and other factors that influence the business decisions of contractors. The total share of oil is called the contractor's profit, recycling costs and excess recycled costs, and contractors' entitlement. The tax paid by the oil company (which is a percentage of the oil share of the contractor's profit) can reach 56% in some cases, and therefore taxes are a major cash flow for the government. In some countries, the National Oil Company pays the taxes of the oil company as an incentive. In the production participation contracts of some countries, the government has the right to buy a certain part of the contractor's share of the production at a price lower than the market price.

4_ The main elements of production participation contracts

By examining the provisions of the production participation contracts concluded before the victory of the Islamic Revolution, in general, the following elements can be extracted as the main basis of these contracts:

Funding the costs of exploration operations by a foreign company (recyclable after discovering the commercial field and exploiting it).

The cost of specific amounts in a certain period of time by the foreign company to implement the minimum exploration obligations (in case of disobeying the stated obligation, the foreign company promised to pay half of the unspent amount to the National Iranian Oil Company.).

Carrying out exploration operations in accordance with the correct engineering and technical principles and international standards of the oil industry and at the sole expense of the foreign company.

Acceptance of all the risks of the exploration stage by the foreign company (if the exploration operation did not end up with commercial oil discovery, the costs of this operation were imposed on the foreign party and could not be claimed from the National Oil Company).

Compilation of the field expansion plan following the commercial exploration of the field by the parties.

Establishing a non-profit company as the supervisor of oil operations on behalf of the parties (participation in investment).

Recovery and amortization of all the costs of exploration operations of the foreign company from the place of oil production or from the place of tax obligations or other obligations of the second party (in case of exploration of a commercial field).

Payment of amounts as receivables from the foreign company to the National Iranian Oil Company at once and at the time specified in the contract.

Payment of sums by the foreign company as land rights to the National Oil Company (from the time of commercial exploitation and equal to the amount of the operational area) Payment of a percentage of the foreign company's share of resources as royalty (proprietary interest) to the National Oil Company of Iran (to the amount of produced oil).

Payment of tax on the special profit arising from oil operations by the parties In accordance with the provisions of the tax law at the time of the execution of the contract.

The mentioned criteria correctly show that production participation contracts are a type of service contract where the share of payment to the oil company is made from the location of the

oil production, and these contracts are essentially different from the civil law company contract. However, the terms and conditions of the contracts are very changeable, especially in the oil Industry.

°_ The nature and legal principles of production participation contracts

Production participation contracts are one of the most important contracts in the upstream sector of the oil and gas industry at the international level. This contract has always been proposed by the critics of the legal debates of this Industry as a favorable alternative to the country's cross-selling oil contracts. Now, in order to clarify the position and compatibility of this contract with the confidential documents of the country, as well as to analyze Its principles from the point of view of Sharia foundations, In this section, we will analyze the nature and most Important legal aspects of this contract. Based on this, first we will analyze the legal nature of this contract and then we will review the most important legal features of partnership contracts in the confidential field of oil and gas of the country.

6_ The nature of production participation contracts in the field of upstream rights In the oil and gas industry

Partnership contracts should be considered as a product of the intensification of nationalistic feelings of developing countries with rich hydrocarbon resources and the governments' desire to make the most of the benefits of the hydrocarbon resources available in their sovereign territory. These social movements in some countries such as Mexico In 1938 or Iran in 1951 led to the nationalization of the oil industry In them and In others such as Venezuela In 1947 and Saudi Arabia In 1973.), Abu Dhabi in (1974) or Kuwait In (1974) appeared through the signing of partnership agreements with international oil companies and finally the creation of national oil companies in those countries (Amani 2009, pp. 22-19). With this situation, despite the fact that

a huge number of sources consider the emergence of production participation contracts from Indonesia, but by reading the historical developments of the oil and gas industry in countries such as Venezuela or Iran, we realize that the implementation of production participation contracts in such countries was before Indonesia. Been achieved. Because of the movements that were formed around the benefit of the people as much as possible from the benefits arising from the hydrocarbon resources available in these countries; from the beginning of the 1950s, the ownership and control of the national oil was announced, and the oil companies took over the control of oil production again, this time as contractors and in the name of the government, with the representative of the host government. It should be stated that even though the production participation contracts were initially not welcomed by the big oil companies, but in the end, due to the realization of their desired goals of concluding an upstream oil contract in the form of a production participation contract, at the end of this contract, it was accepted. He was placed. In such a way that today, after concession contracts, production participation contracts are the most common type of contract in the upstream field of the oil and gas industry in the countries of the world. But the most important goals of foreign oil companies from concluding an upstream contract in the field of oil and gas are as follows:

Allocating a share of ownership of oil resources to them: Oil companies have a great desire to share a part of the physical production obtained from these hydrocarbon fields against the services and costs Imposed on them as a result of operations in the upstream part of the oil countries. This work Is important for them because these companies have the ability to increase the value of their company shares in the global financial markets by placing these resources in their asset list and receive a lot of profit from this place.

Proportionate productivity in exchange for accepting investment risks: the balance between risk and reward of the contractor's activities in the upstream field of oil and gas Is one of the Important principles of setting contracts in this field. Therefore, these companies expect to receive a proportional reward, such as enjoying the physical production of the field for a certain period of time, in exchange for the many risks they incur due to the lack of exploration and commercial exploitation of the field.

Stability of tax laws and other laws related to foreign investment:

Oil companies, despite accepting commercial risks such as exploratory risks (failure to discover a commercial field) and price risks (decrease in oil prices), basically political or economic risks such as changing laws and increasing they don't change the tax rate, they usually use "stability condition" to avoid such risks. By studying the legal and economic characteristics of the contract of participation In production, which we mention below, we realize that all the above-mentioned purposes can be realized in the field of this contract. If the exploration operation is successful and the oil field enters the production stage after the development operation, first a predetermined and specific percentage of the produced oil of the field Is allocated for the depreciation of the contractor's operating costs, and after that the remaining results are divided according to the ratio agreed between the parties. In the section explaining the financial system of this contract, we will explain the mechanism of the distribution of revenues from the hydrocarbon field according to the production participation contract. In short, It can be stated that the approach governing the types of production participation contracts is such that according to them, the second party to the contract as The contractor (or, more precisely, the operator) receives the exclusive license for oil exploration and extraction In a certain period and a certain place from the first party, and finally, by bearing the risks of the project, he is obliged to provide financial and technical services In the framework of carrying out exploration, development, It Is extracted and marketed. On the other hand, the first party of the contract, as the representative of the host government and the owner of the hydrocarbon resource, undertakes that If the operation of exploration and development of the hydrocarbon field, or in a better sense, the discovery or commercial development of the

field from the place of oil extraction, Is successful, the expenses Incurred by the foreign oil company make up for It should be mentioned that the amount of expenses and the quality of their reimbursement are different from each other In different samples. In such a way that even in the idea of discovering the oil business, the risk with the risk of increasing costs beyond the limit set in the contract Is borne by the international oil company, and in return, no more than the share specified in the contract Is given to the foreign oil company. It should be noted that according to the United Nations Declaration No. 626 and 1803, the right of nations to own their natural resources, including the hydrocarbon resources in the reservoir, is an Integral part of the exercise of government sovereignty, so it can be concluded that the ownership of the oil and gas in the hydrocarbon reservoir belongs to the host government. And on the other hand, the right of the foreign oil company regarding the ownership of these resources has only a contractual origin and is caused by the operation and investment made in the hydrocarbon field. Based on this, the parties are partners only in relation to the oil and gas extracted from the field (as a product of joint activity) and they can share it according to the agreed ratio. In the end, It can be said that the production participation contract is based on the following principles more than it is a privilege compared to contracts. First, the host government, directly or through its national oil company, has exclusive and comprehensive sovereignty and ownership over the oil and gas resources produced (Sornarajah, 2004, 57 p.) The foreigner Is transferred to him.

Secondly, in these contracts, unlike the concession contracts, the oil company's role In oil operations is only a secondary role that shares benefits with the host government based on the services it provides (Bredjick, 1998, p90).

Thirdly, in these contracts, instead of participation in profit as was customary In

franchise contracts, participation in production was expanded.

Of course, it is worth mentioning that even in the concession contracts, the party to the contract does not have ownership of the oil in the tank until the oil is produced.

In general, it can be claimed that the production participation contracts have balanced between two polar views of the contract that either often provide the interests of the host government (such as service contracts or mutual sales) or provide the interests of the foreign company (such as the concession contract) because this while the contract includes the host government's ownership of oil and gas resources and its control and management of oil operations (political satisfaction), it has also achieved economic satisfaction for the foreign oil company through an important allocation of production from the field in its favor.

Conclusion

International energy rights are a set of national and international laws and regulations that govern all activities related to energy sources – renewable and non-renewable – and the relationships arising from them. These activities include operations such as discovery, development, production, distribution, sale, and the environmental consequences of their production and consumption. In all these regulations, the rights and duties of producers and consumers, which include public and private rights, are reflected. The evolution of the market system has driven the direction of the laws and regulations governing energy in favor of securing and fixing the private interests of foreign investment and limiting the sovereignty of the host and investor countries. Oil and gas contracts are among the examples where private

rights and public rights are conflicting. Oil contracts have a special nature that they cannot be considered as administrative contracts or just commercial contracts. Three characteristics give this type of contracts, firstly, that one party of this contract is the government or an organization affiliated with the government, secondly, the subject of the contract is the exploration and exploitation of oil resources, which is considered as *anfal* and public wealth, and the third characteristic is the length of time. These are contracts. The combination of these three factors together makes the oil contract have a privileged nature, and considering the principle of national sovereignty over natural resources, which gives the government the right to use mineral resources in the way it deems expedient for economic development and the benefit of the nation. And demand a fair share of its income. Participation in production is a contract between the contractor and the host country (company) in which the contractor pays all the costs of exploration, development, production and related risks in return for receiving a certain share of the production of the same field. The term of the contract, like concession contracts, is between five to six years if the reservoir is not discovered, and if a field is discovered, it is about 25 to 40 years. In these types of contracts, the contractor performs oil operations for the country that owns the oil without having ownership rights in the tank, facilities or oil. The contractor assumes all the costs of exploration, development and production and also assumes the risk of not discovering oil or not receiving the income. Against the produced oil, it is divided into two parts "expense oil" and "profit oil" according to the percentage stipulated in the contract. Oil is the cost to reimburse the costs that the contractor has accepted to complete the project. However, the profit between the government and the contractor is divided according to the percentage agreed in the contract. The contractor is also obliged to pay the tax of his received portion to the government. Whenever 50% of the production is specified as cost oil in the contract, half of the produced oil is allocated

to reimburse the contractor's costs until all costs are amortized. With the amortization of the remaining expenses, the cost oil is transferred to the profit oil.

International Journal of Public Sector
Management 17 (5).

Smith, E, J Dzienkowski, O Andreson, G Canin, J Lowe, and B Kramer. 2000. Materials on International Petroleum Transactions. USA: Rocky Mountain Mineral Law Foundation.

Tavern, Bernard. 1996. Upstream oil & gas agreement. UK: Sweet & Maxwell Pub.

Sources and references

Persian resorcess

امانی، مسعود و مصطفی شفیع زاده خولنجانی، ۱۳۹۱
، تطابق ساختار قراردادهای مشارکت در تولید با
الزامات حاکمیت و مالکیت ملی بر مخازن نفتی،
فصلنامه مجلس و راهبرد.

شیروی، عبدالحسین، ۱۳۸۸ ، حقوق تجارت بین الملل،
تهران: انتشارات سمت .

شیروی، عبدالحسین، ۱۳۹۵، حقوق نفت و گاز،
تهران: میزان.

کاتوزیان، ناصر، ۱۳۸۵ ، نظریه عمومی تعهدات،
چاپ پنجم، تهران: نشر میزان .

کاشانی، سیدصادق، ۱۳۸۸ ، توسعه میادین نفت و گاز
، تهران: انتشارات مرکز پژوهشهای مجلس.

منظور، داود، مسعود امانی، و روح الله کهن هوش
نژاد، ۱۳۹۴ ، بررسی جایگاه حقوقی قراردادهای

مشارکت در تولید در قوانین نفت کشور، پژوهشنامه
اقتصاد انرژی ایران.

مومنی وصالیان، هوشنگ، حجت الله غنیمی فرد و
محمد محمودی، ۱۳۸۸، بررسی مقایسه های
قراردادهای

بیع متقابل و مشارکت در تولید در پروژهای بالادستی
صنعت نفت و گاز ایران، علوم اقتصادی.

English resources

Democratic Republic of Timor. n.d. Model
Production Sharing Agreement.

Pongsiri, Nutavoot. 2004. "Partnerships in oil
and gas production-sharing contracts." In