تحليل ماهية عقد التمويل في عقود النفط

الباحثة
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Investigating the Nature of Reciprocal Trade in the Oil contracts

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المستخلص

يعتبر عقد تمويل النفط في إيران من الناحية القانونية نوعًا من اتفاقيات شراء الخدمات التعاقدية ، وبالتالي فإن الطرف الأجنبي ملزم بتنفيذ عملية التطوير أو إعادة التدوير في حقل نفط أو غاز على نفقته الخاصة واستثماره. على النقيض من ذلك ، تتعهد شركة النفط الوطنية الإيرانية بدفع كل هذه التكاليف إلى الطرف الأجنبي بفائدة معينة وبأقساط متساوية وبالطبع عن طريق النفط أو الغاز المستخرج في نفس حقل العملى. منذ إبرام العقد الأول في عام ١٩٩٤ ، وضعت صناعة النفط والغاز في جمهورية إيران الإسلامية مثل هذه الأنواع من العقود في مشاريع التنقيب عن النفط والغاز على رأس جدول أعمالها. يهدف هذا المقال إلى تحليل ودراسة هذه العقود باستخدام المنهج الوصفي التحليلي ، بالإضافة إلى التعبير عن أهمية هذه الحالة ، فإنه يحلل موقف العقود الأولية في صناعة النفط الإيرانية.

الكلمات المفتاحية : عقد التمويل - عقد النفط الإيراني - الإستثمار الأجنبي - المشاريع النفطية .

Abstract

Buy-back Contract in Iran, is legally a type of contractor agreement under which foreign party undertakes operation or recycling of an oil or gas field with his own capital. In return, the national oil company agrees to pay back the whole expenses of the foreign party with specific interests, in equal installments and necessarily by the oil and gas produced from that operational filed. Since the time of first contract concluded in 1995, oil and gas industry of Islamic Republic of Iran, in up-stream projects have had the third generation of these contracts on the agenda. The aim of the present research is to review and study these contracts, which highlighting the importance of this case, by a descriptive-analytical method analyze the condition of up-stream contracts in the oil industry of Iran

Key words: Buy-back Contract , Iran's oil contract , foreign investment , oil projects .

Introduction

In the international trade, Buy-back Contract is considered as one of the main forms of reciprocal trade; despite of having limited applicability in the global oil and gas industry, in the other areas it's been regarded as the prominent and most effective technics of technology transfer. In Iran as a country having 11% of oil resources and 15% of gas resources of the world, this technic has had the most applicability in the oil and gas industry. Thus, with the existing post-Islamic revolution economic and political difficulties, specifically the current legal restrictions and obligations, all ways for any type of foreign investment have been blocked; therefore, approving this transaction style, the foreign investment has found some way into practice, and as a result important contracts with foreign countries have been concluded with high transactional limits. Although using this system to some extent caused survival and revitalization of Iran's oil industry, but gradually practitioners distinguished some insufficiencies and ambiguities, and also they came to know that foreign partners were not eager to take this way, in comparison to the other common contractual ways (Akhlaghi, 2013).

The subject of these contracts is on governments' authorizations. This feature is seen in all oil contracts of Iran concluded after the Islamic revolution, ranging from rate contracts to functionality, partnership, contractor agreement and eventually Buy-back Contracts. Thus, these types of contracts have specific conditions in terms of the subject and the parties involved, and examining them has a great role in the parties cognition and deal with the contract, also rights and obligations of them, unilateral termination, ruling law, resolving disputes etc. in this regard first of all the general nature of oil contracts specifically Buy-back Contracts are discussed and then, a few criticisms over that would be considered. (Heman)

2- Nature of Petroleum contracts

States governance in the oil and gas fields is applied in two way

A) Contracting, under which a natural person or a legal person dose an action for a contractor in return for a fee, in such condition employer grants no specific privilege for contractor, and the contractor can be a party transacting government only through participating a tender or auction, and competing with the other candidates. Oil contractor agreements subject to the petroleum law of Iran, 1975 are in this category.

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B) concession, under which the government dispenses administration of a common service or operation of a source of public revenue or a national wealth to a natural or legal person inclusively for a specific period of time, and in return the party taking concession for having this concession pays a fee as bonus to the state, that is a party to the contract, for example trial privilege of 1280, and actually the prevented privilege in principle 81 of the constitution, with due observance of company registration law, article 3 has the same implication. Therefore, the nature of a petroleum contract can be considered either in terms of internal law as a contract in the formation of article 10 of Iran civil code that's to say a private law or a public law contract; and in terms of international law it can be investigated that as an international or quasi-international contract. So in all such examples, obligations and assignments of the parties are categorized based on the parties' agreement and will, observance of their profit and loss, and advancement of the economic aims.

In the beginning of the decade from 1992-2002 Iran didn't have enough capital and technology for the increasing the crude oil production, consequently for attracting foreign partnership they defined a number of projects in the form of buyback contract.

Buyback contract is a type of international contract that might be concluded or signed between two states; in which a state as a contractor exports its manufactured equipment or machineries to another country, and in return uses the products resulted from its own equipment or machineries directly or indirectly.

The buy-back contract was designed to ensure the government ruling and authority over oil and gas resources of the country; because this way of investment allows government to attract foreign investments and technical knowledge and services and yet decreases the expenses of foreign transactions, and increases the exports capacity. In the reciprocal purchase contracts, foreign investor undertakes all primary expenses and project maintenance expenses, and at the very end of the contract period, transfers the total control of the project and all obtained rights of that to the Iranian partner.

Hereunto, investor re-obtains all financial costs, and a fix amount of production (or interest). In this type of contract, the receiver country attempts to achieve technology, so that it would eliminate the presence of foreign countries in the development of oil and gas fields, and to speed-up this procedure, it pays contractor's interest for 3 years, these types of contracts merely can reduce the sanctions impacts to some extent, and can let capital and technology step into the country.

Also in the past years a type of buy back contract was made with one of the large oil companies like Shell. In which it had been prescribed that the company uses the manufactured products in return for the establishment of oil exploration equipment

With these details, another type of contract is applicable in the area of oil and gas named «product sharing»; this contract in some part is similar to the buyback contract, having a difference in time condition. In this contract time period is omitted and the time span is unlimited; but a specific percentage of the sale goes to the contracto.

It shall be stated that this type of contract is not in the favor of Iran, because the national oil company of Iran undertakes all risks due to low price of oil by paying the fixed rate of return. In spite of the fact that the short term of buyback contracts causes contractors not to gain long-term profits, but the short term contracts are used in an optimized way.

-of the other types of oil contracts the followings can be named

A. Production-sharing agreements
B. Participation in investment
C. Concession contracts
D. Service contracts (purely service, risky, operational)

In Production-sharing agreements, a specific share of the produced oil is paid to the contractor, so that in case of paying tax or bonus from the contractor, his portion of production also increases accordingly. At this stage there are 3 points, first investment, second technical administration and then marketing. And according to the principals it's limited to the upstream stage, and includes neither exploitation nor operation (Zahmatkesh, 2014).

Nevertheless, the buyback contract cannot be in the same categorization with these contracts, because in the oil buyback contract, in case of encountering unexpected conditions, some problems might be raised and its time period also is different; the contractor works merely as the oilfield operator, and no participation or ownership is made for him consequently. The contractor's share of the product-able resources of reservoir is averagely less than 5 percent. the more share would be considered for the hosting country, and the foreign company after developing the reservoir would have no ownership and authority over the production and management of that. In the buyback contract, lack of foreign participation in price risk, unto the advantages for the hosting country, doesn't mean that the contractor has no risk, because the buyback contractor would be involved with a risk of not receiving part of his demands, due to non-fulfillment of the production level predicted in operation risk, and the increase of cost level beyond the written limits in the contract, force majeure conditions, and risk of low levels of oil that would lead to not receiving his demands (Zahmatkesh, 2014).

In the buy contract, contractor has no right to ownership and authority over oil production, and unlike the participation contracts that are along with the continuance of contractor's presence, the buyback contract is not along with continuance of contractor's presence .

From the whole properties stated about the both contracts, the main differences of these two contracts could be summarized into the three following categories :

One of the differences is about the method for contractor's cost reimbursement. With this comment that in the product participation contracts the product obtained from the project belongs to the contractor (the state owning the reservoir), before it's reached to a specific and already agreed amount as written in the participation contract; therefore, as soon as the product is reached to the specific limit, the foreign contractor cashes out the cost he has endured for exploitation and development of project administration via free, participation and ownership possession of the produced crude oil (Ebrahimi, 2012).

On the other term, the country owning reservoir and the foreign contractor participate with each other hereafter, but in the buyback contracts, without even the least ownership made for the contractor, his costs, interests and fee gained from the sale of each oil share obtained according to the long term agreement, would be compensated. As a result, in the participation contracts, the contractors are more motivated to gain the most economic production ratio via advanced technology, technical knowledge, skills, equipment etc. therefore, in the buyback contracts the main concern of most contractors is to reach a common ratio for the product during the years of reimbursing the paid expenditures, and also reaching a specific production level specified in the contract, that this period is far shorter than the period of the participation contracts. The third difference is the risk that contractors undertake in the participation contracts, and that is different from the contractor risk in the buyback contract. In the first contracts, risk of production costs and the interest obtained from the oil sale both are functions of production level and oil price. In the other word, higher production, higher interest. But in the buyback contracts contractor's risk is the increase of investment costs for achieving the goals mentioned in the contract for the fulfillment of production level. Though with the contractual terms all of these risks can be decreased or conveyed to the opposite party (Ebrahimi, 2012).

٣-The specific property of oil buy back contract

Some Iranian jurists have translated buyback transactions as production offset, or some other have translated that to product repurchase agreement; thus, in legal texts this contract has been recognized and defined as buyback contract .

The production offset is a long-lasting transaction under which a company with all installations and technologies is sold; the buyer mutually undertakes to pay the companies value to seller in form of products and goods produced. The actual obligation of the seller in this offset transaction is to sell products in the international market with proper price, and to receive his own demand from the obtained incomes.

As the buyback contract includes two main contracts, the Economic Commission of the United Nations in its definition has stated that: "in this type of contract, the subject of the primary contract is: equipment and machinery, facilities, knowledge and technical cooperation, that would be given to purchaser for providing production facilities, and then the parties agree that the seller eventually purchases the manufactured products from the first purchaser by manufactural facilities (Pedram, 2013). In Iran for development of oilfields, buyback contract is performed via contracts pursuant to which the foreign oil companies are obliged to provide capital and to implement development operations of a petroleum filed. In return, the National Iranian Oil Company undertakes the reimbursement of the foreign oil company through direct sale of oil and gas which is assigned to the third parties.

3-1 properties of buyback contract

In fact buy back contracts are structured from two separate contracts. In the first contract the seller or provider undertakes to provide manufacture facilities (company, mine etc.), and in return, to receive the sale value of the company, installations and technology as part of the product and invested facilities of that company; the second contract is a contract for repurchasing the product manufactured from the same technology and facility. These two contracts are related to one another through a protocol.

In case the buyback subject is an oilfield development, exploitation and operation, the oil and gas exploited and refined, would be repurchased by the main provider. Therefore, if in the buyback contract it's agreed that mutually some goods get purchased that has no relation (in terms of production) with goods export and main services, then the mentioned contract would be a reciprocal purchase not a buyback.

One of the properties of buyback contracts is their long term condition, which can last from 5 to 20 years. Another property is the high volume of ownership conveyances in buyback contracts.

The concept of buyback was taken to be applied under the budget rule of 1372; thus the term buyback for the first time was mentioned in the budget rule of 1373, and through that the National Iranian Oil Company was allowed to make buyback contracts to the extent of 3.5 million dollar for the establishment of Asalouyeh Gas Refinery and development of north and south pars gas fields.

According to the budget rule of 1373 costs and interests shall be paid to the foreign oil company in equal installments from the earnings obtained from the sale of manufactures resulted from the project, with market rate, for a period of 5 years for Asalouyeh Gas Refinery, and for a period of 10 years for development of north and south pars gas fields. And in case of any type of decrease in production or in oil and gas price, there would be no guarantee provided by Iranian banks and state institutions for the reimbursement of such costs.

It shall not be ignored that according to these laws, the foreign oil companies would be allowed to invest in oil and gas projects under buy-contract plans. Article 6 of oil law in 1987, which prohibited any type of foreign investment in oil and gas projects, was implicitly rectified, and the license for buyback contraction was stipulated in the 5 year plans of second, third and fourth economic development in the years of 1374-1378, 1379-1383, 1384-1388 respectively .

In the budget law of 2003 great changes occurred about this type of contracts, which allowed the National Oil Company to make contracts for exploitation and development of oil and gas fields.

Nonetheless, the aim of buyback contracts, as designed and applied in Iran, is to guarantee the state's authority over gas and oil resources and to keep state's supervision on gas and oil operations in a way settled in the constitution, in the oil law of 1974 and the oil law of 1987. With investigating some clauses of buyback contract the achievement to the aforementioned aim can be easily seen. For example in one of the clauses of buyback contract it's inscribed that the National Iranian Oil Company allows the foreign company to operate development operation on the behalf of the National Iranian Oil Company, but not as a project participant or owner. According to another clause, all the obtained lands and purchased properties for the project, are properties that belong to the National Oil Company; therefore, any type of goods, equipment and machinery used for the project, are provided by the foreign oil company under the name of National Oil Company.

It should be mentioned that the main aim of buyback contract in Iran, is to gain foreign currency and the required expertise for costly, risky and complicated actions for operating gas and oil projects. Thus, in the buyback contracts the financing responsibility and performing development operations are merely on the foreign oil company; nevertheless, in some cases, in the foreign oil companies and national companies, each participant individually or participatory, is responsible for financing and project implementation (Shiravi, 2012).

Buyback contract is a new innovation that has its own terms and conditions, and some jurists have stated that this contract is a type of contact with the same conditions and national and international principles; whereas it's somehow different in Iran and Europe, and even in the non-petroleum contracts. In a comparison between the buyback contract and the considered purchase contract, article 338 of civil law states that: "purchase is the possession of something in return for a specific amount". The possession considered in the mentioned article actually there is not, and merely obligations are made for the parties; the translation of buyback also makes this delusion that its nature is the same as the nature of purchase contract, though it's a mistake. Reasoned by article 338, of the product (object), the following features as to having the feature of being in possession, having the feature of being exchanged with something, and having the feature of tangibility are deduced; thus, buyback contract is a type of unspecific contract, subject to the article 10 of the civil law, and the principle of freedom and the sovereignty of the will governs that, which is somehow obligatory for the contract parties. Some have criticized that the terms and conditions of paying interest and portion of the invested funds to the foreign oil companies is in explicit contradiction with law and Sharia, and this contract cannot be regarded as the type of article 10. It seems that this view is out of the principals of international trading and the common rules of the international contracts (Heman).

In the service buyback contracts, the aligned investing company undertakes all aspects of investment as to installation of equipment, setting up and technology transfer; and after setting the project up, conveys that to the hosting country. The capital return and also the return of company capital interest are done through receiving manufactured products.

The cause of categorizing buyback contract into the line of purchase of service agreements is that the main reimbursement and also the payment of the investment interest is done from the sale of crude oil and its products. Payments could be done as cash or non-cash. This type of contracts are used in the countries under the constitutions of which, any type of ownership (private section or foreign) over the oil industry is known to be nullified.

From the other properties of the buyback contracts, the following ones can be mentioned:

- The contractor company has the responsibility to provide the capital required for exploitation, development, renewal and reconstruction of the oilfields
- All expenditures and costs the contractors endure, along with the capital and the agreed interest would be reimbursed from the earnings obtained from the sale of oil or gas, as specified in the project .
- When the period for paying the capital, investment interest and contractor’s reward is over, then the contractor companies have no right in the petroleum field of the hosting countries.
- After the end of the project operation, the hosting country would undertake the operation control.

Finally it should be stated that the contractor is responsible for financing the plan from the beginning to the end i.e. the responsibility of administration, ordering, structuring and installation, approval request from the hosting country (by the common management committee), transfer of technology, education, setting up and conveying the field to the hosting country; the whole aforementioned stages are done under the financial and technical supervision of the hosting country.

Considering the international markets dependencies on the area of oil contracts that are along with political, economic and legal complications, the hosting country or the Agent Company seeks to choose a specific contract and change its condition in a way that the most interest is acquired

Moreover, political relations, national risk (as to nationalism record, nullification of all contracts), the geological condition, technology, economic condition of the hosting country, the international conditions like sanction, the security condition of the oil zone etc. are of the factors that determine the terms and conditions of contracts (Mazraati, 2006).

Considering that these contracts are of the most fundamental contracts that are currently common in Iran, thus they are investigated with more contemplation. Although the buyback contracts have advantages, but there are also restrictions and threats that occasionally question the nature or essence of these contracts. For example it might be said that transfer of technology, meaning transfer of knowledge should take place, but actually does not; that's to say what is transferred, optimistically is merely the technical proficiency, that even in some cases the hosting country is great at that. Worth mentioning that all problems are not for the nature or property of the contract, but the matter might be due to the weakness in the contraction, which unfortunately has taken place for lack of proficiency, contemplation and accuracy of the negotiators .

Actually, prior to the field development under a buyback contract, the developmental exploitation activities are carried out by the national oil company or its contractors, so that it's revealed whether the development commenced when the economic importance of the field was found out or when a commercial field was exploited; the foreign oil companies for development are always called for tender. The data and information obtained from the exploitation operations are sent for the foreign oil companies so as to make a master plan for the field development. This plan which in detail defines the intended operation is generally named the master development plan.

The master development plan (MDP) is a fundamental part of a buyback contract which is considered as a mission for development operation. The foreign oil company shall achieve the contract's aims

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through master development plan; any type of deviation from the plan would entail the prior and written approval of the National Iranian Oil Company, and the mentioned company also is free to accept or reject such requests. Different operation phases of development and also the important stages in each phase have been defined in the master development plan. The investments costs are calculated according to separate prices listed in the master development plan, and are eventually get agreed in the contract; therefore, the buyback contract for development entails the parties' agreement in detail at contraction.

3-2 financial system in the buyback contracts

All capitals needed rot a master development plan, shall be provided by the foreign oil companies. In buyback contracts four types of costs have been predicted:

- Investment costs
- Non-investment costs
- Operation costs
- Banking costs

Investment costs are the sums that relate directly to developmental operations, according to the accounting procedures attaching the contract. Non-investment costs refer to the expenses that specifying them in contraction time is quite difficult, and are generally referred to the expenses that are paid to Iranian authorities for developmental operations, i.e. taxes, social security costs, custom duties and any other type of necessary duties. Operation costs are the costs that have been paid directly and necessarily for production, prior to the project completion and its conveyance to the National Iranian Oil Company. Operation costs generally are of prominence when the aim of achieving production is designed in two or three phases, and the foreign company has been allowed to exploit the field in the first and second developmental phases. Banking costs refer to financing costs, which based on Libor rate are calculated with an extra percentage.

Nevertheless, these types of costs might be backed under certain conditions. Initially the aim of the contract, in the master development plan shall be met by the foreign oil company; then, the National Iranian Oil Company shall approve the authenticity of the expenses or costs by an international auditor accepted by mentioned Company (Mazraati, 2006). And in the third stage, the expenses or costs shall be properly categorized into the following financial classes; investment costs, non-investment costs, operation costs and banking costs according to the accounting procedures attaching the contract.

In addition to costs, a fixed amount mentioned in the buyback contract would be paid as a reward for investment and risk acceptance to the foreign oil company according to the contract. This reward which in the contract is denoted as wage, would be paid only if the contract aims have been greatly met by the foreign oil company, exactly as stated in the master development plan, and the project then have been successfully conveyed to the National Iranian Oil Company.

3-3 risks of buy-back Contract

There are several risks in the buy-back contracts, which foreign companies have the responsibility of managing them

A) First of all they shall provide the investment costs which have been determined at the time of contraction for development operations. any extra cost for implementation of development plans shall be also provided by the foreign petroleum companies
   With this note that: non-investment costs (operational costs) have not been determined during the contract, and if necessary they would be provided by foreign petroleum companies.

B) All investment costs needed for implementation of the master development plan, and for the fulfillment of goals shall be paid by foreign petroleum companies, in that case its refund would be done only in the limit of the agreed investment costs, written in the contract. The unpredictable changes in the market condition might cause the increase of investment costs from the determined limit, the extra amount of which would be only on the foreign petroleum companies.
   Thus, many technical issues that rise in future, and might lead to exceed of investment costs beyond the determined limit, would be on the foreign company.

C) Expenditure (cost) refunds are subject to fulfillment of goals and the contents of the contract; in case these goals are not fulfilled, the foreign petroleum company would suffer a heavy loss. Also in case of the insufficiency of oil field production and oil low price, the foreign petroleum company if the contract contents are fulfilled, cannot refund all expenses and fees. In such cases, the overdue amounts would be postponed to 3 months later. If the low price continues, and if the period of capital depreciation is spent, then these overdue amounts might never be returned.

D) In case the project is postponed, there might occur some changes in the master development plan, low quality and weak operation of internal sub-contractors, delay in obtain governmental clearances, delay in getting approval from the National Iranian Oil Company, delay of the National Iranian Oil Company in delivering the operation zone to the foreign petroleum company and etc. and it would have a negative charge.

4- A commentary on buy-back contracts in the oil industry in Up-stream and Down-stream industries

From the time of oil industry up-stream contracts in the form of buy back contracts, frequently criticisms have been made from the view point of foreign investors, contractors and also Iranian and foreign experts; and in spite of the experts attempts in planning and introducing the triple generations of buy back contract, these contracts still have some deficiencies, mentioned in the following (Shiravi, 2009).

A) The necessity of determining petroleum expenditures (costs) limits; initially the non-possibility for optimizing this issue according to the data obtained through reservoir behavior during the project time is estimated. It should be explained that the early determination of costs limits i.e. exploitation and development before or during contracting, with consideration to the nature of upstream projects which have been frequently encountered with technical, financial and contractual unexpected factors of reservoir and field unknowns hasn't been possible and lacks industrial logic, and has no contingency with the common upstream contracts of petroleum industry.

B) The constancy of expenses refundable by contractor, and its lack of relation to contractor's operation don't have the required flexibility in terms of financial tools in the buy-back contract. One of the main features of proper contractual systems, is making balance between risk and contractor interests, and also making alignment between the interests of the government of the host country and the foreign petroleum company.

C) Costs increase or lengthening of the duration might have an effective rule in the increase of the contracting companies' profitability; thus, in the buyback contracts, there has been no contractual system based on reward and punishment which supervises the contractors operations; the related contractors also don't have the required sensitivity.

D) The foreign country, after reaching the production level should convey the field to the national oil company; thus, the oilfield doesn't enjoy the foreign company's skills and techniques during production and operation. That's to say the foreign company is not allowed to interfere during operation and production; therefore, any deficiency or shortcoming in productions has a negative impact on the foreign company because any risk is probable to occur at this stage.

E) The international oil companies need to be assured that the right for development of each oilfield where their exploitations are done by them, is given to them by the hosting country; therefore, in the buyback contract, after the commercialization of these oilfield, the foreign country loses the development right, and this leads to foreign countries loss of ambition and not investing on such exploitation projects in the country. Their performance in these types of projects is not proper and loses of the quality.

F) Reimbursement restriction from the oilfield production: investors and foreign countries have demonstrated that in case the oilfield production has been insufficient for the reimbursement of costs, then the oil and gas of another field might be used and there shall be no restriction for refunding from the productions of that field. It can be contemplated.

G) One criticism is that the possibility of confiscating the discovered reservoirs in the project is not considered as the contractor's property. The superiority of partnership contracts in production over buy back contract is attracting foreign investment, because in the buyback contracts the reservoirs cannot be confiscated and recorded in the world stock markets.

H) In terms of ensuring safe production and applying the optimum method to increase the reservoir recovery factor, there is an evident defection. Investigating that, it can be found that some reasons as to insufficient knowledge of contractor about the reservoir which is caused by not having enough study prior to the contraction, and also not preparing a master development plan of the field Hydrocarbon reservoirs by contractor, or not having enough capability for supervising the proper implementation of the master plan, and not updating the obtained information during the project etc. undoubtedly are of the factors that usually are not considered.

Results and suggestions:

Iran's constitution have not indicated specific regulations for upstream industries, and oil and gas fields; what is construed from the general principles of constitution is that the legislator is faced with restrictions in terms of oil and gas upstream activities that shall not be neglected; these restrictions are firstly due to lack of expertise, and secondly lack of the required authorities in this area; whereas, the legislator with his commentary can quite develop a freedom of action. The third restriction in this area is that oil and gas are considered as "ANFAL[1]" and are in the authority of the Islamic state; and the oil upstream activities are inclusively authorized by the state. the government cannot convey it to others neither totally nor partially, or in a participation form and the like.

Deduced from the administration law of fourth principle policies and its regulations, the government can in terms of upstream contracts, without any need to tender holdings, buy any financial, technical and managerial services from nongovernmental entities; Provided that investment, ownership and management of the mentioned activities be authorized by the government; thus, it's obvious that any type of upstream contract in the petroleum industry leading to investment, ownership and management of private section in the upstream activities, is prohibited.

Despite of the fact that there is a rule for encouraging and supporting both foreign investment, and the administration law of 44th principle policies, it was expected that the foreign investment prohibition in the petroleum upstream operations be repealed; but the mentioned rules have always taken place with amendments, prohibitions didn't repeal, gave continuance to the contradictions of these rules and the other rules, and yet has leaved some ambiguities in the contents of the oil contracts. From the other results obtained, there are criticisms on the buyback contract which has been briefly investigated at the end of the article.

Finally we cannot say which of the mentioned contracts are good or bad, contracts are merely assumed as a capacity for the agreement of parties; therefore, none of these contracts have been made common or outdated; however, some of them has been used more. Nonetheless, the hosting countries for technology development, technology transfer and investment attraction shall have this important issue in consideration.

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[1] Properties that belong to the first person of the Islamic territories and are authorized by him.