

من الامتياز إلى عقود الخدمة أين تقف صناعة النفط الكويتية؟

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الملخص

تواجه الكويت صعوبات في تنفيذ استراتيجيتها النفطية لعام 2040، إذ لم يتحقق سوى تطوير محدود في إنتاج النفط الخام منذ ثمانينيات القرن الماضي. وهي مسألة تتطلب تقييماً قانونياً وتعاقدياً وفنياً لاستكشاف العوائق، عبر منهجية مقارنة تجمع بين التحليل القانوني والدراسة التطبيقية. يعتمد النظام التعاقدي في الكويت نهجاً صارماً بسبب القيود الدستورية التي تفرضها المادة 152، والتي تنطبق على عقود الامتياز أو عقود تقاسم الإنتاج (PSAs) وعلى خلاف ذلك، تعتمد دول الخليج الأخرى نماذج أكثر مرونة، ما مكنها من تحقيق تقدم كبير في زيادة إنتاج النفط الخام.

كما أن الشركات النفطية الوطنية الكويتية تعتمد بشكل كامل على التعاقد الخارجي لتنفيذ العمليات النفطية من خلال عقود الخدمة. وتعد عقود تقاسم الإنتاج (PSAs) ضرورية لتطوير الحقول الشمالية في الكويت نظراً لتعقيدها الفني. وتشير دراسة الحالة المتعلقة بالعراق إلى أنه أبرم عدة اتفاقيات يمكن تفسيرها قانونياً على أنها عقود تقاسم إنتاج. وتخلص الورقة إلى أن الشركات النفطية الوطنية في الكويت لا ينبغي أن تظل مجرد مقدمي خدمات، وتوصي بالتحول نحو نهج تعاقدي أكثر مرونة.

الكلمات المفتاحية: حقول شمال الكويت · عقود الخدمة · تقاسم الإنتاج · النهج التعاقدي الصارم

From Concession to Service Contracts:

Where Does Kuwait's Petroleum Industry Stand?

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Abstract

Kuwait struggles in its petroleum strategy of 2040 because only minor development has been achieved in crude oil production since the 1980s. This question requires legal, contractual, and technical evaluation to explore the obstacles through a comparative legal doctrine combined with an empirical study. A rigid contractual approach prevails in Kuwait owing to the constitutional restrictions of Article 152 applicable to concessions or production-sharing agreements (PSAs). Other GCC countries are more flexible than Kuwait and have achieved advanced progress in crude oil production. Kuwait's NOCs are entirely outsourcing petroleum operations through service contracts. PSAs are necessary to develop Kuwait's northern fields, as they are complex. Iraq, as a case study, has signed several agreements that are legally to be construed as PSAs. The paper concludes that Kuwait's NOCs effectively decide not to be service providers and recommends shifting to a flexible contractual approach.

Keywords — Kuwait's North fields; Service Contracts; Production Sharing; Rigid Contractual Approach.

1. Introduction

Kuwait faces major challenges in producing four million barrels per day (MBPD) of crude oil by 2040 as a strategic objective. The target was originally set for 2020 but has kept being postponed [1]. Despite incorporating eight national oil companies (NOCs) to operate its petroleum industry, Kuwait is still entirely outsourcing petroleum operations through service contracts. Few NOCs in the world have marked successful transitions to international oil companies' (IOCs') level, such as Malaysia's Petronas—founded in 1974 and now operating as an IOC [2]—and PetroChina, restructured in 1999 and now a leading IOC in its own right [3]. Kuwait's NOCs, however, remain 'unable to span the full chain' [4] of petroleum operations and continue to rely on IOCs' critical role as technology owners with the professional ability to better develop field operations and lend 'international credibility to an NOC' [5].

The questioned lag in moving toward the 2040 strategy presents, by itself, a research question that must find its answer in realistic facts rather than defensive justifications. This paper adopts the comparative legal doctrine method to evaluate legislation, the contractual approach, and NOCs' capacities, with an empirical study of selected GCC countries and Iraq's recent petroleum agreements as a case study.

2. Kuwait's Crude Oil Production

OPEC statistics for 2024 confirm an average crude oil production of 8,096 MBPD by Saudi Arabia, 3,086 by Iraq, and 2,092 by the UAE, while Kuwait produced

only 2,041 [6]. With the termination of Kuwait's concession to Kuwait Oil Company Limited (KOC Limited)—a joint venture of the Anglo-Persian Oil Company and Gulf Oil Corporation (now BP and Chevron)—under Law 10/1976 regarding the Transfer Agreement of all rights of KOC Limited to Kuwait, KOC Limited was nationalised into an NOC named Kuwait Oil Company (KOC).

Historical data indicate that KOC produced 1,760 to 1,878 MBPD in 1980–1989 (averaging 1,387.7 MBPD), 1,234 to 2,018 MBPD in 1990–1999 (averaging 1,707.8 MBPD) [7], while 2023/2024 closed with 2,065 MBPD [8]. The State Audit Bureau raises concern about the barrel-production cost rising by 41% compared with 2018/2019 due to manpower, contracts and materials [9]. This places upstream NOCs in a difficult position, because since the 1980s less than approximately 700 BPD of additional oil production has been added—due mainly to outsourcing. Considering that 1,700 MBPD is produced from the Burgan Oil Field alone (discovered by KOC Limited in 1938 and considered the second-largest oil well in the world), traditional concessions remain against public and governmental policy. This industry is viewed as a national sector that should no longer be conceded to foreign investors. The failure of traditional concessions to create stability and a mutual-interest balance supports their present rejection [10], as such concessions grant entire ownership of petroleum resources to IOCs subject only to royalty payments to the host-government country (HGC) 'for a relatively long period' [11]. Most HGCs subsequently 'nationalised their mineral resources' [10] in the twentieth century, a 'game-

changing' moment in both international markets and the domestic political environment [12].

3. A Rigid Contractual Approach

Kuwait operates its petroleum industry via service contracts, which are the 'least common form of business' [13] but the only form permitted. A rigid contractual approach is an apt description in light of Article 152's constitutional restrictions, which impose the enactment of a law for a limited period in order to grant foreign ownership of natural resources. Government and Parliament interpret this in 'a very strict and literal manner, i.e., any agreement concerning natural resources needs ... approval of the Parliament' [14]. Hence, these restrictions apply to both concessions and PSAs under this wide interpretation. From a legal standpoint, a PSA does not grant ownership of petroleum resources, as only a share of production at the point of export is granted to the IOC, while the HGC remains the principal owner of unproduced resources [15].

Globally, a rigid approach runs counter to IOCs' preferences, as PSAs are 'the most dominant form of contract ... in developing countries' [16]. Service contracts, by contrast, may be defined as short-term contracts between the HGC—via its authorised representatives—and a contractor to undertake petroleum operations and allocate risks and liabilities in exchange for monetary fees, while ownership of petroleum resources or production remains with the HGC. IOCs look for longer reserve booking, which is not permitted under service contracts. These prevailing market conditions cannot be ignored without improving NOCs' technical capacity.

4. PSAs as a Necessity for Developing Crude Oil Production from North Kuwait Fields

KOC declares that the North reserves contain large quantities of heavy oil but require complex operations [17]. Although heavy oil is an important energy source, it demands unusually high levels of operational effort and technical expertise owing to its large viscosity and density, its high impurity content, and its location at considerable depth [18]. Signing PSAs for the North Fields is therefore a necessity. A PSA may be defined as an agreement between an HGC and an IOC—as partner—to undertake upstream operations within a determined area for a specified period in exchange for a production share after recovery of costs, liabilities, and risks taken by the partner.

Project Kuwait, in the form of an Enhanced Technical Service Agreement (ETSA), was signed as an alternative in order to overcome these strategic challenges. An

ETSA is a risk service contract that generally marks 'the evolution of the contractual framework ... from the concession and production-sharing contract models that granted ... some interest over the oil' [19]. The ETSA, a contractual arrangement signed in 2016 for ten years and recently extended to 2029 [20], was designed to overcome the inability to sign PSAs; it remains a service contract but for a longer period and with higher investment. Nevertheless, existing challenges confirm the ongoing need for PSAs. The difference between the two models lies in their fiscal regime: a PSA grants the IOC a share of production under the production-allocation principle—an 'ongoing process ... where the produced hydrocarbons are allocated from the point of sale back to the point of extraction' [21]—while the contractor in a service contract receives a 'predetermined fee' [13] and title always remains with the HGC.

5. Flexible Contractual Approach in Other GCC Countries

KPC announced that its strategy is conditioned on 'collaboration with the government to review and revise current regulations, facilitating partnerships with international operators ...' [22]. The rigid contractual approach hinders this, and revision of the laws is a must in order to facilitate PSAs. Comparing this with the GCC countries, the UAE does not restrict concessions and/or PSAs at all, while Qatar restricts them at a lower level—requiring only the approval of the Council of Ministers, as per Article 3 of Law 3/2007 regarding the Exploitation of Natural Resources.

Securing a source of income in developing countries requires attracting foreign participation, given IOCs' undeniable role since the age of the Seven Sisters in developing the petroleum industry in the region during the twentieth century [23]. To the present day, IOCs continue to expand their technical expertise and investment [5]—incomparable to NOCs' capabilities—since these projects are IOCs' sources of income and survival [24]; by contrast, Kuwait's NOCs seek governmental and political support, do not give deeper focus to profit generation, and lack operational development.

6. Iraq's Recent Petroleum Agreements as a Case Study

Iraq has initiated several petroleum agreements based on the profit-share principle—after deducting recovery costs—which ought to be legally considered PSAs, regardless of their declared titles as 'technical service contracts'; in the Kurdistan region, by contrast, PSAs are signed and explicitly titled as such [25]. The Technical Service Contract for the Rumaila Field (2009) is a telling

example [26]: Article 2.1 describes its nature as a ‘Technical Service Contract for the rehabilitation ...’, although all the basic fiscal terms of a PSA are present.

First, a signature bonus is payable to Iraq as a lump sum of 4 million USD under Article 4.1 [26]. In the literature, a signature bonus refers to a payment made to the HGC by the IOC when a PSA is signed [27]. *Second*, petroleum cost under Article 1.63 refers to ‘recoverable costs ... incurred and/or payments made by the Contractor in connection with ... the conduct of Petroleum Operations ...’ [26]. Incorporating cost-oil cannot be done unless the arrangement is a PSA, since cost recovery is one of its fiscal toolkits [28]. *Third*, profit-oil is incorporated under the name ‘Remuneration Fee per Barrel’ under Article 19.5, defined in Article 1.74 as a ‘fee paid to Contractor for Incremental Production’ and calculated per barrel under Article 19.5(b). Profit-oil confirms the arrangement is a PSA: it is the ‘revenue that remains after deduction of royalty and cost recovery’ [29]. Although the contract calculates profit-oil as fees per barrel rather than as a stipulated production share, the two formulations converge, as the contract references the export oil price.

Nevertheless, this contract—with all its privileges granted to IOCs as operators—ought to have incorporated a direct international technology-transfer obligation. Although Clause 26 is titled ‘Employment, Training, and Technology Transfer’, its sub-clauses focus on research, training, and technological assistance rather than on technology transfer itself [26]. Unfortunately, this cannot enforce international technology transfer. Considering that training costs are non-recoverable—since IOCs are obliged to create a dedicated fund—it is worth highlighting that this contract is implemented by a consortium of three service providers: one of them, SOMO (State Oil Marketing Company of Iraq), is an NOC of Iraq, referred to as the State Partner. This should assist in enabling international technology transfer by disclosure in practice, since SOMO is an operator alongside the two IOCs: BP Iraq NV and PetroChina Company Limited [26]. Involving the NOC in project implementation is an added asset that should surely lead to the development of its operational and technical capabilities.

7. Lack of Technical and Operational Capacities of NOCs in Kuwait

Kuwait's NOCs, like most NOCs in the world, still lack the technical and operational capacity to operate petroleum operations independently. Indeed, NOCs in Kuwait effectively decide not to be service providers because they have never once attempted to implement an entire petroleum project alone on the basis of their own

manpower, equipment, and technological and operational capabilities. Rather than being involved in day-to-day project implementation, Kuwait's NOCs look to IOCs for capital investment, technology, and manpower—chiefly out of confidence in the IOCs' capacity to deliver successful projects [30]. This has turned Kuwait's NOCs into supervisors who monitor IOCs' performance. Even under Petroleum Strategy 2040, no strategic objective exists to involve NOCs as operators [1].

8. Conclusion and Recommendations

Challenges still exist in achieving Petroleum Strategy 2040, which require urgent, serious, and unprecedented actions grounded in well-established facts. Iraq's experience of involving SOMO as an operator should encourage other NOCs in the region to begin as part of joint ventures or consortia and then gradually to self-source their operations. Accordingly, this paper recommends the following:

- A shift to a flexible contractual approach, in which the approval of the Supreme Petroleum Council alone is sufficient to facilitate PSAs.
- The government should rectify the wide interpretation of Article 152 by enacting rules facilitating PSAs in a relevant policy.
- PSA policy must foster international transfer of advanced technologies as a condition for assisting the development of NOCs' capacities.

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